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6
7 Attorney for RAY MITCHELL NORRIS

8 IN THE SUPERIOR COURT
9 MADERA COUNTY, STATE OF CALIFORNIA

10 PEOPLE OF THE STATE OF CALIFORNIA,

Case No. C-13844

11 Plaintiff,

12 vs.

13 RAY MITCHELL NORRIS,

14 Defendant

RESPONSE TO PLAINTIFF'S MOTION
IN LIMINE OBJECTIONS TO INCLUSION
OF PROPOSITION 215 DEFENSE
(Health & Safety Code §11362.5
and Evid. Code §402)

15 COMES NOW THE DEFENDANT RAY NORRIS, by and through his Attorney
16 WILLIAM LOGAN, and hereby submits the following response to the plaintiff's *in Limine*
17 Motions.
18

19 I

20
21 **HEALTH AND SAFETY CODE § 11362.5 ALLOWS**
22 **AN AFFIRMATIVE DEFENSE TO BE PRESENTED AT THE TRIAL.**

23 The defense agrees that the statute establishes an affirmative defense which can be
24 presented at any time during a case, and especially at trial.
25

26 The defense also agrees that the burden of proof of this defense rests on the Defendant,
27 and that the standard of proof is a preponderance of the evidence. This situation is exactly
28
29

1 analogous to the defense of self defense which is raised at the preliminary hearing or trial of
2 any case alleging assaultive behavior.

3 The statute in question does not, however, contemplate litigation on the issue of the
4 propriety of the physician approval, nor on the quality or character of the illness suffered by
5 the defendant.
6

7 The papers filed by the prosecution urge the Court to accept a non-literal interpretation
8 of what the plain words of the statute say. The Court is not free to ignore what the statute says
9 because the prosecutor wishes it said something else.
10

11 The construction of the statute clearly gives the discretion to any physician to
12 recommend or approve of the use of cannabis in the treatment of “any other illness for which
13 marijuana provides relief”. Health & Safety § 11362.5 (b)(1)(A).
14

15 The inclusion of a “hold harmless” section which protects the physician from any
16 punishment or denial of a right or privilege from his actions clearly indicates that the propriety
17 of the recommendation or approval cannot be questioned. Health & Safety §11362.5 (c).
18

19 The rules of statutory construction will not allow the Court to ignore any part of a
20 statute unless it cannot be reconciled with the other parts of the law. There is no problem in
21 adopting the same logical format as in any other drug case where the recommendation (or
22 more specifically the prescription) of a physician may provide a defense to possession charges.
23 See, *e.g.* Health & Safety §11350.
24

25 The argument by the people regarding federal scheduling is not relevant to the issue at
26 bar.
27

28 It is submitted that Dr. Schoenfeld, as a forensic physician, has done what any other
29 forensic expert would do, which is to interview the defendant and review his medical records.

1 pleased with. Distinguishable from “authorize” meaning to permit a thing to be done in
2 future. To take one’s proper and separate use. To improve; to enhance the value or profits of
3 anything. To enclose and cultivate common or waste land.” “Approval” is defined as the act of
4 confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by
5 another. **“Approval” implies knowledge and exercise of discretion after knowledge.”**

6
7 McCarten v. Sanderson 111 Mont. 407, 109 P.2d 1108.

8
9 These definitions are indicative of the difference between the use of the words
10 “recommend” and “approve” in the statute. The approval clearly indicates a *post-facto* giving
11 of the consent of the physician to the use of cannabis as treatment. The only way to give
12 meaning to the plain words of the statute is to allow the forensic or treating physician to
13 approve of cannabis therapy at any time during the pendency of a case.

14
15 RESPECTFULLY SUBMITTED,

16 March 12, 1998

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WILLIAM LOGAN, Attorney for
RAY MITCHELL NORRIS

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2
3 AFFIDAVIT OF SERVICE
4

5 I, KATHLEEN GUTHRIE do hereby declare and state that I am over eighteen years old,
6 not a party to this action, and reside in Tulare County, California. My business address is P.O.
7 Box 726, Three Rivers, California 93271.

8 On March 12, 1998 I filed the following document (1) with the Madera County Superior
9 Court, and served the designated parties (2) to the action, by facsimile and deposited hard copy
10 in the mail, postpaid, in Three Rivers, addressed as follows:
11

- 12 1. RESPONSE TO PLAINTIFF'S MO *IN Limine* OBJECTIONS
13
14 2. ERNEST J. LICALSI
Madera County District Attorney
MICHAEL KEITZ
15 Deputy District Attorney
201 West 6th Street
16 Madera, CA 93637-3597
17 FAX (209) 673-0430

18 I declare under penalty of perjury that the foregoing is true and correct. Executed this
19 12th day of March 1998, at Three Rivers, California.
20
21

22 _____
KATHLEEN GUTHRIE
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