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CHILDREN'S SERVICES
STATUTE LAW

2 May, 2011

Hon. Rob McKenna
Attorney General
1125 Washington Street SE
P.O. Box 40100
Olympia, WA 98504

Re: Medical Use of Cannabis

Mr. Attorney General:

We are requesting your urgent opinion and counsel in the wake of Governor Gregoire's veto of most substantive sections of Senate Bill 5073, related to medical use of cannabis. We need your guidance as the state's chief law enforcement officer, given the current heightened uncertainty about the legitimacy of Washington's medical cannabis program.

Last Friday the Governor's substantial veto of SB 5073 blocked the implementation of a new licensing and regulatory system for producers, processors, and dispensaries of cannabis for medical use. The Governor expressed concern in her veto statement that state employees would be open to federal prosecution and that "no state employee should be required to violate federal criminal law in order to fulfill duties under state law."

The Governor's veto has thrown our state's medical cannabis program into crisis, as patients are still forced into the risky illegal market to obtain their medicine. Several questions remain for us, spurred not only by our understanding of the current, respectful federal policy toward state medical cannabis laws but also by our understanding of the extent of state discretion under the federal Controlled Substances Act.

Accordingly, we respectfully request your expeditious responses to the following:

1) **Where the federal Controlled Substances Act prohibits state activities that create a "positive conflict" between state and federal laws (*see* 21 U.S.C. Section 903), would the exercise of our state's (and its instrumentalities') regulatory, licensing and zoning powers related to cannabis cultivation, processing and dispensing, as set forth in SB 5073, create a "positive conflict" with federal law, even where no state employee would be required to engage in specific activities that are prohibited by the Controlled Substances Act?**

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2) **What is the likelihood, in consideration of current federal policy respecting individuals whose actions are "in clear and unambiguous compliance with existing state laws," (see so-called "Holder Memorandum" of 10/29/09) that Washington state employees would be subject to federal criminal liability for activities to implement the cannabis cultivation, processing and dispensing system as set forth in SB 5073, where no such comparable federal criminal liability has ever been attached to any state employees in the past and where state employees' activities in this case would fall far short of "aiding and abetting" the violation of federal law?**

3) **How enforceable is Washington's medical cannabis law in general and what is the permissible extent of Washington' police power to protect the health, welfare and safety of the people in the face of the absolute federal prohibition of cannabis?**

If enacted into law, Senate Bill 5073 would have provided suffering medical patients with safety and certainty; would have given Washington's law enforcement agencies the clear guidance they need; and would have provided a well-designed registry that would have served public safety and patients. Without enactment of this bill Washington will fall victim to "gray market" dispensaries, which are so prevalent in California. At this critical time we need your guidance as we craft a new proposal to improve Washington's medical cannabis law.

We look forward to your response as soon as possible. Thank you for your attention to this matter.

Yours sincerely,

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