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BY HAND DELIVERY

The Hon. Lincoln Chafee
Governor
State House
Providence, RI 02903

Dear Governor Chafee:

I am writing regarding the letter you received last Friday from U.S. Attorney Peter Neronha purporting to clarify the United States' position on the cultivation and distribution of medical marijuana in Rhode Island. In response to that letter, which suggests that the three dispensaries the Department of Health has approved to grow and sell medical marijuana may be criminally liable under federal law, you have placed on hold the certificates of registration that were to be issued to those dispensaries. State approval of the three dispensaries took place, as you know, only after a lengthy and thorough vetting process.

We are very concerned about your decision in this regard. Because we believe that holding up these registrations is directly contrary to state law and, in any event, is not mandated in any way by Mr. Neronha's disturbing letter, we urge you to reconsider that decision and to issue the letters of registration to the three DOH-approved dispensaries.

Let me begin by noting our concerns about both the content of Mr. Neronha's letter and its timing. In October 2009, United States Deputy Attorney General David Ogden issued a memo to U.S. Attorneys that was designed to explicate the Department of Justice's views on state medical marijuana laws and to provide "uniform guidance to focus federal investigations and prosecutions" in states with medical marijuana laws "on core federal enforcement priorities."

The core of that memo was the following statement:

> As a general matter, pursuit of these priorities ***should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana***. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that ***unlawfully market and sell marijuana for profit*** continues to be an enforcement priority of the Department. (emphasis added)

As you know, state law requires that the dispensaries approved by the Department of Health be **not-for-profit** organizations. R.I.G.L. §21-28.6-12(f)(1). Mr. Neronha's letter, while purporting to rely on the Ogden memo, subtly changes that memo's stance against the unlawful marketing of marijuana ***for profit*** as a federal enforcement priority by instead rephrasing that priority as applying to "business enterprises that unlawfully market and sell marijuana." In fact, under Rhode Island law, dispensary owners are, in accordance with the Ogden memo, "individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana," and they are not involved in "unlawfully market[ing] and sell[ing] marijuana for profit." Thus, in contrast to Mr. Neronha's asseverations, these dispensaries should *not* be a federal enforcement priority and the letter should *not* be a basis for undoing the will of the General Assembly and the carefully considered work of the Health Department.

We are also extremely concerned about the timing and purpose of Mr. Neronha's letter. As you know, the authority for establishing these centers is the result of legislation enacted by the General Assembly back in June, 2009. According to the statute, which set strict deadlines for its implementation, at least one certificate of registration was supposed to have been issued within 190 days of its enactment. The DOH held lengthy public hearings on the regulatory process governing dispensary licensing and approval. That deadline came and went, but when the application process finally opened, there were well-publicized public hearings regarding the applicants. In fact, the DOH went through this high-profile process *twice,* after determining that there were procedural flaws in the way the first set of applications was considered. All of these hearings were well-covered by the media. It is striking that only now, perhaps just days before certificates of registration were to be granted, has the U.S. Attorney decided to weigh in on the issue with this threatening letter. As you may be aware, his letter is one of several issued within the last week by U.S. Attorneys, apparently attempting to halt the effective passage and implementation of medical marijuana laws across the country.

The timing of this letter creates the appearance that the Department of Justice is unfairly using its law enforcement and prosecutorial functions in order to undermine the outcome of a lengthy and public process where its input could have been offered. While the federal government may have a legitimate interest in the outcome of state legislation or rule-making and may seek to affect those outcomes by political means, we believe the U.S. Attorney's last-minute attempt to derail this two-year old law is an abuse of those powers. If the federal government wishes to slow the implementation of legitimately enacted medical marijuana laws, it should do so through substantive debate, not the use of eleventh-hour threats.

Our state has wisely recognized the needs of patients, the value of marijuana as a medicine and the need for a rational distribution scheme. Any effort to distinguish between patients and lawfully approved distributors can only hinder the effective implementation of Rhode Island's law, which recognizes that marijuana is an effective medical treatment for a wide variety of illnesses. The 2009 statute further recognizes that it is not enough to permit patients to

use the medicine; there must be a mechanism for growing and distributing it that provides them a safe method of access. The state law and the detailed regulations implementing it promote both public health and public safety. The U.S. Attorney's implied threat of prosecution against those who will be following state law is thus inconsistent with the Ogden memo and with the administration's announced intention to end the "war" on drugs and adopt a public health approach to drug policy. The impropriety of Mr. Neronha's threats, and the degree to which his position varies from Department of Justice policy, support your taking a position affirming Rhode Island's law and licensing scheme.

Finally, independent of the propriety of the threats, Mr. Neronha's letter does not in any way impel you to issue a hold on the certificates of registration. To the contrary. State law *mandates* the issuance of these registrations. Nothing in federal law or Mr. Neronha's letter prevents the State from exercising its clear obligation under state law to issue those certificates. Upon issuance of those registrations, it will then be up to the dispensaries themselves to decide how to respond to the U.S. Attorney's threats. But your peremptory action deprives the aggrieved dispensaries of any opportunity to question or challenge the validity of Mr. Neronha's position. Perhaps most importantly, it deprives suffering patients of the hope that they will soon receive the medicine they need.

We know you have been a supporter of the state's medical marijuana program. Especially in that light, and for all the reasons we have noted, we urge you to reconsider your position, and to instead issue the letters of registration to the three DOH-approved dispensaries. In doing so, you will comply with state law and will not in any way violate federal law.

Thank you in advance for your consideration of our views, and we look forward to hearing back from you about this. If you have any questions about our position, I hope you will feel free to let me know.

Sincerely,

Steven Brown
Executive Director

cc: Dr. Michael Fine, DOH Interim Director
Patrick Rogers, Chief of Staff
Brian Daniels, Policy Director