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8 **Attorneys for THCF Medical Clinic**

9
10 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON

11
12
13 **IN THE MATTER OF GRAND**
JURY SUBPOENA FOR THCF
14 **MEDICAL CLINIC RECORDS**

Case No. _____

15
16 **REPLY TO GOVERNMENT'S**
OPPOSITION TO MOTION TO
17 **QUASH GRAND JURY**
18 **SUBPOENA**

19 The Government does not contest that the medical files it seeks via subpoena
20 contain an individual's most sensitive, private information. Rather, the
21 Government claims that the THCF Medical Clinic's ("Medical Clinic's") motion
22 to quash should be denied primarily because the Clinic does not have standing to
23 assert the otherwise applicable physician-patient privileges, and that the privileges
24 have been waived because the Medical Clinic's patients allegedly have disclosed a
25 few of the documents to a third party. However, because case law is clear that the
Medical Clinic has standing to assert the privileges and that this alleged disclosure
did not constructively waive physician-patient privileges, the Government's
subpoena must be quashed.

1 However, if the privileges were somehow deemed not to apply and such
2 sensitive medical documents were somehow regarded as being relevant to a federal
3 investigation, then forcing disclosure of these documents would violate the Fifth
4 Amendment. The only way these documents would be relevant is if they are
5 incriminating, and, therefore, coercing disclosure of the documents would violate
6 the Fifth Amendment right against self-incrimination.

7 **I. THE SUBPOENA MUST BE QUASHED PURSUANT TO**
8 **WASHINGTON'S PHYSICIAN-PATIENT PRIVILEGE, THE**
9 **FEDERAL COMMON LAW PHYSICIAN-PATIENT PRIVILEGE,**
10 **AND FEDERAL RULE OF CRIMINAL PROCEDURE 17(C).**

11 The Government does not dispute the general framework of the Medical
12 Clinic's physician-patient privilege arguments: These state and federal common-
13 law privileges prohibit the Government from forcing disclosure of extremely
14 sensitive medical documents. Instead, it claims that the documents are properly
15 subject to subpoena because the Medical Clinic lacks standing to assert its
16 patients' privacy rights, the Medical Clinic's patients have waived their privacy
17 interest in their medical files, and the patient files held by the Medical Clinic are
18 relevant to the Government's investigation. Each of these arguments is refuted by
19 case law.

20 **A. The Medical Clinic Has Standing To Defend Its Patients' Privacy.**

21 Citing no authority, the Government claims that the Medical Clinic does not
22 have standing to raise the privacy rights of its patients. *See Opp.* at 11. A medical
23 provider, however, has a well-recognized interest in the confidentiality of
24 communications with patients regarding sensitive medical conditions.
25 Longstanding jurisprudence makes clear that "courts have consistently
acknowledged the right of a physician, as a custodian of records, to assert the

1 privacy rights of his patients.” *Sterner v. U.S. Drug Enforcement Agency*, 467 F.
2 Supp. 2d 1017, 1025-26 (S.D. Cal. 2006)); *see also Singleton v. Wulff*, 428 U.S.
3 106, 118 (1976). Thus, the Medical Clinic, as a health-care provider, can assert
4 the privacy rights of its patients in contesting the subpoena at issue. *See In re*
5 *Search Warrant (Sealed)*, 810 F.2d 67, 71 (3d Cir. 1987).

6 **B. The Alleged Disclosure of Small Portions of Some of the Medical**
7 **Clinic’s Patients’ Files Does Not Require Disclosure of the**
8 **Entirety of the Medical Records of All of the Named Individuals.**

9 The Government next asserts the unfounded position that all individuals
10 named in the subpoena have waived confidentiality with respect to their entire
11 medical files because some of these patients allegedly disclosed to a third party a
12 small number of forms relating to their participation in the state medical-marijuana
13 program. However, such disclosure, if any, does not waive the patients’ privacy
14 claims for two reasons: (1) To the extent that the patients disclosed these few
15 documents to obtain medical treatment or to comply with Oregon law, the patients
16 have not waived their privacy rights; and (2) *assuming arguendo* that the patients
17 did not disclose the documents in the course of pursuing physician-recommended
18 medical treatment or complying with state law, waiver is limited to the documents
19 actually disclosed, and the patients’ privacy outweighs the Government’s interest
20 in demanding those documents already in its possession.

21 1. *The Medical Clinic’s Patients Have Not Waived Physician-Patient*
22 *Confidentiality By Disclosing Documents To a Third Party Pursuant*
23 *to State Law or in the Course of Seeking Physician-Recommended*
24 *Medical Treatment.*

25 The Government mistakenly contends that the Medical Clinic’s patients
have waived the physician-patient privilege, basing this claim on the ground that
certain of the patients have provided several medical-related documents to the

1 State of Oregon Department of Human Services Medical Marijuana Program
2 (“State Agency”) and/or to an individual who allegedly provided these patients
3 with physician-recommended medical marijuana. However, it is well settled that
4 patients do not waive a privilege when they disclose documents to third parties
5 (even non-physicians) either as part of their medical treatment or when required by
6 law. *See, e.g., Kraima v. Ausman*, 850 N.E.2d 840 (Ill. App. 2006); *Devenyns v.*
7 *Hartig*, 983 P. 2d 63, 66-7 (Colo. App. 1998); *Louisiana v. Smith*, 643 So. 2d 894,
8 895 (La. App. 1994); *Henry v. Lewis*, 478 N.Y.S.2d 263, 268 (N.Y. App. Div.
9 1984) (“An authorization to release medical information to a specific party does
10 not constitute a waiver of the physician-patient privilege as far as other parties are
11 concerned.”); *State ex rel. Gonzenbach v. Eberwein*, 665 S.W. 2d 794, 796 (Mo.
12 App. 1983); *Grey v. Superior Court*, 133 Cal. Rptr. 318, 320 (Cal. App. 1976)
13 (“[P]etitioner did not, merely by executing and filing the Proof of Death Form
14 [granting insurer access to deceased’s medical records], waive the
15 [psychotherapist-patient] privilege.”).

16 To the extent that these patients provided documents to the State Agency,
17 Oregon law required them to do so. *See Or. Rev. Stat. § 475.309(2)* (providing
18 that participants in Oregon’s medical marijuana program are required to file
19 certain information with the State); *see also* Declaration of Adam B. Wolf, Exh. 1
20 (Oregon Medical Marijuana Program Application Packet). Similarly, patients do
21 not waive physician-patient confidentiality by disclosing documents to an
22 individual who provides their physician-recommended treatment. *Gonzenbach*,
23 655 S.W.2d at 796. Thus, submission of an application is “consistent with
24 retention of the privilege” and is “not so clearly unequivocal and decisive as to
25 demonstrate a purpose to abandon the privilege.” *Id.* A medical patient does not

1 waive confidentiality in any documents submitted—in the strictest of
2 confidence—pursuant to physician-recommended medical treatment or State law.

3 Further buttressing the patients' expectation of confidentiality, the State
4 Agency explicitly assures patients that their participation in the State's medical-
5 marijuana program will not compromise confidential information. *See* Wolf Decl.,
6 Exh. 2 (detailing confidentiality protections and assuring patients that the State
7 Agency will “disclose patient information to others only at the specific, written
8 request of the patient”). Indeed, the State's administrative regulations that
9 implement the state medical-marijuana law include an entire section entitled
10 “Confidentiality,” which explains that all documentation concerning a patient's
11 information is confidential among the State, the patient, and the patient's treatment
12 providers. Or. Admin. R. 333-008-0050.

13 The Government, in its opposition brief, describes a small number of
14 documents in its possession for some of the patients named in the subpoena—
15 copies of forms created by the State Agency, including application forms, renewal
16 application forms, criminal history requests, patient information forms, medical
17 authorizations, and exam records. *Opp.* at 19-20. State law requires that patients
18 provide these documents to state officials to apply for and demonstrate official
19 status as a medical-marijuana patient. *See supra* p. 4; *see also* Wolf Decl., Exh. 3
20 (Documentation of Medical Authorization to Possess Marijuana for Medical
21 Purposes in Washington State). Even if these official forms were generally
22 included in the medical files of the Clinic's patients, they would comprise a scant
23 subset of a patient's overall medical file; as with any medical practitioner's files,
24 the Clinic's files generally include far more sensitive medical information,
25

1 including records transferred from a patient's prior medical providers.¹ These
2 patient records can be voluminous and may include extraordinarily private details,
3 such as diagnoses of HIV or Hepatitis C, as well as intimate psychiatric records.
4 Often, these records include private clinical notes and lab reports extending back
5 many years. The Medical Clinic's patients clearly have not constructively evinced
6 intent to waive their privacy with respect to such delicate information.

7 Accordingly, because the Medical Clinic's patients have not constructively
8 waived any privilege over their medical files, and since the Medical Clinic has
9 standing to assert its patients' privacy rights, the physician-patient privileges under
10 Washington state law and federal common law protect any disclosure of the
11 medical files. The Court, therefore, should quash the subpoena.

12 *2. Waiver, If Any, Would Be Limited To Documents Already Disclosed, and*
13 *the Government's Interest in Those Documents In its Possession Is*
14 *Outweighed By the Patients' Privacy Interest.*

15 Even if the patients' disclosure of small portions of their medical files could
16 somehow constitute a constructive waiver of confidentiality, this waiver would
17 extend only to documents the patients have already disclosed; it would not
18 mandate turning over the Medical Clinic's entire corpus of medical files.
19 However, any previously disclosed documents are both irrelevant to the instant
20 federal prosecution and already in the Government's possession. Therefore, the
21 patients need not turn over to the Government even those few documents that they
22 allegedly already have disclosed.

24 ¹ The Medical Clinic notes that this is true in general for its patients, but is not
25 acknowledging that it possesses records for any individual listed in the subpoena,
let alone commenting on the precise contents of any of its patients' files.

1 a. Disclosure of documents in a non-litigation context waives
2 confidentiality, if at all, in only the disclosed documents.

3 The Government contends that, because some patients have allegedly
4 disclosed a small number of documents from their medical files, all patients have
5 waived confidentiality as to all documents demanded by the subpoena—the
6 entirety of their medical files.² However, case law is clear that, outside of the
7 context of litigation, disclosures to third parties do not waive privileges beyond the
8 items actually disclosed. *See In re von Bulow*, 828 F.2d 94, 101-03 (2d Cir. 1987).
9 As the Washington Supreme Court has explained, a waiver *at trial* “as to part of a
10 communication waives the privilege as to the entire communication [but] this rule
11 of waiver does not apply to partial disclosure *outside* trial.” *State v. Jones*, 99
12 Wn.2d 735, 750 (1983) (emphasis in original). This “is because the only purpose
13 of such a rule is to prevent clients from advancing to the trier of fact a one-sided
14 account of the matters in dispute and hence using the privilege as a sword rather
15 than a shield.” *Id.* (internal quotation marks omitted). Where, as in this case,
16 “disclosures of privileged information are made extrajudicially and without
17 prejudice to the opposing party, there exists no reason in logic or equity to broaden
18 the waiver beyond those matters actually revealed.” *In re von Bulow*, 828 F.2d at
19 101-03; *see also Chevron Corp. v. Penzoil*, 974 F.2d 1156, 1162 (9th Cir. 1992)
20 (citing *In re Von Bulow*); *Westinghouse Elec. Corp. v. Repub. of the Philippines*,
21 951 F. 2d 1414, 1426 n.12 (3d Cir. 1991).

22
23 ² It is clear that the subpoena—which asks the Medical Clinic for all its
24 documents relating to the named individuals—extends far beyond those documents
25 already possessed by the Government. *See supra* pp. 5-6 (noting the limited
number of documents in the Government’s possession relative to the entirety of the
patients’ respective medical files).

1 The Government, citing *Carson v. Fine*, 123 Wn.2d 206 (1994), suggests
2 that any waiver would cover all the documents requested by the subpoena.
3 *Carson*, however, stands for the unremarkable proposition that, by filing a medical
4 malpractice claim, a plaintiff completely waives any physician-patient privilege.
5 123 Wn.2d at 215-16. The Government has not suggested that any of the
6 individuals named in the subpoena have filed a legal claim putting their medical
7 condition at issue. Accordingly, if patients have waived confidentiality, they have
8 done so, at most, only in the documents actually and already disclosed.

9 b. Patients' interest in their sensitive medical records outweighs the
10 Government's interest, if any, in documents that are both
11 irrelevant and already in its possession.

12 *Assuming arguendo* that patients have waived confidentiality for the small
13 number of documents already in the Government's possession, the Government
14 has no plausible justification for requiring the Medical Clinic to produce these
15 same documents to the Government. Any such documents, as the Medical Clinic
16 explained in its opening memorandum, contain sensitive information about the
17 patients, but are doubly without use to the Government—both because the
18 Government already has these documents and because the documents themselves
19 are of little evidentiary value. In light of the relative interests in the few
20 documents at issue, the Court should quash the subpoena pursuant to Federal Rule
21 of Criminal Procedure 17(c) ("Rule 17(c)").

22 While the Government has attempted to show that it has a basis for seeking
23 the Medical Clinic's patients' files, *see* Opp. at 15-16, it has been firmly
24 established that records of medical-marijuana consultations are irrelevant to a
25 federal criminal investigation. *See United States v. Rosenthal*, 266 F. Supp. 2d
1068, 1074-75 (N.D. Cal. 2003), *aff'd in relevant part, United States v. Rosenthal*,

1 454 F.3d 943, 947 (9th Cir. 2006) (adopting the district court’s reasoning on that
2 issue “in whole”). The Government, which has not attempted to distinguish the
3 *Rosenthal* cases that the Medical Clinic cited in its opening memorandum (*see*
4 *Open. Memo.* at 16), contends that “[t]he medical marijuana issue is relevant, as
5 the targets are using the programs to shield their illegal activities under the banner
6 of the programs.” *Opp.* at 16. This argument is puzzling considering the
7 Government has argued repeatedly—and successfully—that state medical
8 marijuana laws do not provide a shield from federal prosecution. *See Gonzales v.*
9 *Raich*, 545 U.S. 1 (2005); *United States v. Oakland Cannabis Buyers’*
10 *Cooperative*, 532 U.S. 483 (2001). Moreover, in *Rosenthal*, “the government
11 maintained that evidence of [a medical] motive or justification for the cultivation
12 of marijuana could not be presented to the jury.” 266 F. Supp. 2d at 1074-75, *aff’d*
13 *in relevant part*, 454 F.3d at 947. The district court and the Ninth Circuit agreed,
14 holding that such irrelevant evidence could not even be introduced. *See id.* at
15 1074; *see also Rosenthal*, 454 F.3d at 947 (affirming this portion of the district
16 court’s holding).

17 Under *Rosenthal*—and consistent with the Government’s views in every
18 medical-marijuana case prior to the action at bar—the Government cannot put
19 before the grand jury evidence regarding medical marijuana. It is established law
20 in the Ninth Circuit that such evidence is not relevant to a federal prosecution.

21 Finally, the Government’s opposition memorandum makes it clear that its
22 interest in these documents is even more ethereal than the Medical Clinic
23 originally presumed because the Government claims it *already possesses* the
24 documents at issue. At this point, the parties are arguing over only those
25 documents that the patients have disclosed to the State Agency and a provider of

1 physician-recommended medicine—documents that the Government can identify
2 only because it actually and already possesses them. Therefore, not only has the
3 Ninth Circuit ruled that these documents are irrelevant to a federal prosecution, but
4 the Government has very little interest in demanding documents already in its
5 possession. Accordingly, even if the patients somehow constructively waived the
6 state and federal physician-patient privileges as to documents they disclosed, their
7 interest in these documents far outweighs the Government’s purported interest in
8 re-obtaining them, and the subpoena thus should be quashed pursuant to Rule
9 17(c). *Cf. Northwestern Memorial Hosp. v. Ashcroft*, 362 F.3d 923, 929-30 (7th
10 Cir. 2004) (quashing a subpoena seeking abortion records as an unwarranted
11 invasion of patient privacy).

12 **C. The Subpoena Threatens To Chill Physician-Patient Speech.**

13 A federal grand jury subpoena seeking details of medical-marijuana
14 consultations will chill physician-patient speech about medical marijuana.
15 Marijuana remains illegal under federal law, and the Government, as documented
16 in the Medical Clinic’s opening memorandum, has a history of attempting to
17 interfere with candid physician-patient communication regarding medical
18 marijuana. *See Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002); Wolf Decl., Exh.
19 4 (United States Attorney for the District of Hawai’i erroneously claiming—in a
20 statement he would later retract—that his office could prosecute physicians for
21 recommending medical marijuana). The Government’s subpoena only adds to that
22 history and unnecessarily imperils such protected physician-patient speech.

23 The Government takes no issue with the First Amendment protection
24 recognized in *Conant* for physician-patient communications about medical
25 marijuana; instead, the Government attempts to avoid *Conant*, claiming that “the

1 subpoena does not seek to [sic] the communications, but rather the written record
2 of the physician's conclusion that a patient has a condition for which the defendant
3 may seek authority for the use of marijuana under the program." Opp. at 9. Here,
4 the Government is flatly incorrect on two fronts. First, the subpoena broadly seeks
5 the *entire patient files*—not just a "physician's conclusion"—for seventeen of the
6 Medical Clinic's patients. Second, the Government invokes a distinction that
7 simply does not exist: Written medical diagnoses are just as much a part of
8 confidential physician-patient communication as verbal consultations.³ For this
9 reason, it is well settled that written medical records are "protected by the rule of
10 privileged communications, as much so as if the physicians were being examined
11 as witnesses in person." *Toole v. Franklin Inv. Co.*, 158 Wn. 696, 698 (1930).

12 The *Conant* injunction prevents the Government from chilling physicians'
13 willingness to provide medical-marijuana recommendations, including basing a
14 criminal investigation on a medical-marijuana patient's medical chart. *See Conant*
15 *v. McCaffrey*, 172 F.R.D. 681, 701 n.8 (N.D. Cal. 1997); *see also Conant*, 309
16 F.3d at 633 (noting that the Government's policy was directed at doctors who
17 "intentionally provide their patients with oral or written statements"
18 recommending marijuana). Thus, the Government's subpoena takes aim at the
19 heart of the conduct protected by the Ninth Circuit in *Conant*.

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24 ³ The Government has previously acknowledged that accurate medical charts,
25 which contain "the physician's conclusions," "are necessary to provide sound
medical care to the patient in the future." *Conant v. McCaffrey*, 2000 WL
1281174, at *5 n.2 (N.D. Cal. Sept. 7, 2000).

1 **II. IF THE REQUESTED DOCUMENTS ARE RELEVANT, THE FIFTH**
2 **AMENDMENT PROTECTS AGAINST THEIR DISCLOSURE.**

3 If the subpoena is not quashed pursuant to the physician-patient privileges
4 and/or Rule 17(c), it should be quashed as a violation of the Fifth Amendment
5 right against self-incrimination. The Government finds itself in a quandary, as it
6 contends that the documents it demands are important for its investigation, yet
7 must acknowledge that the documents are important only to the extent that they
8 are incriminating. If the documents are incriminating, their disclosure is protected
9 by the Fifth Amendment.

10 **A. The Government's Argument Implies That The Requested**
11 **Documents Might Tend To Incriminate.**

12 Responding to the Medical Clinic's claims under the physician-patient
13 privileges and Rule 17(c), the Government contends that the documents it seeks
14 are important for its investigation because they allegedly reveal illegal activity;
15 yet, responding to the Medical Clinic's Fifth Amendment argument, the
16 Government claims that the production of documents under the subpoena would
17 not tend to incriminate. The Government cannot have it both ways. As discussed
18 above, the documents sought in the subpoena are irrelevant to the investigation.
19 Nevertheless, if this Court deems the medical-patient files relevant, that conclusion
20 could only spring from their tendency to incriminate. Accordingly, if the
21 documents are found to be relevant to this federal prosecution, their production is
22 protected by the Fifth Amendment. *See, e.g., Ohio v. Reiner*, 532 U.S. 17, 20
23 (2001) (citing *Hoffman v. United States*, 341 U.S. 479, 486 (1951)) (stating that
24 the Fifth Amendment protects against forced disclosures that have a tendency to
25 incriminate).

1 The Government next argues that the documents do not tend to incriminate
2 because its investigation allegedly targets three individuals, and the Government
3 does not presently intend to prosecute the Medical Clinic, its doctors, or other
4 patients. These assertions about the present scope of the Government's
5 investigation have no bearing on the Fifth Amendment's application. Only
6 immunity protects against the threat of prosecution and effectively serves to
7 nullify the privilege against self-incrimination. *See, e.g., United States v.*
8 *Kastigar*, 406 U.S. 441, 453 (1972). Because the Government could have, but has
9 not, offered immunity, the Fifth Amendment prevents it from demanding these
10 disclosures.

11 **B. Producing the Requested Documents Would Be Testimonial.**

12 The Government contends that there would be "no testimonial aspect" to the
13 production of documents by the Medical Clinic because the Government is already
14 in possession of copies of certain of the documents. *Opp.* at 20. However,
15 assuming that the Medical Clinic possesses these documents, the Government's
16 argument demonstrates that the document production would be *purely testimonial*,
17 as the act of production would both authenticate the documents and demonstrate
18 that the Medical Clinic possesses the documents. *See In re Grand Jury Subpoena,*
19 *Dated April 18, 2003*, 383 F.3d 905, 912-14 (9th Cir. 2004).

20 The Government already possesses the contents of these documents; all that
21 it lacks is evidence that the documents were created by or under the direction of
22 the Medical Clinic. Of course, if the Government sees the creation of the
23 documents as somehow being criminal, then compliance with the subpoena would
24 be a testimonial act providing direct, incriminating evidence.

1 **C. The Medical Clinic Has Standing to Assert a Fifth Amendment**
2 **Claim.**

3 The Medical Clinic may assert others' Fifth Amendment rights, just as it
4 may assert their privacy rights. *See supra* Part I.A. The Government does not cite
5 any cases on point to the contrary, but analogizes to *Crouch v. United States*, 409
6 U.S. 322 (1973), which concerned an accountant and his client. However, a closer
7 analogy is the private relationship between an attorney and his client. When an
8 attorney possesses a client's documents for the purpose of providing legal advice,
9 the attorney may contest a subpoena for those documents by asserting the Fifth
10 Amendment rights of his client. *In re Grand Jury Proceedings on Feb. 4, 1982*,
11 759 F.2d 1418, 1420 (9th Cir. 1985); *United States v. Judson*, 322 F.2d 460, 466
12 (9th Cir. 1963). Just as forced production of documents from counsel's office
13 would undermine attorney-client confidentiality, forced production of medical
14 records from a physician's office would severely destabilize physician-patient
15 confidentiality. To hold otherwise would discourage clients from disclosing
16 incriminating documents to their physicians, which, for many individuals with
17 sensitive medical conditions, would dismantle trust between physicians and
18 patients, undermine the physician-patient relationship, and prevent proper medical
19 care for patients around the country.

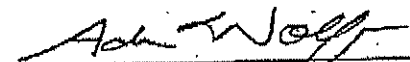
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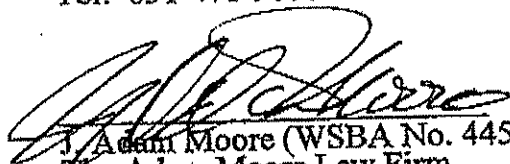
CONCLUSION

For the foregoing reasons, the Medical Clinic respectfully requests that this Court quash the subpoena.

Dated: July 23, 2007

Respectfully submitted,


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14 **Attorneys for THCF Medical Clinic**

15 **UNITED STATES DISTRICT COURT**
16 **EASTERN DISTRICT OF WASHINGTON**

17 Case No. _____

18 **IN THE MATTER OF GRAND**
19 **JURY SUBPOENA FOR THCF**
20 **MEDICAL CLINIC RECORDS**

21 **DECLARATION OF ADAM B.**
22 **WOLF IN SUPPORT OF THCF**
23 **MEDICAL CLINIC'S REPLY**
24 **TO GOVERNMENT'S**
25 **OPPOSITION TO MOTION TO**
QUASH

- 1 I, Adam B. Wolf, am an attorney at law, duly licensed to practice before all courts of the State of California. I am a member in good standing of the bar of the State of California.
- 2 A motion for my admission to this Court *pro hac vice* was filed June 1, 2007.
- 3 I am an attorney employed by the ACLU Foundation, and am representing the THCF Medical Clinic in the action at bar.

1 4. I make this declaration based on my personal knowledge, and, if called to
2 testify, could and would testify as stated herein.

3 5. On July 19, 2007, I downloaded from the Oregon Department of Health and
4 Human Services' ("State Agency's) website relevant portions of an application
5 packet for medical-marijuana patients. Attached as Exhibit 1 is a true and correct
6 copy of this packet.

7 6. On July 19, 2007, I downloaded from the State Agency's website a
8 statement issued by the State Agency entitled "IS MY CONFIDENTIALITY
9 PROTECTED?" Attached as Exhibit 2 is a true and correct copy of this document.

10 7. On July 19, 2007, I downloaded from the Washington State Medical
11 Association's website a form entitled "Documentation of Medical Authorization to
12 Possess Marijuana for Medical Purposes." Attached as Exhibit 3 is a true and
13 correct copy of this form.

14 8. On July 19, 2007, I downloaded from the website of the *Honolulu Advertiser*
15 an article that describes how the United States Attorney for the District of Hawai'i
16 erroneously interpreted *Gonzales v. Raich*, 545 U.S. 1 (2005), to mean that it could
17 commence prosecuting physicians for recommending marijuana to their patients.
18 Attached as Exhibit 4 is a true and correct copy of this article.

19 I declare under penalty of perjury that the foregoing is true and correct to
20 the best of my knowledge.

21

22 Executed this 20th day of July 2007, in Santa Cruz, California.

23

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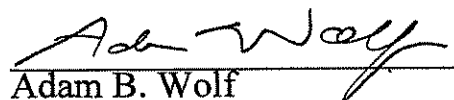

Adam B. Wolf

EXHIBIT 1

OMMP NEW APPLICATION FEE

For a **NEW** application, the fee is \$100.00 **OR** \$20.00 if you can provide proof of Oregon Health Plan (OHP) eligibility or proof of receipt of Supplemental Security Income (SSI) monthly benefits. (If you are RENEWING your OMMP application, the application fee is \$100.00 or \$20.00 if you are on the OHP or if you are receiving SSI.)

OHP: "**Oregon Health Plan**" means the medical assistance program administered by the Department under ORS chapter 414. Eligibility in the Oregon Health Plan is demonstrated by providing a current, valid eligibility determination statement from the Department's Office of Medical Assistance Programs. To qualify for a reduced fee, a copy of the patient's current eligibility statement must be provided at the time the patient submits an application. The Department will verify the patient's Oregon Health Plan eligibility with the Office of Medical Assistance Programs.

SSI: "**Supplemental Security Income**" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources. Eligibility for Supplemental Security Income is demonstrated by providing a copy of a receipt of a current monthly benefit. To qualify for a reduced fee, a copy of a receipt of a current Supplemental Security Income monthly benefit must be provided at the time the patient submits an application. The Department will verify the patient's current Supplemental Security Income receipt of monthly benefits through the Department or with the Social Security Administration.

OPTIONAL INFORMATION (OAR 333-008-0020(2))

The section below is for you to list any other persons who may be at the grow site, other than the patient and/or the designated primary caregiver. Please include each person's full name and date of birth. The OMMP will verify this information with law enforcement personnel if they ask about a specific name(s) of a person who may be at a grow site. Completion of this section is OPTIONAL; you are not required to complete it.

PERSONS LISTED IN THIS SECTION ARE NOT PROTECTED FROM CIVIL OR CRIMINAL PENALTIES

NAME (LAST, FIRST, M.I.):	DATE OF BIRTH (MM/DD/YY):
NAME (LAST, FIRST, M.I.):	DATE OF BIRTH (MM/DD/YY):
NAME (LAST, FIRST, M.I.):	DATE OF BIRTH (MM/DD/YY):

MAIL APPLICATION FORM TO: DHS/OMMP
PO BOX 14450
Portland, OR 97293-0450



"The (state) Act neither protects marijuana plants from seizure nor individuals from prosecution if the federal government chooses to take action against patients or caregivers under the federal Controlled Substances Act."

If this document is needed in an alternative format, please contact this office: (971) 673-1226

311 RENEWAL APPLICATION FORM
Registration for the Oregon Medical Marijuana Program

FOR OFFICIAL USE ONLY

INSTRUCTIONS: Please complete all required information to comply with the registration requirements of the Oregon Medical Marijuana Act. Attach legible copies of ID and enclose your payment. If applicant is a minor (under 18), the custodial parent or legal guardian with responsibility for health care decisions must be listed as the Primary Caregiver.

PLEASE TYPE OR PRINT LEGIBLY.

APPLICANT INFORMATION (REQUIRED)		
NAME (LAST, FIRST, M.I.):	<input type="checkbox"/> Male <input type="checkbox"/> Female	DATE OF BIRTH:
MAILING ADDRESS:		TELEPHONE NUMBER:
CITY, STATE AND ZIP CODE:		COUNTY:
Photo Identification: A photocopy of one of the following must be attached. Please check appropriate box: <input type="checkbox"/> Oregon Drivers License <input type="checkbox"/> Oregon Identification Card <input type="checkbox"/> Voter Registration Card, plus current photo		

PRIMARY CAREGIVER (IF APPLICABLE)		
NAME (LAST, FIRST, M.I.):	<input type="checkbox"/> Male <input type="checkbox"/> Female	DATE OF BIRTH:
MAILING ADDRESS:		TELEPHONE NUMBER:
CITY, STATE AND ZIP CODE:		COUNTY:
Photo Identification: A photocopy of one of the following must be attached. Please check appropriate box: <input type="checkbox"/> Oregon Drivers License <input type="checkbox"/> Oregon Identification Card <input type="checkbox"/> Voter Registration Card, plus current photo		

PERSON RESPONSIBLE FOR GROW SITE (REQUIRED)		
<input type="checkbox"/> PATIENT <input type="checkbox"/> CAREGIVER <input type="checkbox"/> OTHER IF OTHER PLEASE COMPLETE THE FOLLOWING:		
NAME (LAST, FIRST, M.I.):	<input type="checkbox"/> Male <input type="checkbox"/> Female	DATE OF BIRTH:
MAILING ADDRESS:		TELEPHONE NUMBER:
CITY:	STATE: OREGON	ZIP CODE:
Photo Identification: A photocopy of one of the following must be attached. Please check appropriate box: <input type="checkbox"/> Oregon Drivers License <input type="checkbox"/> Oregon Identification Card <input type="checkbox"/> Voter Registration Card, plus current photo		

MARIJUANA GROW SITE ADDRESS (REQUIRED)		
PHYSICAL ADDRESS:		
CITY:	STATE: OREGON	ZIP CODE:
COUNTY:	TELEPHONE NUMBER:	
To list other persons who may be at this grow site, please see back of this page.		

RENEWAL REGISTRATION FEE (REQUIRED)
The RENEWAL registration fee is \$100 or \$20 if you can provide proof of OHP or SSI eligibility. Please see back of page for details.
Enclose your check or money order made payable to "OMMP".

SIGNATURE & DATE (REQUIRED)	
I TESTIFY THAT THE ABOVE INFORMATION IS TRUE.	
SIGNATURE OR PROXY SIGNATURE:	DATE:

SEE BACK OF PAGE FOR MORE DETAILS

OMMP RENEWAL APPLICATION FEE

For a **RENEWAL** application, the fee is \$100.00 **OR** \$20.00 if you can provide proof of Oregon Health Plan (OHP) eligibility or proof of receipt of Supplemental Security Income (SSI) monthly benefits. (If you are making a **NEW** application to the OMMP, the application fee is \$100.00 or \$20.00 if you are on the OHP or if you are receiving SSI.)

OHP: "**Oregon Health Plan**" means the medical assistance program administered by the Department under ORS chapter 414. Eligibility in the Oregon Health Plan is demonstrated by providing a current, valid eligibility determination statement from the Department's Office of Medical Assistance Programs. To qualify for a reduced fee, a copy of the patient's current eligibility statement must be provided at the time the patient submits an application. The Department will verify the patient's Oregon Health Plan eligibility with the Office of Medical Assistance Programs.

SSI: "**Supplemental Security Income**" means the monthly benefit assistance program administered by the federal government for persons who are age 65 or older, or blind, or disabled and who have limited income and financial resources. Eligibility for Supplemental Security Income is demonstrated by providing a copy of a receipt of a current monthly benefit. To qualify for a reduced fee, a copy of a receipt of a current Supplemental Security Income monthly benefit must be provided at the time the patient submits an application. The Department will verify the patient's current Supplemental Security Income receipt of monthly benefits through the Department or with the Social Security Administration.

OPTIONAL INFORMATION (OAR 333-008-0020(2))

The section below is for you to list any other persons who may be at the grow site, other than the patient and/or the designated primary caregiver. Please include each person's full name and date of birth. The OMMP will verify this information with law enforcement personnel if they ask about a specific name(s) of a person who may be at a grow site. Completion of this section is OPTIONAL; you are not required to complete it.

PERSONS LISTED IN THIS SECTION ARE NOT PROTECTED FROM CIVIL OR CRIMINAL PENALTIES

NAME (LAST, FIRST, M.I.):	DATE OF BIRTH (MM/DD/YY):
NAME (LAST, FIRST, M.I.):	DATE OF BIRTH (MM/DD/YY):
NAME (LAST, FIRST, M.I.):	DATE OF BIRTH (MM/DD/YY):

MAIL APPLICATION FORM TO: DHS/OMMP
PO BOX 14450
Portland, OR 97293-0450



"The (state) Act neither protects marijuana plants from seizure nor individuals from prosecution if the federal government chooses to take action against patients or caregivers under the federal Controlled Substances Act."

If this document is needed in an alternative format, please contact this office: (971) 673-1226

ATTENDING PHYSICIAN'S STATEMENT – NEW APPLICATION

Oregon Medical Marijuana Act Program

Instructions: Please complete all sections of this form in order to comply with the registration requirements of the Oregon Medical Marijuana Act OR provide relevant portions of the patient's medical record containing all information required on this form. **This does not constitute a prescription for marijuana.**

If you need this document in an alternate format, please call (971) 673-1226

A PATIENT INFORMATION	
PATIENT NAME (LAST, FIRST, M.I.)	DATE OF BIRTH:
MAILING ADDRESS:	TELEPHONE #: ()
CITY, STATE AND ZIP CODE:	

B PHYSICIAN INFORMATION	
PHYSICIAN NAME: (Please print legibly)	
MAILING ADDRESS:	TELEPHONE #: ()
CITY, STATE AND ZIP CODE:	

C PHYSICIAN'S STATEMENT	
Debilitating Medical Condition: Check appropriate boxes.	
<input type="checkbox"/> 1. Malignant neoplasm (Cancer)	
<input type="checkbox"/> 2. Glaucoma	
<input type="checkbox"/> 3. Positive status for Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS)	
<input type="checkbox"/> 4. Agitation due to Alzheimer's Disease	
5. A medical condition or treatment for a medical condition that produces for a specific patient one or more of the following: (check all that apply)	
<input type="checkbox"/> a. Cachexia	
<input type="checkbox"/> b. Severe pain	
<input type="checkbox"/> c. Severe nausea	
<input type="checkbox"/> d. Seizures, including but not limited to seizures caused by epilepsy	
<input type="checkbox"/> e. Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis.	
Comments:	
I hereby certify that I am a physician duly licensed to practice medicine in Oregon under ORS Chapter 677. I have primary responsibility for the care and treatment of the above-named patient. The above-named patient has been diagnosed with a debilitating medical condition, as listed above. Marijuana used medically may mitigate the symptoms or effects of this patient's condition.	
This is not a prescription for the use of medical marijuana.	
PHYSICIAN'S SIGNATURE	DATE

MAIL ATTENDING PHYSICIAN'S STATEMENT TO:

DHS/OMMP
PO Box 14450
Portland, OR 97293-0450



ATTENDING PHYSICIAN'S STATEMENT – Renewal Registration Oregon Medical Marijuana Act Program

Instructions: Please complete all sections of this form in order to comply with the registration requirements of the Oregon Medical Marijuana Act **OR** provide relevant portions of the patient's medical record containing all information required on this form. **This does not constitute a prescription for marijuana.**

If you need this document in an alternate format, please call (971) 673-1226

A PATIENT INFORMATION	
PATIENT NAME (LAST, FIRST, M.I.)	DATE OF BIRTH:
MAILING ADDRESS:	TELEPHONE #: ()
CITY, STATE AND ZIP CODE:	

B PHYSICIAN INFORMATION	
PHYSICIAN NAME: (Please print legibly!)	
MAILING ADDRESS:	TELEPHONE #: ()
CITY, STATE AND ZIP CODE:	

C PHYSICIAN'S STATEMENT	
Debilitating Medical Condition: Check appropriate boxes.	
<input type="checkbox"/> 1. Malignant neoplasm (Cancer)	
<input type="checkbox"/> 2. Glaucoma	
<input type="checkbox"/> 3. Positive status for Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS)	
<input type="checkbox"/> 4. Agitation due to Alzheimer's Disease	
5. A medical condition or treatment for a medical condition that produces for a specific patient one or more of the following: (check all that apply)	
<input type="checkbox"/> a. Cachexia	
<input type="checkbox"/> b. Severe pain	
<input type="checkbox"/> c. Severe nausea	
<input type="checkbox"/> d. Seizures, including but not limited to seizures caused by epilepsy	
<input type="checkbox"/> e. Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis.	
Comments:	
I hereby certify that I am a physician duly licensed to practice medicine in Oregon under ORS Chapter 677. I have primary responsibility for the care and treatment of the above-named patient. The above-named patient has been diagnosed with a debilitating medical condition, as listed above.	
This is not a prescription for the use of medical marijuana.	
PHYSICIAN'S SIGNATURE:	DATE:

MAIL ATTENDING PHYSICIAN'S STATEMENT TO:

DHS/OMMP
PO Box 14450
Portland, OR 97293-0450



**DECLARATION OF PERSON RESPONSIBLE FOR A MINOR
TO PARTICIPATE IN
Oregon Medical Marijuana Program**

Instructions: Complete all required information in order to comply with the registration requirements of the Oregon Medical Marijuana Act. This form is required in addition to the patient application form if the patient is under 18 years of age.

If you want this document in a larger print, please contact this office: 503-731-4002 x 233

Please contact the DHS/OMMP if you need this material in an alternative format.	
DECLARATION (REQUIRED)	
I _____, do hereby declare:	
1. That I am the Custodial Parent or Legal Guardian with responsibility for health care decisions for: _____ Applicant's Name	
2. The applicant's attending physician has explained to the applicant and to me the possible risks and benefits of the medical use of marijuana;	
3. I consent to the use of marijuana by the applicant for medical purposes;	
4. I agree to serve as the applicant's designated primary caregiver; AND	
5. I agree to control the acquisition of marijuana and the dosage and frequency of use by the applicant.	
SIGNATURE OF PERSON WITH PRIMARY CUSTODY (REQUIRED):	
ADDRESS:	TELEPHONE NUMBER:
CITY, STATE, AND ZIP CODE:	
Subscribed to before me on this _____ day of _____	
Notary Signature _____	
Seal/Stamp	
<p>Notary Instructions: If notary is using a raised seal, indicate in which state you are registered as a notary and the date your commission expires. Notary signature and seal must appear on this form. Do not attach a separate notary statement.</p>	

MAIL DECLARATION FORM TO:

DHS/OMMP
PO BOX 14450
Portland, OR 97293-0450



CHANGE REQUEST FORM Oregon Medical Marijuana Program

INSTRUCTIONS: Please complete all required information to comply with the registration requirements of the Oregon Medical Marijuana Act. For your protection, please use this form to submit changes. Attach legible copies of ID, if applicable. If applicant is a minor (under 18), the custodial parent or legal guardian with responsibility for health care decisions must be listed as the Primary Caregiver. PLEASE TYPE OR PRINT LEGIBLY.

A APPLICANT INFORMATION (REQUIRED)		
NAME (LAST, FIRST, M.I.):	<input type="checkbox"/> Male <input type="checkbox"/> Female	DATE OF BIRTH:
MAILING ADDRESS:		TELEPHONE NUMBER:
CITY, STATE AND ZIP CODE:		COUNTY:
Photo Identification: A photocopy of one of the following must be attached. Please check appropriate box: <input type="checkbox"/> Oregon Drivers License <input type="checkbox"/> Oregon Identification Card <input type="checkbox"/> Voter Registration Card, plus current photo		
B PRIMARY CAREGIVER (IF APPLICABLE)		
NAME (LAST, FIRST, M.I.):	<input type="checkbox"/> Male <input type="checkbox"/> Female	DATE OF BIRTH:
MAILING ADDRESS:		TELEPHONE NUMBER:
CITY, STATE AND ZIP CODE:		COUNTY:
Photo Identification: A photocopy of one of the following must be attached. Please check appropriate box: <input type="checkbox"/> Oregon Drivers License <input type="checkbox"/> Oregon Identification Card <input type="checkbox"/> Voter Registration Card, plus current photo		
C PERSON RESPONSIBLE FOR GROW SITE (REQUIRED)		
<input type="checkbox"/> PATIENT <input type="checkbox"/> CAREGIVER <input type="checkbox"/> OTHER IF OTHER PLEASE COMPLETE THE FOLLOWING:		
NAME (LAST, FIRST, M.I.):	<input type="checkbox"/> Male <input type="checkbox"/> Female	DATE OF BIRTH:
MAILING ADDRESS:		TELEPHONE NUMBER:
CITY:	STATE: OREGON	ZIP CODE:
Photo Identification: A photocopy of one of the following must be attached. Please check appropriate box: <input type="checkbox"/> Oregon Drivers License <input type="checkbox"/> Oregon Identification Card <input type="checkbox"/> Voter Registration Card, plus current photo		
D MARIJUANA GROW SITE ADDRESS (REQUIRED)		
PHYSICAL ADDRESS:		
CITY:	STATE: OREGON	ZIP CODE:
COUNTY:	TELEPHONE NUMBER:	
To list other persons who may be at this grow site, please see back of this page.		
E SIGNATURE & DATE (REQUIRED)		
I TESTIFY THAT THE ABOVE INFORMATION IS TRUE.		
APPLICANT OR PROXY SIGNATURE:		DATE:

MAIL CHANGE REQUEST FORM TO: DHS/OMMP
 PO BOX 14450
 Portland, OR 97293-0450



SEE BACK OF PAGE FOR MORE DETAILS

OPTIONAL INFORMATION (OAR 333-008-0020(2))

The section below is for you to list any other persons who may be at the grow site, other than the patient and/or the designated primary caregiver. Please include each person's full name and date of birth. The OMMP will verify this information with law enforcement personnel if they ask about a specific name(s) of a person who may be at a grow site. Completion of this section is OPTIONAL; you are not required to complete it.

**PERSONS LISTED IN THIS SECTION ARE NOT PROTECTED FROM
CIVIL OR CRIMINAL PENALTIES**

NAME (LAST, FIRST, M.I.):	DATE OF BIRTH (MM/DD/YY):
NAME (LAST, FIRST, M.I.):	DATE OF BIRTH (MM/DD/YY):
NAME (LAST, FIRST, M.I.):	DATE OF BIRTH (MM/DD/YY):

The Oregon Department of Justice has advised DHS that the Oregon Medical Marijuana Act neither protects marijuana plants from seizure nor individuals from prosecution if the federal government chooses to take action against patients or caregivers under the federal Controlled Substances Act."

If this document is needed in an alternative format, please contact this office: (971) 673-1226

Criminal History Request

**CONFIDENTIAL
INFORMATION**

Read all instructions before completing form

Section 1 Patient Information	Name and Address of Patient		
	Type or print clearly NAME (Last/First/Middle):		
	MAILING ADDRESS:		
	CITY:	STATE: OREGON	ZIP CODE:

Section 2: Completed and Signed by Person Responsible for Grow Site	To Be Completed and Signed by Person Responsible for Grow Site		
	Type of position: <input type="checkbox"/> Person Responsible For a Medical Marijuana Grow Site		
	Name of subject individual (Last/First/Middle):	Date of birth: Month ____ Day ____ Year ____	Male <input type="checkbox"/> Female <input type="checkbox"/>
	Maiden name, other name(s) used:	Driver's License or ID Card: Number: _____ State: _____	
	Street Address:	17 Home/Message Phone: _____	
	CITY:	STATE: OREGON	ZIP:
	COUNTY:		
	Mailing Address (if different than street address):		
	CITY:	STATE: OREGON	ZIP:
	COUNTY:		

Section 2: Completed and Signed by Person Responsible for Grow Site	<i>DHS/Oregon Medical Marijuana Program (OMMP)</i>		
	List all ORS 475.992 (1)(a) or (b) Convictions After January 1, 2006: (Manufacture or delivery of a controlled substance in Schedule I or Schedule II, Class A or B Felony Convictions)		
	DATE OF CONVICTION Estimate if not known	CRIME:	Location (City, State):
	1		
	2	Use additional paper if necessary.	
	Probation Officer Name (if applicable):	County, State:	Phone Number:
	I understand that a criminal and background history check will be completed on me and the information may be shared with the person listed in Section 1. I certify this information is correct and complete. I understand if I provide false or incomplete information, I may be denied the ability to become a "Person Responsible for a Medical Marijuana Grow Site" within the State of Oregon Medical Marijuana Program. I understand the check may be repeated as long as I am a registry cardholder within the Oregon Medical Marijuana Program. I have read and understand the instructions for completing this form.		
	Person Responsible for Grow Site Signature:	Date:	

EXHIBIT 2

IS MY CONFIDENTIALITY PROTECTED?

Yes, the OMMP protects your confidentiality!

- The OMMP works from a locked and secure office.
- The OMMP keeps all computer and paper files locked and secure when not in use.
- OMMP staff tells officers from state or local law enforcement agencies “yes” or “no” when asked: (1) if a specific person has a valid registry identification card; (2) if a specific person is a caregiver of a patient; (3) if a specific person has a pending application, or (4) if a specific address is a registered “grow site”. This “yes” or “no” practice is called “verification”, because we only verify specific questions asked of us.
- OMMP staff do not give out other information to law enforcement. For example, if an OMMP staff member is asked by an officer to give out the name of a patient’s designated primary caregiver, the staff member tells the officer that such information is confidential and can only be verified if OMMP staff is given specific information (name or address) to verify.
- The OMMP follows all Department of Human Services policies on the Health Insurance Portability and Accountability Act (HIPAA). HIPAA uses terms such as “identified data” and “de-identified” or “non-identifying data.” “Identified data” means data that can specifically identify individuals, such as name or date of birth. “De-identified” or “non-identifying data” means data that protects the identity of specific individuals. For example, a count of the number of patients currently registered with the OMMP does not allow the identification of specific individuals.
- When asked for information by newspaper or TV reporters, for example, the OMMP gives out only counts—not names, addresses, dates of birth, or other “identifying” information. In giving out counts, the OMMP combines small numbers. For example, if a county has fewer than 50 OMMP patients, the OMMP will combine the actual number of patients from that county with one or more other counties that have fewer than 50 patients. The OMMP then gives out a “combined” count of patients for several counties. This protects the actual identity of patients who may live in less-populated areas of the State.
- The OMMP will disclose patient information to others only at the specific, written request of the patient.

EXHIBIT 3



- [HOME PAGE](#) | [NEWS AND EVENTS](#) | [LEGISLATIVE AFFAIRS](#) | [MEMBERS ONLY](#) | [MEMBERSHIP/RESOURCES](#) | [FOR OUR PATIENTS](#) | [ABOUT WSMA](#)

MEMBERSHIP/RESOURCES

Benefits

Join WSMA

- Requirements of Membership
- Dues Schedule
- Register For Membership

What We Do For You

Resources

- Seminars
- CME Calendar
- Practice Resource Center
- Contract Evaluation
- Practitioner Application
- Products & Services
- HIPAA

Washington State Medical Association

Resources

Medical Marijuana

Documentation of Medical Authorization to Possess Marijuana for Medical Purposes in Washington State

Patient Name _____ Date of Birth _____

I am a physician licensed in the State of Washington. I am treating the above named patient for a terminal illness or debilitating condition as defined in RCW 69.51A.010.

I have advised the above named patient about the potential risks and benefits of the medical use of marijuana. I have assessed the above named patient's medical history and medical condition. It is my medical opinion that the potential benefits of the medical use of marijuana would likely outweigh the health risks for this patient.

Signature of Physician _____

Printed Name of Physician _____

Risks and benefits of medical marijuana

Under Washington state law, the use of medical marijuana is now permissible for some patients with terminal or debilitating illnesses. The law regulating this (RCW 69.51A) allows physicians to advise patients about the risks and benefits of the medical use of marijuana.

The medical and scientific evidence supporting the use of medical marijuana remains controversial in the medical community. Not all health care providers believe that medical marijuana is safe or effective and some providers feel that it is a dangerous drug.

According to the Washington state law, the benefits of medical marijuana may include treating nausea and vomiting from chemotherapy; AIDS wasting syndrome; severe muscle spasms from multiple sclerosis or other spasticity disorders; glaucoma; and some types of intractable pain.

Some of the risks of medical marijuana may include possible long-term effects on the brain in the areas of memory, coordination and cognition; impairment of the ability to drive or operate heavy machinery; respiratory damage; possible lung cancer; and physical or psychological dependence.

This form provided by the Washington State Medical Association 3/2000

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EXHIBIT 4



Posted on: Tuesday, June 7, 2005

State's medical marijuana program 'essentially dead'

By Ken Kobayashi
Advertiser Courts Writer

A U.S. Supreme Court decision on medical marijuana signals the end to a state program used by more than 2,500 patients in Hawai'i because doctors who must sign off on the use of the drug can now be prosecuted, U.S. Attorney Ed Kubo said yesterday.

Kubo said his office would not prosecute the medical marijuana smokers, but cautioned that the doctors could be prosecuted on misdemeanor charges as accomplices to the distribution of the marijuana, which is still illegal under federal law.

"The U.S. Supreme Court decision this morning is the death knell to the medical marijuana issue," he said, a sentiment shared by some medical marijuana advocates.

"I would advise all physicians and anyone who is involved in distributing or helping in the distribution of any illegal narcotic to be very, very leery," he said.

'Aina Haina optometrist Joyce Cassen, one of 116 doctors who issued certificates to Hawai'i's 2,596 registered medical marijuana users, turned down about a half dozen requests, but granted one for a patient for his glaucoma. She said the marijuana helped the eye pressure and had a "definite medical benefit."

But she won't be issuing any more.

"If it could become something I could be prosecuted for, I certainly would want to stay away from that," she said.

The 6-3 decision by the high court did not strike down the laws authorizing medical marijuana use in Hawai'i and 10 other states, but essentially cleared the way for federal marijuana prosecution despite the states' laws.

The possible end of the program worries patients like Rhonda Robison, who fears she will not be able to get marijuana for her 34-year-old battle against muscular dystrophy, which she called "very, very painful."

Robison said she is struck when she least expects it. The muscles in her body contract and expand throughout the day. Her joints, she said, also often slip out of place, causing sharp pain.

But she said it improved in 2000, when Hawai'i became the eighth state to allow marijuana use for medical purposes.

Robison's husband, John, 39, who has undergone chemotherapy for leukemia, also has a permit to use marijuana.

Kubo said he doesn't think medical marijuana smokers "have anything to fear as far as federal prosecution is concerned." Under federal law, possession of the amounts allowed by the state medical marijuana law would be a misdemeanor punishable by up to a year in jail.

HAWAI'I MEDICAL MARIJUANA LAW

Under the law, a person must be certified by a physician to use marijuana for a "debilitating" medical condition. The certificate allows the patient to have up to three mature, flowering marijuana plants; four immature plants; and an ounce of usable marijuana for each mature plant. The certificate must be renewed each year.

Number of people certified as of the end of May:

Big Island	1,343
Kaua'i	378
Lana'i	3
Mau'i	557
Moloka'i	7
Ni'ihau	5
O'ahu	303
Total	2,596

Source: Department of Public Safety

Kubo said traditionally, those cases are turned over to state and county authorities for their review. But he said an accomplice in the distribution of marijuana can be held criminally liable under federal law. The first offense in most cases would be a misdemeanor, but he cautioned that a second offense carries mandatory jail time.

As to whether he plans to launch any prosecutions, Kubo said he will need to consult with the U.S. Justice Department as well as the state attorney general and city and county prosecutors.

Hawai'i adopted its medical marijuana law five years ago. It allows the use of marijuana for "debilitating" medical conditions that include cancer, glaucoma, HIV, severe pain and nausea. But the law requires approval by a doctor who certifies the use of the marijuana for the condition.

"I don't think I could be counseling anyone to continue their marijuana use, especially if it's a federal crime," federal Public Defender Peter Wolff said.

He also suggested that the decision "puts in jeopardy" medical doctors who might also risk their medical licenses for assisting in the violation of federal law.

"I think the Hawai'i program is essentially dead, unless doctors are willing to take a huge risk to their ability to practice medicine, and why would they do that?" he said.

Bill Wenner, a retired Big Island surgeon and one of the pioneers in issuing certifications, agreed that the decision will kill Hawai'i's program.

He said not many doctors were willing to participate when the program first started. If the decision means the federal prosecutors can prosecute people using marijuana for medicinal purposes, "it's open season for patients and it's not hard to figure it's going to be open season on doctors, too."

Jeanne Ohta, executive director of the Drug Policy Forum of Hawai'i, which favors drug treatment over prison, said the decision does not change the Hawai'i law. But she had hoped that the Bush administration would not "waste your tax dollars" by prosecuting the patients.

"There are other issues to expend money on," she said.

Tom Mountain, 51, founder and director of the Honolulu Medical Marijuana Patients Cooperative, which assists medical marijuana patients, said the prosecution of the doctors would shut down his operation. He said the patients would be forced to pay for expensive medicines or get the marijuana, which sells on the street for about \$600 to \$700 an ounce. State officials said Hawai'i's program will continue operating as they await word from Attorney General Mark Bennett.

Bennett said he didn't think the decision would have much of an effect because the federal government had the authority in the past to prosecute marijuana users or doctors acting under state medical marijuana laws, but didn't do so.

But he said if the Justice Department decides to prosecute the doctors, it will have a "large practical consequence."

"I think we need to see whether the Department of Justice makes any kind of material change," he said.

The Associated Press contributed to this report. Reach Ken Kobayashi at kkobayashi@honoluluadvertiser.com or 525-8030.

Back

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1 **CERTIFICATE OF SERVICE**

2 I certify that on July 23, 2007, I served the foregoing documents:

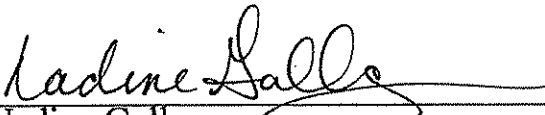
- 3 • Reply to Government's Opposition to Motion to Quash Grand Jury Subpoena
- 4 • Declaration of Adam B. Wolf in Support of THCF Medical Clinic's Reply to Government's Opposition to Motion to Quash

5 upon the parties hereto by the methods indicated below, and addressed to the
6 following:

7 James P. Hagarty
8 Assistant United States Attorney
9 402 E. Yakima Avenue
10 Suite 210
11 Yakima, WA 98901

- _____ HAND DELIVERY
- MAIL DELIVERY
- _____ OVERNIGHT MAIL
- TELECOPY (FAX) (509) 454-4435
- _____ E-MAIL James.P.Hagarty@usdoj.gov
- _____ E-FILE

12 I declare under penalty of perjury that the foregoing is true and correct to the best
13 of my knowledge.

14 
15 Nadine Gallo
16 Legal Assistant