CONROY & COMPANY
Barristers and Solicitors

JOHN W. CONROY, Q.C.

PETER V. DUROVIC
November 20, 1998

BC Compassion Club Society

ATTENTION: Hilary Black

Dear Ms. Black:

RE: The Prescription of a Controlled Drug by a Physician to a Patient

It is my opinion that it is lawful for a physician to prescribe the controlled drug "Cannabis (marihuana)" to a patient under his or her professional treatment if the drug is required for the condition for which the person is receiving treatment. In so doing, the physician is not committing any criminal offence, nor is the physician aiding or abetting another to commit a criminal offence.

The detailed basis for my opinion is as follows:

1. "Cannabis" used to be controlled by the *Narcotic Control Act* which was repealed and replaced by the *Controlled Drugs and Substances Act* on May 14th, 1997. The old *Act* used the term "narcotics" and the new *Act* uses the term "controlled substance". A "controlled substance" is defined to mean a substance included in Schedules I, II, III, IV, or V.

   By Section 60 of the *Act*, the Governor in Council (the Federal Cabinet) may by Order amend any of Schedules I - VIII by adding to or deleting from them any item or portion of any item where the Cabinet deems the amendment to be necessary in the public interest. Consequently, this is how "Cannabis" and all other drugs, including codeine, morphine and many others come to be "controlled drugs" by being placed in the Schedules pursuant to the *Act*.

   "Cannabis" is controlled in Schedule II. A copy of Schedule II is attached which lists not only Cannabis, but its preparations, derivatives and similar synthetic preparations, which might also be relevant from a prescription point of view.

   The *Act* defines a "practitioner" to mean a person who is registered and entitled under the laws of a Province to practise in that Province the profession of medicine, dentistry or veterinary medicine, and includes any other person or class or persons defined as a

practitioner.

2. Generally speaking, it is an offence to possess, possess for the purpose of trafficking, or to traffic or manufacture or import or export a controlled drug. However, Section 4 of the *Controlled Drugs and Substances Act* provides as follows:

> **"4(1) <u>Except as authorised under the Regulations</u>, no person shall possess a substance included in Schedules I, II or III"**

In other words, if one is authorised to possess under the Regulations, one is not committing an offence.

3. The term "traffic" is also defined in the *Act* as follows:

> **"traffic" means, in respect of a substance included in any of Schedules I to IV,**
>
> **(a) to sell, administer, give, transfer, transport, send or deliver the substance,**
>
> **(b) to sell an authorization to obtain the substance, or**
>
> **(c) to offer to do anything mentioned in paragraph (a) or (b),**
>
> **<u>otherwise than under the authority of the regulations</u>".**

In other words, if one is doing any of these things as expressly authorised in the Regulations, one is not "trafficking".

4 Section 55 of the *Act* allows the Governor in Council to make regulations for carrying out the purposes and provisions of the *Act*, including the regulation of the medical, scientific and industrial uses and distribution of controlled substances and precursors. Regulation 53 expressly authorises a practitioner to administer, prescribe, give, sell or furnish a controlled drug to a person if that person meets the tests set out under Regulation 53, which provides as follows:

> **"53.(1) No practitioner shall administer, prescribe, give, sell or furnish a narcotic to any person or animal except as provided in this section.**
>
> **(2) Subject to subsection (3), a practitioner may administer, prescribe, give, sell or furnish a narcotic to a person or animal if**
>
> **(a) the person or animal is a patient under his professional treatment; and**
>
> **(b) the narcotic is required for the condition for which the person or animal is receiving treatment.**
>
> **(3) No practitioner shall administer, prescribe, give, sell or furnish**

methadone to any person or animal unless the practitioner has been named in an authorization issued by the Minister pursuant to subsection 68(1)"

In view of the above, it is my opinion that a physician clearly meets the definition of a "practitioner" within the meaning of the *Act*. The person who seeks a prescription must be a patient of the practitioner's and be under his or her professional treatment. If the physician is of the medical opinion that "Cannabis (marihuana)" or any of its derivatives such as medical cannabinoids is required for the condition for which the patient is receiving treatment, then the physician is expressly authorised by law, namely Regulation 53, to administer, prescribe, give, sell or furnish the drug to the patient. Such conduct falls outside the definition of "traffic" in the *Act*.

5. Once one has received a "prescription" in accordance with Regulation 53, the problem remains of filling that prescription. At present, the Minister has not licensed any dealers or manufacturers and consequently the problem is one of obtaining the substance or filling the "prescription". However, once the prescription is filled, the individual then "possesses" the substance, but "as authorised under the Regulations". It is my opinion, that the patient does not commit an offence under Section 4 of the *Act* in such circumstances where "possession" is pursuant to a valid prescription.

   While the Federal Crown might argue that one can only "possess" pursuant to either a Ministerial permit or from a licensed dealer or manufacturer, it is my opinion that being in possession of a lawful prescription is sufficient authority to possess the substance "as authorised under the Regulations".

   However, if I am wrong on this issue, I point out that it is the patient who is the "possessor" and not the physician. If one is charged in such circumstances, following ***R. v. Parker*** (10 December 1997) per Judge P.A. Sheppard, Toronto Region, a case from the Ontario Court of Justice (Provincial Division), one should vigorously defend and seek the constitutional exemption that he received on the basis that his possession was "medically approved". That decision is on appeal and remains good law in Ontario unless reversed on appeal. Anyone wishing a copy of that decision should ask the BC Compassion Club Society for one.

6. It has been suggested in some quarters that by prescribing a physician may be "aiding and abetting" the offence of possession by the patient. I disagree and point out once again that Section 4 of the *Act* authorises possession in circumstances that are "authorised under the Regulations". To "aid or abet" includes doing something to assist or to encourage the person to possess the substance. In my opinion, this does not apply when a physician does something that he or she is expressly authorised to do under the law, leaving it to the patient to fill the prescription on their own.

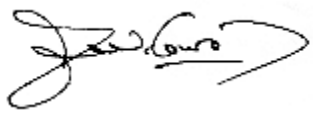
7. At present, in British Columbia, patients are able to fill their prescriptions by becoming members of the BC Compassion Club Society and by providing the appropriate documentation from their physician verifying their medical condition. Patients of the society have been stopped by the police on departing the premises but as long as they have been able to show valid documentation, they have been allowed to proceed on

their way.

In sum, it is inconceivable to me that a physician would be charged with any offence for simply prescribing in accordance with Regulation 53 provided the terms of Section 53 are otherwise met.

Yours very truly,

CONROY & COMPANY



Per:

Electronically signed by:
JOHN W. CONROY, Q.C.
JWC*dml
1-117-3.let