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OPINION NO. 2016-05

HEALTH AND HUMAN SERVICES;
MEDICAL MARIJUANA PROGRAM;
IDENTIFICATION CARD: A patient cannot use a copy of a completed application at a Nevada dispensary to obtain medical marijuana. A recommendation from a California physician and a driver's license from another state cannot be used to obtain medical marijuana from a Nevada dispensary.

Richard Whitley, Director
Department of Health and Human Services
4126 Technology Way, Suite 100
Carson City, NV 89706

Dear Mr. Whitley,

On behalf of the Department of Health and Human Services, you have requested an opinion from the Office of the Attorney General on two issues related to the medical marijuana program. First, you have asked whether a copy of a pending application for a registry identification card under NRS 453A.210(8) is deemed to be a card for purposes of purchasing medical marijuana at a dispensary. Additionally, you have asked whether NRS 453A.364(3) allows a dispensary to sell medical marijuana to a non-resident purchaser when the purchaser presents to the dispensary a physician's recommendation for medical marijuana along with government issued identification.

Your second inquiry appears to describe the process recognized in California which allows patients to use a recommendation from a physician to obtain medical marijuana without a government issued card specific to that purpose. You have

explained that the Division of Public and Behavioral Health interprets NRS 453A.364(3) to require that a non-resident purchaser present to the Nevada dispensary a government-issued card or similar document specifically authorizing the purchaser's lawful use of medical marijuana in another state or local jurisdiction. In your letter, you express that the intent of the Division of Public and Behavioral Health is to meet the needs of the patient in an expedited fashion while complying with the registry laws which provide safeguards for marijuana use in our society.

QUESTION ONE

Does NRS 453A.210(8) state or imply that an applicant for a registry identification card may use a copy of the completed registry application to purchase medical marijuana at a Nevada dispensary before the application has been processed by the Division of Public and Behavioral Health (Division)?

SUMMARY CONCLUSION TO QUESTION ONE

A patient cannot use a copy of a completed application at a Nevada dispensary to obtain medical marijuana. Under NRS 453A.210(8), a registry applicant is deemed to hold a registry identification card *upon presentation to a law enforcement officer* of a copy of the application. Accordingly, a copy of the application is authorized for official use only in connection with interactions between the applicant and law enforcement officers.

ANALYSIS

NRS 453A.210(8) provides the following:

Except as otherwise provided in this subsection, if a person has applied for a registry identification card pursuant to this section and the Division has not yet approved or denied the application, the person, and the person's designated primary caregiver, if any, shall be deemed to hold a registry identification card upon the presentation to a law enforcement officer of the copy of the application provided to him or her pursuant to subsection 4.

This provision attributes a registered status to a person who has applied for but has yet to receive a registry identification card. However, the attribution is limited in its scope to criminal justice matters, namely situations in which the applicant presents a copy of his or her application to a law enforcement officer. In this regard, NRS 453A.210(8) allows a user of medical marijuana to avoid arrest for using or possessing marijuana while the user's registry application is pending with the Division, but only if the user waives the confidentiality of the registry application afforded by NRS 453A.700 and presents a copy

of the application to a law enforcement officer. If charged with a crime, any user of medical marijuana who does not have a registration identity card may also assert an affirmative defense concerning use of medical marijuana according to NRS 453A.310. By treating a pending registry application as a registry identification card in this limited context, NRS 453A.210(8) minimizes the time and expense devoted to criminal enforcement action against persons who will likely be issued registry identification cards on the basis of their applications, or who may otherwise have a valid affirmative defense to criminal prosecution.

Indeed, the language of the statute establishes that a copy of the registry application is to be deemed a registry identification card only *upon presentation to a law enforcement officer*. Although the language is plain on its face, some have argued that it implicitly governs transactions between medical marijuana users and dispensaries. To interpret the statute in this manner is to render part of it meaningless or superfluous. The Nevada Supreme Court has ruled that statutes should be interpreted to avoid a reading which would render part of the statute meaningless or superfluous when a substantive interpretation can be given. *Board of County Comm'rs Clark County v. White*, 102 Nev. 587, 590, 729 P.2d 1347, 1350 (1986). If a copy of the application is deemed to be a registry identification card for all purposes and under all circumstances, there is no reason that the language of the statute should expressly confine its application to situations in which the applicant presents a copy of his or her application to a law enforcement officer. In short, the statute's attribution of a registered status to an applicant is qualified by the phrase "upon the presentation to a law enforcement officer." If the attribution is unqualified, the qualifier is meaningless. To give it meaning, the application of the statute must be limited accordingly.

QUESTION TWO

May the language of NRS 453A.364(3) be interpreted to allow a dispensary to sell medical marijuana to a non-resident based upon the non-resident's presentation of a physician's recommendation for medical marijuana along with a government issued identification card (e.g., driver's license)?

SUMMARY CONCLUSION TO QUESTION TWO

A recommendation from a California physician and a driver's license from another state cannot be used to obtain medical marijuana from a Nevada dispensary. According to NRS 453A.364(3), a dispensary may only recognize a non-resident card or other identification if the card or other identification is *issued* by a state or jurisdiction other than Nevada *and* that identification is the functional equivalent of a Nevada registry identification card.

ANALYSIS

When the voters of Nevada approved a constitutional initiative in 2000, they not only directed the Legislature to provide for the use of medical marijuana, but also to provide for "[a] registry of patients, and their attendants who are authorized to use the plant for a medical purpose, to which law enforcement officers may resort to verify a claim of authorization and which is otherwise confidential." Nev. Const. art. 4, § 38. The voters balanced the needs of patients with the concerns about marijuana use by placing a constitutional provision for patient registry on equal footing with a constitutional provision for a patient's right to use medical marijuana. "The Nevada Constitution should be read as a whole, so as to give effect to and harmonize each provision." *Nevadans for Nev. v. Beers*, 122 Nev. 930, 944, 142 P.3d 339, 348 (2006). The patient registry was a significant component of the initiative because when the voters authorized a patient to use medical marijuana, they expressly made that use subject to a patient registry.

The Nevada Legislature acted in accordance with the registry provision of the Nevada Constitution in its legislation to extend recognition to non-residents who travel from another jurisdiction with a similar registry and desire access to medical marijuana in Nevada. NRS 453A.364 provides the following:

1. The State of Nevada and the medical marijuana dispensaries in this State which hold valid medical marijuana establishment registration certificates will recognize a nonresident card only under the following circumstances:
 - (a) The state or jurisdiction from which the holder or bearer obtained the nonresident card grants an exemption from criminal prosecution for the medical use of marijuana;
 - (b) The state or jurisdiction from which the holder or bearer obtained the nonresident card requires, as a prerequisite to the issuance of such a card, that a physician advise the person that the medical use of marijuana may mitigate the symptoms or effects of the person's medical condition;
 - (c) The nonresident card has an expiration date and has not yet expired;
 - (d) The holder or bearer of the nonresident card signs an affidavit in a form prescribed by the Division which sets forth that the holder or bearer is entitled to engage in the medical use of marijuana in his or her state or jurisdiction of residence; and
 - (e) The holder or bearer of the nonresident card agrees to abide by, and does abide by, the legal limits on the possession of marijuana for medical purposes in this State, as set forth in NRS 453A.200.

2. For the purposes of the reciprocity described in this section:

(a) The amount of medical marijuana that the holder or bearer of a nonresident card is entitled to possess in his or her state or jurisdiction of residence is not relevant; and

(b) Under no circumstances, while in this State, may the holder or bearer of a nonresident card possess marijuana for medical purposes in excess of the limits set forth in NRS 453A.200.

3. As used in this section, "nonresident card" means a card or other identification that:

(a) Is issued by a state or jurisdiction other than Nevada; and

(b) Is the functional equivalent of a registry identification card, as determined by the Division.

NRS 453A.364 authorizes the recognition of a "nonresident card" under specified circumstances. As quoted above, subsection 3 of NRS 453A.364 defines a "nonresident card" as a card or identification issued by a state or local jurisdiction other than or outside of Nevada. The definition thus contrasts the term "nonresident card" with the term "registry identification card." Given the Legislature's use of contrasting terminology, the term "registry identification card" necessarily refers to a card issued by the state of Nevada pursuant to the provisions of Chapter 453A of the NRS. Furthermore, since a nonresident card must be the functional equivalent of a registry identification card, the nonresident card must serve the same purpose or function in another state or jurisdiction as does the Nevada registry card within Nevada. Otherwise, the card or identification does not meet the definition of "nonresident card" as set forth at NRS 453A.364(3).

When interpreting statutory language, the Nevada Supreme Court follows the "plain meaning rule." According to the plain meaning rule, when "the words of the statute have a definite and ordinary meaning," the plain language of the statute governs "unless it is clear that this meaning was not intended." *Harris Associates v. Clark County School Dist.*, 119 Nev. 638, 641-642, 81 P.3d 532, 534 (2003). In other words, when the statute is plain on its face, it is inappropriate to look beyond the language of the statute in an effort to ascertain the intent or understanding of the individual legislators who voted to enact the statute.

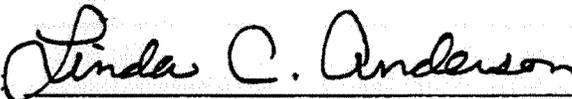
In enacting the provisions of Chapter 453A of NRS, the Nevada Legislature expressly and unambiguously declined to adopt the California model of making a registry identification card optional and allowing the patient to deal directly with the dispensary using only documents provided by the patient's physician. Furthermore, in enacting the provisions of NRS 453A.364, the Legislature specifically declined to adhere to the California model as it may have otherwise pertained to nonresident

Richard Whitley
July 26, 2016
Page 6

purchasers of medical marijuana. While a physician's recommendation may allow for the purchase of marijuana in California, the physician's recommendation is not issued by a governmental entity. This holds true even if the recommendation is accompanied by a California driver's license. Although issued by the state, a California driver's license does not provide immunity from arrest or prosecution for the use or possession of marijuana, does not incorporate background checks to ensure legitimacy, and does not itself allow for the purchase of medical marijuana. Therefore, it is not the functional equivalent of Nevada's registry identification card.

In summary, the Division of Public and Behavioral Health has correctly interpreted NRS 453A.364 to require that a nonresident desiring access to medical marijuana in Nevada present a card or other identification which is specific to the lawful use of medical marijuana and issued by a state or local jurisdiction. Even when accompanied by a driver's license, a recommendation by a California physician does not satisfy these requirements.

Sincerely,
ADAM PAUL LAXALT
Attorney General

By: 
Linda C. Anderson
Chief Deputy Attorney General

LCA/LLA