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BEFORE THE DIRECTOR OF THE
ARIZONA DEPARTMENT OF HEALTH SERVICES

In the Matter of:) Case No : 2014A-MMR-0254-DHS
)
ARIZONA CANNABIS NURSES)
ASSOCIATION,)
)
) DECISION
Appellant)
)
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)
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PURSUANT TO the authority granted to me by Arizona Revised Statutes (A.R.S.) § 41-1092 08(B), and in accordance with the above-referenced matter, and

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IN CONSIDERATION OF this proceeding, and the recommended decision of the administrative law judge, Thomas Shedden, I hereby make the following decision

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NOW, THEREFORE, in that the findings of fact of the appointed administrative law judge, received on June 4, 2014, and incorporated herein by reference, are supported by the greater weight of the credible evidence and they are hereby **ADOPTED** except as amended

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NOW, FURTHER, in that conclusions of law numbers 1 through 4, 7, and 8 of the appointed administrative law judge, received on June 4, 2014, and incorporated herein by reference, are supported by the greater weight of the credible evidence, are legally correct, and they are hereby **ADOPTED** except as amended

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NOW, FURTHER, in that conclusions of law numbers 5 and 6 of the appointed administrative law judge, received on June 4, 2014, and incorporated herein by reference, are not

1 supported by the greater weight of the credible evidence, are not legally correct, and they are
2 hereby **REJECTED**

3 **NOW, FURTHER**, in that the recommended decision of the appointed administrative
4 law judge, received on June 4, 2014, and incorporated herein by reference, is supported by the
5 greater weight of the credible evidence, is legally correct, and is hereby **ADOPTED** except as
6 amended
7

8 **FINDINGS OF FACT**

9 Page 2, Findings of Fact, number 6, lines 9 and 10, delete the text after “contained the”
10 and add the following:
11

12 components specified in Arizona Administrative Code (“A A C ”)
13 R9-17-106(A)(1) through (A)(7) The Department’s review for
14 administrative completeness of the components submitted for a
15 petition is liberal Dr Christ’s testimony, Audio Hearing Record,
16 May 13, 2014, at 4:51 to 4:54; 5:58 to 6:00 Locations on the
17 Audio Hearing Record are given in hours and minutes
18

19 This deletion and addition are made to avoid a conclusory finding on the issue for
20 determination
21

22 Page 2, Findings of Fact, number 7, line 14, before “palliative” add “therapeutic or” to
23 correct an omission

24 Page 2, Findings of Fact, number 7, line 14, after “condition.” add “A.A C R9-17-
25 106(B)(2).” to add the applicable citation

26 Page 2, Findings of Fact, number 7, line 15, delete “meet these requirements” and add
27 “provide evidence specified in A A C R9-17-106(B)(2)” to make a technical change
28

1 Page 2, Findings of Fact, number 8, lines 19 and 20, delete the text and add the
2 following:

3 The Department's Medical Advisory Committee ("Committee")
4 initially discussed Appellant's Petition at a meeting before the
5 public hearing took place; one-half of the Committee felt that
6 Appellant's Petition did not meet the conditions for going forward
7 with a public hearing. However, the Department scheduled a
8 public hearing on Appellant's Petition in order to get more
9 information. The Committee also discussed Appellant's Petition at
10 a meeting after the public hearing took place. Testimony of Dr.
11 Christ, Audio Hearing Record, May 13, 2014, 6:19 to 6:21

12 This deletion and addition are made for consistency with the record

13
14 Page 2, Findings of Fact, number 10, lines 23 to 25, delete the first sentence as
15 inconsistent with Findings of Fact, number 10 as amended herein.
16

17 Findings of Fact, number 10, line 27, after "objection" add the following:

18 Notwithstanding Appellant's waiving any objection, it cannot be
19 shown that affording the Appellant and the public an opportunity
20 for in-person comment on and presentation of additional
21 information for Appellant's Petition caused, or could have caused,
22 any harm.
23
24

25 This addition is made for clarification

26 Page 3, Findings of Fact, number 13, line 11, after "the 2012 review" add the following:
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28

1 The record established that the U of A fully searched a new
2 database, which had not been available for the 2012 evidence
3 review

4 This addition is made for consistency with the record.

5
6 Page 4, Findings of Fact, number 20, lines 14 to 16, delete the first sentence and add the
7 following:

8 The record established that Dr Christ's recommendation letter to
9 the Director just states what the Committee recommended: that
10 marijuana has not been subjected to high-quality, scientifically-
11 controlled testing in humans. This does not mean that only
12 randomized controlled double-blind studies are acceptable; good
13 cohort studies would be acceptable. Dr Christ's testimony, Audio
14 Hearing Record, May 13, 2014, at 5:24 to 5:27.

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16
17 This deletion and addition are made for consistency with the record.

18 Page 6, Findings of Fact, line 6, delete "Compos-Outcalt" and add "Campos-Outcalt" to
19 correct a clerical error

20 Page 6, Findings of Fact, number 34, line 9, after "as more evidence becomes available "
21 add the following:

22
23 Dr Campos-Outcalt testified that his systematic evidence review
24 excluded animal studies because such studies do not tell very much
25 about the effect in humans; that it is standard practice to exclude
26 animal studies; that animal studies may tell you about basic
27 physiological principles; that solid basic science research on
28

1 animals may lead to studies on humans, but doesn't tell you how
2 things are going to work in humans; and that many drugs are
3 researched through animal studies, but less than five percent end
4 up being proven to work in humans Audio Hearing Record, May
5 13, 2014, at 1:12 to 1:17 Dr Campos-Outcalt further testified his
6 understanding is that the language in A A C R9-17-106(A)(7) –
7 “reporting the results of research on the effects of marijuana on the
8 medical condition” – means the effect on people Audio Hearing
9 Record, May 13, 2014, at 4:21 to 4:22

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11
12 This addition is made for consistency with the record

13 Page 6, footnote 6, line 30, delete “his work” and add “the 2012 and 2013 evidence
14 reviews” for clarity

15 Page 8, Findings of Fact, number 55, line 20, after “without any reported adverse
16 effects ” add the following:

17
18 The record established that there have been only anecdotal or
19 media reports of overdosing on marijuana or adverse effects of
20 marijuana See the Department's Supplemental Exhibits R and S

21
22 This addition is made for consistency with the record

23 Page 12, line 17, add Findings of Fact, numbers 91 through 95 as follows:

24 The New Mexico Study¹

25 91 The record established that the New Mexico study was
26 published after the Department issued its determination denying
27

28 ¹George R Greer M D , Charles S Grob M.D & Adam I Halberstadt Ph D (2014) PTSD Symptom Reports of Patients Evaluated for the New Mexico Medical Cannabis Program, Journal of Psychoactive Drugs, 46:1, 73-77, DOI: 10 1080/02791072 2013 873843

1 Appellant's petition. Testimony of Dr. Campos-Outcalt that the
2 publication date of the New Mexico study was January 16, 2014,
3 Audio Hearing Record, May 13, 2014, at 4:06

4
5 92 The record established that the Committee reviewed a
6 manuscript version of the New Mexico study. Dr. Campos-Outcalt
7 and Dr. Christ testified that the manuscript version of the New
8 Mexico study was not a high-quality study. Testimony of Dr.
9 Campos-Outcalt, Audio Hearing Record, May 13, 2014, at 2:57 to
10 3:03, 3:24 to 3:27, 4:07 to 4:11; testimony of Dr. Christ, Audio
11 Hearing Record, May 14, 2014, at 0:37 to 0:39

12
13 93 The New Mexico study included 80 individuals in the New
14 Mexico medical marijuana program who self-described as having
15 PTSD. The New Mexico study results indicated more than 75
16 percent symptom reduction among study subjects during
17 marijuana-use time periods when compared with non-marijuana-
18 use time periods. The New Mexico study concluded: "[T]he data
19 reviewed here supports a conclusion that cannabis is associated
20 with PTSD symptom reduction in some patients, . . ."

21
22
23 94 The issue addressed by the New Mexico study was the
24 palliative (symptom-reduction) effect of marijuana use for PTSD.
25 The New Mexico study did not address the issue of any therapeutic
26 (curative) effect of marijuana use for PTSD and cannot provide
27 support for any curative effect derived from marijuana use for
28

1 PTSD or other condition. The Director finds that the record in this
2 matter did not include credible evidence of a curative effect
3 derived from marijuana use for PTSD or other condition.

4
5 95 The Director finds that the published version of the New
6 Mexico study, which was not available to or considered by the
7 Department for its review of Appellant's Petition, provides
8 sufficient support for a decision by the Director to add PTSD to the
9 list of debilitating conditions set forth in A.R.S. § 36-2801(3)
10 because its subsequent publication in a peer-reviewed journal gives
11 the study additional credibility. Further, the Director finds that a
12 physician's written certification, as defined in A.R.S. § 36-
13 2801(18), for the medical use of marijuana for PTSD is to be
14 specifically limited to palliative, non-therapeutic use.
15
16

17 Page 12, line 17, after Findings of Fact, number 95, as added herein, add Findings of
18 Fact, numbers 96 and 97, as follows:

19 Additional Findings by the Director

20 96 The record shows that PTSD is a condition for which there
21 are limited effective palliative treatment options, and that there is
22 substantial anecdotal evidence that medical marijuana provides
23 relief to those suffering from this condition.

24
25 97 The director finds that the new evidence presented at the
26 administrative hearing, including the additional weight that can be
27 given to the New Mexico study, supports the Director's decision to
28

1 add PTSD to the list of debilitating conditions as set forth in

2 A.R.S. § 36-2801(3)

3 **CONCLUSIONS OF LAW**

4 Page 13, Conclusions of Law, number 3, line 2, after “the same principles)” add the
5 following:
6

7 Further, Arizona courts have stated: “Statutory provisions are to
8 read in the context of related provisions and the overall statutory
9 scheme,” and “[s]tatutes relating to the same subject matter should
10 be read *in pari materia* to determine legislative intent [or in this
11 case the intent of the voters] and to maintain harmony.” *Goulder*
12 *v. Ariz. Dep’t of Transp.*, 177 Ariz. 414, 416, 868 P.2d 997, 999
13 (App. 1993), *aff’d*, 179 Ariz. 181, 877 P.2d 280 (1994) ²

14 This addition is made to correct an omission and for consistency with applicable case
15 law.
16

17 Page 13, Conclusions of Law, number 4, line 10, delete “§ 9-17-106 (A)” and add “R9-
18 17-106(A)” to make a technical correction
19

20 Page 13, Conclusions of Law, numbers 5 through 6, lines 11.5 through 24.5, delete the
21 numbers, the text, and footnote 7 and add new Conclusions of Law, numbers 5 through 6 as
22 follows:
23

24 5 Under the *in pari materia* rule of statutory construction,
25 when read consistently with A.A.C. R9-17-106(A)(7), subsection
26 (A)(6) must mean that a petition to add a debilitating condition is
27

28 ² Arizona courts apply the same rules in construing both statutes and rules. See *Gutierrez v. Indus. Comm’n of Ariz.*, 226 Ariz. 395, 396, ¶ 5, 249 P.3d 1095, 1096 (2011); *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 412, ¶ 18, 132 P.3d 1187, 1192 (2006)

1 to include a summary of the evidence other than the articles
2 reported in peer-reviewed journals. Articles reported in peer-
3 reviewed journals are to be included under subsection (A)(7). The
4 Department's interpretation gives meaning to both A.A.C. R9-17-
5 106(A)(6) and (A)(7). An agency's interpretation of its rules is
6 generally entitled to great weight and accorded deference by
7 Arizona courts. See *Capitol Castings, Inc v Ariz Dep't of Econ*
8 *Sec*, 171 Ariz 57, 60, 828 P.2d 781, 784 (App 1992); *Marlar v*
9 *Ariz*, 136 Ariz 404, 411-12, 666 P.2d 504, 511-12 (App 1983);
10 *Metro Mobile CTS, Inc v NewVector Commc'ns, Inc*, 661 F.
11 Supp 1504, 1512 (D Ariz 1987), *aff'd*, 892 F.2d 62 (9th Cir
12 1989). The Director concludes that the Department's
13 interpretation of its administrative rule is valid.

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17 6. The record established that the Department reviewed all the
18 material submitted by Appellant for its Petition, all the
19 written/online comments submitted by public, all the comments
20 made and materials submitted at the public hearing, and the U of A
21 systematic evidence reviews. The Committee gave more weight to
22 the evidence (or lack thereof) of articles published in peer-
23 reviewed journals.
24

25 This deletion and addition are made for consistency with the Findings of Fact as amended
26 and added herein and with applicable legal authorities
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28

1 Page 13, Conclusions of Law, number 7, lines 25 and 26, delete the text and add the
2 following:

3 Based on the Department's subsequent review of the newly
4 published, peer-reviewed New Mexico study and the additional
5 evidence provided at the administrative hearing, the Director found
6 that this provides sufficient support for a decision by the Director
7 to add PTSD to the list of debilitating conditions set forth in A R S
8 § 36-2801(3). The Director further found that a physician's
9 written certification, as defined in A R S § 36-2801(18), for the
10 medical use of marijuana for PTSD is to be specifically limited to
11 palliative, non-therapeutic use. See Findings of Fact, number 95 as
12 added herein.
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16 This deletion and addition are made for consistency with Findings of Fact, numbers 91
17 through 95 as added herein.

18 Page 13, Conclusions of Law, number 8, lines 27 and 28, delete the text and add the
19 following:

20 In accordance with the Findings of Fact and Conclusions of Law as
21 amended and added herein, the Director concludes that Appellant's
22 Petition and appeal should be granted, and that PTSD should be
23 added to the list of debilitating conditions for which marijuana may
24 be dispensed for medical use. A physician's written certification,
25 as defined in A R S § 36-2801(18), for the medical use of
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1 marijuana for PTSD is to be specifically limited to palliative, non-
2 therapeutic use

3 This deletion and addition are made as a technical change

4 Page 14, line 1, before "Order" add "Recommended" to make a technical change

5 Page 14, Recommended Order, lines 2 and 3, delete the text and add the following:

6
7 It is recommended that the Director grant Appellant's Petition and
8 appeal; add PTSD to the list of debilitating conditions for which
9 marijuana may be dispensed for medical use; and require that a
10 physician's written certification, as defined in A R S § 36-
11 2801(18), for the medical use of marijuana for PTSD be
12 specifically limited to palliative, non-therapeutic use
13

14 This deletion and addition are made as a technical change

15
16 **IT IS ORDERED THAT** the appeal is granted

17
18 **IT IS FURTHER ORDERED THAT** Appellant Arizona Cannabis Nurses
19 Association's Petition to add Post-Traumatic Stress Disorder to the list of debilitating medical
20 conditions set forth in A R S § 36-2801(3) is granted

21 **IT IS FURTHER ORDERED THAT** Post-Traumatic Stress Disorder is added to the
22 list of debilitating conditions for which marijuana may be dispensed for medical use, from and
23 after January 1, 2015

24 **IT IS FURTHER ORDERED THAT** a physician's written certification, as defined in
25 A R S § 36-2801(18), for the medical use of marijuana for Post-Traumatic Stress Disorder is to
26 be specifically limited to palliative, non-therapeutic use
27

1 **IT IS FURTHER ORDERED THAT** a physician's written certification, as defined in
2 A R S § 36-2801(18), for the medical use of marijuana for Post-Traumatic Stress Disorder is to
3 include an attestation that the patient is participating in conventional treatment for Post-
4 Traumatic Stress Disorder

5
6 **IT IS FURTHER ORDERED THAT** the effective date for adding Post-Traumatic
7 Stress Disorder, for palliative use only, to the list of debilitating conditions for which marijuana
8 may be dispensed for medical use is January 1, 2015. This effective date enables physicians to
9 prepare for issuing written certifications in accordance with A A C R9-17-202(F)(5) and (G)(8)
10 and A A C R9-17-204(A)(5) and (B)(4) for best meeting the needs of patients who qualify for
11 the palliative use of medical marijuana for Post-Traumatic Stress Disorder; enables medical
12 marijuana dispensaries to comply with the requirement to develop, document, and implement
13 policies and procedures in accordance with A A C R9-17-310(A)(2) for best meeting the needs
14 of patients who qualify for the palliative use of medical marijuana for Post-Traumatic Stress
15 Disorder; and enables medical directors of medical marijuana dispensaries to comply with
16 requirements to develop and provide training to dispensary agents in accordance with A A C
17 R9-17-313(C), and to oversee the development and dissemination of educational materials and a
18 system for documenting qualifying patients' symptoms in accordance with A A C R9-17-313(D)
19 for best meeting the needs of patients who qualify for the palliative use of medical marijuana for
20 Post-Traumatic Stress Disorder

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24 **PURSUANT TO** the requirements of A R.S. §§ 41-1092 08(H), 41-1092 09, and 12-904,
25 the parties are advised that they have a period of thirty (30) days from the receipt of this decision
26 to file a motion for rehearing or review with the Clerk of the Department, at the address
27
28

1 appearing on the distribution list; or a period of thirty-five (35) days after receipt of this decision
2 to file a notice of appeal for judicial review of administrative decision in Superior Court
3

4
5 Dated this 9th day of July, 2014

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8 Will Humble
9 Director

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1 ORIGINAL filed on the 9th day of July, 2014, with:

2 Clerk of the Department
3 Arizona Department of Health Services
4 1740 W Adams, Room 203
5 Phoenix, AZ 85007

6 PDF COPY of the foregoing submitted electronically via the Office of Administrative Hearings
portal on the 9th day of July, 2014, to:

7 Thomas Shedden, Administrative Law Judge
8 Office of Administrative Hearings
9 1400 W Washington, Suite 101
Phoenix, AZ 85007

10 COPIES of the foregoing sent by certified mail return receipt requested on the 10th day of July,
11 2014, to:

12 Arizona Cannabis Nurses Association
13 5505 E Paseo Cimarron
Tucson, AZ 85750

14 Kenneth A Sobel, Esq
15 5505 E Paseo Cimarron
16 Tucson, AZ 85750

17 COPIES of the foregoing sent by regular mail/interdepartmental mail/electronic transmission on
the 10th day of July, 2014, to

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