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Regulating Businesses and Personal Conduct

§9.51 d. Federal Controlled Substances Act

Under the Controlled Substances Act (CSA) (21 USC §801 *et seq*.), marijuana has "no currently accepted medical use at all." *U.S. v Oakland Cannabis Buyers' Coop*. (2001) 532 US 483, 491, 732, 121 S Ct 1711. Unless in conjunction with a federally approved research study, the possession, cultivation, and distribution of marijuana is illegal under federal law. 21 USC §§823(f), 841(a)(1), 844(a). State law cannot place activities involving marijuana beyond congressional reach. *Gonzales v Raich* (2005) 545 US 1, 29, 125 S Ct 2195. Moreover, there is no medical necessity defense to the CSA's prohibitions. *Oakland Cannabis Buyers' Coop.*, 532 US at 491. Accordingly, any activity otherwise immunized under state law remains a violation of federal law, including the operation of a storefront marijuana dispensary. However, a physician's license may not be revoked solely on the basis of recommending medical marijuana. *Conant v Walters* (9th Cir 2002) 309 F3d 629, 632.

The District of Columbia Circuit denied a petition by medical marijuana advocates to review the DEA's decision to maintain marijuana as a Schedule I drug. *Americans for Safe Access v Drug Enforcement Admin.* (DC Cir 2013) 706 F3d 438. Federal officials are not barred under the Commerce Clause, Ninth Amendment, Tenth Amendment, or the Equal Protection Clause from taking legal action against medical marijuana patients, dispensaries, or dispensary property landlords. *Sacramento Nonprofit Collective v Holder* (ED Cal 2012) 855 F Supp 2d 1100; *Marin Alliance for Med. Marijuana v Holder* (ND Cal 2011) 866 F Supp 2d 1142.

It has been asserted that the Controlled Substances Act preempts the CUA and MMPA. The courts have not to date accepted that argument. *Qualified Patients Ass'n v City of Anaheim* (2010) 187 CA4th 734 (federal law making marijuana illegal did not preempt MMPA's provisions creating criminal immunity for collectives); *County of San Diego v San Diego NORML* (2008) 165 CA4th 798, 818 (federal law making marijuana illegal did not preempt the MMPA's identification card program); *City of Garden Grove v Superior Court* (2007) 157 CA4th 355 (federal law did not preempt right to return of impounded marijuana under CUA or MMPA). But see *Conejo Wellness Ctr., Inc. v City of Agoura Hills* (2013) 214 CA4th 1534, 1558 n5 (court suggested in dictum that any affirmative authorization of medical marijuana activities was likely subject to federal preemption).

NOTE™ In October 2011, the four United States Attorneys whose areas include California announced they were targeting medical marijuana operations that were a front for illegal activity; threats of civil asset forfeiture and other criminal and civil actions followed. Their actions included letters to local governments with statements that state and city employees who conduct activities mandated by local ordinances were not immune from liability under the CSA. However, we are not aware of any enforcement action against any local official or employee on that basis. Moreover, the Department of Justice updated its position in a memorandum from James Cole, Deputy Attorney General: "Guidance Regarding Marijuana Enforcement," dated August 29, 2013, advising prosecutors to consider the existence of a strong and effective state regulatory system when determining whether a particular marijuana operation implicates federal enforcement priorities.