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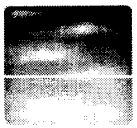

To: Carolyn Harris/CH/CLB
Cc:
Bcc:
Subject: Transportation of Medical Marijuana

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Date: 03/16/2010 03:39 PM
Subject: Transportation of Medical Marijuana

City Atty Shannon claims People v Trippet (1997) prohibits one member of a collective from transporting marijuana to another member. However, this is IMPOSSIBLE because "collective/cooperative cultivation" is a RIGHT created in 2003 under Medical Marijuana Program Act.

A court case obviously cannot instruct us on legal categories not invented at the time the case was written!

The Attorney General guidelines clearly confirm this

Under the section entitled **"GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS",** transportation is limited under People V Trippet as follows:

Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is "reasonably related to [their] current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)"
Notice that Prop 215, 1993, is referenced explicitly, but MMPA (SB420) is not mentioned.

However, further down in the document is the section entitled **"GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES"**

In that section is the following passage:

"...marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by or distributed to, other members of a collective or cooperative."

Pretty clear and totally explicit. There really is nothing to argue about. Transportation from one member of a cooperative/collective to another is protected by California law. Period.

Diana Lejins

Advocates for Disability Rights

Working to make the World a better place,
diana ☺

DRD-20

# CALIFORNIA PATIENT RIGHTS

## THE SALE OF MEDICAL MARIJUANA IS LEGAL UNDER STATE LAW

### ASA'S LEGAL ANALYSIS

The nonprofit sale of medical marijuana is legal under state law, despite protests by some local California officials.

Under the Medical Marijuana Program Act ("MMPA") and the Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("AG Guidelines"), sales of marijuana by properly organized medical marijuana dispensaries are legal under state law, so long as they are not for profit.

In 1996, the California electorate passed the Compassionate Use Act ("Proposition 215" or "the CUA") "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician...."

Although the CUA did not expressly provide a mechanism for the seriously ill to obtain marijuana, it explicitly sought "[t]o encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana."

To meet the voters' challenge, in 2003, the California Legislature passed the Medical Marijuana Program Act to provide for collectives and cooperatives, which may sell marijuana. Specifically, the MMPA states that "Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360 [sales and possession for sale], 11366 [maintaining a place where marijuana is sold], 11366.5, or 11570."

Furthermore, the landmark court decision in People v. Urziceanu (2005) 132 Cal. App.4th 747, 785, ruled that the MMPA's "specific itemization of the marijuana sales law indicates it contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana."

In 2008, the Attorney General issued Guidelines for law enforcement that recognized the legality of storefront medical marijuana collectives as long, as they abide by state law.

Specifically, the AG Guidelines allow for storefront dispensaries to "[a]llocate[] [marijuana] based on fees that are reasonably calculated to cover overhead costs and operating expenses".

Thus, the distribution model affirmed by the Legislature, the Attorney General and the courts relies on legal sales of marijuana. Under California law, medical marijuana collectives and cooperatives, which engage in sales, are legal and pay at least tens of millions of dollars in sales tax to the State Board of Equalization annually.

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Case law interpreting California Health & Safety Code § 11362.775, which provides specific legal protections for the association of qualified persons within the State in order to collectively or cooperatively cultivate marijuana for medical purposes:

(1) *People v. Hochanadel*, 98 Cal.Rptr.3d 347 (filed 8/18/2009) – Court concluded that "the MMPA's authorization of cooperatives and collectives did not amend the CUA, but rather was a distinct statutory scheme intended to facilitate the transfer of medical marijuana to qualified medical marijuana patients under the CUA…." The court also concluded "that storefront dispensaries that qualify as 'cooperatives' or 'collectives' under the CUA and MMPA, and otherwise comply with those laws, may operate legally, and defendants may have a defense at trial to the charges in this case based upon the CUA and MMPA."

(2) *County of Butte v. Superior Court of Butte County*, 96 Cal.Rptr.3d 421 (filed 7/1/2009) – County of Butte was sued by a member of a medical marijuana collective after being ordered by a sheriff to destroy some of the marijuana plants in accordance with the County's underlying policy to allow qualified patients to grow marijuana collectively only if each member actively participates in the actual cultivation of the marijuana by planting, watering, pruning, or harvesting the marijuana. Trial court sustained the civil lawsuit for money damages against the County and concluded that contrary to the policy of the County, "the [State] legislature intended collective cultivation of medical marijuana would not require physical participation in the gardening process by all members of the collective, but rather would permit that some patients would be able to contribute financially, while others performed the labor and contributed the skills and 'know-how.'" Court of Appeal upheld the trial court ruling.

(3) *People v. Newcomb et al.*, 2009 WL 1589574 (filed 6/9/2009) (Not Officially Published) – Defendants appealed their convictions based upon the collective/cooperative defense under California Health & Safety Code § 11362.775. Appellate court upheld the convictions, but elaborated that "other than merely purchasing marijuana, not every member must contribute to some aspect of the collective or cooperative; … Because some patients may be too ill to contribute to the collective or cooperative, requiring them to do so, in order to be part of the collective or cooperative, would be impractical."

(4) *People v. Urziceanu*, 132 Cal.App.4th 747 (filed 9/12/2005) – Appellate court reversed and remanded a trial court's determination that a defendant was precluded from raising a "collective, cooperative defense" under Health & Safety Code § 11362.775. The appellate court found that the defendant had presented the trial court with sufficient evidence that: the defendant was a qualified patient; the co-defendants were qualified patients; the procedures of the collective, in question, verified the prescriptions and identities of the various members, making them qualified patients, as well; members paid membership fees and reimbursed the defendant for cost incurred in the cultivation through donations; and members volunteered and participated at the collective, by helping with cultivation, delivery, processing of new applications, etc. The court elaborated that Health & Safety Code § 11362.775's "specific itemization of the marijuana sales law indicates it contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana."