comes to Ann Arbor", by John McKenna Rosevear. It is the perfect counter to the "keep fear alive" tactics. It might be on the web by now. I got 150 leftover copies.

The second document which fundamentally threatens our patient's

quality of life is the State of Michigan Court of Appeals concurring opinion of Judge P.J. O'Connell, in the case of Michigan v. Robert Lee Redden and Torey Alison Clark (published Sept 14, 2010)

Judge O'Connell's 30 page treatise is just his opinion, and has been accorded far too much importance. His argument is illogical and uncalled for. It can be ~~thoroughly~~ demolished by looking at a dictionary, unless the actual meaning of words does not matter. He even directly contradicts himself (on pg. 6 first paragraph – the terms of the act are accurately stated and the word "or" is properly used, then see the law itself (bottom of page 8), noting the accurate use of the word "or". Then on page 15 O'Connell blusters forth to opine that "or" does not mean "or". He knows in his heart that most medical marijuana patients are faking it (Pg. 22), so he develops a way to undermine the "dual path" which is outlined in the MMMA for getting doctor recommendations.

The MMMA provides (333.26424(f)) that a doctor can't get into trouble "solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patients medical history ***or***" **(yes, the word is "or")** for "stating that, in the physicians professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's serious or debilitating medical condition".

So, clearly the law provides two ways in which a person can get a doctor's recommendation to become a qualifying patient, a) their regular doctor may write the recommendation, or b) a different doctor (maybe a "pot doc"), can look at MEDICAL RECORDS to see if the patient qualifies to use medical marijuana under the terms of the act (that is, whether or not they have records to prove that they have one of the ailments listed under the Act as "qualifying conditions").

When you visit a doctor in our society the doctor makes written notes on your chart about what is wrong with you and how you are being treated. A patient has the right to get copies of these records to show them to another doctor. It is disingenuous for Judge O'Connell to pretend that he has no awareness of the concept of medical records.

In one mind boggling sentence O'Connell asserts that, "It is beyond question that one doctor treating 100, 500, or 1000 terminally ill patients with a 10 minute examination has **not** been acting pursuant to bona fide physician-patient relationship". (Pg. 15, footnote 20)

What a masterpiece of intentional duplicity and pejorative "framing". NOBODY has EVER said that a person must be "terminally ill" in order to qualify as a medical marijuana patient. I have gut pain that is often debilitating but I can run or swim for many miles, and don't plan to die soon. (I am 63 and have loved cannabis for 43 years; I wish we could put me and all the legislators and appellate judges 5 miles out into Lake Michigan, and see who makes it to the shore). Given the false way that the sentence is

framed his conclusion is indeed "beyond question".

A 10 minute doctor visit is plenty "bona fide" if the doctor and patient are talking together in person and the patient's MEDICAL RECORDS clearly indicate that the patient has a medical condition that **qualifies them to use medical marijuana under the MMMA**. O'Connell seems to be fully aware of this on Page 6 where he claims that "pot docs" will provide certifications for medical marijuana "without bothering to establish EITHER 1) A bona fide physician-patient relationship, OR 2)the existence of a terminal or debilitating medical condition". If O'Connell was honest enough to admit to the existence of what we call MEDICAL RECORDS he would also have to admit that 10 minutes is far longer than is necessary to 1) Check patient records to make sure the patient has a qualifying condition, 2) Check off one of the qualifying conditions on the State of Michigan "Physician Certification" form and 3) possibly listen to the persons heart and check their blood pressure. They would have time left over to talk about the weather. The "pot doc" at the Ann Arbor compassion center which I run once checked a man's heart and sent him straight to the hospital, where he needed an operation. Oops, it just happened again yesterday. These patients would not have otherwise seen a doctor, and might have had a stroke or heart attack. Their relationship with our doctor was "bona fide" enough to possibly save their lives. Many people never otherwise go to a doctor; if they are "real men", or they can't afford it.

Judge O'Connell seeks to preclude the MMMA from actually working to serve qualified patients when, on page 15 he says that the word "or" does not mean "or" (as in "OR, for otherwise stating that, in the physicians professional opinion, the patient is likely to receive therapeutic or palliative benefit..."). To try to restrict the applicability of the MMMA and save the "status quo" as much as possible O'Connell simply opines (in an obvious attempt at "chicanery" (see pg. 16), that "This provision does NOT create an alternative scenario under which a physician may issue a written certification to a patient in the absence of a bona fide physician – patient relationship with that patient OR A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY. (Certainly we do not need to show our full medical history from birth to the present, we simply need to prove that we qualify under the terms of the Act. He admits that the word "OR" is present, but denies its meaning. According to Webster's New World Dictionary (Warner Books, 1990) the word "or" means "an alternative, or the last in a series of choices", which is EXACTLY what O'Connell said it does NOT mean. The "Oxford American Dictionary", (Avon Books 1980) defines "or", conj. "as an alternative". The 2230 page "Webster's New Universal Unabridged Dictionary" explains (pg. 1360) that "or" is "used to connect words, phrases, or clauses ***representing alternatives***". We must defend the meaning of language and insist that, in the MMMA, the word "or" means what the word "or" means. Clearly O'Connell's basic assertion is false. The provision in the act which follows the word "or" DOES "create an alternative scenario under which a physician can issue a written certification". There are two ways that a patient can get a "bona fide" recommendation from a physician, 1) from their regular doctor 2) from a compassionate "pot doc" who reviews MEDICAL RECORDS TO SEE IF A PATIENT QUALIFIES UNDER THE TERMS OF THE ACT.

If it is true that some doctors are simply "selling recommendations" then this is illegal and must stop. However, if we admit that MEDICAL RECORDS exist, a ten minute appointment is plenty of time to ascertain whether a patient has a malady which qualifies them to use medical marijuana in Michigan. It was excruciatingly well known to the drafters of the MMMA that most doctors (and most huge systems

of doctors, like the University of Michigan or the Veterans Administration) are directed to never write recommendations for medical marijuana, (which they don't understand well and cannot make a lot of money from). The drafters understood from long and brutal experience that the MMMA could not help most patients in the real world unless it included these dual pathways for getting a physicians recommendation. It is clear in the plain wording of the law and was the obvious intent of the framers of the initiative to "create an alternative scenario under which a physician may issue a written certification". Otherwise, most patients who have a qualifying condition would never have a way to become qualified patients under the Act.

The law was written with the intent that it would be able to function, and was approved with 63% in favor. This is a mandate for implementation, not obstructionism.

His goal of making the law unworkable is illustrated clearly enough (pg. 16) when he declares (as if he can reshape reality), that "labor" is not a cost. This would be big news to businesses around the globe. Section 4(e) of the Act "permits a primary caregiver to receive compensation for costs associated with assisting a registered qualifying patient". O'Connell declares his odd personal opinion that labor is not a cost as a fact and decrees (footnote 21) that a caregiver "may not receive compensation or otherwise profit from the labor in cultivating Marijuana or otherwise assisting the qualifying patient". The great majority of people have to make money when they work, so that they can pay bills and buy what they need. The law says that "any such compensation shall NOT constitute the sale of controlled substances" (333.26424(e).

To say that labor is not a cost is another way to say that the MMMA won't be allowed to actually work in the real world - which is not what 63% of the voters voted for. They voted that medical patients should have safe access to an "uninterrupted availability" (333.26428(2)) of their medicine. In another blazing example of "bad faith" implementation of the MMMA, pg. 18, O'Connor unilaterally declares what should happen to medical patients when they assert the "affirmative defense" (cite) to avoid prosecution for the use of medical marijuana. "It logically follows (he opines) that a defendant resorting to that defense by placing into evidence his or her medical condition necessarily waives any physician-patient privilege that would otherwise limit a prosecutor's prerogative to question the defendant's physician or examine pertinent medical records". What a breathtaking Orwellian outrage! This is exactly the moment when your physician-patient confidentiality rights should be most operative, or what good are they? If you assert the affirmative defense that is provided in the law the prosecutor suddenly may become the doctor, the medical inquisitor, asking you completely personal questions about your health, and deciding if you are sick enough to assert the affirmative defense. This simply isn't the American way! Prosecutors and judges don't go to medical school. They must respect the confidentiality of patient records (that is in the act- 333.26426(h)), and only doctors, not lawyers, are qualified to determine whether or not a patient has a "qualifying condition". The Act provides a penalty of 6 months in jail for any governmental official who breaches the confidentiality of patient records, as was recently done so brazenly by Sheriff Bouchard's men in Oakland County.

O'Connell (pg.20) denies that the Act provides dual paths for a patient to become certified by a doctor and use the "affirmative defense". He blatantly replaces the word "or" with the word "and". He says that Robert Redden and Torey Clark could not use the affirmative defense because "they must first

establish that Dr. Eric Eisenbud, the physician who signed their medical marijuana authorizations, treated them in the course of a bona fide physician-patient relationship, AND they must further establish that they have a serious or debilitating medical condition. These judges slipped the word "and" in place of the word "or" and denied the affirmative defense to Bob and Torey. The JUDGES AND PROSECUTORS DECLARED THAT THE MEDICAL JUDGEMENT OF A DOCTOR WAS INVALID. The law says "or", **NOT** "and", thus O'Connor's duplicity must be intentional. Doctors are supposed to make medical decisions in the USA. O'Connor himself clearly stated that right concept was "or", when he states that a valid doctor-patient relationship must be sufficient to "establish EITHER a bona fide physician-patient relationship OR the existence of a terminal or debilitating medical condition".(pg 6)

Compounding his egregious elitism he issues "a stern warning to all: Do not attempt to interpret this act on your own" (O'Connell pg.7, footnote 10). (How's THAT for participatory democracy, ...only his "priesthood" can know what words mean. This is just plain un-American). He says it would be "prudent" for "citizens of this State to avoid all use of marijuana" until the Supreme Court sorts everything out.

Patients and caregivers obviously work with a different time frame; they are out of time to wait. Today is what matters.

There is no need for ranting about a "bona fide" this or that. O'Connors "protocols" that "must be adhered to" (pg. 20) in order for a valid doctor-patient relationship to be established are pure balderdash that he made up himself (hopefully not at taxpayer expense).The tone of this opinion is unremittingly negative, giving no credit for the compassion that voters were trying to enable. He calls a visit to a "pot doc" a "one time shopping event" (O'Connell, pg.21) - when a ten minute doctor visit is clearly more than enough time to look at medical records and determine whether or not a patient qualifies under the Act. In fact, Dr. Eisenbud (the doctor questioned in Michigan v. Redden) works for the The Hemp and Cannabis Foundation, which is the oldest and most strict organization in the field of medical marijuana certification. The THC Foundation organization is so strict that they will not even allow you to make an appointment until AFTER you have provided them with three different notations from valid medical records proving that you have the medical condition that would enable you to qualify as a medical marijuana patient. Judge O'Connell heartlessly, inaccurately, and illegally states that the "affirmative defense is not available unless the testifying physician is the patient's treating physician for the underlying serious or debilitating condition" (pg.21). He simply makes things up, to thwart the clearly expressed will of the voters and bolster the prison industrial complex.

Everyone agrees that no doctor is allowed to "routinely sell written certifications for profit" (without supporting valid medical records) and that "such certifications must be disallowed under this act". (O'Connell, pg. 19) Nobody defends fraud.

The source of O'Connells ire becomes clear on page 22. He wants to twist the words of the law to make it more restrictive because "the majority of persons who are becoming certified at this time" are "abusing the written certification process". Since we patients are mostly "fakers" he knows that he should be able to twist the law until it is unworkable. He wants to limit the number of recommendations a physician can write, but don't most areas of medicine have specialists who are experts in their specific field?

O'Connell's opinion constantly shows ignorance of cannabis as medicine. He says that doctors fail "to set any medical boundaries" (pg 15) for cannabis use, not understanding that cannabis dosage is totally individualistic. Idiosyncratic dosage requirements are one of the main reasons that cannabis medicine fell out of fashion in the 1890's. Aspirin and morphine, for instance, are more predictable; and dosages can be standardized. Also, "One supposes", says he, "that most citizens voting for the MMMA envisioned" (he does not explain how he determines what people "envision"), that patients would visit their regular doctors, obtain prescriptions for marijuana and then have the prescription filled at a licensed pharmacy" (pg. 23-24). What a sentence! You can't get a "prescription" for something that has been (falsely) labeled a Schedule I drug. Does he honestly think that voters had never heard of dispensaries in California and assumed that medical marijuana patients could go to the drugstore? He wants to hold on to the status quo, but the voters are way out ahead of him.

O'Connor provides his lecture about Schedule I drugs as if the federal classification had some validity, but its only validity is in the law. No person who was not in the employ of the prison-industrial complex would agree that cannabis could meet any one of the three standards, all of which must be met to identify a Schedule I drug. First, cannabis does not have a high potential for abuse, even compared to soda pop or french fries, let alone alcohol or heroin. Since I have used cannabis each day for 43 years, I would have noticed by now if there was a problem. Second, cannabis is perfectly safe for medical use. The federal government once declared, through DEA appointed Judge Francis Young, after two years of gathering data, that marijuana was probably the "one of the safest therapeutically active substances known to man". Third, cannabis clearly has recognized medical uses within the United States, since 15 states have already passed it into law. Hundreds of thousands of Americans are now qualified patients, using cannabis medicine as needed.

This Schedule I designation is a stain on our national moral character, a harmful anachronism that will make future Americans ashamed of their ancestors. It has damaged, and sometimes devastated, the lives of more than 10 million otherwise law abiding Americans. It is a disgraceful embarrassment, since everyone understands that it is a lie in each detail. No evidence or reason caused cannabis to be listed as a schedule one drug. This "scheduling" system was developed around 1970, when a lawsuit by Professor Timothy Leary derailed the old "tax stamp" law that had been in place since pot was outlawed in 1937. President Nixon told the government to classify cannabis as a schedule I substance, pending the report of the National Commission on Marijuana and Drug Abuse (1972). Nixon's very conservative commission exhaustively studied the marijuana issue and declared it was a "Signal of Misunderstanding", and that both possession and small scale sale of marijuana should be made legal. When Nixon found out he immediately promised to ignore the recommendations of his "blue ribbon" commission.

How can intelligent and powerful men, who have sworn fealty to the US constitution, support the damage that results from making the cannabis herb into a Schedule I drug- after they know that it is based on pure vindictive caprice, not science? Law Enforcement hangs on to that Schedule I classification like a pit bull, since the majority of the "drug war" is still based on chasing after cannabis.

Children are damaged when they learn that government will openly lie to them and conduct a cultural war against cannabis with such ferocity that an American is arrested every 37 seconds...and that the

next victim could be them. The serious damage from entanglement with the legal system is much more damaging than cannabis to the lives of young people. Schedule I may be the law, but it is immoral to defend it. People who defend Schedule I are the people who, in another age, would have been happy to burn "witches" or gas Jews if that was official government policy.

O'Connor even seems to mock economic growth, new careers, and graduates of the Medical Marijuana Academy! (Pgs. 26 & 28) Medical marijuana is causing a lot of money to be invested in Michigan. New businesses are rapidly hiring people. These are real jobs that support families, help sick people, and have a future. At this moment in Michigan it is just not right to kill off what could be Michigan's fastest growing new industry.

"A comprehensive set of administrative rules", made by "legislative and administrative officials" is what the judge thinks we need. (pg. 28). His ideas, like "log keeping requirements" and "reporting requirements" open the door to the suspicion, search, or inspection that are specifically banned in the act. We have already been there and done that, with the first set of burdensome regulations which were promulgated by the MDCH. It was made clear at a huge public hearing in Lansing (cite) that all burdens on patients and caregivers which were in excess of the text of the Act would be ~~forever~~ litigated until the regulations reflected the words that were on the ballot, ~~which voters approved so overwhelmingly.~~ Certainly a new wiring installation should be up to code and inspected, but this should be done in the normal course of events, with no illegal discriminatory laws aimed at patients and caregivers. The judge says he is merely the bringer of bad news, but no, he is ***creating*** bad news by trying to limit and restrict such a popular humanitarian program that seems to work fine.

It is true that a few portions of our law could be tightened up, and the leaders of the medical marijuana community have already agreed to revisions; in subcommittee hearings with Rep. Fred Durhal Jr., on Nov. 16, 2010. We are not being inflexible. We will never compromise, however, on the principle that medical patients, with a doctor's recommendation, must have safe access to medical marijuana in Michigan.

It may be possible to work things out in Michigan so that all parties will be more satisfied, but that would take "good faith" on the part of people who are deeply invested in perpetuating the status quo of "SWAT team" type Drug War and civil forfeiture without a conviction in court.

We could at least agree that cities and townships have the "local option" to have dispensaries and major growing operations if they want to. (These would still have to follow the outline of the MMMA).

Patients and caregivers know that we have entered a bright new era in Michigan, full of hope and promise. We will never go back to hiding in fear. We will bring therapeutic cannabis, the pure medicine of Mother Nature, to people who are sick in every corner of Michigan. Forces that would unfairly restrict medical marijuana (or any plant) are purely evil and anti-American. Drug Warriors must fervently hope that there is no God who will judge them when they die.

Patients and caregivers will be polite and quiet and sit through meeting after meeting, but we will fight for the rights of our patients with every bit of our power and resources. It would be a mistake to

underestimate our resolve. We operate in every part of the great state of Michigan and we can sustain political activity over time. It would be a great mistake for anyone to try to undermine the gains that medical patients have made through the democratic process. Any person or entity that attacks the fundamental purpose or implementation of the Michigan Medical Marijuana Act will have an unpleasant time of it.

We must begin by unmasking the antidemocratic, and totalitarian power grab which has been unleashed in Michigan cities by the Michigan Municipal League. If groups of citizens planned together to break the law it would be called a "conspiracy", but the local government "powers that be" are planning to "smash and grab" the MMMA. A huge voter mandate approved specific wording about medical marijuana, and that initiative is now the law. Either the MML should let medical marijuana interests fully join in the discussion, or there must be negative consequences for their behavior.

As for the judge, he should be seen as a self righteous, irrelevant meddler – a bearer of "badfaith".

Eternal vigilance is the price of liberty; certainly for advocates of medical marijuana.

Chuck Ream 11/2010

A note from my attorney:

The Court of Appeals operates in three-judge panels. O'Connell's opinion is not the majority opinion. He concurred (agreed) with the result the majority reached, but he could not resist writing a separate opinion discussing issues that were not before the court. Therefore, much of what he had to say is "obiter dicta", meaning something "said by the way." The fact that parts are dicta, plus the fact that it is only a concurring opinion, means that his comments are not controlling law: they are not binding on lower courts. However, lower courts may find his analysis persuasive. Since this case is the first published opinion by the Court of Appeals on medical marijuana, lawyers on both sides will be scouring both the majority and the concurring opinions for anything that can help them.

The whole opinion is hostile to medical marijuana. You may be asking "Who is this guy?" O'Connell is a former prosecutor from Republicanland, so it is no wonder that he thinks the Michigan Medical Marijuana Act is a fraud on the public. I have attached his biography from the Court of Appeals Website.

Chuck Ream is a 33 year Kdg teacher, 20 yr elected township trustee, A2 Compassion Center president Michigan, & a political activist for Cannabis and Michigan LPC, & Am Values.