



Promoting Legal Medical Marijuana Therapeutics and Research

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2008 AUG 14 P 2:36

Joseph D. Elford
Chief Counsel
Americans for Safe Access
1322 Webster St. Suite 402
Oakland, CA 94612
(415) 573-7842

August 12, 2008

Thomas W. Mayfield
Board of Supervisors
County of Stanislaus
1010 Tenth Street
Suite 6700
Modesto, CA 95354

Re: *County of San Diego v. San Diego NORML*, No. D050333

Dear Mr. Mayfield:

I am Chief Counsel for Americans for Safe Access, the largest grassroots organization in the country working to protect the legal rights of medical marijuana patients. I write to explain the Fourth Appellate District's recent published decision in *County of San Diego v. San Diego NORML*, No. D050333, -- Cal.Rptr.3d -- (4th Dist. July 31, 2008) and request that your county immediately implement the medical marijuana identification card program mandated by the Medical Marijuana Program Act (Health & Saf. Code, §§ 11362.7-11362.9, hereinafter MMP).

After the Compassionate Use Act (Health & Saf. Code, § 11362.5) was enacted in 1996, the Legislature received "reports from across the state [that] revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act." (Senate Bill 420, Stats. 2003 c.875, Sec. 1, subd. (a)(2).) To rectify this, the Legislature enacted the MMP "to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers." (Senate Bill 420, Stats. 2003 c.875, Sec. 1, subd. (b)(1).) To this end, the MMP includes provisions establishing a voluntary identification card program for qualified medical marijuana patients. (Health & Saf. Code, § 11362.7, subd. (f) & § 11362.71.) "Participation in the identification card program, although not mandatory, provides a significant benefit to its participants: they are not subject to arrest for violation of California's laws relating to the possession, transportation, delivery or cultivation of marijuana provided they meet the conditions outlined in the MMP." (*County of San Diego v. San Diego NORML*, No. D050333, at p.5 [citing Health & Saf. Code, § 11362.71, subd. (e)].)



Because medical marijuana patients throughout the state might benefit from uniform implementation of the identification card program, the MMP mandates that every county health department “shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.” (Health & Saf. Code, § 11362.71, subd. (a)(1).) Specifically, every county must: provide applications to qualified patients, receive and process completed applications, develop protocols to maintain the confidentiality of patient records, and issue identifications cards to qualified applicants. (Health & Saf. Code, § 11362.71, subd. (b).)

Although the MMP does not set forth a time-frame for the implementation of the identification card program, it is clear that counties have an obligation to do this in a reasonable period of time. The recent published decision in *County of San Diego v. San Diego NORML, supra*, clarifies that the state-mandated medical marijuana identification card program is valid and not preempted by federal law. For this reason, I urge your county, which is one of the few remaining counties not to have implemented the identification card program, to do so immediately.

While I would prefer to resolve this matter amicably, I would like to inform you that we are prepared to commence litigation to ensure implementation of the medical marijuana identification card program in your county as the Legislature intended.

Your earliest attention to this matter is most appreciated.

Sincerely,

Joseph D. Elford
Chief Counsel
Americans for Safe Access
(415) 573-7842