

NEW YORK
state department of
HEALTH

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

August 13, 2014

The Honorable Eric Holder
Attorney General of the United States
Department of Justice, Room 4400
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Dear Mr. Attorney General:

In July 2014, Governor Andrew M. Cuomo signed into law New York State's medical marijuana program. In doing so, Governor Cuomo authorized the most tightly controlled and strictly regulated law in the nation regarding this issue. The law is based upon available scientific evidence regarding efficacy of medical marijuana use in treating serious conditions, is narrowly tailored to serve only patients most appropriate for medical marijuana therapy, and avoids the use of smoking as a route of administration.

More importantly, this law addresses all known concerns raised by the federal government, as detailed in Deputy Attorney General James Cole's memo of August 2013 and relied upon by New York State law enforcement officials. The legislation mandates that all cultivation and manufacture of marijuana be tightly regulated to occur solely within New York State. All forms of marijuana are still illegal per se, unless and until my office makes a determination otherwise solely for the limited purposes identified in the legislation. Unlike other states, New York will not grant immunity to individuals possessing marijuana for an otherwise state permitted medical purpose. Doing so would have encouraged individuals to engage in illegal activity, including illicit street sales. Finally, and most critically, New York's law grants Governor Cuomo the power to summarily suspend all cultivation, manufacture and dispensing of marijuana based upon a recommendation by my office or by the office of the Superintendent of the New York State Police.

Given the complexity of the legislation and the amount of time necessary to cultivate and manufacture marijuana, implementation of our program is not scheduled to begin prior to January 2016. Since the passage of this law, however, at least three children in New York State have died from complications related to epilepsy resistant to standard therapies. Although it is not a cure, there is objective medical evidence that indicates this serious condition may be helped by the use of cannabidiol (CBD), an active substance within the marijuana plant that does not provide the psychoactive effects often associated with marijuana use.

I am therefore requesting that the Department of Justice, including the Drug Enforcement Administration, grant New York State a narrow, time-limited exception to import CBD from other states for use by these young patients with refractory epilepsy unresponsive to conventional therapies pending implementation of our program. With your approval, the Department of Health would identify sources of CBD in other states with medical marijuana programs. After identifying a manufacturer that has complied with all relevant New York State laws as well as the laws of the state providing the CBD, and exhibiting sufficient moral character, the Department of Health would seek permission to securely transport CBD from the manufacturer to New York State so that it may be made available to these patients.

With these safeguards in place, New York State will be able to safely and effectively provide CBD to this discrete class of patients with minimal risk of diversion. Upon activation of our medical marijuana program, this exercise of the Department of Justice's discretion regarding importation would cease. I therefore respectfully request that the Department of Justice help New York State address this urgent public health issue by agreeing to the above outlined framework, and agree to work with New York State to implement this arrangement.

I thank you for your consideration in this matter and look forward to future discussion. You can contact me at my office number which is 518-474-2011.

Sincerely,

Howard Zucker M.D.

Howard A. Zucker, M.D., J.D., L.L.M.
Acting Commissioner of Health