
**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICANS FOR SAFE ACCESS, et al.)

Petitioners)

v.)

DRUG ENFORCEMENT ADMINISTRATION, et al.)

Respondents.)

No. 11-1265

**SUPPLEMENTAL AFFIDAVIT OF MICHAEL KRAWITZ IN
SUPPORT OF PETITIONERS**

I, MICHAEL KRAWITZ, hereby declare under penalty of perjury as follows:

1. I am a resident of Elliston, Virginia in Montgomery County and would testify under oath, under penalty of perjury under the laws of the United States, to the following of called to testify.

2. I served honorably in the United States Air Force from 1981 to 1986. While on active duty in 1984, I suffered a motorcycle accident in Guam, due to a

poorly maintained roadway. After being thrown from the motorcycle, I broke my fibula and tibia, and my right hip; broke the tip of my femur; fractured my left arm, and cracked my skull.

3. The accident required me to endure multiple surgeries, including end-to-end bowel resection, a hip replacement, and the removal of my spleen.

4. I am rated in the Veterans Affairs (“VA”) system as one-hundred percent totally and permanently disabled, which means I am eligible for all my medical treatment from the VA at no cost to me. I continue to suffer severe pain to this day.

5. To manage the pain I suffer from this military accident, VA physicians have prescribed me a litany of treatments, including prescriptions for: oxycodone, morphine, Marinol, Tylenol, Donnatol, Naproxen, Relafen, Flexaril, Norflex, Percodan, and Zoloft. Many of these prescription medications, especially the opiate-based oxycodone, have caused me extremely deleterious side effects, such as nausea and constipation.

6. During a routine visit to a physician in the Netherlands in 1996, the physician recommended that I try to marijuana to treat my pain, which would reduce the amount of opiate-based pain medications I was taking and mitigate the constipation and nausea associated with these prescription medications. I heeded this physician’s advice with much success – my medical marijuana use enabled me

to manage my pain while reducing his use of opiate-based prescription medications that have caused me so many problems with my digestive system.

7. After I revealed the fact of my medical marijuana prescription to the VA in the course of my medical treatment approximately ten years ago while I was living in Virginia, my VA physician required me to sign a “Contract for Controlled Substance Prescription,” which required me to “abstain from the use of alcohol and illicit substances [including marijuana],” and not “accept controlled substance medication from any other . . . individual.” If I violated these conditions, the VA would discontinue my pain treatment. A true and correct copy of this pain contract is attached to my original affidavit as Exhibit 1, filed on or about May 29, 2012.

8. I refused to sign this pain contract, since I was using marijuana medicinally. As a result, the VA discontinued my pain treatment and would not provide me prescription medications for a period of approximately eight months.

9. What caused the VA to reinstate my pain treatment was the intervention from my Congressman, which resulted in the VA agreeing to pay an osteopath in Charlottesville, Virginia to administer my pain treatment through the VA’s fee basis program. This non-VA osteopath is located approximately one-hundred thirty miles from my home in Elliston, Virginia, as compared to the thirteen miles for my VA physician in Salem, Virginia, which causes me to expend significant time and resources in travel, which is amplified by the fact that I am on

a fixed income. In addition, I am unable to have my pain medications paid for by the VA because the VA will not pay for them, unless they are prescribed by a VA physician. There are also frequent delays in my reimbursement for the doctor visits from the VA fee basis program.

10. I would prefer to have all of my medical treatment administered within the VA system, since this would provide for the maintenance of all of my medical records in one system. The fractured nature of my current treatment results in duplicative evaluations and treatment; for instance, the non-VA physicians have to duplicate some of the medical tests and evaluations I receive through the VA, which I have to pay for. This could be avoided by consolidation of my medical treatment in the VA system.

11. Because I found that my medical marijuana use enabled me to reduce my intake of opiate-based prescription medications to treat my pain, which, in turn, alleviated my nausea and constipation, I decided to further cut down on his use of opiate-based medications by spending significant time in Oregon (at least one or two months per year), which is the only medical marijuana state that allows nonresidents to avail themselves of the Oregon Medical Marijuana Program (“OMMP”), ORS 475.300-475.346. *See State v. Berringer*, 234 Or.App. 665, 673, 229 P.3d 615 (2010) (“The operational provisions of the OMMA and its implementing regulations apply with equal rigor to residents and nonresidents.”).

12. Under the OMMP, residents and nonresidents alike must either possess or have applied for an OMMA registration card. ORS 475.309(1)(a); *Berringer*, 234 Or.App. at 673. Both must have documentation from the attending physician attesting to the person's debilitating medical condition. *See* ORS 475.309(2). Upon submission of an application with the physician's statement and the appropriate fee, the Oregon Health Authority "shall" issue the patient a registry identification card. *Id.*¹ The registry identification card exempts cardholding patients from the Oregon criminal penalties for the cultivation and possession of marijuana, and related offenses. *See* Ore. Stat. Ann. 475.309(1). Furthermore, Oregon medical marijuana patients who hold valid registry identification cards are protected from seizure of amounts of marijuana authorized by ORS 475.320 by Oregon law enforcement. *See* ORS 475.324.

13. To register for the OMMP, so I could reduce my intake of opiate-based prescription medications while I spent several months at a time in Oregon, I would have seen a VA physician in Oregon, which is provided for by the VA, but I knew this preferred method of treatment would be futile because the VA discouraged its physicians from discussing medical marijuana with their patients

¹ The absence of the physician's statement is fatal to the application, *see* Ore. Stat. Ann. 475.309(5)(b)(A), and the physician's statement must be updated annually, Ore. Stat. Ann. 475.309(7)(C)(i).

through the pain contract and repeated dissemination of the fact that marijuana is classified in Schedule I. Indeed, I have found that VA physicians are not willing to discuss the medical benefits of marijuana, although they are willing to discuss its negative effects, because of its Schedule I status. This is likely because the VA policy prohibits VA physicians from memorializing any recommendation that a patient use marijuana medicinally, so, even if they do not fill out a form or write a recommendation, they would be obligated to describe their conversation with me about the positive attributes of marijuana in their clinic notes. They are, thus, deterred from having such conversation by the VA policy and marijuana classification in Schedule I. I have been seeing a non-VA physician in Oregon annually since 2010.

14. On January 31, 2011, the VA issued a Directive codifying its prohibition on VA physicians “completing forms seeking recommendations or opinions regarding a Veteran’s participation in a State marijuana program.” A true and correct copy of VHA Directive 2011-004 is attached hereto as Exhibit 1. This Directive conflicts with VHA Directive 2008-071, which requires VHA providers to honor requests by veterans in completing non-VHA forms regarding their current health conditions. A true and correct copy of VHA Directive 2008-071 is attached hereto as Exhibit 2.

15. As a result of this practice and policy, as later codified in VHA

Directive 2011-004, I have had to expend significant economic and other resources to be treated by an Oregon physician outside the VA system, which I pay for on my own. These expenses include the annual fee for the physician's visit of approximately \$140.00. A true and correct copy of an OMMP Physician's Statement form is attached hereto as Exhibit 3.

16. Due to the VA's policy, rather than being treated entirely within the VA system, I am currently treated by no less than three physicians (two of whom are outside the VA system), with my medical records dispersed among them.

17. To consolidate this recordkeeping and treatment within the VA system, which would almost certainly be effectuated by rescheduling, I have joined the instant rescheduling effort.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and ability.

Executed on this 22nd day of October in Elliston, Virginia.



MICHAEL KRAWITZ

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on October 22, 2012, via ECF/electronic filing upon the United States Attorney General's Office, 950 Pennsylvania, Avenue, N.W., Washington DC, 20530, and Carl E. Olsen, 130 East Aurora Avenue, Des Moines, IA 50313.

DATED: October 22, 2012

Respectfully Submitted,

/s/ Joseph D. Elford

Joseph D. Elford

January 31, 2011

ACCESS TO CLINICAL PROGRAMS FOR VETERANS PARTICIPATING IN STATE-APPROVED MARIJUANA PROGRAMS

1. PURPOSE: This Veterans Health Administration (VHA) Directive provides policy regarding access to clinical programs for patients participating in a State-approved marijuana program.

2. BACKGROUND

a. Department of Veterans Affairs (VA) providers must comply with all Federal laws, including the Controlled Substances Act. Marijuana is classified as a Schedule I drug under the Controlled Substances Act.

b. Veterans who receive their care from VA and who have a desire to participate in one of several State marijuana programs might ask their VA physicians to complete State authorization forms.

c. State laws authorizing the use of Schedule I drugs, such as marijuana, even when characterized as medicine, are contrary to Federal law. The Controlled Substances Act (Title 21 United States Code (U.S.C.) 801 et al.) designates Schedule I drugs as having no currently-accepted medical use and there are criminal penalties associated with production, distribution, and possession of these drugs. State law has no standing on Federal properties.

d. VHA policy does not administratively prohibit Veterans who participate in State marijuana programs from also participating in VHA substance abuse programs, pain control programs, or other clinical programs where the use of marijuana may be considered inconsistent with treatment goals. While patients participating in State marijuana programs must not be denied VHA services, the decisions to modify treatment plans in those situations need to be made by individual providers in partnership with their patients. VHA endorses a step-care model for the treatment of patients with chronic pain: any prescription(s) for chronic pain needs be managed under the auspices of such programs described in current VHA policy regarding Pain Management.

3. POLICY: It is VHA policy to prohibit VA providers from completing forms seeking recommendations or opinions regarding a Veteran's participation in a State marijuana program.

4. ACTION

a. **Deputy Under Secretary for Health for Operations and Management (10N).** The Deputy Under Secretary for Health for Operations and Management is responsible for ensuring that medical facility Directors are aware of the prohibition of completing forms for participation in State marijuana programs.

b. **Chief Officer Patient Care Services.** The Chief Officer Patient Care Services is responsible for providing clinical guidance to VA providers regarding factors to be considered

THIS VHA DIRECTIVE EXPIRES JANUARY 31, 2016

VHA DIRECTIVE 2011-004**January 31, 2011**

when determining how substance abuse, pain control, or other treatment plans could be impacted by a Veteran's participation in State marijuana programs.

c. **Medical Facility Director.** Each medical facility Director is responsible for ensuring facility clinical staff are aware:

(1) Of the prohibition of completing forms for participation in State marijuana programs.

(2) If a Veteran presents an authorization for marijuana to a VA provider or pharmacist, VA will not provide marijuana nor will it pay for it to be provided by a non-VA entity. **NOTE:** *Possession of marijuana, even for authorized medical reasons, by Veterans while on VA property is in violation of VA regulation 1.218(a)(7) and places them at risk for prosecution under the Controlled Substances Act.*

(3) That if a patient reports participation in a State marijuana program to a member of the clinical staff, that information is entered into the "non-VA medication section" of the patient's electronic medical record following established medical facility procedures for recording non-VA medication use.

5. REFERENCES

a. Office of General Counsel (OCG) Opinion on State Medical Marijuana Registration Forms - VAOPGCADV 9-2008.

b. Title 21 U.S.C. 801 et al, the Controlled Substances Act.

6. FOLLOW-UP RESPONSIBILITY: Pharmacy Benefits Management Services (119) is responsible for the content of this Directive. Questions may be directed to (202) 461-7326.

7. RECISSIONS: VHA Directive 2010-035 is rescinded. This VHA Directive expires January 31, 2016.

Robert A. Petzel M.D.
Under Secretary for Health

DISTRIBUTION: E-mailed to the VHA Publication Distribution List 2/4/2011

Oregon Medical Marijuana Program
APPLICATION FORM

USCA Case #11-1265

Document #1401020

Filed: 10/22/2012

Page 1 of 2

OFFICIAL USE ONLY			
CHC	FS	OHP	SSI
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

All areas marked **REQUIRED** must be completed.
 PLEASE TYPE OR PRINT LEGIBLY.

A REQUIRED PATIENT INFORMATION			
LEGAL NAME (LAST, FIRST, M.I.):	<input type="checkbox"/> Male	<input type="checkbox"/> Female	DATE OF BIRTH:
MAILING ADDRESS:			PHONE #:
CITY:	STATE:	ZIP CODE:	COUNTY:
Photo Identification: A photocopy of one of the current following ID types must be attached. Please check appropriate box: <input type="checkbox"/> OR DL / ID #: _____ <input type="checkbox"/> Other US State or Federal Issued ID#: _____			

B OPTIONAL CAREGIVER INFORMATION (<i>Not your physician</i>)			
LEGAL NAME (LAST, FIRST, M.I.):	<input type="checkbox"/> Male	<input type="checkbox"/> Female	DATE OF BIRTH:
MAILING ADDRESS:			PHONE #:
CITY:	STATE:	ZIP CODE:	COUNTY:
Photo Identification: A photocopy of one of the current following ID types must be attached. Please check appropriate box: <input type="checkbox"/> OR DL / ID #: _____ <input type="checkbox"/> Other US State or Federal Issued ID #: _____			

C REQUIRED GROWER INFORMATION			
LEGAL NAME (LAST, FIRST, M.I.):	<input type="checkbox"/> Male	<input type="checkbox"/> Female	DATE OF BIRTH:
MAILING ADDRESS:			PHONE #:
CITY:	STATE:	ZIP CODE:	COUNTY:
Photo Identification: A photocopy of one of the current following ID types must be attached. Please check appropriate box: <input type="checkbox"/> OR DL / ID #: _____ <input type="checkbox"/> Other US State or Federal Issued ID #: _____			

D REQUIRED MARIJUANA GROWSITE ADDRESS			
PHYSICAL ADDRESS:			
CITY:	OREGON	ZIP CODE:	
COUNTY:			

D REQUIRED APPLICATION FEE and GROWSITE REGISTRATION FEE (<i>As Applicable</i>)	
<p>The application fee is \$200, <u>or</u> \$100 with proof of OHP or Food Stamp receipt, <u>or</u> \$20 with proof of current SSI receipt. (SSDI, SSA and Medicare benefits <u>do not</u> qualify for the reduced application fee). A growsite registration fee of \$50 is required <u>in addition to the application fee</u> if you designate someone other than yourself as your grower. See reverse for details.</p> <p>Enclose your <u>check</u> or <u>money order</u> payable to "OMMP" or "OHA/State of Oregon". We do not accept debit/credit cards. This form must accompany payment.</p>	

E REQUIRED SIGNATURE & DATE	
I TESTIFY THAT THE ABOVE INFORMATION IS TRUE.	
APPLICANT SIGNATURE:	DATE:

DO NOT FAX

Application Fee

For every application, the non-refundable base application fee is:

\$200.00 **OR**

\$100.00 if you provide proof of Oregon Health Plan (OHP)¹ eligibility, or Food Stamp benefits (SNAP)², **OR**

\$20.00 if you provide proof of receipt of Supplemental Security Income (SSI)³ monthly benefits.

Growsite Registration Fee

If someone other than yourself is your grower, a grow site registration fee of \$50.00 is required in addition to the application fee. See table below.

Application and Growsite Registration Fee Scenarios

Assistance Program Participation	Patient is Grower	Patient is NOT Grower
Not a Participant	\$200	\$250
OHP ¹ /SNAP ²	\$100	\$150
SSI ³	\$20	\$70

¹ OHP: "Oregon Health Plan" means the medical assistance program administered 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.

² SNAP/Food Stamps: means the monthly benefit assistance program administered by the federal government for a person who has limited income and financial resources. To qualify for the reduced fee, a copy of a current Food Stamp benefit proof must be provided at the time the patient submits an application.

³ 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. Social Security Disability Income (SSDI) and Social Security Retirement receipt **do not** qualify for a reduced application fee.

MINORS

If the applicant is a minor (under age 18), the custodial parent or legal guardian with responsibility for health care decisions must be listed as the Primary Caregiver on the application.

CRIMINAL HISTORY CHECK

According to ORS 475.304(6)(a), the Authority shall conduct a criminal records check under ORS 181.534 of any person whose name is submitted as a person responsible for a marijuana grow site.

MAIL COMPLETE APPLICATION TO:

**OHA/OMMP
PO BOX 14450
Portland, OR 97293-9929**



Until this application has been approved or denied by the Oregon Medical Marijuana Program, a copy of these materials (along with proof of mailing or transmission) shall have the same legal effect as a registration card. ORS 475.309(9)

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 the OMMP at (971) 673-1234