IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 09cr209
	)	
ROBERT PAWLOWSKI,	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO PERMIT THE USE OF MEDICAL MARIJUANA

AND NOW comes the Defendant, Robert Pawlowski, by and through his attorney PATRICK K. NIGHTINGALE, ESQUIRE, who brings the within Motion to Permit the Use of Medical Marijuana and in support thereof sets forth the following:

1. Defendant, Robert Pawlowski, incorporates all prior pleadings in this matter.

2. Defendant is serving a term of supervised release. One of the conditions of his release is that he not commit a federal crime.

3. Cannabis remains Schedule I under federal law and no exception is made for state sanctioned medical cannabis use.

4. Defendant requests this Court to modify that condition to allow the use of medical marijuana as long he is in compliance with Pennsylvania law. In the alternative, he requests that this Court take no punitive action if he is violated for medical marijuana use, so long as that use is in compliance with Pennsylvania law.

5. Pennsylvania enacted the Medical Marijuana Act in 2016 ("The Act"). The Act provides that "use or possession of medical marijuana . . . is lawful within this Commonwealth" so long as the "patient" meets certain requirements. *See* 35 Pa. Stat. Ann. § 10231.303. To be eligible for medical marijuana under the Act, a "patient" must have one of the enumerated "serious medical condition[s]," which include, *inter alia*, severe chronic or intractable pain, cancer, neuropathies, Crohn's disease, post-traumatic stress disorder (PTSD), Anxiety, Tourette's syndrome, autism, seizure disorder, HIV/AIDS, Huntingdon's disease, sickle cell anemia and

inflammatory bowel disease. *Id*. § 10231.103. The Act also requires a "patient" to "receive[] certification from a practitioner," to acquire the marijuana from an approved dispensary, and to be "in possession of a valid identification card issued by" the Pennsylvania Department of Health at any time they are in possession of medical marijuana. *Id*. § 10231.303.

6. Defendant suffers from anxiety, a qualifying condition under Pennsylvania's Medical Marijuana Act. Defendant's letter of certification from Dr. Eric Smith is attached hereto and made a part hereof.

7. Defendant's patient identification is attached hereto and made a part hereof.

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8. Other local District Judges have permitted the use of medical marijuana when in compliance with Pennsylvania law. *See United States v. Richard Martin*, 09-cr-98, Doc. No. 133 (W.D.P.A. 2019) (**Judge Cercone** permitting the use of medical marijuana provided use remains in compliance with Pennsylvania law); *See also United States v. Nicole Hooper*, 19-cr-142, Doc.

Nos. 61, 64 (W.D.P.A. 2020) (Government consenting to the use of medical marijuana) (**Judge Bissoon** permitting the use of medical marijuana provided use remains in compliance with Pennsylvania law).

Respectfully submitted,

/s/ Patrick K. Nightingale

Patrick K. Nightingale, Esq.
Attorney for Defendant
Robert Pawlowski
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ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2021, upon consideration of Defendant's Motion to Permit Medical Marijuana, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED. Defendant must strictly comply will all provisions of Pennsylvania's Medical Marijuana Act which includes, but it not limited to, a prohibition on smoking medical marijuana and storing unused medical marijuana in it's original dispensary packaging at all times when not actively consuming medical marijuana. Defendant shall keep all receipts from the purchase of medical marijuana for inspection by his pre-trial services officer upon request. Because smoking medical cannabis is not permitted under Pennsylvania's medical marijuana act Defendant is prohibited from possessing any paraphernalia used for smoking dry leaf marijuana. Vaporization of same is permitted as it is authorized under the act.

BY THE COURT:

_____, J.

pennsylvania
Medical Marijuana Program
PATIENT
ISSUED: 12/09/2020
EXPIRES: 12/09/2021
PAWLOWSKI
ROBERT
MEDICAL MARIJUANA IDENTIFICATION CARD

Pennsylvania
visitPA.com USA
DRIVER'S LICENSE
NOT FOR REAL ID PURPOSES
DUPS: 00
4d DLN: [redacted]
3 DOB: [redacted]
4b EXP: 08/21/2023
4a ISS: 08/08/2019
1 PAWLOWSKI
2 ROBERT
15 SEX: M 18 EYES: BRO
16 HGT: 5'-11"
9 CLASS: CM
9a END: NONE
12 RESTR: NONE
5 DD [redacted]
DL
ORGAN DONOR

From: **Robert Pawlowski** [redacted]
Subject: Re:
Date: March 31, 2021 at 7:21 PM
To: Patrick K. Nightingale, Esq. pknlaw@mac.com

RP

Pennsylvania Department of Health
Office of Medical Marijuana

Patient Certification

PENNSYLVANIA MEDICAL MARIJUANA PROGRAM

Publication Release Date:

For additional information, please contact:
The Pennsylvania Department of Health
Office of Medical Marijuana
RA-DHMedMarijuana@pa.gov

Pennsylvania Department of Health
Office of Medical Marijuana

Patient ID: [redacted]

MEDICAL MARIJUANA PROGRAM
PATIENT CERTIFICATION

Section 1 - Patient Information

Patient's Name : ROBERT PAWLOWSKI	**Email Address :** [redacted]
Patient's Address : [redacted]	**Patient's DOB :** [redacted]
	Primary Phone Number : [redacted]
Date of patient consultation: 11/23/2020	
Length of time patient has been under practitioner's continuing care: Less than 1 Year	

Treatment period for this certification

- (●) **One year from date of patient consultation**
- ( ) **A treatment period less than one year (please specify):**

Section 2 - Serious Medical Conditions Under Act 16

Select whichever is applicable; can select more than 1

☐ **Amyotrophic Lateral Sclerosis**	☐ **Autism**
☐ **Cancer**	☐ **Crohn's Disease**
☐ **Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity**	☐ **Epilepsy**
☐ **Glaucoma**	☐ **HIV(Human Immunodeficiency Virus)/ AIDS(Acquired Immune Deficiency Syndrome)**
☐ **Huntington's Disease**	☐ **Inflammatory Bowel Disease**
☐ **Intractable Seizures**	☐ **Multiple Sclerosis**
☐ **Neuropathies**	☐ **Parkinson's Disease**
☐ **Post-traumatic Stress Disorder**	☐ **Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or ineffective**
☐ **Sickle Cell Anemia**	☐ **Neurodegenerative diseases**
☐ **Terminal illness**	☐ **Dyskinetic and spastic movement disorders**
☐ **Opioid use disorder for which conventional therapeutic interventions are contraindicated or ineffective, or for which adjunctive therapy is indicated in combination with primary therapeutic interventions**	☑ **Anxiety Disorders**
☐ **Tourette Syndrome**	

Section 3 – Caregiver Designation

Please check the appropriate box below:

☐ The patient is under 18 years of age.
☐ The patient needs assistance from a parent, spouse, caregiver, or legal guardian to obtain medical marijuana due to their medical condition.
☐ The patient, in the opinion of the practitioner, is either homebound or an inpatient and will not be able to visit a dispensary during the treatment period listed in this patient certification?
☑ None of the above.

Section 4 – Caregiver Information

(The patient is permitted to designate up to 2 caregivers)

Name :

Email Address :

Telephone Number :

Relationship to Patient:

☐ **Caregiver** ☐ **Custodial Parent** ☐ **Legal Guardian** ☐ **Spouse**

Name :

Email Address :

Telephone Number :

Relationship to Patient:

☐ **Caregiver** ☐ **Custodial Parent** ☐ **Legal Guardian** ☐ **Spouse**

Section 5 – Practitioner's Information

Practitioner's Name :

Practitioner's Business Address : 203 Canterbury Court, Blue Bell, PA, 19422

Name of Medical Practice or Group : -Erik C. Smith, MD, LLC

Professional Email Address : dr.ecsmith@gmail.com

Telephone Number : (215) 919-4979

Section 6 – Practitioner's Recommendation

☐ **Are there any limitations or restrictions as to the form of medical marijuana for the above patient?**

The following form of medical marijuana is recommended for the above patient.

- ☑ **Vaporizer or Nebulizer Form**
- ☑ **Topical Form**
- ☑ **Liquid**
- ☑ **Oil**
- ☑ **Pill**
- ☑ **Tincture**

☐ **It is recommend that the patient discuss the form of medical marijuana to be dispensed with a medical professional employed by dispensary.**

☐ **Any other information about the above patient's medical condition that should be condsidered when dispensing medical marijuana?**

Section 7 – Practitioner's Certified Statements

I, Erik Smith, MD, the practitioner treating Robert Pawlowski : certify that I have completed the following:

1. I have conducted a patient consultation in a manner appropriate to make a medical determination as to the patient's serious medical condition(s) indicated above.
☑

2. I have made a diagnosis of a serious medical condition for the above patient for which the patient will receive a therapeutic or palliative medical benefit from the use of medical marijuana.
☑

3. I have established a medical record for the patient and shall maintain that medical record while the patient is under my continuing care treatment.
☑

4. I have consulted the Prescription Drug Monitoring Program database to review whether the patient has been recently dispensed any controlled substances that would prohibit or pose a risk for the patient to obtain medical marijuana.
☑

5. I have received an informed consent statement from the patient, or if applicable, an informed consent statement from the patient's caregiver, custodial parent, legal guardian or spouse that includes an explanation of the potential risks and benefits of the medical use of marijuana.
☑

Section 8 - Physician Attestation

I understand that a false statement made in this application is punishable under the applicable provisions of 18 Pa. C.S. Ch. 49 (relating to falsification and intimidation) ☑

I understand that by typing my name below, I am electronically signing this patient certification.

Erik Smith

Print Name

11/25/2020

Date

On Tue, Mar 30, 2021 at 1:30 PM Robert Pawlowski <[redacted]> wrote:
I called and it'll take up to 24 hours for the doctor to either email me or call me. But I'm confident they'll just email it so as soon as I get it I'll send it to you directly.

On Tue, Mar 30, 2021, 1:20 PM Robert Pawlowski <[redacted]> wrote:
Okay working on it right this second.

On Tue, Mar 30, 2021, 1:20 PM Patrick K. Nightingale, Esq. <pknlaw@mac.com> wrote:
As soon as I have that I'll file.

Patrick K. Nightingale, Esquire
707 Grant Street
2340 Gulf Tower
Pittsburgh, PA 15219
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www.patricknightingale.com
www.cannabislegalsolutions.net

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On Mar 30, 2021, at 1:17 PM, Robert Pawlowski <[redacted]> wrote:

Ok, I will do that.

On Tue, Mar 30, 2021, 12:59 PM Patrick Nightingale <pknlaw@mac.com> wrote:
I need a letter from Veriheal setting forth your qualifying condition.

Patrick

Patrick K. Nightingale, Esquire
www.patricknightingale.com

> On Mar 30, 2021, at 10:58 AM, Robert Pawlowski <[redacted]> wrote:
>
>
> <original_9d0de6d9-3ec1-40a1-bead-d95c3dbd04d9_20210226_084229.jpg>
> <20210226_084243.jpg>
> <original_5bba3abf-581b-4b60-859c-3f4d3dd1e398_20210226_235812.jpg>