

<p>People</p> <p>v.</p> <p>Nathaniel Derek Archer</p>	<p>NO. SCD198684 – San Diego Department of Services</p> <p>DECLARATION OF NATHANIEL DEREK ARCHER IN SUPPORT OF OSC WHY HIS PAROLE SHOULD NOT BE REVOKED</p> <p>Date: December 15, 2009 Time: 9:00 a.m. Location: 220 W. Broadway San Diego, CA 92101 Court: 12</p>
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I, Nathan Archer, make this declaration to show this Court why my probation should not be revoked for (a) failure to report to a probation officer in Marin County (condition 6f) and for (b) failure to register pursuant to Health & Safety Code Section 11590 (condition 6j), as a narcotics offender, which I am not. It is not that I am willfully disobeying my probation order, but I am opposing the requirement that I register as a narcotics offender because I believe it is unconstitutional, punitive in nature, and will impose a social stigma that will forever mar the perception of my character. I believe this because I legally use marijuana for chronic pain, and not for any other reason. My conviction is directly related to that legal use.

I also am requesting that this Court modify my probation order as stated below.

I request that the court continue this hearing so that I may seek legal counsel to appear and present effectively my legal position to the Court. I do not have sufficient legal background to understand the procedural basis on which my arguments should be made.

On May 2, 2008, I was ordered to complete three years of probation for violations of Health & Safety Code sections 11358 and 11359. The probation order permitted me to complete my probation in Marin County where I live. My convictions have been on appeal.

On November 17, 2009, the Court of Appeal reversed my conviction under 11359, but let stand the conviction under Section 11358, for cultivating marijuana to provide to four individuals for whom I had been designated qualified primary caregiver.

The public defender is pursuing further relief from the California Supreme Court on the ground that the conviction under Health & Safety Code Section 11358 should be overturned because I am a *legal* user of marijuana pursuant to a validly issued medical marijuana prescription card, as were the individuals to whom I provided marijuana, all of whom had validly issued medical marijuana cards. The Court of Appeal held that I did not have sufficient evidence to demonstrate that I was a designated qualified primary caregiver. The fact that the public

defender will request the Supreme Court grant *certiorari* on this issue would seem sufficient reason to rethink the requirement that I must register as a narcotics offender, particularly given the wholly punitive effect it will have on my life, as set forth below in greater detail.

I now address the violations that are the subject of this OSC:

(a) Failure to report to a probation officer in Marin County (condition 6f)

I was given permission and it is in my probation order that I may complete my probation in Marin County where I reside. I have dutifully attended every appointment with my probation officer, but on the date in question forgot the appointment because I was at my job at the yacht and social club called Sausalito Cruising Club helping with clean-up and construction at location. I had previously stated to my probation officer that due to transportation and distance issues, it was difficult for me to appear before 1:00 p.m. Please forgive this violation of my probation terms, as it was unintentional. I make every effort to appear regularly. I am gainfully employed at the Sausalito Cruising Club, a yacht and social club in the Sausalito area. I work as a doorman. It is my intention to maintain this job through my probation and then proceed to obtain the education and licensing required to allow me to pursue a career working with children in an educational context. Please do not modify my probation for this single violation given the consistency of my appearances before the probation officers throughout the first year and half of my probationary period.

(b) Failure to register as a narcotics offender under Health & Safety Code Section 11590 (condition 6j):

At the time that the probation order was issued, I stated that I did not want to register as a narcotics offender under Health & Safety Code Section 11590, because my conviction was not for cultivation of narcotics, but a conviction for cultivation of marijuana. I had at the time of my arrest and later conviction, and currently have a valid medical marijuana prescription card, issued to me by my medical doctor for chronic pain. I have attached a facsimile copy for your review. I was cultivating marijuana for myself and four others who also have medical marijuana cards, and for whom I believed I was validly designated as a qualified primary caregiver under the law. I continue to believe that I was validly designated.

There is a terrible stigma attached to such a registration, particularly because it creates the assumption that the registree is a user of narcotics and a drug addict. I am neither. I use marijuana for chronic pain and anxiety that results. It works effectively, *so that I do not have to use narcotics*. One of the people I was working with and for whom I believed I was a primary caregiver, suffers from pain associated with burns over 80% of his body. Marijuana is an effective alternative to traditional narcotic pain medications.

Only the day before the decision relating to the appeal of my conviction was handed down, the American Medical Association's House of Delegates voted to reverse its long-held position that marijuana be classified on the Controlled Substances Act's Schedule I, meaning it has a high potential for abuse, no medical value and no safety for use under medical supervision.

Instead, it has adopted a report drafted by the AMA Council on Science and Public Health, or CSAPH, titled, "Use of Cannabis for Medicinal Purposes," which affirms some therapeutic benefits and calls for further research.

The CSAPH report concluded that, "short term controlled trials indicate that smoked cannabis reduces neuropathic pain, improves appetite and caloric intake especially in patients with reduced muscle mass, and may relieve spasticity and pain in patients with multiple sclerosis." The AMA now recommends that "the Schedule I status of marijuana be reviewed with the goal of facilitating clinical research and development of cannabinoid-based medicines, and alternate delivery methods."

The last AMA position, adopted eight years ago, called for maintaining marijuana as a Schedule I substance. "This shift, coming from what has historically been America's most cautious and conservative major medical organization, is historic," Aaron Houston, director of government relations for the Marijuana Policy Project, said in a news release. "Marijuana's Schedule I status is not just scientifically untenable, given the wealth of recent data showing it to be both safe and effective for chronic pain and other conditions, but it's been a major obstacle to needed research."

The American College of Physicians issued a position paper last year calling for an evidence-based review of marijuana's status as a Schedule I controlled substance to determine whether it should be reclassified to a different schedule. The CSAPH report has not been officially released to the public, but an executive summary says it: "(1) provides a brief historical perspective on the use of cannabis as medicine; (2) examines the current federal and state-based legal envelope relevant to the medical use of cannabis; (3) provides a brief overview of our current understanding of the pharmacology and physiology of the endocannabinoid system; (4) reviews clinical trials on the relative safety and efficacy of smoked cannabis and botanical-based products; and (5) places this information in perspective with respect to the current drug regulatory framework."

Why is any of this important to the fact that I must register as a narcotics offender as part of my probation order? It is because the stigma attached to such registration will forever limit me in the pursuit of education and licensing to work with children, which is my goal. The difficulties that ex-offenders have in obtaining jobs is well known, and is in fact the number one problem for those in the position of trying to re-integrate themselves as functional members of society.

I am and remain a legal user of marijuana pursuant to the advice of my doctor and my possession of a validly issued medical marijuana prescription card. I am currently gainfully employed as a doorman for the Sausalito Cruising Club, and await the completion of my probation period so that I may initiate my pursuit of further education and licensing to work with children. The job of doorman is not my life goal. Working with children is. I do not want to jeopardize that future and I feel that it is both punitive and an unreasonable restriction on my liberty to make me register as a user of narcotics, which I am not. I have done my research and there are many examples of what I am talking about. There is the case of the man who had successfully driven a school bus for 10 years but lost his job when the school board uncovered a

25-year-old criminal conviction. There is the State prison which for years operated a vocational training program in barbering, but the State denied barber licenses to all convicted persons. The most painful realization which one comes to in studying economic barriers is the lack of a reasonable connection between the past crime and the future employment. So often the barrier is against all convicted persons, and not just those who might have committed related crimes.

Discrimination against former offenders in employment, bonding and licensing denies legitimate employment to some. I very much fear that I will be denied my right to pursue gainful employment because I legally use a pain medication that is now considered to be a very effective and reasonable alternative to narcotics. I do not want society to deem me a drug dealer, because that is what they will do if they see me registered as a narcotics offender. One cannot grow narcotics. I grew the drug that I use to ease my pain and the pain of others for whom narcotics are not an option.

Please do not jeopardize my hope of personal improvement and future advancement and require me to register. Registering as a narcotics offender would in fact be cruel and unfair punishment. Registration is an attempt to protect the public through deterrence of future conduct, but my conduct was not such that would jeopardize the public's health. In fact, what I did was help those who were in pain and in need. Registration will needlessly and uselessly discredit my character, making me less employable.

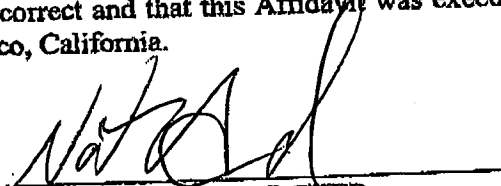
Consider the statements above and these facts below:

- 1) My conviction for simple possession was reversed because I was using and continue to use marijuana legally.
- 2) I have served half of the required probation period of three years.
- 3) I have not been in any trouble in my community during my probation period, and am in fact a gainfully employed individual with hopes of returning to school once my probation period is over.
- 4) I am a qualified medical marijuana patient legally allowed to use marijuana. I *legally* consume the very drug that I am to register as a narcotics offender for, because I have chronic pain which is alleviated by marijuana.
- 5) Marijuana is the reason I am ordered to register as a narcotics offender.
- 6) There is no history of drug abuse on my record.
- 7) Registering as a narcotics offender will damage my ability to obtain/maintain gainful employment.
- 8) The purpose behind registering as a narcotics offender is to inform the authorities of my history of drug abuse, and I have no such history.

9) I have no criminal history. I have never been violent to anyone.

For these reasons, I respectfully request that this Court continue my probation hearing so that I can find counsel to represent me. I am also respectfully requesting that this Court modify my probation so that I am not required to register as a narcotics offender when I have not used or been arrested for using narcotics so that I will be able to continue my efforts to pursue my life goals without limitations or stigma that will surely result from the registration. As for my missing one appointment with my probation officer, I am truly sorry. My record speaks for itself that I am a conscientious and well-meaning person who has every intention of completing probation without further issues before this Court.

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct and that this Affidavit was executed on this 2 day of December, 2009 in San Francisco, California.


NATHAN ARCHER

Medical Marijuana Program APPLICATION/RENEWAL (Please Print)

For application instructions, view page 4.

This application is for:

- Patient Only (Applicant)
 Primary Caregiver Only
 Patient and Primary Caregiver

SECTION 1 TO BE COMPLETED BY ALL APPLICANTS.

Name (last, first, middle initial)			
ARCHER, Nathan D.			
Mailing address (number, street)			Telephone number
1001 Bridgeway #420			(858) 220 0984
City	State	ZIP code	County of residence
Sausalito, CA	CA	94965	Marin
Additional contact information			

Is applicant under 18 years of age? Yes No

If yes, complete Section 2 for the parent, legal guardian, or person with legal authority to make medical decisions for minor applicant, unless minor applicant is (check one):

- Lawfully emancipated; or
 Declares self-sufficient minor status or is a minor capable of medical consent

SECTION 2 TO BE COMPLETED FOR MINOR APPLICANT IDENTIFIED IN SECTION 1.

Parent/guardian/other name (last, first, middle initial)		Telephone number if different from above ()	
Mailing address if different from above (number, street)	City	State	ZIP code

Relation to applicant (check one):

- Parent with legal authority to make medical decisions
 Legal Guardian
 Other person or entity with legal authority to make medical decisions

SECTION 3 TO BE COMPLETED IF THE APPLICANT IS UNABLE TO MAKE HIS/HER OWN MEDICAL DECISIONS.

Does the applicant have the capacity to make medical decisions? Yes No

If "No," enter the name and address of person acting on the applicant's behalf:

Name (last, first, middle initial)		Telephone number ()	
Mailing address (number, street)	City	State	ZIP code

Check one of the following to indicate the legal authority of the person (legal representative) signing this application on behalf of the applicant:

- I am the conservator for the applicant and I have authority to make medical decisions.
 I am an attorney-in-fact under a durable power of attorney for health care.
 I am a surrogate decision maker authorized under an advanced healthcare directive.
 I am authorized by statutory or decisional law to make medical decisions for the applicant, as follows:
 Parent Legal Guardian Other (please specify): _____

SECTION 5

ALL APPLICANTS MUST IDENTIFY THEIR ATTENDING PHYSICIAN.

Attending physician name Richard D. Rider, MD.		California medical license number C16851
Service mailing address (number, street) 2166 Hayes St #204		Licensed by (check one)
City San Francisco	State CA	ZIP code 94117
Office telephone number (415) 751-3409		Office fax number (415) 751-3410
		<input checked="" type="checkbox"/> Medical Board of California <input type="checkbox"/> Osteopathic Medical Board of California

Notice Required by Civil Code, Section 1798.17

The Civil Code, Section 1798.17, requires that this notice be provided when collecting personal or confidential information from individuals. Providing the individual information and identifying information requested on this form is mandatory. Failure to furnish this information to the administering agency, in order to process your application for a medical marijuana identification card, will result in denial of your application. The information collected will be verified for accuracy to determine eligibility for a medical marijuana identification card. Sections 11362.71 and 11362.715 of the Health and Safety Code authorize the collection and maintenance of the information.

The Compassionate Use Act of 1996 (Act) (Health & Safety Code, Section 11362.5) ensures that patients and their primary caregivers who possess or cultivate marijuana for the personal medical purposes of the patient upon the recommendation of a physician are not subject to California criminal prosecution or sanction. However, the Act does not protect marijuana plants from seizure nor individuals from federal prosecution under the federal Controlled Substances Act. The information that you provide in this application may be released as required by law, judicial order, or subpoena, and could be used in a federal criminal prosecution.

You have the right to access records containing your personal information which are maintained by the county health department, or the county's designee, and the Department of Health Services.

Responsibilities

It is my responsibility:

- To notify, within seven days, the county health department or the county's designee of any changes in my attending physician or designated primary caregiver.
- To use my identification card only for the purposes intended by the law.
- To ensure that an authorized medical release of information is on file with my medical provider in order to complete my application.

Declaration

I have read the notice required by Civil Code, Section 1798.17 and understand my responsibilities as stated above concerning my participation in the Medical Marijuana Program. I confirm to the best of my knowledge the listed duties and information provided by my primary caregiver. I declare under penalty of perjury that the information I provided on and with this application is true and correct.

Nathan D. Archer
Print name of applicant or legal representative


Signature of applicant or legal representative

09/01/09
Date

Medical Marijuana Program WRITTEN DOCUMENTATION OF PATIENT'S MEDICAL RECORDS (Please Print)

Note to Attending Physician: This is not a mandatory form. If used, this form will serve as written documentation from the attending physician, stating that the patient has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate. A copy of this form must be filed in the attending physician's medical records for the patient. If the patient chooses to apply for a Medical Marijuana Identification card through the county health department or its designee, the agency will call the attending physician to verify the information contained on this form, in accordance with Health & Safety Code, Section 11362.72 (a)(3).

Attending physician name <u>Richard D. Rider, MD</u>		California medical license number <u>C16851</u>
Service mailing address (number, street) <u>2166 Hayes ST # 204</u>		Office telephone number <u>(415) 751-3409</u>
City <u>San Francisco</u>	State <u>CA</u>	ZIP code <u>94117</u>
Licensed by (check one) <input checked="" type="checkbox"/> Medical Board of California		Office fax number <u>(415) 751-3410</u>
<input type="checkbox"/> Osteopathic Medical Board of California		

Patient's name Nathan D. Archer is a patient under the medical care and supervision of the above named physician who has diagnosed the patient with one or more of the following medical conditions:

1. Acquired Immune Deficiency Syndrome (AIDS)
2. Anorexia
3. Arthritis
4. Cachexia
5. Cancer
6. Chronic pain
7. Glaucoma
8. Migraine
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis
10. Seizures, including, but not limited to, seizures associated with epilepsy
11. Severe nausea
12. Any other chronic or persistent medical symptom that either:
 - a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990.
 - b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health

ATTENDING PHYSICIAN STATEMENT:

This patient has been diagnosed with one or more of the foregoing medical conditions and the use of medical marijuana is appropriate.

Attending physician's signature Richard D. Rider MD Telephone number 415-751-3409 Date 9-1-09

Original—Patient

Copy—Patient's File