

**FOR IMMEDIATE RELEASE: December 8, 2007**  
**CONTACT: Carl Olsen**  
**Iowans for Medical Marijuana**  
**(515) 288-5798**

**Dear Governor Richardson,**

In your press release dated August 17, 2007, you vowed to fight the federal intimidation efforts, and use every state resource to fully implement the state law making medical marijuana legal for the most seriously ill patients. We think it is inconsistent that New Mexico state law continues to classify marijuana as a schedule I controlled substance, N.M. Stat. Ann. § 30-31-5(A)(2) (2007), with no accepted medical use in treatment in the United States.

Although federal law currently classifies marijuana as a schedule I controlled substance with no accepted medical use in treatment in the United States, the actual determination of whether marijuana has accepted medical use is specifically reserved to the states under the federal Controlled Substances Act of 1970 (CSA) (21 U.S.C. §§ 801 et seq.). This is clear from the recent decision by the United States Supreme Court in *Gonzales v. Oregon*, 546 U.S. 243 (2006).

***Gonzales v. Oregon***, 546 U.S. 243, 250 (2006) (referring to 21 U.S.C. § 903):

"No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates . . . to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision . . . and that State law so that the two cannot consistently stand together." § 903.

***Gonzales v. Oregon***, 546 U.S. 243, 269-270 (2006):

In deciding whether the CSA can be read as prohibiting physician-assisted suicide, we look to the statute's text and design. The statute and our case law amply support the conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, however, the statute manifests no intent to regulate the practice of medicine generally. The silence is understandable given the structure and limitations of federalism, which allow the States "great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." (Citations omitted).

***United States v. Oakland Cannabis Buyers' Cooperative***, 532 U.S. 483, 492 (2001):

The Attorney General can include a drug in schedule I only if the drug "has no currently accepted medical use in treatment in the United States," "has a high potential for abuse," and has "a lack of accepted safety for use . . . under medical supervision." §§ 812(b)(1)(A)-(C). Under the statute, the Attorney General could not put marijuana into schedule I if marijuana had any accepted medical use.

Although New Mexico Senate Bill 523, effective July 1, 2007, now includes marijuana in both schedule I and schedule II of New Mexico's state version of the Uniform Controlled Substances Act, the question that we have for New Mexico is why New Mexico's version of the Uniform Controlled Substances Act continues to list marijuana as a schedule I controlled substance, N.M. Stat. Ann. § 30-31-6 (2007), which has "no accepted medical use in treatment in the United States", N.M. Stat. Ann. § 30-31-5 (2007). Under both New Mexico and federal law, the criteria for placing a substance in schedule I is "no accepted medical use in treatment in the United States".

We fear that this inconsistency is going to cause problems for patients in New Mexico who are attempting to comply with the Lynn and Erin Compassionate Use Act, N.M. Stat. Ann. § 30-31C-1 (2007), as amended by New Mexico Senate Bill 523, effective July 1, 2007.

Carl Olsen, George McMahon, Barbara Douglass  
Directors of Iowans for Medical Marijuana (<http://www.iowamedicalmarijuana.org/>)  
Members of the Board for Patients Out of Time (<http://www.medicalcannabis.com/>)  
Petitioners in The Federal Marijuana Rescheduling Petition (<http://www.drugscience.org/>)

-30-

<http://www.richardsonforpresident.com/newsroom/pressreleases?id=0225>

**For Immediate Release: 08/17/2007**

## **Office of New Mexico Governor Press Release**

### **Governor Also Directs Health Department to Resume Planning for Medical Marijuana Program**

SANTA FE -- Governor Bill Richardson today sent a letter to President Bush urging him to end the misguided priority the Office of National Drug Control Policy has placed on threatening the prosecution of state workers for providing and patients for receiving medical marijuana relief.

"At a time when the scourge of meth is coming across the border, and cocaine and heroin use continues to ravage our communities, the federal government should be cracking down on real criminals---not people who are trying to help those in pain," Governor Richardson said in the letter to the President.

The Bush Administration earlier this year threatened to target New Mexico state officials with federal prosecution if the Legislature passed a bill making medical marijuana legal for the most seriously ill patients. Governor Richardson today vowed to fight the federal intimidation efforts, and use every state resource to fully implement the state law.

"Mr. President, you still have an opportunity to leave a legacy of compassion by adding an exemption in federal law for states that enact medical marijuana and be an ally instead of an adversary in assisting critically ill people," Governor Richardson said in his letter. "Respected physicians and government officials should not fear going to jail for acting compassionately and caring for our most vulnerable citizens. Nor should those most vulnerable of citizens fear their government because they take the medicine they need."

Governor Richardson also directed the state Department of Health to continue planning to fully implement the law, including designing a program to provide eligible patients with access to medical marijuana. The Governor said he wants the Health Department to be prepared to start a program once legal hurdles, imposed by the federal government, are cleared.

Letter to President Bush follows:

August 17, 2007

The Honorable George W. Bush

President of the United States

The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President,

I am writing to raise my deep concern about the White House Office of National Drug Control Policy's misguided priority and wasted resources spent to intimidate states trying to implement medical marijuana programs that provide relief to citizens suffering from the pain of severe illness or injury. At a time when the scourge of meth is coming across the border, and cocaine and heroin use continues to ravage our communities, the federal government should be cracking down on real criminals---not people who are trying to help those in pain.

New Mexico, like eleven other states, passed a medical marijuana law to allow board-certified physicians to review and certify patients are eligible for medical marijuana to relieve the pain of patients suffering from debilitating conditions. Our Department of Health is now impaired in its ability to fully comply with new state law for fear of federal prosecution. That law calls for controls on the provision of medical marijuana to help protect the health of our citizens and not force patients to seek a remedy from potentially criminal elements.

The population that seeks this remedy is small and the program is strictly regulated. So far, only 60 patients have applied for state ID card and the Department of Health has approved just 30. I have listened to the personal and heartbreaking stories of this small group of people who suffer greatly each day, and like my Republican and Democratic colleagues in the legislature, I was moved to act.

Mr. President, you still have an opportunity to leave a legacy of compassion by adding an exemption in federal law for states that enact medical marijuana and be an ally instead of an adversary in assisting critically ill people. Respected physicians and government officials should not fear going to jail for acting compassionately and caring for our most vulnerable citizens. Nor should those most vulnerable of citizens fear their government because they take the medicine they need.

Sincerely,

Bill Richardson

Governor, State of New Mexico

<http://www.freewmexican.com/news/67544.html>

### **Medical Marijuana: Drug bust sparks questions over law**

**By ASSOCIATED PRESS**  
**August 29, 2007**

### **Man in wheelchair faces possible federal drug charges after raid**

MALAGA, N.M. -- Agents with a regional drug task force raided Leonard French's home in southeastern New Mexico on Tuesday and seized several marijuana plants.

But the wheelchair-bound man said he's certified by the state Health Department to possess and smoke marijuana for medical reasons. The 44-year-old lost the use of his legs about 20 years ago as the result of a motorcycle crash and now suffers from chronic pain and muscle spasms.

French allowed the agents into his home in Malaga, just north of the New Mexico-Texas border, because he said he believed he was doing nothing wrong. He had worked with his doctor and the state to get permission to have marijuana.

"I'm kind of stuck between a rock and a hard place," he told Albuquerque television station KOB-TV on Tuesday. "It makes me feel like the state says, 'Here you go. Here's your license to drive,' and the first time I left the driveway, they took my car away."

While no charges have been filed against French, the Pecos Valley Drug Task Force said federal drug charges are possible.

Allan Oliver, a spokesman for Gov. Bill Richardson, said authorities targeting a paraplegic man suffering from a spinal cord injury is "a policy without compassion."

"As long as Mr. French was within the limits of the medical marijuana state law, we urge the (Drug Enforcement Administration) not to prosecute him," Oliver said late Tuesday. "U.S. attorneys have their hands full with real drug cases and border violations, and can't afford to waste taxpayer dollars to prosecute individuals who are critically ill or suffering from debilitating conditions."

The task force stated in a news release that agents did not know French had state permission to use marijuana until after the raid.

Deborah Busemeyer, a spokeswoman for the New Mexico Department of Health, confirmed that officers called the agency after the raid to verify the man's state-issued marijuana identification card. Each card has the department's telephone number and a special code.

"This is a sad story because we want patients who need medical marijuana to have it," she said. "A lot of these people have chronic pain and other illnesses, and this is their only relief."

A state law that took effect this summer allows the use of marijuana for pain or other symptoms of debilitating illnesses such as cancer, glaucoma, epilepsy, multiple sclerosis, HIV-AIDS and certain spinal cord injuries.

The department has been certifying patients as eligible to possess marijuana. That protects the individuals from state prosecution, but leaves them to find their own supply of marijuana -- potentially growing it themselves or obtaining it from friends or drug dealers.

Busemeyer said 38 patients have been approved to participate in the program since the law took effect July 1.

She stressed the state law does not protect those in the program from federal prosecution.

"Some patients are nervous about federal prosecution," she said. "Other states (with medical marijuana laws) have experienced that federal agencies haven't gone after patients. But again, we can't provide protection against federal law."

New Mexico is the 12th state to legalize marijuana for certain medical uses, but it's the only one where the law calls for state-licensed production and distribution of the drug.

The department announced earlier this month that it would not implement the law's provisions for the agency to oversee the production and distribution of marijuana to eligible patients because of concerns over the potential for federal prosecution against state employees.

Richardson, who is running for the Democratic presidential nomination, has ordered the department to resume planning for a medical marijuana program, and a public hearing on the matter is planned this fall.

French is apparently not the first person in the state's medical marijuana program to catch the attention of law enforcement. Busemeyer said a similar incident occurred recently in another part of the state, but she could not provide details.

Law enforcement agencies have asked the department if it could inform them about patients who are certified to have marijuana, but Busemeyer said doing so would violate federal patient privacy laws.



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# United States Senate

WASHINGTON, DC 20510-1502

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October 24, 2007

Reverend Carl Olsen  
130 E. Aurora Avenue  
Des Moines, IA 50313

Dear Reverend Olsen:

Thank you for your letter and continued interest in medicinal marijuana. As you may know, Article VI, Clause 2 of the Constitution establishes that all federal statutes are the supreme law of the land, superceding state laws. This is often referred to as the Supremacy Clause. Therefore, whether a state statute on an issue exists or not, the federal statute establishes the law.

Please do not hesitate to contact me with any future questions.

Sincerely,



Tom Harkin  
United States Senator

TH/mck