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April 10, 2017

VIA E-MAIL (rcs@stanleyreuter.com) AND U.S. MAIL

Mr. Richard C. Stanley, Chairman
Louisiana State Bar Committee on the Rules of Professional Conduct
Stanley, Reuter, Ross, Thornton & Alford, LLC
900 Poydras Street
Suite 2500
New Orleans, LA 70112

Re: Request for the Louisiana State Bar Committee on Rules of Professional Conduct to provide guidance concerning the ethical implications associated with the provision of legal advice relating to the cultivation and distribution of medical marijuana

Dear Mr. Stanley:

On May 19, 2016, Governor John Bel Edwards signed Senate Bill 271 into law, amending and reenacting La. R.S. § 40:1046, and providing for a comprehensive, working medical marijuana program in Louisiana (the "Act"). Over a period just shy of a year, and in conformance with the Act, (1) the Louisiana State University Agricultural Center ("LSUAC") and the Southern University Agricultural Center ("SUAC") have exercised their respective options to be licensed as the sole production facilities in Louisiana, (2) the Louisiana Board of Pharmacy has proposed new regulations establishing a special type of pharmacy permit to enable the dispensing of marijuana for therapeutic purposes, (3) LSUAC, through the Board of Supervisors of Louisiana State University and Agricultural & Mechanical College, issued a Solicitation for Offers seeking a single supplier with which to contract for the cultivation, extraction, processing, and production of medical marijuana (in response to which seven firms have submitted an offer), and (4) SUAC, through the director of the Southern Institute of Medical Plants, Janana Snowden, PhD, indicated that it intends to release a Request for Proposals or Solicitation for Offers in the near future seeking a single vendor to conduct a "seed to sale" operation.

LSUAC and SUAC, and the various entities that will contract with and provide services to LSUAC and SUAC, will unquestionably require legal assistance in their efforts to navigate the complex regulatory scheme set forth in La. R.S. § 40:1046 and to determine how that regulatory scheme intersects with relevant federal and state law. Currently, there is a tension between federal and state law regarding the legality of marijuana in any form. More specifically, La. R.S. § 40:1046 is in conflict with 21 U.S.C. § 811, *et seq.*, the Controlled Substances Act, which classifies marijuana as a Schedule I controlled substance. Indeed, it is still a federal crime to cultivate, manufacture, distribute, and possess any form of marijuana, whether medical or recreational. However, notwithstanding this conflict, in August 2013,

James M. Cole, then Deputy Attorney General of the United States, issued new guidance regarding marijuana enforcement (the "Cole Memorandum"). Essentially, the Cole Memorandum states that jurisdictions that have legalized marijuana in some form are less likely to be threats to the federal priorities under the Controlled Substances Act if they have implemented strong and effective regulatory and enforcement systems to control the cultivation and distribution of marijuana. Relying on this guidance, more than half of the states, including Louisiana, have legalized medical marijuana.

Just as LSUAC and SUAC and various other entities require legal guidance to wade through these uncharted waters, the members of the Louisiana State Bar Association require guidance to evaluate the manner in which our provision of legal assistance on matters related to the cultivation and distribution of medical marijuana intersects with our ethical obligations under La. R. Prof. Conduct 1.2(d), which is identical to Rule 1.2(d) of the American Bar Association Model Rules of Professional Conduct ("Rule 1.2(d)"). Rule 1.2(d) provides that:

> A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

In light of the tension between Louisiana and federal law, it is not clear whether Rule 1.2(d) allows or disallows for Louisiana practitioners to provide legal counsel to entities that seek legal guidance on matters related to the cultivation and distribution of medical marijuana.

The state bar associations of Hawaii, Alaska, Illinois, Nevada, Oregon and Washington, recognizing this tension between state law and federal law, have amended their variants of Rule 1.2(d) to allow their practitioners to provide legal counsel and assistance regarding the cultivation and distribution of medical (and/or recreational) marijuana. Likewise, the ethics committees for the State Bar of Arizona and the New York State Bar Association each released opinions permitting such conduct. Indeed, although the Arizona Supreme Court recently declined (without providing comment) to adopt a petition that would have formally codified the ability of lawyers to provide legal counsel and assistance regarding the cultivation and distribution of medical marijuana, the ethics committee for the State Bar of Arizona explained in Ethics Opinion 11-01 that:

> [W]e decline to interpret and apply [Rule 1.2(d)] in a manner that would prevent a lawyer who concludes that the client's proposed conduct is in "clear and unambiguous compliance" with state law from assisting the client in connection with activities expressly authorized under state law, thereby depriving clients of the very legal advice and assistance that is needed to engage in the conduct that the state law expressly permits. [...] A state law now expressly permits certain conduct. Legal services are necessary or desirable to implement and bring to fruition that conduct expressly permitted under state law. In any potential conflict between state and federal authority, such as may be presented by the interplay between the Act and federal law, lawyers have a critical role to perform in the activities that will lead to the proper resolution of the controversy.

As you know, the Louisiana State Bar Committee on the Rules of Professional Conduct (the "Committee") debated this very issue on November 2, 2016, and ultimately declined to recommend an amendment to the Louisiana Rules of Professional Conduct that would have clarified whether Louisiana practitioners are permitted to provide legal counsel or assistance to entities that seek legal guidance on matters related to the cultivation and distribution of medical marijuana.

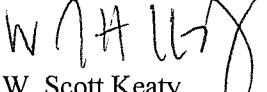
Respectfully, we urge that the Committee revisit this issue and clarify the ethical responsibilities of Louisiana practitioners in this novel area of the law. At this time, the Committee has three options—and two of these options are fraught with consequences that the Committee would surely want to avoid. First, the Committee could provide no guidance on whether Louisiana practitioners can or cannot advise clients on matters related to the cultivation and distribution of medical marijuana. Under such circumstances, individuals and entities that seek legal guidance will have to navigate the complex regulatory scheme set forth in La. R.S. § 40:1046 on their own or will have to retain attorneys who are willing to operate in the grey area that exists if the Committee does not provide guidance. This, in turn, will divide Louisiana practitioners into two distinct camps—the cautious and the cavalier—the former risking relationships with longstanding clients and the latter risking sanctions from the Louisiana Attorney Disciplinary Board. Second, the Committee could provide that Louisiana practitioners cannot advise clients on issues related to the cultivation and distribution of medical marijuana. Under such circumstances, individuals and entities that seek legal guidance will be forced to forego legal guidance altogether. Significantly, the inability of Louisiana attorneys to provide legal guidance on matters related to the regulatory scheme enacted by the Louisiana legislature will make it far more difficult for individuals and entities to comport with the Cole Memorandum, which stresses that strong and effective regulatory and enforcement systems are necessary to justify federal forbearance from enforcement of the Controlled Substances Act, which is technically applicable. Third, the Committee could provide that Louisiana practitioners are permitted to advise clients on issues related to the cultivation and distribution of medical marijuana. We believe that this is the only option that is justifiable in light of the Louisiana legislature's decision to establish a medical marijuana program.

We ask that the Committee provide guidance to its members in the near term concerning whether the prohibition contained in Rule 1.2(d) bars the provision of legal assistance to individuals and entities on matters relating to the cultivation and distribution of medical marijuana.

Best regards.

Sincerely,

KANTROW, SPAHT, WEAVER & BLITZER
(A PROFESSIONAL LAW CORPORATION)

By: 
W. Scott Keaty
Joshua G. McDiarmid

WSK/mjb
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cc: Edward J. Walters, Jr. (*via e-mail only*)