April 16, 2020

To: El Dorado County Board of Supervisors
Re: Cannabis Ordinance

Dear Supervisors,

We have reviewed the presentation made to the El Dorado Planning Commission by County Counsel Breann Moebius concerning the legal status of medical cannabis cultivation in California. This is an admittedly confusing area of rapidly changing law over the last twenty years.

In her presentation, Ms. Moebius stated that current law limits personal medical cultivation of cannabis to six plants per person and per residence. **While it is true that California law does indeed limit nonmedical personal cultivation to six plants, we believe that County Counsel was in error in stating that the same limitation applied to personal medical cultivation.**

In support of this position, we offer the following:

Prop. 64, the Adult Use of Marijuana Act, ("AUMA"), specifically distinguished between medical and nonmedical cannabis. The Proposition added B&P §26000(a) which reads:

> (a) The purpose and intent of this division is to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale of nonmedical marijuana and marijuana products for adults 21 years of age and over.

AUMA provided as follows:

> SECTION 3. PURPOSE AND INTENT.
> The purpose of the Adult Use of Marijuana Act is to establish a comprehensive system to legalize, control and regulate the cultivation, processing, manufacture, distribution, testing, and sale of nonmedical marijuana, including marijuana products, for use by adults 21 years and older, and to tax the commercial growth and retail sale of marijuana.

AUMA added Health & Safety Code §11362.1(a)(3) which affirmatively states it is lawful for a person 21 and older to cultivate up to six plants. **Nothing in the section states it is illegal to grow in excess of six plants. This is dealt with in another section, as will be explained below.**

AUMA similarly added §11362.2 to the Code to place limits on 11362.1(a)(3) cultivation. The fact that this exception for up to six plants, and the restrictions placed thereupon, was intended for nonmedical personal cultivation is further supported by §11362.2(b)(4), also added by AUMA, which provides that the restrictions on the cultivation allowed under 11362.1(a)(3) are repealed "upon a determination by the California Attorney General that nonmedical use of marijuana is lawful in the State of California under federal law."

Also consistent with these AUMA provisions being limited to personal nonmedical cultivation is the fact that §11362.1 applies only to persons 21 and older, while the Compassionate Use Act does not limit personal medical cultivation to those 21 and older. This is further reflected in one of the stated purposes of AUMA: "(n) Deny access to marijuana by persons younger than 21 years old who are not medical marijuana patients.

In addition, **AUMA added Health & Safety Code §11362.45, which states as follows:**

> **Nothing in section 11362.1 shall be construed or interpreted to amend, repeal, affect, restrict, or preempt:**
> **(i) Laws pertaining to the Compassionate Use Act of 1996 [Prop. 215, which legalized the use and cultivation of medical marijuana in California].**

AUMA specifically addressed medical cannabis in Section 5, where it placed no new limits or attempted to change established law regarding personal medical cultivation.

CURRENT STATE LAW

Health & Safety Code §11358 currently prohibits cultivation of any plants whatsoever. Interestingly, it is silent on both the six legal nonmedical plants allowed in §11362.1(a)(3), as well as regarding the personal medical cultivation allowed in §11362.5.

H&S §11362.1(a)(3) creates an exemption to §11358 for nonmedical cultivation of up to six plants per person/residence.

Similarly, H&S §11362.5 creates an exemption to §11358 for a valid patient to cultivate a number of plants reasonably related to current medical need. See *People v. Kelly*, 47 Cal.4th 1008, 1049 (2010).

Furthermore, the Kelly court held that the 6 mature/12 immature plant language in H&S §11362.77, which was specifically relied upon by County Counsel, was an unconstitutional amendment of the Compassionate Use Act of 1996, codified as §11362.5. It is now only applicable to prevent the arrest of a person who has both a state medical cannabis ID and is within the 6/12 plant limit. As the Supreme Court has explained, a person cultivating more than six plants may be arrested, but may still use the

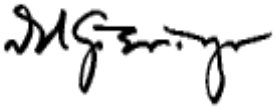
Compassionate Use Act to establish they were cultivating an amount reasonably related to their medical need and, as such, cultivating legally.

Given this, we ask that the Board of Supervisors not pass the ordinance before them, which will trample on the rights of medical marijuana patients in El Dorado county. We have heard from several patients in the county who are concerned that they will be unable to grow an adequate amount of cannabis to meet their medical needs under the new ordinance. AUMA's aim was to expand on the rights of adults to use and cultivate cannabis, not to impinge on patients' rights to cultivate an adequate supply of medical cannabis for their own use. There is no need to use Prop. 64/AUMA as a reason to undo the ordinance currently in place in El Dorado County.

Our office is always available for consultation on these matters.

Sincerely,

William Panzer
Legal Director, Cal NORML
Co-author, Prop. 215



Dale Gieringer
Director, California NORML
Co-author, Prop. 215

cc: Breann Moebius, County Counsel