SUPREME COURT
STATE OF ARIZONA

RODNEY CHRISTOPHER JONES, Appellant v. STATE OF ARIZONA, Appellee.	**No. CR-18-0370-PR** Court of Appeals Division One No. 1 CA-CR 16-0703 Yavapai County Superior Court No. P1300CR201400328

DECLARATION OF WILL HUMBLE, FORMER DIRECTOR OF THE ARIZONA DEPARTMENT OF HEALTH SERVICES

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DECLARATION OF WILL HUMBLE
Former Director of the Arizona Department of Health Services

WILL HUMBLE hereby declares pursuant to Rule 80(c), Ariz. R. Civ. P., as follows:

1. I served as Interim Director of the Arizona Department of Health Services ("ADHS") from January 2009 to January 2010 and as the ADHS Director from January 2010 until March 2015. I subsequently served as a health policy director at the University of Arizona from 2015 to 2017. I continue to be involved in public health policy as the Executive Director of the Arizona Public Health Association and as Adjunct Faculty with The University of Arizona's Mel & Enid Zuckerman College of Public Health.

2. Among other degrees, I have a Masters Degree in Public Health from the University of California, Berkeley, and a Bachelor of Science in Microbiology from Arizona State University. I also received an Honorary Doctorate from The University of Arizona in 2015 for my career-long commitment to public health.

3. During my tenure as Director of the ADHS, Arizona voters passed Proposition 203, an Arizona ballot measure to decriminalize the sale, possession, and use of medical marijuana. Proposition 203, or the Arizona Medical Marijuana Act, is codified at Arizona Revised Statutes Title 36, Chapter 28.1 ("AMMA").

4. During the 2010 campaign I made it publicly-known that I was concerned that the public health risks of the Act could outweigh its public health benefits. My primary concern was that the statutory language of the Act could become a vehicle for increasing the recreational use of Cannabis. Over the course of the public debate about Proposition 203, I came to believe that the public health benefits exceeded the risks, and I ended up voting for the Act. Upon its passage, my primary goal was to develop

a regulatory program that closely reflected the statutory language while minimizing recreational access to the program.

5. Among the findings and declarations accompanying Proposition 203 were that "modern medical research has confirmed the beneficial uses for marijuana in treating or alleviating the pain, nausea and other symptoms associated with a variety of debilitating medical conditions... as found by the National Academy of Sciences' Institute of Medicine in March 1999" and in subsequent "published studies," that marijuana has "many currently accepted medical uses," and that marijuana's "medical utility has been recognized by a wide range of medical and public health organizations..."

6. Also among the findings and declarations accompanying Proposition 203 when the Initiative went to the ballot was that "[s]tate law should make a distinction between the medical and non-medical use of marijuana[,]" and "[h]ence, the purpose of this act is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana."

7. In enacting the AMMA, the voters gave the ADHS broad Rulemaking responsibilities and authority for the creation and management of Arizona's medical marijuana program. A.R.S. § 36-2803 directs ADHS to promulgate Rules to establish a functioning medical marijuana program. ADHS' role in promulgating Rules (Administrative Code) for the Medical Marijuana program was described in the Proposition 203 Initiative publicity pamphlet:

> ANALYSIS BY LEGISLATIVE COUNCIL
>
> The Arizona Department of Health Services (DHS) would be required to adopt and enforce a regulatory system for the distribution of marijuana for medical use, including a system for approving, renewing and revoking the registration of qualifying patients, designated caregivers, nonprofit dispensaries and dispensary agents. The costs of the regulatory system

would be paid from application and renewal fees collected, civil penalties imposed and private donations received pursuant to this proposition.

8. As the ADHS Director, the responsibility for developing, executing and managing Arizona's medical marijuana program (including its Rules and Regulations regarding licensing of patients, caregivers, dispensaries, and dispensary agents) rested with myself and our team, including my legal and administrative counsel team, medical staff, rule writers, computer technology staff, communication specialists, statisticians, vital records personnel, and other members of our public health team.

9. Under my leadership, the ADHS fulfilled (to the best of our ability) the responsibilities and exercised the authority that the voters approved to allow Qualified Patients to benefit from medical marijuana while limiting (to the extent possible) recreational use of the program.

10. My team and I worked closely with the Arizona Attorney General's Office to ensure that our regulations were consistent with the statutory language approved by the voters.

11. Because of the importance of the administrative decisions and the public interest in the outcomes of our decisions, I was directly engaged on a day-to-day basis with our team of rule-writers throughout the development of the Administrative Code. I would have known had ADHS staff ever received an instruction to omit extracts or concentrates. I was never informed to omit extracts or concentrates.

12. As the Director of the state agency that implemented the Act, I feel compelled to provide this Court with my testimony to ensure that the Court has relevant information as to my actions, decisions, and motivations as we implemented the Act. I offer this declaration (without compensation) to assist this Court in its analysis of the

issues raised and the arguments presented in Rodney Christopher Jones's ("Jones" or "Petitioner") petition for review and the response thereto.[1]

13. As discussed below, as Director of the ADHS, I followed the *Jones* case at the trial court level. For context, these are some milestone dates and events leading up to Rodney Christopher Jones' criminal case:

- November 2010, Proposition 203, the Arizona Medical Marijuana Act, passes.
- March 28, 2011, ADHS publishes its final Rules for the Medical Marijuana program. The Rules are codified at Arizona Administrative Code §§ R9-17-101: R9-17-323. The Rules include multiple reference to marijuana-infused edibles.
- April 2011, ADHS begins to accept applications for qualifying patients and designated caregivers.
- December 06, 2012, Arizona's first licensed medical marijuana dispensary opens in Glendale, Arizona.
- December 2012, ADHS publishes its first set of Amended Rules for the Medical Marijuana program. The Rules include multiple reference to marijuana-infused edibles.

14. I understand that Petitioner was convicted under Arizona's narcotics and drug paraphernalia statutes for possession of a small amount of a marijuana concentrate.

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[1] I provide this declaration in my personal capacity and am not acting on behalf of ADHS. I left my role as Agency Director on March 2, 2015 and I am outside of the two-year confidentiality term required of me under A.R.S. § 38-504. I am not being compensated in any fashion for providing this declaration or the accompanying amicus petition.

15. I further understand that Petitioner was at the time of his arrest an Arizona-licensed Qualified Patient and that he acquired the concentrate from a Dispensary Agent of an Arizona-licensed medical marijuana dispensary.

16. Although I am not a lawyer, I understand that Petitioner's conviction was premised in part upon the trial judge's finding that Petitioner's status as a licensed medical marijuana patient was of no import because concentrates, regardless of quantity, are not in the trial judge's view protected under the immunities and safe harbors of A.R.S. § 36-2811.

17. I also understand that a divided panel of the Arizona Court of Appeals, Division 1, upheld Petitioner's conviction.

18. A primary concern of mine is Petitioner's right to Due Process, but I am also concerned that the outcome of this case, should it uphold the Court of Appeals' ruling, would: 1) remove options that Qualified Patients are entitled to under the Act for administering marijuana; 2) erode the ADHS' well-researched and objective implementation of the Act by overturning their Administrative Code; 3) undermine the intent of Arizona voters who approved Proposition 203 by removing forms of marijuana that were clearly outlined in the Act; and 4) cause undue damage to the business models of dispensaries and their contractors that were built around the statutory and regulatory constructs of the Act and the ADHS' implementation of AMMA.

19. During my tenure, myself and ADHS staff often consulted with attorneys from the Arizona Attorney General's Office under an Intergovernmental Agreement. We did so as we developed the regulations (Administrative Code) for the AMMA and as we implemented the program.

20. During promulgation of the Medical Marijuana Program's initial (and later, amended) Rules, the legality of marijuana extracts and concentrates was a topic of

discussion, including discussions with various Assistant Attorneys General who aided myself and our team at the ADHS.

21. As we developed the Rules, I always believed that extracts and preparations of marijuana (*Cannabis*) were protected under Proposition 203.

22. During our Rule-writing process, I never received advice to disallow the production, preparation, or sale of mixtures and preparations of marijuana - such as extracts or concentrates - in our regulatory scheme as it relates to Arizona law. However, our lawyers were clear to warn us repeatedly that AMMA in its entirety conflicts with Federal law (e.g. the Controlled Substances Act).

23. Despite counsel from the Attorney General's office about the conflicts between AMMA and the Federal Controlled Substances Act, I continued to fulfill our responsibilities under AMMA. My comfort in proceeding was in part because of the 2009 US Department of Justice's "Ogden Memo" which suggested that state medical marijuana programs operating under the authority of state laws would not be a priority for the Justice Department in terms of prosecution.

24. I also received a letter on May 2, 2011 from then-US Attorney for Arizona Dennis Burke, that reads in part:

> An October, 2009, memorandum from then-Deputy Attorney General Ogden provided guidance that, in districts where a state had enacted medical marijuana programs, USAOs ought not focus their limited resources on those seriously ill individuals who use marijuana as part of a medically recommended treatment regimen and are in clear and unambiguous compliance with such state laws. And, as has been our policy, this USAO will continue to follow that guidance. The public should understand, however, that even clear and unambiguous compliance with AMMA does not render possession or distribution of marijuana lawful under federal statute.

These correspondences from the Department of Justice, along with my long collegial professional relationship U.S. Attorney Burke made me comfortable proceeding with

the implementation of AMMA. Worthy to note, in my conversations with United States Attorney Burke and his staff, he never brought up any distinction between dried flower and any mixtures or preparations of usable marijuana, such as extracts or concentrates. Likewise, as to my conversations with staff from the Arizona Attorney General's Office.

25. Under my direction, the ADHS implemented the Medical Marijuana program such that the production and sale of mixtures and preparations of marijuana (e.g. extracts, resins, concentrates and edibles) were permissible under the AMMA.

26. Under my direction, the ADHS promulgated Rules that provided for a regulatory program that included marijuana extracts and concentrates. The Rules included an obligation on the part of dispensaries to maintain and to report inventory and sales relating to extracts and concentrates through the ADHS Point of Sale System and in accord with the inventory control requirements under our Administrative Code.

27. During my tenure as Director, I maintained on online and publicly-accessible journal that I called ***The Director's Blog***. It has been and remains available for view on ADHS's website.

28. The purpose of this Blog was to keep the public generally informed of public health-based or Department-based issues of general concern. I sometimes wrote about medical marijuana issues on the Blog, although the topics I addressed were wide ranging across many disciplines of public health. The Medical Marijuana program was a topic of a small fraction of my posts.

29. On August 30, 2013, I authored a medical marijuana Blog entry regarding Petitioner's criminal case, back when it was in the trial court.

30. As I pointed out at the time, I became aware (via the Arizona Attorney General's Office) of Petitioner's arrest and the resultant criminal charges by the Yavapai County Attorney. The Yavapai County Attorney's prosecution of Petitioner seemed in conflict with AMMA, how the ADHS set up the Medical Marijuana program, and how

the program was operated. To my recollection, as of that time, no Arizona-licensed patient, caregiver, dispensary agent, or dispensary had been criminally charged in this fashion (under State law) and it appeared to me there was now possible dissent over the legal status of marijuana extracts and concentrates. My goal for the Blog post was to make patients aware that a valid ADHS-issued Qualified Patient card may not protect them from arrest and prosecution for possession of Cannabis as defined under the Arizona Criminal Code, even if it was purchased at a state licensed dispensary.

31. As noted in my August 30, 2013 Blog entry, I followed up a week later, on September 4, 2013, with a shorter Blog entry, hoping to raise the public's awareness of the issue in dispute:

> *Last week I posted a blog that points out that the words "Marijuana" in the Arizona Medical Marijuana Act and "Cannabis" in the Arizona Criminal Code have different definitions… and that the distinction may be an important one for Qualifying Patients.*
>
> *The major difference is that the definition of "Useable Marijuana" in AMMA includes "… dried flowers of the marijuana plant, and any mixture or preparation thereof…" without specifically addressing the "resins" and "extracts" identified in the Criminal Code.*

32. The point of my Blog entry was not to take a position. Rather, it was meant to inform Qualified Patients and Dispensary Agents of the argument being raised by the prosecution in Petitioner's criminal case and to warn patients and staff about the fact that at least one County prosecutor did not consider possession of a valid ADHS Qualified Patient medical marijuana card as protection from criminal charges for possessing *Cannabis* as defined under the Arizona Criminal Code, even if they possessed less than 2.5 ounces of useable marijuana as defined under AMMA. After learning of this case, I did not change policy regarding extracts, concentrates or edibles (because of Petitioner being criminally charged) nor did I receive legal advice to do so.

33. In October 2013, the American Civil Liberties Union assisted in filing *ZANDER WELTON, as represented by JACOB WELTON and JENNIFER WELTON*

v. STATE OF ARIZONA, a governmental entity; JANICE BREWER, Governor of the State of Arizona in her official capacity, ARIZONA DEPARTMENT OF HEALTH SERVICES, an Arizona administrative agency; WILLIAM HUMBLE, Director of Arizona Department of Health Services in his official capacity; and WILLIAM MONTGOMERY, Maricopa County Attorney in his official capacity; Maricopa County, Maricopa County Superior Court Action No. CV 2013-014852.

34. From my recollection of the lawsuit, Zander had epilepsy and suffered from seizures (I think Zander was 5 years old at the time of the lawsuit). Zander was not achieving relief through conventional medicines. Zander was registered as a medical marijuana patient, and his parents found that Zander responded well to a marijuana oil-extract that significantly improved Zander's quality of life. However, access to Zander's cannabis-oil, as well as his parents' liberty, was threatened, as the Welton family was faced with the possibility of criminal prosecution. So, the ACLU filed suit for a declaratory judgment and injunction, to establish the Weltons' legal rights.

35. Maricopa County Superior Court Judge Katherine Cooper presided over the Welton case.

36. On March 21, 2014, Judge Cooper ruled that extracts and concentrates were legally protected under the AMMA's immunities and safe harbor protections.

37. As the *Welton* case was of significant interest to ADHS, I reviewed Judge Cooper's ruling to see if there was any further guidance within it that would benefit ADHS's implementation, regulation, or enforcement over Arizona's Medical Marijuana program.

38. What I read in Judge Cooper's ruling was consistent as to what I believed the law to be, that mixtures and preparations of marijuana (*Cannabis*) like extracts, resins and edibles are covered under AMMA.

39. For example, Judge Cooper's decision contains the following passages:

> "First, the definition of "usable marijuana" does not limit the medicine to just the dried flowers. It includes "any mixture or preparation" of the dried flowers of the marijuana plant. The plain and ordinary meaning of the AMMA's text is reflected in the Merriam-Webster Dictionary definitions of these words…"
>
> "Second, the drafters included the phrase "and any mixture or preparation thereof." These words expand the allowable manipulation of the plant. To conclude that patients can only use unmanipulated plant material would render the phrase meaningless. Basic statutory interpretation prohibits such a result. Each word and phrase is given meaning. Bilke, supra. See Williams v. Thude, 188 Ariz. 257, 259, 934 P.2d 1349, 1351 (1997) (when interpreting a statute, a court presumes the legislature intended each word and clause to have meaning). Had the drafters wanted to limit legal use to the plant form only, they did not need this phrase and would have omitted it."
>
> "Third, the statute provides that medical marijuana can be prepared "for consumption as food or drink." Marijuana preparations that are consumed as food or drink may involve marijuana extracts. Ex. 2 to Plaintiffs' Application, ¶ 9. An extract is a method of removing material from the plan, usually cannabinoids. Extractions facilitate proper dosing and, in some cases, make it feasible for patients who cannot consume the medicine in plant form to receive it another way. Id. at 11. Again, the statute itself contemplates patients preparing marijuana in a manner, including extract form to meet their medical needs."
>
> "It makes no sense to interpret the AMMA as allowing people with these conditions to use medical marijuana but only if they take it in one particular form. Such an interpretation reduces, if not eliminates, medical marijuana as a treatment option for those who cannot take it in plant form, or who could receive a greater benefit from an alternative form. Constraining patients' medical marijuana options contradicts the stated purpose of the AMMA -- to "protect patients with debilitating medical conditions . . . from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana." Prop. 203 § 2(G)."

40. On March 23, 2014, I published another Blog entry addressing the *Welton* decision:

Court Provides More Clarity Regarding Marijuana Extracts

Judge Cooper from Maricopa County Superior Court ruled on Friday that: "*The language of the Arizona Medical Marijuana Act and its ballot materials make clear that proponents and votes intended the Act to provide access to medicine for debilitating medical conditions without fear of criminal prosecution. The Arizona Medical Marijuana Act does not limit the form in which that medicine can be administered. Nor does it prohibit the use of extracts, such as CBD oil.*"

This ruling provides some clarity regarding how we'll regulate the sale of edibles that contain extracts from the marijuana plant. Here's a summary of the issue addressed by the Court:

The Arizona Medical Marijuana Act provides registry identification card holders and dispensaries a number of legal protections for their medical use of Marijuana pursuant to the Act. Interestingly, the Arizona Medical Marijuana Act definition of "Marijuana" in A.R.S. § 36-2801(8) differs from the Arizona Criminal Code's ("Criminal Code") definition of "Marijuana" in A.R.S. § 13-3401(19). The Arizona Medical Marijuana Act makes a distinction between "Marijuana" and "Usable Marijuana." A.R.S. § 36-2801(8) and (15). The definition of "Marijuana" in the Arizona Medical Marijuana Act is "… all parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant." The definition of "Usable Marijuana" is "…the dried flowers of the marijuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks and roots of the plant and does not include the weight of any non-marijuana ingredients combined with marijuana and prepared for consumption as food or drink." The "allowable amount of marijuana" for a qualifying patient and a designated caregiver includes "two-and-one half ounces of usable marijuana." A.R.S. § 36-2801(1).

The definition of "Marijuana" in the Criminal Code is "… all parts of any plant of the genus cannabis, from which the resin has not been extracted, whether growing or not, and the seeds of such plant." "Cannabis" (a narcotic drug under the Criminal Code) is defined as: "… the following substances under whatever names they may be designated: (a) The resin extracted from any part of a plant of the genus cannabis, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or its

> resin. Cannabis does not include oil or cake made from the seeds of such plant, any fiber, compound, manufacture, salt, derivative, mixture or preparation of the mature stalks of such plant except the resin extracted from the stalks or any fiber, oil or cake or the sterilized seed of such plant which is incapable of germination; and (b) Every compound, manufacture, salt, derivative, mixture or preparation of such resin or tetrahydrocannabinol." A.R.S. § 13-3401(4) and (20)(w).
>
> An issue the Department had been wrestling with for some time is how the definition of "Marijuana" and "Usable Marijuana" in the Arizona Medical Marijuana Act and the definition of "Cannabis" and "Marijuana" in the Criminal Code fit together. In other words, prior to this ruling it had appeared as though registered identification card holders and dispensaries could have been exposed to criminal prosecution under the Criminal Code for possessing a narcotic drug if the card holder or dispensary possesses resin extracted from any part of a plant of the genus Cannabis or an edible containing resin extracted from any part of a plant of the genus Cannabis.
>
> At least for now, it appears that forms of marijuana that include extracts from the plant are provided the same level of protection (for patients and dispensaries) as the actual dried marijuana plants under the Arizona Medical Marijuana Act.

41. No party, including Arizona government, appealed the *Welton* decision.

42. After Judge Cooper's Welton decision I continued to believe that marijuana mixtures and preparations of *Cannabis* (e.g. extracts, concentrates, and edibles) remained protected under State law by the AMMA, just as I believed back at the start of the Medical Marijuana program. I received no advice from the Attorney General to the contrary.

43. To shed further light on why ADHS believed that marijuana extracts and concentrates were protected by the AMMA, the Court may want to consider things that I and my team at ADHS considered when we promulgated Rules and Regulations.

44. For example, when promulgating Rules and Regulations for the AMMA, we consulted the Arizona Ballot Proposition Guide, which contained the full text of Proposition 203, as well as legislative council analysis. As noted in Section 2 of the Guide, the Initiative contains 7 paragraphs of Findings that discuss the historical use of cannabis and cannabis-derived medicine, spanning over 5,000 years of history.

45. Subsection A of Section 2 of the Proposition 203 Initiative reads:

> A. Marijuana's recorded use as a medicine goes back nearly 5,000 years, and modern medical research has confirmed beneficial uses for marijuana in treating or alleviating the pain, nausea and other symptoms associated with a variety of debilitating medical conditions, including cancer, multiple sclerosis and HIV/AIDS, as found by the National Academy of Sciences' Institute of Medicine in March 1999.

46. As Proposition 203 specifically referenced the March 1999 National Academy of Sciences' Institute of Medicine Report, ADHS reviewed it with the intention of better understanding how to implement the Medical Marijuana program.

47. The *Institute of Medicine Report*, (which I read in 2010) is 170 pages: *Marijuana and Medicine Assessing the Science Base*, by Janet E. Joy, Stanley J. Watson, Jr., and John A. Benson, Jr., Editors, Division of Neuroscience and Behavioral Health, Institute of Medicine National Academy Press, Washington, D.C.

48. Discussion of this report also appeared in the March 18, 1999 New York Times.

49. The *Institute of Medicine Report* writes at length about the administration of marijuana and marijuana-derived extracts as medicines. The authors made no judgmental distinction between pure dried flower versus extracted or concentrated components, "*Throughout this report, marijuana refers to unpurified plant extracts, including leaves and flower tops, regardless of how they are consumed--whether by ingestion or by smoking.*" *Institute of Medicine Report*, P. 20. If anything, the authors were critical of the practice of smoking

whole dried flower, writing "*smoked marijuana, however, is a crude THC delivery system that also delivers harmful substances*". *Institute of Medicine Report*, P. 4.

50. Turning back to Section 2 of the Proposition 203 Initiative, subsection G reads:

> G. State law should make a distinction between the medical and nonmedical uses of marijuana. Hence, the purpose of this act is to protect patients with debilitating medical conditions, as well as their physicians and providers, from arrest and prosecution, criminal and other penalties and property forfeiture if such patients engage in the medical use of marijuana.

51. It is clear to me that AMMA was concerned with providing options for relief for persons with the illnesses listed in the Act and that AMMA recognized that various forms of marijuana could provide for different routes of administration (e.g. ingestion) to help patients.

52. Moreover, AMMA requires diagnosis by a licensed physician (A.R.S. § 36-2801.12) to determine existence of "debilitating medical condition" (A.R.S. § 36-2801.13) in a patient, and that patients were restricted to persons with one or more of the following illnesses: Cancer, ALS, Glaucoma, Crohn's disease, HIV/AIDS, Hepatitis C, Alzheimer's, PTSD, severe and chronic pain, Cachexia, severe nausea, seizures, Multiple Sclerosis, muscle spasms, and any other condition ADHS would choose to add (A.R.S. § 36-2801.3).

53. Also, ADHS had A.R.S. § 36-2801(15) as guidance:

> "Usable marijuana" means the dried flowers of the marijuana plant, and any **mixture or preparation thereof,** but does not include the seeds, stalks and roots of the plant and does not include the weight of any non-marijuana ingredients combined with marijuana and prepared for consumption as food or drink.

54. I understood the voter approved AMMA language to mean that non-flower consumables were permitted as are mixtures or preparations deriving from the dried flowers.

55. Our ADHS team also looked to A.R.S. § 36-2803 (B), which refers to "smoking or ingesting marijuana" as an additional indication that more than smoking dried flower was permitted. Similar references to "ingesting" appear at A.R.S. § 36-2814(A)(3) and (B). The statutory differentiation between smoking versus ingesting indicated to me that the AMMA contemplated a variety of mechanisms of administration for patients (and their physicians).

56. Likewise, A.R.S. § 36-2805(A)(3) reads "…that marijuana be consumed by a method other than smoking", suggesting that physicians could recommend, and patients could choose the administration of marijuana by a variety of methods.

57. And, A.R.S. § 36-2802 expressly contemplates multiple methods of "engaging in the medical use of marijuana" including "smoking".

58. The ADHS also looked to the "Analysis By Legislative Council" in the Proposition 203 Initiative publicity pamphlet which made no distinction between types of medical marijuana or its extracts. Legislative Counsel referred to "marijuana" - "A qualifying patient who is registered with DHS (or a registered designated caregiver on behalf of the qualifying patient) may obtain up to 2.5 ounces of marijuana in a 14-day period from a registered nonprofit medical marijuana dispensary."

59. I believe that our interpretation was consistent with medical practice, as many patients cannot administer marijuana in the traditional method of smoking or other form of inhalant. Smoking marijuana involves inhaling marijuana combustion products which can be harmful to many patients. An example is Zander Welton, a 5-year old (discussed above). The ADHS understood that Proposition 203's employment of "mixtures,", "preparations," "food," "drink," and express reference to the *Institute of*

Medicine Report, all contemplated the extraction of compounds from the dried cannabis flower and the direct consumption or infusion of such extract into other routes and mechanisms of administration.

60. Consistent with these sentiments, we established metrics addressing permissible quantities of extracts or concentrates versus dried flower.

61. In practice, Department field personnel were required to ensure that dispensaries counted the starting weight of the useable marijuana as the compliance point for the 2.5-ounce limit. For example, if 2.5 ounces of dried useable marijuana made 0.25 ounces of extract, the dispensary was limited to selling the 0.25 ounces of extracts (under the compliance standard that patients can purchase up to 2.5 ounces of useable marijuana every 2 weeks), and the weight of the dried flower is what is required to be entered into the ADHS Point of Sale System.

62. To regulate extracts, the ADHS enacted:

- R9-17-316, which establishes a dispensary inventory control system for marijuana-infused products.
- R9-17-317, which establishes labeling requirements on marijuana-infused products, including data regarding its weight.
- R9-17-319, which establishes a Department-regulated regimen for the manufacturing processes of extraction and infusion of marijuana from and into other products.

63. While ADHS allowed extraction, we did not regulate the methods used to do so (*e.g.* CO2 versus butane). I was concerned about the potential fire hazard associated with butane extraction methods but felt these concerns would be properly addressed at the local level, because ADHS also required a City or County Certificate of Occupancy that I believed would subject such applicant to proper fire inspections.

64. Noted above, R9-17-319 treats extraction and infusion facilities just like food establishments under the Arizona Food Code. We required them to meet the same standards as any party who would be required to follow the commercial food code, such as restaurants.

65. Indeed, looking to ADHS's website today, it is clear to me that the Agency and its Director still embrace the legality of marijuana extracts. For example, ADHS now publishes a document, *Recommendations for Best Practices Regarding Marijuana Extractions, Concentrates, Infusion Kitchens and Edible Food Products Containing Marijuana*. As the document reads, ADHS still endorses the manufacture, sale, and consumption of marijuana extracts and products manufactured from marijuana extracts.

66. Likewise, ADHS publishes a special Application to separately license Medical Marijuana Dispensary Infusion Kitchens.

67. And, ADHS publishes its official definition of "food," in context of marijuana infusion kitchens, as:

> Anything placed in the mouth intended for human consumption (Defined as food, drink, or other substances swallowed or absorbed) is considered food.
>
> Marijuana tinctures, tonics, tablets, capsules, etc. are considered food and therefore require an Infusion Kitchen License.

68. The ADHS even contemplates both edibles and non-edibles in the 2017 edition of the *Medical Marijuana Verification System Dispensary Handbook*, P. 11. The Handbook acknowledges that ADHS considers extracts and concentrates to be covered under AMMA and makes no distinction between infused products that are eaten versus those consumed in other methods.

69. In short, Arizona voters approved the Arizona Medical Marijuana Act, which includes a definition of useable marijuana that uses the words "mixtures and preparations thereof" as well as several additional references to edibles. Reasonable

persons can argue the wisdom of the voters' decision to approve the AMMA, but I believe that it's unreasonable to conclude that the Act does not provide for mixtures and preparations of marijuana such as extracts, resins and edibles made with extracts.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 10th day of August 2018.

/s/ Will Humble
Will Humble

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