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CLIENT ALERT MEMORANDUM

To: *All Police Chiefs & Sheriffs*

From: *Martin J. Mayer*

"RENT TO A POT DISPENSARY-GO TO JAIL"

Recently, the Federal Drug Enforcement Administration notified approximately 150 Los Angeles landlords that if they rent properties for use as medical marijuana dispensaries they face arrest, incarceration and loss of those properties.

Timothy J. Landrum, DEA special agent in charge of the Los Angeles office, sent a letter to landlords who have rented properties for use as medical marijuana dispensaries, informing them that they were aiding and abetting in the commission of a federal crime. Currently, there are approximately 400 medical marijuana dispensaries located in the City of Los Angeles.

It would appear that, even under California's Proposition 215, codified as the Marijuana Compassionate Use Act, such dispensaries are illegal. Senate Bill 420, which was enacted to implement

Proposition 215, makes reference to "collectives" being permitted in order to grow and distribute medical marijuana, but the law specifically prohibits making a profit – which is exactly what marijuana dispensaries do.

In fact, on July 17, 2007, the DEA announced the indictment of nearly a dozen medical marijuana dispensaries, alleging that they profited from the illegal distribution of marijuana. Profiting from such distribution is illegal under California law, as well.

Zoning Regulations May Violate California Law

It must also be noted that when cities issue zoning regulations which permit the establishment of such dispensaries, even though regulating locations to commercial

or industrial areas, such zoning regulations are in violation of California law.

Government Code Section 37100 prohibits local governments from promulgating ordinances which are in violation of the U.S. Constitution or state or federal law. Since the U.S. Supreme Court, in the case of Gonzalez v. Raich, ruled that the federal Controlled Substances Act (CSA) supersedes California's Compassionate Use Act, and that there is no medical exception under the CSA, the use, possession or distribution of marijuana continues to be a felony under federal law.

How This Effects Your Agency

The conflict between state and federal law regarding the use of marijuana for medical purposes creates an ongoing problem for California law enforcement. As has been pointed out on numerous occasions all that Proposition 215 established was a possible defense against prosecution for possession of marijuana by those who qualify under state law to use it for medical purposes. It did not legalize possession of marijuana in the state of California nor did it effect the prohibition which exists under federal law. All Proposition 215 established was that, under California law, one would not be prosecuted for possession and use of the

drug if that individual was determined to be a qualified medical user.

This latest action by the federal Drug Enforcement Administration reinforces the fact that distribution of marijuana constitutes a felony under federal law. In this case, landlords who knowingly rent property for dispensaries are aiding and abetting in the commission of a crime. As such, those individuals are subject to arrest (by federal agents) and prosecution (under federal law).

This action does not appear to have a direct impact upon California law enforcement, other than to reinforce that marijuana dispensaries are still considered illegal under federal law and, therefore, pursuant to Government Code Section 37100 cannot be permitted through zoning regulations to be operated within the state of California.

As always, we urge that law enforcement agencies receive advice, guidance and direction from their designated legal advisors before taking any actions as a result of information generated in these Client Alert Memos. Should you wish to discuss this matter in greater detail, please feel free to contact me at 714 – 446-1400 or via e-mail, mjm@jones-mayer.com.