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REPORT BY THE DRUGS AND THE LAW COMMITTEE AND THE HEALTH LAW COMMITTEE

GOVERNOR CUOMO'S PROPOSAL TO RESTART THE ANTONIO G. OLIVIERI CONTROLLED SUBSTANCES THERAPEUTIC RESEARCH PROGRAM

The New York City Bar Association, through its Drugs and the Law Committee and Health Law Committee ("the Committees"), respectfully submits these comments in response to Governor Cuomo's proposal to restart the Antonio G. Olivieri Controlled Substances Therapeutic Research Program (N.Y. Public Health Law § 3397-C) (the "Research Program") in twenty hospitals across New York's sixty-two counties. We note that the Research Program dates back to 1980, and that, since then, a broad range of clinical benefits of medical marijuana has been established and documented in peer–reviewed scientific literature. These studies have shown that marijuana can alleviate certain symptoms in patients with HIV/AIDS and multiple sclerosis, and can be medically beneficial in treating chronic pain, glaucoma, and certain other conditions. It has also been shown to have important palliative benefits when used in conjunction with chemotherapy in cancer patients.

We commend Governor Cuomo for proposing to use his executive power to allow some ill New Yorkers to obtain medical marijuana by enrolling as subjects in the Research Program. However, we believe that the most urgent need is to provide all qualified patients with access to a safe and reliable supply of medical marijuana that they and their doctors, in their individual professional medical judgment and discretion, reasonably expect will address symptoms related to the patients' conditions. The narrow scope of the Research Program does not fully address that need. We therefore reaffirm our position that the Compassionate Care Act (the "CCA") should be enacted without delay, as a modern and effective means of providing qualified patients access to medical marijuana.[1]

The Committees observe that the proposal to restart the Research Program is similar in some respects to Governor Chris Christie's 2010 proposal for New Jersey's medical marijuana program. Governor Christie proposed that Rutgers University cultivate marijuana for distribution by hospitals. Rutgers University declined to participate in medical marijuana cultivation due to concerns about jeopardizing federal funding for academic grants, research grants and work-study programs. Although New Jersey hospitals never formally responded to Governor Christie's proposal, it is safe to assume that they were concerned (as, for example, North Shore LIJ expressed in January) about dispensing a Schedule I controlled substance (which is considered under federal law to have no

[1] *See* City Bar Report in Support of Legislation Permitting the Production, Distribution and Use of Medical Marijuana in New York State, A.6357-A/S.4406-A (with recommendations), reissued June 2013, *at* http://www2.nycbar.org/pdf/report/uploads/20072485-UpdatedReportPermittingMedicalMarijuana.pdf.

accepted medical use), which could imperil their reimbursements from Medicaid and Medicare. Among other factors, this delayed the implementation of New Jersey's medical marijuana program.

Last August, the U.S. Department of Justice issued guidance to U.S. Attorneys on its priorities regarding marijuana enforcement. This guidance has provided some clarity to state governments on how to structure medical marijuana programs to minimize federal concerns and potential prosecutions. However, the U.S. Center for Medicare & Medicaid Services (CMS) has issued no similar announcement or guidance to health care institutions.

Moreover, under the Research Program, New York State would be limited to either marijuana grown by the University of Mississippi for the National Institute on Drug Abuse, or marijuana seized by state and local law enforcement agencies. Although the marijuana grown by the University of Mississippi is of high quality, it does not contain significant amounts of cannabidiol (CBD), an important, non–intoxicating component of marijuana, which has been found to produce beneficial therapeutic effects that significantly differ from those produced by the principal psychoactive component tetrahydrocannabinol (THC). Any marijuana the New York State Department of Health ("DoH") would contract to receive from state or local law enforcement agencies would be of inconsistent and uncertain quality, safety and clinical strength, which the DoH would be responsible for testing. In contrast, the CCA would provide a robust system for registered organizations to manufacture a wide variety of marijuana products, which they would be responsible for testing and required to report the results.

Beyond consideration of the consequences of current federal law, the Committees are supportive of the CCA as the model to introduce medical marijuana to New York State because the CCA was drafted in congruence with current medical trends. To that end, the CCA addresses important concerns about health care: first, that health care access is provided appropriately to individualize care (continuum of care), and second, that effective evidence-based practices are ensured by ongoing quality assurance programs (with required biennial reports by the DoH to the Governor and the Legislature, provisions for medical marijuana research programs and analysis and evaluation of the implementation of the CCA). Hospitals are no longer the center of American health care, but today focus mainly on care of the acutely ill. Case management and managed care coordination are now ubiquitous, with the goal of keeping patients out of hospitals and providing services within their communities in outpatient centers or in home care. Clustering patient access to medical marijuana within twenty hospital centers, as called for by the Research Program, would serve to preclude access to the vast majority of the patient population that could potentially benefit.

We believe that appropriately licensed and regulated registered organizations/dispensaries in the community, as provided for by the CCA, are better suited for reaching the populations suffering from the serious conditions that may benefit from treatment with medical marijuana. The CCA will provide for the data collection, research and review necessary to evaluate long-term program efficacy. In short, the CCA addresses the issues of concern: production, distribution, licensing, diversion, taxation, efficacy, program review and protection of medical marijuana.

Therefore, the Committees support the Compassionate Care Act (with the recommendations suggested in our June 2013 report) and urge its enactment into law in 2014.

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