LOS RIOS
COMMUNITY COLLEGE DISTRICT

American River College
Cosumnes River College
Folsom Lake College
Sacramento City College

1919 Spanos Court
Sacramento, CA 95825
Phone: 916 568-3021
Fax: 916 568-3023
www.losrios.edu

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FORMAL LEGAL OPINION
OFFICE OF THE GENERL COUNSEL
LOS RIOS COMMUNITY COLLEGE DISTRICT

Question Presented: May a person who has a prescription or recommendation to use medicinal marijuana under the Compassionate Use Act of 1996 (Cal. Health & Saf. Code, § 11362.5) possess that marijuana on a Los Rios Community College campus or in its programs?

Short Answer: No.

Discussion

Generally, under federal and state law it is a criminal offense to sell, possess, use, cultivate or transport marijuana. Further, a separate federal law requires the District to prohibit the unlawful manufacture, distribution, dispensing, possession or use of illicit drugs and alcohol in its workplace. In 1996, the voters of California enacted the Compassionate Use Act ("CUA") which created an exception to prosecution under the state criminal laws regarding marijuana for certain people. This law, however, does not change the fact that marijuana remains illegal under federal law and thus, the District must enforce that law through its policies and regulations.

Under federal law, Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub.L. No. 91-513, 84 Stat. 1236, to create a comprehensive drug enforcement regime it called the Controlled Substances Act, 21 U.S.C. § 801-971. Congress established five "schedules" of "controlled substances." (See 21 U.S.C. § 802(6).) Controlled substances are placed on a particular schedule based on their potential for abuse, their accepted medical use in treatment, and the physical and psychological consequences of abuse of the substance. (See 21 U.S.C. § 812(b).) Marijuana is a Schedule I controlled substance. (21 U.S.C. § 812(c), Sched. I(c)(10).) Under the Controlled Substances Act, it is unlawful to knowingly or intentionally "manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance," except as otherwise provided in the statute. (21 U.S.C. § 841(a)(1).) Possession of a controlled substance, except as authorized under the Controlled Substances Act, is also unlawful. (See 21 U.S.C. § 844(a).)

California law also has a similar series of laws that make criminal the possession, cultivation, sale and transportation of marijuana. (Health and Safety Code, §§ 11357 [possession]; 11358 [cultivation]; 11359 [possession for sale]; 11360 [transportation,

distribution, or importation]. Los Rios Community College District Regulation 2441 embodies these prohibitions. That regulation states that good cause for student discipline includes: "**(d)** The use, sale, or possession on campus of, or presence on campus under the influence of, any controlled substance."

A separate set of federal laws come into play here as well -- the U.S. Drug-Free Workplace Act of 1988. (41 U.S.C.§ 702). That law requires the District to notify its students and employees that the unlawful manufacture, distribution, dispensing, possession or use of illicit drugs and alcohol is prohibited in the workplace and college premises. The District's formal Policy concerning this issue is located in LRCCD Policies 2442, 5621, 6821, and 9154. The requirements of federal grant funding (including the over $31 million in grant funding received this year) require the District to certify its compliance with these provisions.

In 1996, the voters of this state enacted a state law entitled the Compassionate Use Act "to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes. . . ." (Cal. Health & Saf. Code, § 11362.5, subd. (a).) Subdivision (d) of the Compassionate Use Act provides: "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician."

The cases that have construed this statute have concluded that it only provides a limited immunity from criminal prosecution under state law for possession and/or cultivation of marijuana by people with appropriate prescriptions and/or recommendations. For example, in *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549-1551, the First District Court of Appeal examined whether the Compassionate Use Act provided the defendant with a defense to charges she transported marijuana. The court stated, "the statute specifically identifies only two penal provisions (out of five) from article 2 of division 10 of the [Health & Safety] Code, section 11357, dealing with possession, and section 11358, dealing with cultivation, etc. It would have been a simple matter for the drafters to have included a reference to section 11360 within subdivision (d) of section 11362.5. Thus, that subdivision could just as easily have read: 'Sections 11357, 11358 and 11360 shall not apply to a patient . . . who possesses, cultivates, or transports marijuana for the personal medical purposes of the patient'—but it doesn't. We may not infer exceptions to our criminal laws when legislation spells out the chosen exceptions with such precision and specificity." The court went on to state, "[n]ot only is there no evidence of any 'contrary' intent here, indeed the voters were expressly told by the Legislative Analyst that the proposed law 'does not change other legal prohibitions on marijuana . . . .' [Citation.] This symmetry between legal principle and evidence of the voters' intent compels the conclusion that, as a general matter, Proposition 215 does not exempt the transportation of marijuana allegedly used or to be used for medical purposes from prosecution under section 11360." (*Id.* at p. 1550.)

As the above demonstrates, "[d]espite popular misconception, Proposition 215 did not legalize large-scale marijuana processing and distribution-even for eventual medical marijuana uses. Rather, its state immunity from state prosecution has been limited to possession and use by qualified patients and their qualified primary care-givers." (*U.S. v. Landa* (2003) 281 F.Supp.2d 1139, 1143.)

This state law can not vitiate the federal marijuana laws. Under Article VI, section 2, of the United States Constitution, federal law is superior to California state law and cannot be overruled by it. This was recently affirmed by the United States Supreme Court in *Gonzales v. Raich* (U.S. 2005) 545 U.S. 1, 9. There, when two California citizens challenged the federal laws prohibiting the possession and sale of marijuana, the United States Supreme Court concluded that the application of the Controlled Substances Act to marijuana was squarely within the power of Congress. (*Id.* at p. ; see also *U.S. v. Landa, supra,* 281 F.Supp. at p. 1145 [federal law barring marijuana possession for any purpose preempted California law, and departure would impermissibly compromise federal interest in discouraging marijuana usage].)

As a result, possession of marijuana remains illegal under federal law as a controlled substance regardless of whether the person has a prescription or recommendation. The District is obligated by law and by its grant funding to ensure that students, faculty and/or staff do not unlawfully possess or use marijuana on the campuses of this District. As a result, the possession or use of marijuana (for any purpose) on the Los Rios College campuses is a violation of federal law, the District's Policies and Regulations, and may result in the discipline of a student up to and including expulsion from the campus. For our employees, violation of this legal restriction can also result in discipline up to and including termination.