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To: Attorney at Law

Re: Defending the most common California marijuana cases

Dear Counselor;

I am writing the following to memorialize my observations regarding the current legal defense for marijuana in California as of late 2018.

- 1) I have reviewed more than 2500 cannabis investigations and qualified as a cannabis expert at least 350 times in at least 35 California counties, as well as in multiple federal courts and other States. This can be detailed by viewing my curriculum vitae, available as a download from www.chrisconrad.com.
- 2) HSC 11359 charges are a specific intent charge so any alternative intent, allowing the personal use and medical marijuana statutes as a defense.
- 3) HSC 11360 transportation charges require proof of intent to sell, allowing the personal use and medical marijuana statutes as a defense. This also includes for transportation out of state, including airport seizures.
- 4) HSC 11362.1 allows adults age 21 and above to possess, share and transport up to an ounce of marijuana and eight grams of concentrate. It disallows searches involving lawful amounts of cannabis.
- 5) HSC 11362.4 disallows anyone to, “(4) Possess an open container or open package of cannabis or cannabis products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.” and impaired driving.
- 6) HSC 11362.5 allows a patient with a doctor’s recommendation or approval, or their qualified primary caregiver, to cultivate, possess and, implicitly, transport any reasonable amount of marijuana for the patient’s then-current medical need.
- 7) California HS 11362.5, the Compassionate Use Act of 1996, uses the term “marijuana” as defined by HS 11018 to include “the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.” California Attorney General Opinion 03-411 concurs that this includes concentrated cannabis such as hashish.
- 8) California HSC 11362.765 states in part, “(a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

... (b) Subdivision (a) shall apply to all of the following: (1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.”

- 9) HSC 11362.765(b)(3) “Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.”
- 10) 11362.765 (c) “A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.”
- 11) Pursuant to California HS 11362.775. [Until January 9, 2019,] Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.
- 12) HS 11362.77(a) states, “A qualified patient or primary caregiver may possess no more than eight ounces [227 grams] of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.”
- 13) California HS11362.77(b) provides that a physician may authorize a greater quantity as being within the statutory safe harbor to meet a particular patient’s medical need.
- 14) California HS 11362.77(d) provides that only the dried mature processed flowers (“bud”) of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana.
- 15) I am aware that HS 11479 sets statutory requirements on the destruction of evidence including the filing of a court record, taking adequate photographs of the totality of the marijuana, taking weights or measurements, and preserving bulk and random samples representative of the marijuana gardens.
- 16) Regarding preservation of evidence, HSC 11479 states that, “In the case of growing or harvested cannabis, that amount in excess of two pounds, or the amount of cannabis a medicinal cannabis patient or designated caregiver is authorized to possess by ordinance in the city or county where the cannabis was seized, whichever is greater, may be destroyed without a court order by the chief of the law enforcement agency or a designated subordinate. Destruction shall not take place pursuant to this section until all of the following requirements are satisfied: (a) At least five random and representative samples have been taken, for evidentiary purposes, from the total amount of suspected

controlled substances to be destroyed. These samples shall be in addition to the 10 pounds required above. When the suspected controlled substance consists of growing or harvested cannabis plants, at least one 2-pound sample or a sample in the amount of medicinal cannabis a medicinal cannabis patient or designated caregiver is authorized to possess by ordinance in the city or county where the cannabis was seized, whichever is greater, shall be retained. This sample may include stalks, branches, or leaves. In addition, five representative samples of leaves or buds shall be retained for evidentiary purposes from the total amount of suspected controlled substances to be destroyed.

(b) Photographs and videos have been taken that reasonably and accurately demonstrate the total amount of the suspected controlled substance to be destroyed. (c) The gross weight of the suspected controlled substance has been determined, either by actually weighing the suspected controlled substance or by estimating that weight after dimensional measurement of the total suspected controlled substance. ... , an affidavit shall be filed within 30 days in the court that has jurisdiction over any pending criminal proceedings pertaining to that suspected controlled substance, reciting the applicable information required by subdivisions (a), (b), (c), and (d) together with information establishing the location of the suspected controlled substance, and specifying the date and time of the destruction. ...”

- 17) Weighing only a small part of a destroyed garden is inadequate to estimate, evaluate and project the condition of the remainder of the garden that has been destroyed, and it does not confirm the total garden weight. For example, weighing two pounds out of 20 pounds or two pounds out of 200 pounds, one still only sees two pounds and cannot project the amount from which it was taken.
- 18) Regarding volatile extracts such as BHO butane hash oil, HSC 11379.6 says, “(a) Except as otherwise provided by law, every person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, five, or seven years and by a fine not exceeding fifty thousand dollars (\$50,000).
- 19) I am informed by *People v Luna* that, “while the [solvent extraction] manufacturing process need not be complete, it must at least be started.” ... “At the time appellant was arrested, he had no ability to begin manufacturing hashish, which expert opinion established is an instantaneous as opposed to an incremental process. In order to begin manufacturing hashish, appellant still had numerous steps to accomplish, including assembling the components of the manufacturing device... “.
- 20) California Health and Safety Code 11362.3.(b)(3) states, “Volatile solvent” means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.

- 21) I am aware that *California Code of Regulations* section 5000(k), published November 16, 2017, has established that ethanol and CO₂ are not volatile solvents for purposes of extracting concentrated cannabis.
- 22) *California Code of Regulations* Title 16 Div. 42, § 5000.(k), states that “‘Nonvolatile solvent’ means any solvent used in the extraction process that is not a volatile solvent. For purposes of this division, a nonvolatile solvent includes carbon dioxide (CO₂) used for extraction and ethanol used for extraction or post-extraction processing.”
- 23) I am informed by the *People v Kelly* (S164830) decision, as well as *Trippet, Mower* and *Wright*, that the quantities in HS 11362.77(a) represent a safe harbor from arrest, not a limit on patient immunity, and that HS 11362.5 qualified patients in California have limited statutory immunity to lawfully possess and cultivate a reasonable amount of cannabis that is necessary for personal or collective medical purposes.
- 24) The federal government provides patients in its Investigational New Drug (IND) program with an average of 6.65 pounds of medical marijuana per year to be smoked in 10 or more cigarettes per day. This amount, a little over eight (8) grams per day, is a reasonable, safe and effective standard dosage for treating chronic conditions.
- 25) Using edibles, tinctures, vaporizers, and other non-smoked forms typically require larger amounts than the equivalent smoked dosage. According to the National Institute on Drug Abuse, cannabis when eaten may require three to five times its smoked dosage.

I, Chris Conrad, declare under penalty of perjury that the foregoing is true and correct except as to those matters stated under information and belief, and as to those, I believe them to be true.

Sincerely,



Chris Conrad