

April 10, 2012

**Via Overnight Mail**

Hon. Douglas P. Miller  
Hon. Betty Ann Richli  
Hon. Carol D. Codrington  
Justices of the Court of Appeal  
Fourth Appellate District, Division Two  
3389 Twelfth Street  
Riverside, CA 92501

Re: *People of the State of California, et al. v. Wildomar Patients Compassionate Group, Inc.*  
Case No. E052728  
Supplemental Request for Publication<sup>1</sup>

To the Honorable Justices Miller, Richli and Codrington:

Pursuant to California Rules of Court, Rule 8.1120(c), Respondent City of Wildomar and the League of California Cities (the "League") respectfully request that the opinion issued by this court in the case referenced above (the "Opinion") be certified for publication in the Official Reports. The League is an association of California city officials who work together and combine their resources so that they may influence policy decisions that affect cities, and as such, takes particular interest in the determination of all legal issues that affect public agencies. The League submitted an *Amicus* Brief in support of Respondent in this case.

The City and League believe that the Opinion meets the standards for publication under California Rules of Court, Rule 8.1105(c). The Opinion addresses the permissible scope of local regulation of medical marijuana establishments, a legal issue that has a significant impact on public agencies, and therefore, is of continuing interest to the public generally. (CRC Rule 8.1105(c)(6).) In addition, the Opinion advances a new interpretation and clarifies the application of two key provisions in the Medical

<sup>1</sup> In the Request for Publication dated April 9, 2012, the undersigned attorney did not state the League of California Cities' interest in publication as required by Rule 8.1120(a)(2). Therefore, I submit this Supplemental Request for Publication.

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Marijuana Program Act ("MMP") and creates an apparent conflict in the law with the decision in *City of Lake Forest v. Evergreen Holistic Collective* (Cal.App. 4 Dist.) 2012 WL 639462. (CRC Rule 8.1105(c).)

The Opinion analyzed Health and Safety Code sections 11362.775 and 11362.768, subdivisions (f) and (g), and concluded that the MMP did not preempt local zoning prohibitions of medical marijuana establishments. With regard to section 11362.775, the Opinion rejected the contention that this provision immunized medical marijuana dispensaries from all nuisance abatement actions. The Opinion advanced a new interpretation and clarification of the immunities in section 11362.775 by holding that it did not provide immunity from nuisance abatement actions brought to enforce local zoning regulations. Rather, the Opinion held that the MMP's immunity extended only to lawful dispensaries and a dispensary operating in violation of a local zoning ordinance is not lawful. If published, the Opinion would be the only current published opinion that advances this interpretation of section 11362.775 in the context of a *per se* zoning prohibition.

The Opinion's new interpretation and clarification of section 11362.775 creates a conflict with the analysis in *Evergreen*. (CRC Rule 8.1105(c)(5).) *Evergreen* interpreted the immunities set forth in section 11362.775 broadly and held that this section immunized medical marijuana establishments from both state criminal sanctions and civil nuisance abatement actions and thereby authorized the operation of dispensaries statewide. The Opinion's more narrow interpretation of section 11362.775 is consistent with the holdings in *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, and *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, but is in conflict with *Evergreen*.

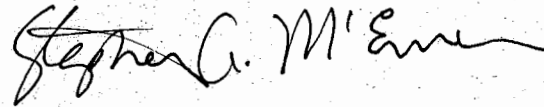
The Opinion also advanced a new interpretation and clarification of section 11362.768, subdivisions (f) and (g). Subdivision (f) of this section states: "Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." Subdivision (g) further states: "Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." Based on the phrase "or establishment" in each subdivision, the Opinion concluded that the Compassionate Use Act ("CUA") and the "MMP do not expressly mandate that MMDs shall be permitted within every city and county nor do the CUA and MMP prohibit cities and counties from banning MMDs." The authority to control the establishment of medical marijuana establishments necessarily includes the authority to prohibit them. If published, the Opinion would be the only current published opinion that advances this

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interpretation of section 11362.768, subdivisions (f) and (g)(CRC Rule 8.1105(c)(5)). Moreover, this interpretation is significant because *Evergreen* did not analyze or interpret the meaning of the word "establishment" in these statutory provisions.

It is respectfully submitted that, for these reasons, the Opinion meets the standards for publication under California rules of Court, Rule 8.1105(c) and merits certification for publication in the Official Reports.

Respectfully Submitted,



STEPHEN A. MCEWEN

SAM:fk

cc: J. David Nick  
Jeffrey V. Dunn  
Lee Ann Meyer  
Riverside County Superior Court

IRV #4849-4865-7935 v1

**PROOF OF SERVICE**

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 1851 East First Street, Suite 1550, Santa Ana, California 92705.

On **April 10, 2012**, I served the following document(s):

**REQUEST FOR PUBLICATION DATED APRIL 10, 2012**

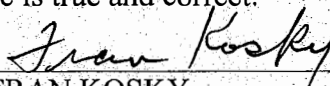
on the interested parties in this action by placing a true and correct copy of such document, enclosed in a sealed envelope, addressed as follows:

**SEE ATTACHED SERVICE LIST**

- BY U.S. MAIL.** I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Riverside, California. [CCP § 1012; 1013; 1013a]
- BY OVERNIGHT COURIER,** I caused the above-referenced document(s) to be deposited in a box or other facility regularly maintained by the overnight courier, or I delivered the above-referenced document(s) to an overnight courier service, for delivery to the above addressee(s). [CCP §1013]
- BY FACSIMILE.** The facsimile transmission of the foregoing document was reported as complete and without error. A copy of the transmission report as issued by the transmission facsimile machine is attached pursuant to California Rules of Court, Rule 2.306(h)(4). [CRC 2.306(a)(b)(d)(f)(g)(h)]
- BY EMAIL.** I caused the document (without enclosures) described above, to be sent via email in PDF format to the above-referenced person(s) at the email addresses listed. [Pursuant to         -10 Agreement between counsel – electronic service pursuant to Rule 2.260, CRC]
- BY PERSONAL SERVICE.** I caused such envelope to be delivered by hand to the above-referenced person(s) at the above address(s). [CCP § 1011]
- BY LEXISNEXIS E-SERVICE.** By submitting an electronic version of the document listed above via LexisNexis, pursuant to the Court's order Mandating Electronic Service dated December 7, 2004. I certify that said transmission was completed and that all pages contained therein were received. [CRC, Rule 2.250(5) and 2.253(a)]

Executed **April 10, 2012**, Irvine, California.

- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
\_\_\_\_\_  
FRAN KOSKY

**SERVICE LIST**

**PEOPLE, et al. v. WILDOMAR PATIENTS COMPASSIONATE GROUP, et al.**  
**Riverside Superior Court Case Nos. RIC 10022903 and RIC 10022476**  
**Fourth Appellate District, Division 2, Case Nos. E 052728 and E052788**

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