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September 7, 2011

Humboldt County Board of Supervisors
825 Fifth Street
Eureka, California 95501

Re: Medical Marijuana – Mendocino County's Medical Marijuana Ordinance

Your Honors:

On November 5, 1996, California voters passed Proposition 215, the Compassionate Use Act of 1996 (“the Act”), which decriminalized the cultivation and possession of marijuana by seriously ill individuals and their primary caregivers upon a physician’s verbal or written recommendation. (*Health and Safety Code* § 11362.5(d).) The Act was enacted to “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 who has determined that the person’s health would benefit from the use of marijuana,” and to “ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.”(*Health and Safety Code* § 11362.5(b)(1)(A)-(B).)¹

Courts have found an implied defense under the Act to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.) While, the Act does not grant immunity from arrest; it provides an affirmative defense to charges of unlawful cultivation, possession, transportation and use of marijuana. (See generally *People v. Mower* (2002) 28 Cal.4th 457, 474.) Accordingly, while we can continue to arrest people who cultivate, possess, transport or use marijuana under a physician’s recommendation, we cannot prosecute them.

Therefore, it is essential that the Board of Supervisors develop a county ordinance or series of ordinances that is able to effectively address the unwanted issues that have become associated with the cultivation, possession, transportation and use of medical marijuana. That ordinance or series of ordinance should rightfully be interested in promoting: (i) public and consumer safety;

¹ The possession, sale, cultivation, distribution, and transportation of marijuana are generally crimes under California law. (See, e.g., *Health and Safety Code* § 11357 [possession of marijuana is a misdemeanor]; *Health and Safety Code* § 11358 [cultivation of marijuana is a felony]; *Vehicle Code*, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; *Health and Safety Code* § 11359 [possession with intent to sell any amount of marijuana is a felony]; *Health and Safety Code* § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; *Health and Safety Code* § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

September 7, 2011
Board of Supervisors

(ii) sustainable and responsible cultivation, transportation, and use that preserves and protects the environment and reduces the incidences of lawfully cultivated, transported or distributed medical marijuana from being diverted to non-patients or illicit markets; and (iii) a lawful business environment that stimulates the creation of lawful new businesses and jobs.

Mendocino County's medical marijuana ordinance appears to address the above interests in a responsible manner. While I believe that a square footage limitation rather than a plant count limitation would be easier to enforce and would more readily limit the illegal diversion of lawfully grown marijuana, I believe that Mendocino County's Ordinance is a workable framework and that adopting a similar ordinance would promote the above interests.

Respectfully submitted,

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District Attorney