

assert the medical purpose for using marihuana in a motion to dismiss, and the charges *shall* be dismissed following an evidentiary hearing where the person shows the elements listed in subsection 8(a).” (emphasis added)

4. According to the Michigan Medical Marihuana Act MCL§333.26428(a), “Except as provided in section 7, a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid where the evidence shows that:

(1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;

(2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

5. Defendant affirmatively states that in fact defendant is a patient, who suffers from a serious or debilitating medical condition, or its symptoms.

6. A physician has made a statement that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or

alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

7. The statement was made by patient's doctor in the course of a bona fide physician-patient relationship.

8. Before the statement was made the doctor had completed a full assessment of the patient's medical history and current medical condition. Patient met with the doctor in person, and patient observed and participated as the doctor completed a full assessment of patient's medical history and of patient's medical condition.

9. The statement was made to patient orally, in person, and was also reflected in writing, a copy being attached (see Exhibit A), and indicated that the patient would be likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or its symptoms.

10. The fact that the doctor made the "statement" satisfies the requirement of the Act. Therefore, as the statement, and any record thereof, is not offered to prove the truth or falsity of the matter asserted therein, it is not hearsay.

11. Defendant affirmatively states that in fact said Physician is an individual licensed as a physician under Part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

12. Such statement by the physician must be afforded ultimate deference in this regard, as physicians are made the ultimate gatekeepers for access to marihuana according to the Act, and further should be considered reliable based on the expertise established by the state licensure and the fact that a professional licensing board could sanction a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

13. Defendant affirmatively states that in fact the alleged conduct giving rise to this prosecution was related to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

14. Defendant affirmatively states that the amount of marihuana medicine in his possession was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating his serious or debilitating medical condition or its symptoms.

15. With respect to the conduct that gives rise to the instant prosecution, defendant affirmatively states that his conduct did not involve possessing or engaging in the use of marijuana under any of the disqualifying circumstances established by the Michigan Medical Marihuana Act, MCL 333.26427(b).

Wherefore Defendant prays this Honorable Court determine, at an evidentiary hearing, that the Defendant has shown the necessary elements of the Michigan Medical Marihuana affirmative defense, established by Section 8 (a) of the Michigan Medical Marihuana Act, and that the prosecutor has produced insufficient evidence at such hearing to rebut the statutory presumption of validity of the affirmative defense presented, and further, as the Michigan Medical Marihuana act specifically mandates dismissal of the charges where the Defendant has shown the necessary elements, Defendant respectfully requests the court to enter an order dismissing this action with prejudice, and discharging Defendant.

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Dated: _____