edible marijuana products or marijuana-infused products which sells the edible marijuana products or marijuana-infused products to the other medical marijuana establishment.

3. An excise tax is hereby imposed on each retail sale in this State of marijuana, edible marijuana products or marijuana-infused products by a medical marijuana dispensary at the rate of 2 percent of the sales price of the marijuana, edible marijuana products or marijuana-infused products. The excise tax imposed pursuant to this subsection:

(a) Is the obligation of the medical marijuana dispensary.

(b) Is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.

(c) Must be considered part of the total retail price to which general state and local sales and use taxes apply.

4. The revenues collected from the excise taxes imposed pursuant to subsections 1, 2 and 3 must be distributed as follows:

(a) Seventy-five percent must be paid over as collected to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.

(b) Twenty-five percent must be expended to pay the costs of the Health Division of the Department of Health and Human Services in carrying out the provisions of sections 10 to 20, inclusive, of this act.

5. The Department shall review regularly the rates of the excise taxes imposed pursuant to subsections 1, 2 and 3 and make recommendations to the Legislature, as appropriate, regarding adjustments that the Department determines would benefit the residents of this State.

6. As used in this section:

(a) "Cultivation facility" has the meaning ascribed to it in section 3.5 of this act.

(b) "Edible marijuana products" has the meaning ascribed to it in section 5.3 of this act.

(c) "Facility for the production of edible marijuana products or marijuana-infused products" has the meaning ascribed to it in section 7.3 of this act.

(d) "Marijuana-infused products" has the meaning ascribed to it in section 7.9 of this act.

(e) "Medical marijuana dispensary" has the meaning ascribed to it in section 8 of this act.

(f) "Medical marijuana establishment" has the meaning ascribed to it in section 8.3 of this act.

Sec. 24.5. NRS 372A.060 is hereby amended to read as follows:

372A.060 1. This chapter does not apply to ~~[any]~~ *:*

(a) Any person who is registered or exempt from registration pursuant to NRS 453.226 or any other person who is lawfully in possession of a controlled substance ~~[.]~~ *; or*

(b) Except as otherwise provided in section 24.4 of this act, any person who acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana for the medical use of marijuana as authorized pursuant to chapter 453A of NRS.

2. Compliance with this chapter does not immunize a person from criminal prosecution for the violation of any other provision of law.

Sec. 24.7. NRS 372A.070 is hereby amended to read as follows:

372A.070 1. A person shall not sell, offer to sell or possess with the intent to sell a controlled substance unless he or she first:

(a) Registers with the Department as a dealer in controlled substances and pays an annual fee of $250; and

(b) Pays a tax on:

(1) ~~[Each gram of marijuana, or portion thereof, of $100;~~

~~(2)]~~ Each gram of ~~[any other]~~ *a* controlled substance, or portion thereof, of $1,000; and

~~[(3)]~~ *(2)* Each 50 dosage units of a controlled substance that is not sold by weight, or portion thereof, of $2,000.

2. For the purpose of calculating the tax imposed by ~~[subparagraphs]~~ *subparagraph* (1) ~~[and (2)]~~ of paragraph (b) of subsection 1, the controlled substance must be measured by the weight of the substance in the dealer's possession, including the weight of any material, compound, mixture or preparation that is added to the controlled substance.

3. The Department shall not require a registered dealer to give his or her name, address, social security number or other identifying information on any return submitted with the tax.

4. Any person who violates subsection 1 is subject to a civil penalty of 100 percent of the tax in addition to the tax imposed by subsection 1. Any civil penalty imposed pursuant to this subsection must be collected as part of the tax.

5. The district attorney of any county in which a dealer resides may institute and conduct the prosecution of any action for violation of subsection 1.

6. Property forfeited or subject to forfeiture pursuant to NRS 453.301 must not be used to satisfy a fee, tax or penalty imposed by this section.

7. As used in this section:

(a) "Controlled substance" does not include marijuana, edible marijuana products or marijuana-infused products.

(b) "Edible marijuana products" has the meaning ascribed to it in section 5.3 of this act.

(c) "Marijuana-infused products" has the meaning ascribed to it in section 7.9 of this act.

Sec. 24.9. Section 19.5 of this act is hereby amended to read as follows:

Sec. 19.5 1. The State of Nevada and the medical marijuana dispensaries in this State which hold valid medical marijuana establishment registration certificates will recognize a nonresident card only under the following circumstances:

(a) The state or jurisdiction from which the holder or bearer obtained the nonresident card grants an exemption from criminal prosecution for the medical use of marijuana;

(b) The state or jurisdiction from which the holder or bearer obtained the nonresident card requires, as a prerequisite to the issuance of such a card, that a physician advise the person that the medical use of marijuana may mitigate the symptoms or effects of the person's medical condition;

(c) The nonresident card has an expiration date and has not yet expired;

(d) The ~~[holder or bearer of the nonresident card signs an affidavit in a form prescribed by the Division which sets forth that the holder or bearer is entitled to engage in the medical use of marijuana in his or her state or jurisdiction of residence; and~~

~~(e)]~~ ***state or jurisdiction from which the holder or bearer obtained the nonresident card maintains a database which preserves such information as may be necessary to verify the authenticity or validity of the nonresident card;***

(e) The state or jurisdiction from which the holder or bearer obtained the nonresident card allows the Division and medical marijuana dispensaries in this State to access the database described in paragraph (d);

(f) The Division determines that the database described in paragraph (d) is able to provide to medical marijuana dispensaries in this State information that is sufficiently

accurate, current and specific as to allow those dispensaries to verify that a person who holds or bears a nonresident card is entitled lawfully to do so; and

(g) The holder or bearer of the nonresident card agrees to abide by, and does abide by, the legal limits on the possession of marijuana for medical purposes in this State, as set forth in NRS 453A.200.

2. For the purposes of the reciprocity described in this section:

(a) The amount of medical marijuana that the holder or bearer of a nonresident card is entitled to possess in his or her state or jurisdiction of residence is not relevant; and

(b) Under no circumstances, while in this State, may the holder or bearer of a nonresident card possess marijuana for medical purposes in excess of the limits set forth in NRS 453A.200.

3. As used in this section, "nonresident card" means a card or other identification that:

(a) Is issued by a state or jurisdiction other than Nevada; and

(b) Is the functional equivalent of a registry identification card, as determined by the Division.

Sec. 25. On or before April 1, 2014, the Health Division of the Department of Health and Human Services shall adopt the regulations required pursuant to section 20 of this act.

Sec. 25.5. 1. If the Director of the Department of Health and Human Services determines that the revenues from the fees collected pursuant to section 12 of this act are not sufficient in Fiscal Year 2013-2014 or Fiscal Year 2014-2015 to pay authorized expenditures necessary to carry out sections 10 to 20, inclusive of this act, the Director of the Department of Health and Human Services may request from the Director of the Department of Administration a temporary advance from the State General Fund for the payment of authorized expenditures to carry out sections 10 to 20, inclusive of this act.

2. The Director of the Department of Administration shall provide written notification to the State Controller and to the Senate and Assembly Fiscal Analysts of the Fiscal Analysis Division of the Legislative Counsel Bureau if the Director of the Department of Administration approves a request made pursuant to subsection 1. The State Controller shall draw a warrant upon receipt of the approval by the Director of the Department of Administration.

3. Any money which is temporarily advanced from the State General Fund to the Director of the Department of Health and

Human Services pursuant to this section must be repaid on or before the last business day in August immediately following the end of Fiscal Year 2013-2014 and Fiscal Year 2014-2015, respectively.

Sec. 26. 1. This section and section 25.5 of this act become effective upon passage and approval.

2. Sections 1 to 22, inclusive, 22.35 to 24.7, inclusive, and 25 of this act become effective upon passage and approval for the purpose of adopting regulations and carrying out other preparatory administrative acts, and on April 1, 2014, for all other purposes.

3. Sections 22.3 and 24.9 of this act become effective on April 1, 2016.

4. Sections 14 and 15 of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

➥ are repealed by the Congress of the United States.

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Attorneys for Petitioner
Reno Newspapers, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO NEWSPAPERS, INC., a Nevada corporation,

Petitioner,

vs.

CITY OF SPARKS, a municipal corporation,

Respondent.
_____/

Case No. CV15-01871

Dept. No. 9

REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

Petitioner Reno Newspapers, Inc., dba Reno Gazette-Journal ("RGJ"), submits the following reply in support of its Petition for Writ of Mandamus in this matter:

I. Introduction.

Oppositions such as that filed by Respondent City of Sparks ("the City") basically establish the validity of public records mandamus petitions such as that filed by the RGJ in this matter.

If, as is legally required to sustain a claim of confidentiality in this State, an express, unambiguous provision of Nevada law declares a specific form of public

record confidential and not subject to public disclosure, the government agency seeking to deny access to the record need only cite to that provision and rely upon its express language. The agency does not need to make side show arguments about "failure to exhaust administrative remedies," or to spend pages of written argument discussing the history of potentially applicable statutory provisions and how, when read together, those provisions evidence a legislative intent to shield the public record from public disclosure.

The fact of the matter in this case is that there is no express, unambiguous provision of Nevada law that declares the names of the City's medical marijuana establishment ("MME") business license holders confidential and not subject to public disclosure. For the reasons discussed in the RGJ's Petition for Writ of Mandamus, this includes the administrative regulation relied upon by the City - - NAC 453A.714(1), which nowhere mentions the names of local MME business license holders.

The City does not admit this, but it cannot avoid it. As a consequence, in an effort to prop up its proffered, overly broad interpretation of NAC 453A.714(1), the City, in its opposition to the RGJ's Petition, erroneously characterizes the RGJ's narrow construction of that regulation - - which form of construction is mandated by Nevada's Public Records Act - - as a challenge to the validity of the regulation, and asserts that such a challenge is premature and "non-justiciable" until the RGJ exhausts its administrative remedies for such a challenge under the Nevada Administrative Procedure Act. In addition, despite the absence of any provision in Nevada's medical marijuana statutes declaring the names of local MME business license holders confidential, the City argues that a legislative intent for such confidentiality can be gleaned from an overall reading of the Nevada's medical marijuana statutory structure, thereby establishing the merit of its overly broad interpretation of NAC 453A.714(1).

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This is the type of legal sophistry that both the Nevada Legislature and the Nevada Supreme Court have expressly eliminated in the public records jurisprudence of this State. Again, unless some provision of the law expressly, unambiguously declares a particular form of public record to be confidential, that record is not confidential and is subject to public disclosure. Broad interpretations of purported confidentiality provisions are expressly forbidden, and the presumption is that a public record is open to public inspection.

Try as it might, the City cannot meet these standards in its effort to shield the names of its MME business license holders from public disclosure. The City should therefore be compelled to release those names to the RGJ.

II. Law and Argument.

A. The Nevada Attorney General's Office Does Not Agree With The City's Legal Position.

The only legal ground advanced by the City for the purported confidentiality of the names of its MME business license holders is that Nevada state law - - through NAC 453A.714(1) - - mandates that the City not publicly disclose those names. This position, however, is apparently not embraced by the Nevada Attorney General's Office.

Submitted with this Reply as Exhibit 1 is an affidavit from RGJ reporter Chanelle Bessette. Attached to that affidavit as Exhibit A is an August 19, 2015 e-mail the RGJ received from the Communications Director for the Nevada Attorney General addressing the issue of whether state law imposes a confidentiality requirement on information obtained by local governments through the process of licensing MMEs. In an apparent rejection of the existence of any such requirement, the Communications Director provided the following position of the Attorney General's Office:

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> State law requires that the Division of Public and Behavioral Health maintain the confidentiality of records and personal information obtained from an applicant seeking to operate a medical marijuana establishment. With the consent of the applicant, the Division may share that information with a local government if the local government agrees to maintain the confidentiality of the information. However, <u>when a local government obtains records and personal information through local licensing and regulatory procedures, that information may be subject to disclosure if it is not otherwise made confidential by a local ordinance</u>...

(Emphasis added.)

Whether the Attorney General's Office has correctly analyzed the confidentiality requirement imposed by state law on the Nevada Division of Public and Behavioral Health - - a point the RGJ does not concede - - that Office does not believe that any state law confidentiality requirement extends to records and information local governments such as the City receive through business licensing procedures for MMEs.

That is the precise point the RGJ is making in this action: nothing in Nevada state law, including NAC 453A.714(1), imposes confidentiality on any aspect of the business license records the City maintains for its MMEs. The City's attempt - - through its broad interpretation of an unclear statutory and regulatory scheme - - to nonetheless find something in state law to prevent public disclosure of the names of its MME business license holders should therefore be rejected.

B. <u>A Mandamus Proceeding Is The Appropriate Remedial Vehicle For The Adjudication Of The Parties' Dispute</u>.

Before embarking on its overly broad construction of the MME statutory and regulatory scheme, the City first argues that the RGJ's Petition "directly challenges the validity and applicability of NAC 453A.714"...and thus a declaratory relief action brought under NRS 233B.110 is the appropriate remedial vehicle. <u>See</u> the City's

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Response at p. 4:18-21. The City then argues that NRS 233B.110 requires a party challenging the validity of a regulation to first exhaust all administrative remedies before seeking judicial involvement; and, once judicial involvement is available, to join the agency whose regulation is at issue as an indispensible party to the judicial proceeding.

The foregoing characterization of the RGJ's position in this case, however, is simply wrong. Nowhere in its Petition for Writ of Mandamus does the RGJ challenge the validity of NAC 453A.714(1). Rather, the Petition makes entirely clear that it is the City's overly broad interpretation of NAC 453A.714(1), and the resultant denial of a valid public records request, that led to the filing of this action. Indeed, the Petition plainly states:

> Under the circumstances, the City, through its overly-expansive interpretation of NAC 453A.714(1), has done exactly what the Nevada Legislature and the Nevada Supreme Court have instructed government agencies in this state not to do in public records matters - - it has wrongfully given the broadest possible interpretation to an unclear, ambiguous regulation for the purpose of defeating public access to public information.

See Petition at p. 9:7-13.

As a result, any requirements of NRS 233B.110, including exhaustion of administrative remedies and joinder of an administrative agency as an indispensible party, are simply not applicable to this action. To the contrary, because this action merely implicates the proper interpretation of a purported confidentiality provision, mandamus is the appropriate legal mechanism for addressing the City's refusal to produce the requested public information.

In fact, the Nevada Supreme Court has expressly stated that: "a writ of mandamus is available to compel the performance of an act that the law requires as a

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duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion. Mandamus is the appropriate procedural remedy to compel production of public records." DR Partners v. Bd. of Cnty. Comm'rs of Clark Cnty., 116 Nev. 616, 620-21, 6 P.3d 465, 468 (2000). See also Reno Newspapers, Inc. v. Gibbons, 127 Nev. Adv. Op. 79, 266 P.3d 623 (2011)(holding that mandamus was the appropriate procedural vehicle for a newspaper to seek, under the Nevada Public Records Act, access to a former Nevada governor's e-mails).

A public records dispute may very well, and often does, present a disagreement between the parties as to the proper scope or interpretation of a purported confidentiality provision. This, necessarily, means that the party advocating public disclosure, consistent with Nevada's public records jurisprudence, advances a narrow construction of the confidentiality provision. But such advocacy does not equate with a contention that the provision is invalid or must be stricken from the books as unlawful. Rather, it is simply a means of supporting that party's position that the provision should not and cannot be given the overly broad interpretation typically advanced by the party advocating non-disclosure.

A good example of this can be found in Reno Newspapers, Inc. v. Sheriff, 126 Nev. Adv. Op. 23, 234 P.3d 922, 926 (2010), a mandamus action in which the RGJ sought disclosure of certain concealed weapon permit information maintained by the Washoe County Sheriff. In framing the issue, the Supreme Court noted that "the parties dispute the scope of NRS 202.3662, which governs the confidentiality of information about an applicant for a concealed firearms permit and a permittee." Id. at 925. The Sheriff broadly construed the statute, arguing that because an application for a concealed firearms permit and information related to the applicant are declared confidential under the statue, any information contained in a subsequently issued

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permit, including the name of the permittee, was likewise confidential. The Supreme Court disagreed, holding that under the narrow construction of confidentiality provisions required by the Nevada Public Records Act, the statutory grant of confidentiality under NRS 202.3662 did not extend to a permittee. The names of permittees were therefore found to be a matter of public record, and the court ordered the Sheriff to disclose the same. Id. at 926.

At no point in Sheriff did the RGJ argue that NRS 202.3662 was invalid or somehow unenforceable under the law. Rather, it simply advocated the narrow statutory construction approach embraced by the Supreme Court.

Very similarly, in this case, the parties dispute the proper interpretation and scope of a confidentiality provision, namely, NAC 453A.714(1). Just as in Sheriff, the RGJ advocates a narrow construction of the provision and contends that it does not extend to the names of the City's MME business license holders. Conversely, the City broadly construes the provision, arguing that the Nevada Legislature evidenced an intent that the provision apply to such names. In advocating its contravening position, one of the RGJ's arguments is that the overly broad interpretation advanced by the City is inconsistent with and not supported by the statutory structure that underlies that provision, and therefore that the provision must be construed narrowly and consistent with that structure. This is not an assertion that the provision is invalid. It is an assertion that the City's interpretation is overly broad and incorrect.

Under the circumstances, the City's detour into the requirements of the Nevada Administrative Procedure Act is misplaced. The Court should simply undertake the adjudication sought by the RGJ's Petition for Writ of Mandamus - - which is deciding

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whether NAC 453A.714(1) allows the City to maintain secrecy as to the names of its MME business license holders.[1]

C. In The Absence Of An Express, Unambiguous Declaration Of Confidentiality, The Names Contained In The City's MME Business Licenses Are A Matter Of Public Record.

Getting to the real issue of this case, it cannot be emphasized enough that all public records generated by government entities in this State are public information and subject to public inspection unless otherwise expressly and unambiguously declared by law to be confidential. NRS 239.010(1). The purpose of the Public Records Act is to foster principles of democracy by allowing the public access to information about government activities. DR Partners v. Bd. of County Comm'rs, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000). In 2007, the Legislature amended the Act to ensure the presumption of openness, and provided that all statutory provisions related to the Act must be construed liberally in favor of the Act's purpose. NRS 239.001(2). In contrast, any exemption or exception that restricts the public's right to access a governmental entity's records must be construed narrowly. NRS 239.001(3). Thus, a court must

[1] Perhaps because of its detour into administrative law, the City fails to adequately explain how NAC 453A.714(1) can be construed as extending to names contained in its local MME business license records where the Nevada Legislature expressly and unambiguously imposed confidentiality on the names of attending physicians and the holders of registry cards, but not on the names of local MME business license holders, and where NAC 453A.714(1) itself makes no specific mention of the names of such license holders. More likely is that the City's failure in this regard results from the fact that, given Nevada's strong public policy mandating narrow construction of any exceptions to the Public Records Act, there is no adequate explanation.

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presume that all public records are open to disclosure unless an express, unambiguous confidentiality exemption or exception exists under the law. Reno Newspapers v. Sheriff, 126 Nev. Adv. Op. 23, 234 P.3d 922, 924-25 (2010). Correspondingly, any court presented with a public records dispute must begin its analysis with a presumption in favor of public disclosure, and the governmental entity bears the burden of overcoming this presumption by proving that the requested records are confidential. PERS v. Reno Newspapers Inc., 129 Nev. Adv. Op. 88, 313 P.3d 221, 223-24 (2013).

Here, the City does not dispute that NRS 239.010(1) contains a comprehensive list of statutory exceptions to the Public Records Act, and that none of those exceptions relate to the names of local MME business license holders. Indeed, the only two classes of persons whose identities are expressly declared by one of those statutory exceptions to be confidential are "attending physicians," and persons who apply for or hold "registry identification cards." See NRS 453A.700(1). Moreover, the City concedes that its MME business licenses are public records subject to public disclosure.

The City nonetheless would have this Court wander through a maze of statutory provisions to reach the attenuated conclusion that the Nevada Legislature evidenced an intent that the names of local MME business license holders be confidential, and that NAC 453A.714(1) is the ultimate expression of that intent. But for two reasons, such a process is not proper under Nevada law. First, the Nevada Supreme Court has made clear that "when the language of a statue is plain and unambiguous, courts are not permitted to search for its meaning beyond the statute itself." Chanos v. Nev. Tax Comm'n, 124 Nev. 232, 240, 181 P.3d 675, 680 (2008). A search for legislative intent is thus improper here. The plain language of the confidentiality statutes in NRS

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Chapter 453A is clear: confidentiality is provided only for attending physicians and registry card holders, not for local MME business license holders.

Second, as stated in Sheriff, supra, the Legislature must "expressly and unequivocally create an exemption or exception [to public disclosure] by statute." Id. at 925. That was not done here. Again, then, a process of wandering through the provisions of Chapter 453A to discern legislative intent regarding confidentiality is simply not proper.

The City recognizes this and thus it attempts to focus on NAC 453A.714(1) in isolation. But, the City itself acknowleges that NAC 453A.714(1) does not define or identify the persons or entities who are intended to be included in the category of persons who "facilitate or deliver service" under the authority of NRS 453A. And this is important because the Legislature, in enacting the provisions of NRS Chapter 453A, clearly knew how to carve out confidentiality exceptions for certain classes of people. Indeed, as discussed in the RGJ's Petition and as further discussed above, the Legislature did just that when it provided that the names of "attending physicians" and applicants for and holders of "registry identification cards" are excepted from disclosure under the Public Records Act. NRS 453A.700. The absence of any similar mention by the Legislature of the names of local MME business license holders cannot be ignored, and, when considered with the undefined, general language of NAC 453A.714(1), requires the conclusion that any confidentiality imposed by NAC 453A.714(1) does not extend to those names. See Reno Newspapers v. Sheriff, 126 Nev. Adv. Op. 23, 234 P.3d 922, 925 (2010), where, as noted above, the Supreme Court held that because the confidentiality statute at issue was silent as to whether the name of a concealed weapon permittee is confidential, any arguments the Sheriff might make if the Court were to read the statute in isolation from the overall statutory structure failed in light of

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the explicit rules of construction stated in NRS 239.001, which, again, provides that open records are the rule, and exceptions to the rule are to be narrowly construed.

This makes clear sense in this matter. Again, if the Nevada Legislature intended the names of local MME business license holders to be confidential, why did the Legislature, while expressly creating confidentiality for the names of attending physicians and the holders of registry cards, not do the same thing for those license holders? Given that the Legislature must "expressly and unequivocally create an exemption or exception" to the Public Records Act, the only proper conclusion to be reached is that the names of such persons are simply not confidential. Sheriff at 925. And any effort on the part of the City to stretch the scope of NAC 453A.714(1) to create such confidentiality is meritless and flagrantly ignores the admonition of the public records jurisprudence in this State that exceptions to public disclosure are to be narrowly construed.

D. The City Misinterprets And Misapplies NRS 453A.370(5).

In the final analysis, the City appears to rest its position on the argument that NRS 453A.370(5) evidences a legislative intent that the names of local MME business license holders be confidential, and therefore that the Court should adopt its interpretation of NAC 453A.714(1). There are several problems with this argument, however.

First, if that was truly the Legislature's intent, why didn't the Legislature, consistent with Sheriff, supra, expressly state that such names are confidential, as it did with the names of attending physicians and the holders of registry cards? Again, this failure, under Nevada's public records jurisprudence, precludes a court from filling the gap with an expensive interpretation of the meaning or intent of NRS 453A.370(5) or of NAC 453A.714(1).

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Second, as noted in the RGJ's Petition for Writ of Mandamus, and not disputed in the City's Opposition, NRS 453A.370(5) is not, in and of itself, a confidentiality statute. Indeed, it is not referenced in the all-inclusive list of confidentiality provisions contained in NRS 239.010(1). Thus, whatever legislative intent the City believes is evidenced by that statute, it does not expressly establish confidentiality for anything, including the names of local MME business license holders.

Third, the City ignores the initial phrase of NRS 453A.370(5), thereby violating a fundamental canon of statutory construction that "the words of a statute must be read in their context and with view to their place in the overall statutory scheme." In re Finney, 486 B.R. 177 (B.A.P. 9th Cir. 2013); Barney v. Mt. Rose Heating & Air Conditioning, 124 Nev. 821, 192 P.3d 730 (2008).

NRS 453A.370(5) reads, the Division shall:

> **As far as possible while maintaining accountability**, protect the identity and personal identifying information of each person who receives, facilitates or delivers services in accordance with this chapter.

(Emphasis supplied).

The City would have the first clause of the statute referring to "accountability" disregarded entirely. However, when interpreting a statute, the City cannot render "words or phrases superfluous or make a provision nugatory." S. Nevada Homebuilders Ass'n v. Clark Cnty., 121 Nev. 446, 117 P.3d 171 (2005). "Maintaining accountability" must therefore be considered an integral part of the Division's express obligation under NRS 453A.370(5), and this, in turn, correlates directly with NRS 453A.320 which states:

> The purpose for registering medical marijuana establishments and medical marijuana establishment agents is to protect the public health and safety and the general welfare of the people of this State.

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With such a statutory structure and statement of public policy, it makes little sense to require MMEs and their agents to be registered, yet prevent the general public, for whose safety Chapter 453A was intended, from knowing who the establishment license holders are. Again, this Court must interpret provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes and to avoid unreasonable or absurd results. Nevada Homebuilders at 446. To do as the City requests, thereby ignoring the obligation to maintain accountability relative to licensed MMEs, would leave a large hole in the public's ability to investigate and test whether its health and safety are being protected by the licensing agencies. This absurd result certainly cannot be what the Legislature intended in light of the stated purpose of the MME regulatory statutes.

Under all of these circumstances, NRS 453A.370(5) cannot be interpreted or applied to provide the City the confidentiality it seeks for the names of its MME business license holders.

III. Conclusion.

In sum, the City's confidentiality position fails the basic test of the Nevada Public Records Act: Is there an express, unequivocal provision of law that declares the names of the City's MME business license holders confidential? For the reasons discussed in this Reply and in the RGJ's Petition for Writ of Mandamus, the answer is no.

The RGJ thus respectfully requests the issuance of a writ of mandamus compelling the City to provide the RGJ with unredacted copies of the MME business licenses it has issued.

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 20th day of October, 2015.

GLOGOVAC & PINTAR

By: _____

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 West Plumb Lane, Reno, NV 89509, and that on the 20th day of October, 2015, I served the foregoing document(s) described as follows:

REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

On the party(s) set forth below by:

___ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices, addressed as follows:

Douglas R. Thornley, Esq.
City of Sparks
431 Prater Way
Sparks, Nevada 89432

X I electronically filed with the Clerk of the Court, using ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF System:

SCOTT A. GLOGOVAC ESQ for RENO NEWSPAPERS, INC.
DOUGLAS R. THORNLEY ESQ for CITY OF SPARKS

___ Personal delivery via messenger.

___ Facsimile (FAX).

___ Federal Express or other overnight delivery.

Dated this 20th day of October 2015.

Employee of Glogovac & Pintar

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
RENO, NEVADA 89509-3766
(775) 333-0400

INDEX OF EXHIBITS

Exhibit No.	Description	Pages
1	Affidavit of Chanelle Bessette	5

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
RENO, NEVADA 89509-3786
(775) 333-0400

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EXHIBIT 1

EXHIBIT 1

AFFIDAVIT OF CHANELLE BESSETTE

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, CHANELLE BESSETTE, being first duly sworn, do hereby depose and state under penalty of perjury, that the assertions of this Affidavit are true:

1. I am a resident of Reno, Nevada, and am employed as a reporter by the Reno Gazette-Journal ("RGJ").

2. I make this affidavit in connection with the reply filed by the RGJ in support of its Petition for Writ of Mandamus in this action. With the exception of any matters stated herein on information and belief, I have personal knowledge of each of the factual matters stated in this affidavit and could testify to the same in a court of law if called upon to do so.

3. Attached hereto as Exhibit A is a true and correct copy of an August 19, 2015 e-mail the RGJ received from Patty Cafferata, Communications Director for the Nevada Attorney General's Office.

DATED this 20th day of October, 2015.

CHANELLE BESSETTE

SUBSCRIBED and SWORN to before me on this 20th day of October 2015.

NOTARY PUBLIC

VICKIEMARIE SAYLOR
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 01-[illegible] - Expires July 03, 2016

EXHIBIT A

EXHIBIT A

Bessette, Chanelle

From: Robison, Mark
Sent: Wednesday, August 19, 2015 4:46 PM
To: Bessette, Chanelle
Subject: FW: health division - marijuana

~ Mark Robison
Reno Gazette-Journal and RGJ.com

From: Patty D. Cafferata [mailto:PCafferata@ag.nv.gov]
Sent: Wednesday, August 19, 2015 4:24 PM
To: Robison, Mark <mdrobison@reno.gannett.com>
Subject: RE: health division - marijuana

Mark:

I know you discussed this at length with Chief of Staff Nick Trutanich.

Here is the quote from the office and you can attribute it me, if you need to.

"State law requires that the Division of Public and Behavioral Health maintain the confidentiality of records and personal information obtained from an applicant seeking to operate a medical marijuana establishment. With the consent of the applicant, the Division may share that information with a local government if the local government agrees to maintain the confidentiality of the information. However, when a local government obtains records and personal information independently through local licensing and regulatory procedures, that information may be subject to disclosure if it is not otherwise made confidential by a local ordinance. The Office of the Attorney General does not advise local governments as to the applicability of local ordinances."

Thanks for contacting our office.

Patty

Patty Cafferata
Communications Director
Nevada Attorney General Adam Laxalt
100 N. Carson Street
Carson City, NV 89701-4717
775-684-1136 office
775-600-5690 cell

Pcafferata@ag.nv.gov

From: Robison, Mark [mailto:mdrobison@reno.gannett.com]
Sent: Wednesday, August 19, 2015 2:11 PM
To: Patty D. Cafferata
Subject: health division - marijuana

I'm told that someone from the AG's office representing the health division may know what the official position is, or at least have more information?

MARK ROBISON

Engagement editor
Reno Gazette-Journal
mrobison@rgj.com
@MarkRGJ

775-846-5368

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Nevada Bar No. 00226
ANDREW C. JOY, ESQ.
Nevada Bar No. 13162
GLOGOVAC & PINTAR
427 West Plumb Lane
Reno, NV 89509
Telephone: 775-333-0400
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sglogovac@gplawreno.net
ajoy@gplawreno.net

Attorneys for Petitioner
Reno Newspapers, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO NEWSPAPERS, INC., a Nevada corporation,

Petitioner,

vs.

CITY OF SPARKS, a municipal corporation,

Respondent.
_____/

Case No. CV15-01871

Dept. No. 9

REQUEST FOR ORAL ARGUMENT

Petitioner Reno Newspapers, Inc., dba Reno Gazette-Journal ("RGJ"), hereby respectfully requests the Court to set oral argument on the RGJ's Petition for Writ of Mandamus in this matter.

Because briefing on that Petition has been completed, the RGJ, contemporaneously herewith, is filing a request for submission of the Petition.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 21st day of October, 2015.

GLOGOVAC & PINTAR

By: _____

SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 000226
ANDREW C. JOY, ESQ.
Nevada Bar No. 13162

Attorneys for Petitioner
Reno Newspapers, Inc.

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
RENO, NEVADA 89509-3766
(775) 333-0400

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 West Plumb Lane, Reno, NV 89509, and that on the 21st day of October 2015, I served the foregoing document(s) described as follows:

REQUEST FOR ORAL ARGUMENT

On the party(s) set forth below by:

___ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices, addressed as follows:

Douglas R. Thornley, Esq.
City of Sparks
431 Prater Way
Sparks, Nevada 89432

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SCOTT A. GLOGOVAC ESQ for RENO NEWSPAPERS, INC.
DOUGLAS R. THORNLEY ESQ for CITY OF SPARKS

_____ Personal delivery via messenger.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

Dated this 21st day of October 2015.

Employee of Glogovac & Pintar

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
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(775) 333-0400

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SCOTT A. GLOGOVAC, ESQ.
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ajoy@gplawreno.net

Attorneys for Petitioner
Reno Newspapers, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO NEWSPAPERS, INC., a Nevada corporation,

Petitioner,

vs.

CITY OF SPARKS, a municipal corporation,

Respondent.
_____/

Case No. CV15-01871

Dept. No. 9

REQUEST FOR SUBMISSION

IT IS HEREBY REQUESTED that Petitioner's Petition for Writ of Mandamus, filed herein on September 18, 2015, be submitted to this Court for decision, subject, however, to Petitioner's request, filed contemporaneously herewith, that the Court set oral argument on the Petition.

The undersigned certifies that a true copy of this request has been served on all counsel and parties hereto.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 21st day of October, 2015.

GLOGOVAC & PINTAR

By: _____

SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 000226
ANDREW C. JOY, ESQ.
Nevada Bar No. 13162

Attorneys for Petitioner
Reno Newspapers, Inc.

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
RENO, NEVADA 89509-3766
(775) 333-0400

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 West Plumb Lane, Reno, NV 89509, and that on the 21st day of October 2015, I served the foregoing document(s) described as follows:

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City of Sparks
431 Prater Way
Sparks, Nevada 89432

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SCOTT A. GLOGOVAC ESQ for RENO NEWSPAPERS, INC.
DOUGLAS R. THORNLEY ESQ for CITY OF SPARKS

_____ Personal delivery via messenger.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

Dated this 21st day of October 2015.

Employee of Glogovac & Pintar

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(775) 333-0400

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO NEWSPAPERS, INC.,
a Nevada Corporation,

Petitioner,

v.

CITY OF SPARKS, a Municipal Corporation,

Respondent.
_____/

Case No. CV15-01871
Dept. No. 9

ORDER TO SET HEARING

The Court is in receipt of Petitioner RENO NEWSPAPERS, INC.'s *Request for Oral Argument* filed on October 21, 2015. The Court is also in receipt of Petitioner's *Petition for Writ of Mandamus* filed on September 18, 2015. On October 8, 2015, Respondent, CITY OF SPARKS, filed a *Response in Opposition to Petition for Writ of Mandamus*. Petitioner filed a *Reply in Support of Petition for Writ of Mandamus* on October 20, 2015.

Upon review of the moving papers and exhibits, the Court believes a hearing would be appropriate to assist the Court in this decision. The Court orders a hearing; the Court requests both parties present oral arguments on Petitioner's *Petition for Writ of Mandamus* and any other motions ripe for judicial review at the time of the hearing.

THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that counsel for the parties shall meet and confer and, thereafter, contact Department Nines' Judicial Assistant within fifteen (15) days to schedule a hearing to occur within the next sixty (60) days.

DATED: this 12 day of November, 2015.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 12th day of November, 2015, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Further, I certify that on the 12th day of November, 2015, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

SCOTT GLOGOVAC, ESQ. for RENO NEWSPAPER, INC.
DOUGLAS THORNLEY, ESQ. for CITY OF SPARKS
CHESTER ADAMS, ESQ. for CITY OF SPARKS

Brianne Buzzell
Judicial Assistant

Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE SCOTT N. FREEMAN, DISTRICT JUDGE

-oOo-

RENO NEWSPAPERS, INC., Plaintiff, vs. CITY OF SPARKS, Defendant.	Case No. CV15-01871 Dept. No. 9

TRANSCRIPT OF PROCEEDINGS

Oral Arguments

Thursday, January 14, 2016

Reno, Nevada

Reported By: SUSAN KIGER, CCR No. 343, RPR

A P P E A R A N C E S

For the Plaintiff:	GLOGOVAC & PINTAR Attorneys at Law By: Scott A. Glogovac, Esq. 427 W. Plumb Lane Reno, Nevada 89509
For the Defendant:	Sparks City Attorney's Office BY: DOUGLAS R. THORNLEY, ESQ. 431 Prater Way P.O. Box 857 Sparks, NV 89431

RENO, NEVADA, THURSDAY, JANUARY 14, 2016, 10:03 A.M.

-oOo-

THE COURT: We are on the record in CV15-01871. This is the time set for a Petition for Writ of Mandamus. Reno Newspapers versus City of Sparks.

Appearances, please.

MR. GLOGOVAC: Scott Glogovac on behalf of the Petitioner, Your Honor.

MR. THORNLEY: Doug Thornley on behalf of City of Sparks.

THE COURT: Good morning. I carefully reviewed the petitions and its exhibits. I'm looking forward to oral argument on this.

Mr. Glogovac, it's your petition.

MR. GLOGOVAC: Thank you, Your Honor. Your Honor, the factual context of this case, the specific factual context is unique, as the Court knows, since the papers have been reviewed. It involves a public records dispute over business licenses, at least the names in business licenses that the City of Sparks has issued to individual owners of medical marijuana establishments. So it's a unique factual scenario. But the law that governs and that controls the ultimate outcome where we get at the end of this case in public records

disputes isn't unique. In fact, it's very well established and I would suggest that probably as well established as any area of the law in civil matters in this state.

Through the Nevada Public Records Act which is in Chapter 239 of the Nevada Revised Statutes and through Nevada Supreme Court cases, and there have been many of them in the last several years addressing the provisions of the Public Records Act, we have a clear legal framework for where this case goes.

So what I would like to do, Your Honor, with the Court's indulgence, is go through the legal underpinnings of the case and address the specific issue that we have.

The first legal concept that we have to address, and this needs to it be addressed because it was an issue raised in the City's responsive papers, is what is the proper procedural vehicle for the RGJ, that's Reno Gazette Journal, if I can reduce it to that from time to time. What's the proper procedural vehicle for the RGJ to address this dispute? And this is one of those issues that I've said as part of the public records jurisprudence that's well established, Your Honor, that I was referring to because under the Public Records Act, and specifically Section 239.011, is that it is expressly stated that if a records' request is denied, the requester may apply to the District Court in the county in

which the record is located for an order permitting inspection of the record. The record here, names of MME business licenses in the City of Sparks, they are located in Washoe County, so the Reno Gazette Journal can apply for production of the records here in this Court.

And in conjunction with that statutory provision, the Nevada Supreme Court has held on several occasions that the proper forum that that proceeding should take is a Petition for Writ of Mandamus. And this goes all the way back to the *DR Partners* case which is cited in our papers. That's at 116 Nevada 616, a 2000 case.

And then in subsequent cases including the *Reno Newspapers versus Sheriff* case, that was the case that involved production of records that related to former Governor Gibbons' concealed carry permit. In that case, the Nevada Supreme Court underscored again that the means by which a public records dispute is resolved is a Petition for Writ of Mandamus by the requester, in this case the RGJ, in the county in which the records are located.

So, again, because we've got records that the City of Sparks maintains here in Washoe County, the proper means for the RGJ to address the dispute was to file this mandamus proceeding.

Now, the City in response to that as the initial

argument in its opposition essentially ignores what the Public Records Act states. It ignores the Nevada Supreme Court express directive that mandamus is the proper proceeding and argues that because one of the issues in this case involves a regulation, an administrative regulation, the Nevada Administrative Procedures Act overrides -- the Public Records Act overrides or sets aside the Nevada Supreme Court decisions and mandates the dispute in this case be resolved through the procedures of the Administrative Procedure Act, specifically a declaratory relief action naming among other defendants the governmental entity or agency that promulgated the regulation. That's the argument here. And for several reasons, Your Honor, it's not a valid argument.

First, there's nothing in the Public Records Act that makes it subject to the procedures of the Administrative Procedures Act. If the Nevada legislature had intended that, what it would have said in 239.011 is, subject to the provisions of Chapter 233B, the requester can file an application. And the Nevada Supreme Court would have realized that carve out. But there is no carve out in the Public Records Act for proceedings in which a regulation is at issue as part of the fight over whether or not records are produceable or publically assessable. It's not carved out. It's likewise not carved out in the Administrative Procedure

Act. There's no specific statement in there that any public

records proceeding that implicates the applicability, validity of an administrative regulation must be determined through a declaratory relief action.

So there's nothing in the law that supports the argument, first of all, that somehow, some way, the Administrative Procedures Act takes precedents over the clear direction in the Public Records Act and the clear case authority under the Public Records Act that this mandamus proceeding is the proper way to address the parties' dispute.

And by the way, Your Honor, in a mandamus proceeding, as this Court is probably well aware, the defendant or the respondent is always going to be the governmental agency that isn't doing what the Petitioner wants it to do. That's the City of Sparks here. So the proper process has been invoked.

And I want to add to that, too, Your Honor, that the provision that's being relied on by the city as mandating the declaratory relief action isn't mandatory anyway. The provision that they are relying on -- I'll find that, it's NRS 233B.110, subsection 1 of Section 1. And what it says is, "The validity or applicability of any regulation may be determined in a proceeding for a declaratory judgment in the District Court in and for Carson City or in and for the county where the plaintiff resides."

And then it goes on to address who the Defendant should be and what the issue would be.

So the Administrative Procedures Act itself doesn't mandate that a declaratory relief action be the process by which the issue is revolved. It's not mandatory language. And when you take that into account along with the fact that we do have guidance from the Nevada Public Records Act and the Nevada Supreme Court that it's a mandamus proceeding as the proper vehicle, I don't think there can be any question that we've done it correctly here.

Beyond that, two more things, Your Honor, and we've pointed this out in our reply papers, this is nothing more than, in our opinion, to the extent you get to this regulation. It's just a garden variety interpretation issue. This isn't a proceeding by which someone is attempting to strike down an administrative regulation. That's not what's happening here. Nobody is trying to say that the regulation should be wiped off the books. We are just advancing arguments relative to the interpretation of that regulation. So it wouldn't even be a situation where you've got relief being requested that a regulation be voided or somehow taken off the books.

THE COURT: Is it part of your argument that the regulation doesn't apply?

MR. GLOGOVAC: Yeah, right.

THE COURT: The regulation says that a dispenser should be -- identity should be kept confidential. That's based upon which they denied your request. Your point is it doesn't even apply, that it's a public records analysis not a -- don't even look at the regulation.

MR. GLOGOVAC: Right. And one further point, Your Honor, and I'll come back to this. I don't even -- we don't even believe the Court needs to get to the regulations so that in the final analysis the case isn't going to rest on the regulation. I'll explain that in a bit.

THE COURT: I think that's the whole point of today.

MR. GLOGOVAC: For two reasons.

THE COURT: All right.

MR. GLOGOVAC: In any event, Your Honor, I think we get past then the initial hurdle that's been raised here. Do we have the proper process in place? I think we do. Once we get past that, and again, talking about legal constructs, there are two further principles that guide where we end up. Both of these are substantive and both of them are public records jurisprudence substantive issues. One is general. One is specific. The general one is that under the public records jurisprudence in this jurisdiction, both the statute and the Nevada Supreme Court decisions, there is a very strong

overriding public policy that underpins the Public Records Act in Nevada, and that is that the legislature has said that it is the purpose of the act to foster Democratic principles by, in turn, fostering openness in government which in turn means public access to what public servants are doing. That's the whole point of the Public Records Act. And there's probably no stronger policy enforced by the Nevada Supreme Court in any area of the civil law with the potential exception of minimum insurance in car cases. That's the only other place where you will find such strong pronouncements of public policy.

So that's the backdrop in this case that has to be kept in mind and it's reflected in Nevada Supreme Court cases, but also specifically in the Nevada Public Records Act itself.

For the record, I wanted to cite two of the provisions, Your Honor. One is NRS 239.001 sub 2. That statute is the first provision in the Public Records Act. And it states that the provisions of the Public Records Act must be construed liberally to carry out the important purpose of open government and public access to public record. That's the import of that section.

The next section, 239.001 sub 3 says any claimed exception to public access must be narrowly construed.

And beyond that, NRS 239.0113 places the burden of proof in these cases on the governmental agency. So that's

the general kind of underpinning of any public records case. Like it or not, that's the playing field. It tips very heavily toward access, public access to records. And if that's not being allowed, there needs to be something specific that overrides it which gets me to the second legal underpinning, and it's the specific principle here, and that is the principle, Your Honor, that a public record, and this is in the case law, a public record is subject to disclosure. And there's no dispute here, sometimes cases come along where there's a fight over whether a record is even public. We don't have that here. The city has acknowledged the business licenses it issues including to medical marijuana establishments are public record.

So getting back to my point, a public record is subject to disclosure unless one of two circumstances exists. One the Nevada legislature has expressly and unequivocally declared by statute that the record is confidential or two, applying a balancing of interests of the so-called Donrey balancing test. The interests of the private individuals or of law enforcement outweigh the public's right to access.

THE COURT: Which is an interesting issue. Freeze that for a moment.

MR. GLOGOVAC: I will.

THE COURT: I have a question. It seems to me that

when I reviewed the regulation, and I'm sure I'll hear this from the City in a moment, and I want you to distinguish it for me, that with this new area of business, that to reveal the identity of potential investors would have a chilling effect on the business, and the regulation that talks about protecting the identity and personal identifying information may prevent a potential business investor from investing in such an enterprise if they thought that their identity could be released by way of additional regulation, which is that they have to get a business license. So you get a business license as part of the scheme of being a medical marijuana investor, and then they rely on that statute that their identity would not be revealed. And then you come to court and say, "Wait a minute, because of the requirement, you have to get a business license. We are going to find out what your name is," and it abrogates that statute. Talk to me about why that doesn't matter.

MR. GLOGOVAC: Okay. Number one, the City of Sparks in its papers did not raise a Donrey balancing test argument. Those are very difficult arguments to prevail on because the proponent of the Donrey balancing test can't just offer conjecture or assumptions or thoughts or consideration that something might happen. There has to be specific evidence presented that the concern that you're talking about, for

instance, in fact occurs or will occur. An example in the -- in the judge or in the former Governor Gibbons gun permit case, one of the arguments that was made by the District Attorney's Office, by the Sheriff's office in that case, was well, if the -- if the names of CCW permit holders become a matter of public record, and they were at the time, they aren't now, but if they become a matter of public record, that increases danger to the people who hold the weapons because they may be targeted for some kind of personal mugging or attack. People may want to break into the home and find their guns, that sort of thing.

And the Nevada Supreme Court says hypothetical concerns about the potential impact of information being public aren't enough to overcome the public's interest.

THE COURT: You need actual evidence.

MR. GLOGOVAC: You do. And what you've raised is the potential. And then if I can address is the merits of the potential, I would say, Your Honor, with all due respect, it's an old way of thinking. Because the whole idea here is to legitimize, and the medical marijuana industry, just as any other medical industry exists, or just as a plumbing business exists, or a hardware store, the whole idea here is, "Hey, this is on the up-and-up." I mean, this is -- yeah, we've gotten past the idea of marijuana being a problem as it

relates to people using it for medicinal purposes. And so anybody that wants to run one of these businesses in theory is a legitimate business person, whether or not that person used to own a drywall company, was a lawyer, a chiropractor, whatever.

THE COURT: President of the university.

MR. GLOGOVAC: Yes.

The whole idea is to legitimize it. And so I would say that and also I think the shear volume of applications, I don't have the numbers, but the shear volume of applications that the Division of Health received for these MMEs was phenomenal. And you may have seen some of the news coverage the crying by people that came out publically saying this was unfair. So I don't think hypothetical chilling is real in the current way that folks that want to get involved in this business look at it. Beyond that, there's no evidence of it. And then, finally, it wasn't raised.

THE COURT: Are there any other, other than the City of Sparks, putting Sparks aside, is there any other governmental entity that has revealed the identities per the Reno Gazette Journal's inquiry?

MR. GLOGOVAC: Yeah, my understanding is Washoe County, and my understanding is Clark County and City of Las Vegas have also not claimed confidentiality.

THE COURT: Not claimed confidentiality?

MR. GLOGOVAC: Not. The City of Sparks is the only one that raised that position. And we provided in an e-mail that Pat Caffratti from the Attorney General's Office opined on it as well.

But in any event, Your Honor, kind of picking up with where I left off, so you've got to have a statutory expression or a balancing. The balancing doesn't apply here for the reasons I've indicated.

And then let me just underscore this legal principle and to let the Court see that it's not something that I just kind of pulled out of thin air. The Nevada Supreme Court has said what I just said and that is that a public record is subject to disclosure unless one of two circumstances exist: A statute for confidentiality or this balancing test. And I cite the Court to Reno Newspapers versus Sheriff, again, this is the Gibbons case, one of them, the gun permit one. And that is 126 Nevada 211. And at 214, 215, this is what Justice Hardesty wrote on behalf of a unanimous en banc court, though through some of the provision of the public record act that I did and writes as follows:

"Thus this Court will presume that all public records are open to disclosure unless either, one, the legislature has expressly and unequivocally

created an exemption or exception by statute."

And then there's some case authorities.

And then two, "Balancing the private or law enforcement interest for nondisclosure against the general policy in favor of an open and accessible government requires restricting public access to government records".

And it cites the Donrey case.

So again, you need a statute or balancing test. We don't have the balancing test here. That ruling by the Court in the Sheriff case was underscored in the most recent public records case by the Nevada Supreme Court. This was a case where the Reno newspaper sought information from PERS, the Public Employees Retirement System, on benefits and some other information, and ultimately the Nevada Supreme Court ruled that information is public, Your Honor, for all public employees.

THE COURT: All of this affects all of us. Issue weapons permit, PERS.

MR. GLOGOVAC: Not me. I'm a privately employed non-gun owner.

THE COURT: No wonder you can argue so aggressively.

MR. GLOGOVAC: In any event, the advanced opinion in this case, it's 129 Nevada Advanced Opinion 88, on page 5,

Justice Saitta writes again on behalf of a unanimous -- Justice Parraguirre on behalf of a unanimous en banc court,

> "The State entity must either show that a statutory provision declares the record confidential or in the absence of such a provision, that it's interest in nondisclosure clearly outweighs the public's interest in access."

So there's the burden that the city has to meet. They've foregone the balancing test argument, so they've got to point to a statute. So is there a statute, a Nevada legislature-enacted statute that quotes the names of business license, individual business license holders for MMEs, medical marijuana establishments, for the City of Sparks from public disclosure. And this is the burden they simply can't meet. There is no statute, Your Honor.

Let me start first with our analysis and then touch on their response to it. The analysis here is straightforward because the Nevada legislature on the question of whether there's a statute, the Nevada legislature not only is known for making things easy for folks, did make this type of analysis easy in 2013 when it amended the Public Records Act to enumerate every confidentiality statute that it had ever enacted that's still in place. And you can find that in NRS 239.010. And that's the basic provision of the Public

Records Act that says unless confidential, you've got to provide public records.

And what it says is, "Except as provided in this section and," and then it goes on to list, Your Honor, I would say close to 200 statutes that provide confidentiality --

THE COURT: I have that before me.

MR. GLOGOVAC: -- for certain public records. And then it says, "and unless otherwise declared by law to be confidential."

THE COURT: Let's talk about that for a minute.

MR. GLOGOVAC: Right.

THE COURT: It sounds like you're about to get there.

MR. GLOGOVAC: Yeah.

THE COURT: That seems to be what the City is hanging their hat on is the fact that "unless otherwise declared by law to be confidential," then they want me -- I'm assuming they will argue in a moment that they want me to go to the regulation statute.

MR. GLOGOVAC: Right.

THE COURT: Which is, just for the record, which is NRS 453A.370 sub 5.

MR. GLOGOVAC: Right.

THE COURT: Go ahead.

MR. GLOGOVAC: I'm going to get there. Can I still go through the --

THE COURT: Right.

MR. GLOGOVAC: And, Your Honor, again, I go back to the central legal pin that if the City can't point to a statute that provides confidentiality here, the records must be provided because that's what the Nevada Supreme Court told us in the Sheriff case and the PERS case.

THE COURT: I'm with you. I don't want to sound dumb, so walk me through it like I'm a 5th grader. It sounds like this is a statute that provides for confidentiality. Why am I wrong on that?

MR. GLOGOVAC: I'm going to tell you. Can you indulge me for a few minutes? I know I'm talking here a lot, but if you can indulge me for just a few more minutes.

THE COURT: Sure. You're talking fine, it's just sometimes things come up during the argument that I'm very interested in your expertise in the area, so that's why I ask the questions. But go in the order you want to.

MR. GLOGOVAC: I will definitely address it.

So, Your Honor, and this is the first part of the response to that. NRS 239.010 is intended as and constitutes a list of all confidentiality statutes. The statute that you've just recited isn't in there. There are only two

statutes from Chapter 453A which is the statute that governs the medical use of marijuana that are listed as confidentiality statutes.

THE COURT: I see that.

MR. GLOGOVAC: There's two of them. The first one is 453A.610. All that statute does is afford confidentiality to certain information and documentation that's generated by or received by the University of Nevada Medical School as part of a program it's got up there. They're actually studying whether there truly is medical benefits to marijuana. That doesn't apply here.

The other statute is NRS 453A.700 and it provides confidentiality for two categories of names. One, attending physicians. And attending physicians are defined as medical doctors or osteopaths who have as patients individuals with debilitating or chronic medical conditions, so they prescribe marijuana for them.

The second category of individual given confidentiality for name under 453A.700 is the applicant for or a holder of a registry identification card. And that's a card that simply says this person is exempt from state prosecution for using marijuana for medical purposes. State prosecution only, medical use only. Now, those names clearly -- those categories of names clearly don't fit within

the confidentiality that's being requested here or advocated here. So this is a -- this is an exhaustive, exclusive list of the confidentiality statutes, and the statute that you've referred to is not listed in here.

THE COURT: I understand.

MR. GLOGOVAC: It isn't the confidentiality statute. That's what I wanted to get to, Your Honor. What it is, you've cited it, 453A.3705, let me grab that. It's a statute, but it's not a confidentiality statute. It reads:

"As far as possible while maintaining accountability, protect the identity and personal identifying information of each person who receives, facilitates, or delivers services in accordance with this chapter."

There are several problems with that. First of all, as far as possible while maintaining accountability, what does that mean? If a city refuses to provide the names of individual license holders for medical marijuana establishments, is that accountable to the public? Wouldn't the public want to know who the owners of medical marijuana establishments are? Isn't there somebody who could have slipped through the vetting process that the State and city do and somebody says, "Hey, I know this person. I used to buy my marijuana from him 15 years ago by the Sparks Nugget." You

know, I mean, it's not accountable to the public would be our argument. But we don't even have to establish that because in and of itself that phrase interjects non-specificity. It's equivocal. What exactly does that mean? And again, Your Honor, because the legal linchpin that underlies this, and the Nevada Supreme Court has said again and again, the statute must expressly and unequivocally provide confidentiality for the record in question.

THE COURT: I think the test is narrowly tailored, I get that.

MR. GLOGOVAC: Right. And so you don't have that here. You have kind of a vague statement of purpose. And a vague statement of purpose isn't a confidentiality statute. If it were a confidentiality statute, the Nevada legislature would have included it in NRS 239.010. So it's not a confidentiality statute, that's -- with that vagueness. Plus I would say this, Your Honor, if the Nevada legislature wanted to give confidentiality to the names of license holders, business license holders relative to MMEs, it would have done that, the same way it did with holders of registry identification cards, the same way it did for the names of attending physicians. It would have done that. But it didn't do that. Since it didn't expressly and unequivocally do that, we can't come in the back end with this vaguely worded statute

and create confidentiality. So it doesn't apply. The regulation under it doesn't apply here. We don't even get to it. There is no confidentiality statute that applies in this case.

And then our papers have talked about, we went ahead and addressed the regulation, and our papers have talked about that. I don't need to reiterate that.

But in sum, Your Honor, and all the way from questions from the Court, because there's no balancing test advocated or established here, and because there can be no statute that is shown to unequivocally and expressly afford confidentiality for these names, the records have to be provided. And I understand hesitation any time names are being provided, but the law is the law. The Nevada Public Records Act is overriding here and it governs the result for all the reasons I've stated.

THE COURT: All right. Don't go away. I have a few questions I need you to answer for me.

MR. GLOGOVAC: Sure.

THE COURT: So we are at NRS 239.010. And we go to all of the statutes that are specifically discussing confidentiality. Then the legislature gives a catchall, in my view, potentially, just for purposes of our discussion, that unless otherwise declared by law to be confidential, which is

to me, if we have forgotten one, it might apply. So then the question is, we go to -- obviously, we go to NRS 453A.370 which is part of the regulations, and I understand the regulations are promulgated by the Division, and they were adopted by the legislature.

So then they say, as far as possible on maintaining accountability. And when we look at a statute from a judicial standpoint, we look at its plain meaning before we have to dive into legislative history. So to me, as far as possible while maintaining accountability to me would mean the regulators, not the public. I'm just going to say that. Protect the identity and personal identifying information of each person who receives, facilitates, or delivers services in accordance with this chapter. Well, folks that are investing in medical marijuana enterprises are facilitating and delivering the services. So it seems that that fits. Distinguish that for me.

MR. GLOGOVAC: Sure. Starting from the beginning of the analysis.

THE COURT: Sure.

MR. GLOGOVAC: The -- obviously the statute that you just recited isn't one of the enumerated ones in NRS 230.010.

THE COURT: Agreed.

MR. GLOGOVAC: Okay. The "or otherwise declared --

unless otherwise declared by law to be confidential," the Nevada Supreme Court has told us what that means.

THE COURT: All right.

MR. GLOGOVAC: And they haven't told us that that means in case the legislature forgot one. They told us that that means balancing law enforcement interest, balancing private interest. That's why I started the argument --

THE COURT: What's your authority for that?

MR. GLOGOVAC: That's why I started the argument in the *Reno Newspapers versus Sheriff* case, again 126 Nevada 211 at 214, 215, where the Nevada Supreme Court says, "Thus, this Court will presume that all public records are open to disclosure unless either the legislature has expressly and unequivocally created an exemption or exception by statute." Or, two, "Balancing the private or law enforcement interest for nondisclosure," et cetera, et cetera. The Donrey balancing test.

THE COURT: It's clear as mud to me.

MR. GLOGOVAC: And the same thing was stated, Your Honor, in the *PERS versus Reno Newspapers* case at page 5 of the advance opinion. The State entity may either show that a statutory provision declares the record confidential or in the absence of such a provision, that its interest in nondisclosure clearly outweighs the public's interest in

access.

So the Nevada Supreme Court, that's what they've told us. What that comes out of, Your Honor, is an old case that the Nevada Supreme Court decided. It was a Cliff Young decision where there wasn't a statute that protected certain police records. And so the Court decided, you know, they just didn't feel right about those records being released and so the Court recognized that sometimes law enforcement has an interest in its investigative materials particularly when there's an ongoing criminal investigation --

THE COURT: Yeah, yeah.

MR. GLOGOVAC: -- that they don't want the public to know that. Part of what law enforcement does is allow public information to leak out the way they want, et cetera, et cetera.

THE COURT: There's actually a box in the Sparks Police Department where the Reno Gazette Journal can pick up police reports.

MR. GLOGOVAC: It can. Sitting at my desk, I sometimes get calls that says, "Hey, such and such wasn't in the box."

THE COURT: Interesting.

MR. GLOGOVAC: In any event, so that's the starting point. Then, Your Honor, when you have to go through the

process that you're going through, asking yourself, to whom does that accountability apply? And the fact that the statute isn't listed as one of confidentiality provisions here, and that the Nevada Supreme Court has said again and again the claimed exemption must expressly and unequivocally do it. And they did it for attending physicians. And they did it for the others. That's the basis.

THE COURT: And I'm very familiar with first amendment cases, I've had a few myself. And they do have to be narrowly tailored. So I'm following your argument.

MR. GLOGOVAC: Anything further, Your Honor?

THE COURT: Not yet.

MR. GLOGOVAC: Thank you. I'll sit down.

THE COURT: I'll give you a chance to reply.

I want to hear from the City. I think I pretty much have the City's argument, but I want you to give me anything you want.

MR. THORNLEY: Thank you, Your Honor. I'd agree that the facts of this case are unique. This is -- well, they are unique in the sense that from my research this is the first time a regulation has been used to argue for confidentiality of a record.

THE COURT: This is how I see it. It's so interesting on a number of different levels, because it's a

regulation promulgated by, basically, the Division of Health to regulate the medical marijuana industry, and they have this statute that you've so appropriately cited and that I've identified that asks for the protection of the identity and personal information of individuals that facilitate or deliver, which to me, you would affectively argue is on point with investors, right, who you have to get business licenses for this.

But Mr. Glogovac has made in some pretty powerful arguments as to why it should be released. So go ahead.

MR. THORNLEY: We skipped an important statute, though. In 233B.040, Your Honor, regulations are given the force of law. And so long as the regulation is properly adopted by the Division, it has the force of law in the state of Nevada.

THE COURT: And it's a statute. It's also promulgated as statute.

MR. THORNLEY: Well, I think to me, the point is I guess I had intended to start at the beginning and go to the end, but I'll start in the middle.

THE COURT: Go wherever you want.

MR. THORNLEY: When Mr. Glogovac says that it must be a statute and that the regulation is not a statute and that's how he gets through the confidentiality argument, to me

that is an argument that the regulation itself is invalid. If municipalities and agencies can't rely on the regulation to say, "Hey, this record is confidential," then the regulation itself is of no force and effect and therefore invalid, which brings us squarely into the grasp of the Administrative Procedures Act. There's a reason that the legislature has prescribed a method for challenging the validity and application of the promulgated regulation. And that's so that the State agency that promulgates the regulation can make a record, can explain what they were thinking, can point to the evidence that might be used in the Donrey balancing test down the road, can say, "Hey justice has passed out this memo that says these are the points we are looking at in terms of the prosecutorial discretion for prosecuting marijuana crimes," can take the memo that says, "Congress has recognized that the sale of marijuana is a dangerous trade. These are what we think are the outcomes of that, and this is how we think that people who are engaged in this business ought to behave."

When you look at whether or not a petition for mandamus is appropriate as a vehicle for relief in this case, you can't look at it in a vacuum. You can't say, "All right, well, 239 says I can apply for an order from the Court in the county in which I reside." What you have to do is look at what is the underlying purpose of a writ petition? The

purpose of a writ petition is to give a vehicle for relief when there isn't one. In this case, there is one. It's in 233B. Our basic contest here is whether or not, as you put earlier, is whether or not this regulation applies to preclude the release of the names and the personally identifying information in these business licenses. And so the State, the legislature said, "That's how we want you to do that." There's a case that's not in any of the briefs, I do have a copy of it if you would like to see it. It's *Kay versus Nunez*. It's a land-use case. Prior to 2001 land-use decisions were challenged by petitions for mandamus.

In 2001, the legislature comes through and says, We are going to pass this addition to Chapter 278. It's going to require municipalities to adopt, essentially, an appeals process. And at the end of the municipal appeals process, we'll give you the right to petition the District Court for judicial review.

In the *Kay* case, the Petitioner brought both actions, petition for mandamus and petition for judicial review. And the Supreme Court says, Hey, look, the legislature has provided this vehicle for relief, and on that basis, a petition for mandamus is not the appropriate vehicle for relief. It really is as simple as that. It's as simple as the writ relief statute says.

THE COURT: Your position is this is not a Public Records Act. It should not be a Public Records Act challenge, it should be a challenge to the regulation.

MR. THORNLEY: That's the uniqueness of the case. Typically when you cite a Public Records Act challenge, it is that either the Donrey balancing test doesn't work or there's no statute on point. And in this case, the disagreement is whether or not the regulation, which is by name, not a statute, carries with it the force of law and falls into that or otherwise declared by law to be a confidential catchall provision.

So Chapter 239 does not specifically provide the type of remedial vehicle that one must use. It just says the -- it describes what the appropriate venue is for that challenge. And because it doesn't describe the vehicle, petition for mandamus is appropriate.

I think if you look at the DR Partners case and you look specifically at the sentence in that case that describes the holding as it relates to mandamus which you'll see, and this is pretty close, but not a direct quote, is that the Court said, "Thus, for the public records sought in this case, a petition for mandamus is the appropriate remedy."

So it's still a factual decision based on the unique circumstances of each case. And in this case, there is a

vehicle. There is a plain, speedy, and adequate remedy at law in the form of Administrative Procedures Act.

And more than that, Your Honor, when you review 233B, you see that the legislature imposed additional requirements to relief. And that's that the Petitioner is required to ask the State agency, "Hey, what were you thinking? What do you think about this application?" And all of those all of those requirements go towards creating a record so that the Court can make the most informed decision possible. When you fail to include that State agency, when you fail to add them in as a party, I think it's fatal to any sort of decision that comes from the Court.

THE COURT: I thought that was an interesting argument, the failure to join.

MR. THORNLEY: It's not just a failure to join under the Rules of Civil Procedure, Your Honor, the law itself, the statute itself says you must join the State. You must give the State an opportunity to be heard. Even to the Attorney General, independent of the agency, because of course their views might diverge, the Attorney General is required to be served and is entitled to be heard if he so chooses. There are parties that are not in this courtroom today that perhaps could provide some answers or enlightenment on the questions the Court has.

THE COURT: The analysis would be whether they would be affected by my decision.

MR. THORNLEY: I think it's inarguable that the Division of Health and Human Services or Public and Behavioral Health would be affected by your decision. In fact, I think, although you don't have jurisdiction over it, the entities in Clark County, they will be affected by the decision here today. And for that reason, because it ought to be uniformly applied by the State, because it ought to be uniformly enforced and interpreted, the State's participation in this lawsuit is critical.

When you get into the actual regulation, Your Honor, I didn't hear much talk about Administrative Code 453A.714 sub part 1. There's two sentences there. The first relates specifically to the Division of Public and Behavioral Health. It says the Division shall maintain the confidentiality of the identities of these people. You know, subject to later provisions in this statutory section. And those later provisions are that they can share the information amongst themselves within the Division for their official purposes. They can share the information with local law enforcement for the purpose of making sure that these marijuana businesses are operating legally. And that they can share the information with local governments at the request of

the local government.

The second sentence I think applies broadly to everybody that comes in contact with this information from a government perspective. And it says, "Except as otherwise provided in 239.0115," again the 239 and 233B and 453A, they all work together. They all work in conjunction with one another to form the analysis. "The name and other identifying information of any person who facilitates or delivers services pursuant to this chapter or Chapter 453A of the statutes is confidential, not subject to subpoena or discovery, and not subject to inspection by the general public." I'm not certain how much more clear and unequivocal you can make a statement of confidentiality. That's not just confidentiality, that's it's confidential on the face of the public records, and a Court can't order it to be produced by subpoena. It's not subject to discovery and it's not subject to inspection by the public under any circumstances. It's unlimited. It's unequivocal. And it's very clear. This is not had a case where we need to be looking at legislative intent, although certainly I think Chapter 453.370 sub part 5 does a good job of explaining what the intent of the legislature was. I think this is a plain-language case, and it's a plain-language case where we use the ordinary rules of statutory construction where we read each part of the statute as having meaning. So

we read each word, each phrase, each sentence as applying as though it has an independently applicable meaning. And the Supreme Court of Nevada has also indicated that that's the way we go through this analysis.

And so even though it needs to be narrowly drawn, even though it needs to be tailored such that we don't take information that might not be part of this -- the grasp of the legislature, the interpretation still needs to make sense. And to that end, I do think that the *RGJ versus Sheriff* case is probably the most important one in terms of making a decision here today. But I think we need to understand what it is that the Supreme Court did there and what the arguments from the District Attorney's Office were. The District Attorney's Office said was that where a statute says the application for a concealed weapons permit and the information contained therein and the investigation related thereto is confidential, well that must mean that the information on there is confidential, and it stays confidential, and it becomes part of a permit.

And what the Supreme Court said was, no, the statute makes distinction between an applicant and a permittee in multiple places. And Justice Hardesty list those places out and he says this statutory subsection, it references a permittee. In that statutory subsection, it references an

applicant. And on that basis, the Supreme Court draws the conclusion that because there's a distinction in the law between an applicant and a permittee. There's a distinction in the law between an application and a permit. And the information here on an application, because we are required to make a narrowly tailored finding, doesn't extend to a permit, which the legislature obviously in this construct viewed as a different type of document.

By contrast, in this case we haven't made any sort of distinction as to the document we are looking at. The legislature and the Division of Public and Behavioral Health at the direction of the legislature have taken an entire class of information and said this information is not subject to dissemination. And I think that the reason they did it that way is essentially the way the -- it relates to the way the industry was set up in Nevada. It was done very quickly. And what the legislature did in 2013 was say, you know, here is the basic framework that we think the commercial side of this operation ought to exist within. But because we are limited to 120 days, because we only meet biennially, you, Division, who's going to oversee this, you're going to pass these regs and you're going to get into the nitty-gritty on how we word this.

And because they had to rectify the disparity

between the applications the State received, and the limited number of licenses that were going to be handed out, the Division passed a series of regulations that says essentially, "Look, we're going to take in your application, and we're going to rank you according to our criteria. And then based on the number of licenses that are set aside for each jurisdiction, we are going to give them to the top-ranked candidates." And then your license stays provisional until you jump through all the hoops that the Municipality wants to put through. And I think that that provisional aspect of the state license is very important here. Perhaps a little nuance, but very important. And that's what the regulation in the laws say, Your Honor, is that the names of people who deliver services are confidential. It's not possible to legally deliver services without first obtaining all of the municipal approvals.

And so to me it makes no sense to suggest that the same act, the municipal business license, the municipal zoning approvals, those same acts that essentially allow you to legally deliver services also strips you of this protection that the legislature has afforded you. Because if we are looking at it under the plain language, and this is, I think, in the brief that the newspaper alludes to it, the Attorney General's Office gets this wrong when they say, well, the

applications are confidential. No. Facilitates, delivers, receives. Those things are confidential. People who wanted to facilitate, receive, or deliver, I'm not certain they're protected. And as you alluded to, it's an all-cash business, selling highly potent street drugs. There's a reason the Justice says this is perhaps not the best business practice.

So I'm not certain that this is really that difficult in terms of doing all sorts of legal positioning to try to figure out what it means. The term deliver is statutorily defined. It adopts the definition in the controlled substances act. It means to -- you know, the actual or constructive transfer of a controlled substance. Marijuana is a controlled substance. I don't think it's particularly difficult to get to that point. You know, you look at what does any and each mean? Any and each mean every. Every person who facilitates or delivers. When you look at the statutory definitions of medical marijuana, it's an independent testing lab, a cultivating facility, facility for production of edible marijuana products, a dispensary. They all include the term deliver in the statutory definition. So as a matter of law, that's what those facilities do, they deliver services. And the people that work there by extension do, too.

I think what you have to do when you look at this,

you look at the plain language. And as the Supreme Court has also provided us guidance, you presume that the legislature had full knowledge of the existing laws when they passed the law. You presume that they use these words intentionally and they use them consistently. And what you do is you look and you look at the history of the medical marijuana industry in Nevada and you say in 2001, when we offered this protection to cardholders, and doctors, and people who participate in university studies, we didn't have a commercial side. We didn't have a commercial participation in this industry where we needed to protect the identities of people who participated. But we did pass the definition of the term deliver.

So in 2013 when they come back and revisit it, they knew what they were doing when they use the term deliver. They passed that law. So when they say, "Hey, these people who are delivering services, these people are actively, constructively transferring marijuana to other people, we need to protect them, too. We are not certain what the best way to do that is, so we're going to tell the regulatory agency that we put in charge of this, 'Hey, we want you to pass this regulation. And then when we review it, it will have the force of law.'"

But there's a practical aspect of this that I think

is perhaps missed in looking at it in a vacuum through the lens of Chapter 239.

You know, in sum, I think the -- there's a serious practical aspect in the sense that if you look at a regulation and you say, "All right. Well I think that confidential only reaches the State." And the second sentence says, "It's not subject to subpoena, discovery, or public inspection," that's not confidential at all. Right? It either is or it is not. And to say that it is not because it only applies to the State doesn't make much sense. To say that it is not confidential because the regulation isn't a statute, the regulation has force of law. It doesn't make much sense to me. It's the same as saying the regulation is invalid which brings us right back to, "Well, we ought to be in the Administrative Procedures Act." The only logical conclusion that applies both the plain language of the statute that follows the ordinarily accepted rules of statutory construction, that, you know, are in fact the overarching guidelines that the Supreme Court of Nevada has this is the way we look at statutes and rules, and this is how we analyze these questions, is that this information is confidential and it doesn't matter if it's in the files of the State or on the forms of Municipality. The names and personal information of these people is protected.

Now, whether or not that provides accountability I think is a political question that isn't for the Court to answer, but I tend to agree with Your Honor's analysis that that reference is towards those regulators.

THE COURT: That's what it seems to be the plain meaning, when I read it, and it's within the regulation statute. So, you know, I don't find that as ambiguous as Petitioner does. I kind of, you know, sort of read it that way, but very interesting.

MR. THORNLEY: I'm happy to answer any questions you have, Your Honor, but I think, to me there's a procedural vehicle that's been mandated by the legislature, the law -- the plain language of the law is not that difficult to follow. There are multiple statutory definitions that -- you know, it's very linear. There's not a leap of faith. This analysis is very linear. I don't think it's difficult. I don't think it requires searching for the legislative intent, because I think it's right there on paper. But even if you were looking for the legislative intent, you don't need to leave the statute because it's right there in 453A.370 sub part 5. That is the intent of the Legislature. In this case we don't have to look at the legislative history which is great because there isn't any, and it says right there as part of the statute, we want you to protect these people. Thank you.

THE COURT: I appreciate your argument. Thank you.

Mr. Glogovac, your reply.

MR. GLOGOVAC: Just a few things, Your Honor, as to the procedural mechanism. Once again, I go back to the point that the Nevada Supreme Court has specifically held that mandamus is the appropriate means of bringing a public records dispute before a Court. That is what we've done. The Administrative Procedures Act the City relies on simply says a declaratory relief action may be brought. It may be brought, but in a public records case, mandamus is the appropriate vehicle. That's number one.

Number two --

THE COURT: Stop a second. Hold that thought.

His position is that he doesn't believe it's a Public Records Act challenge. He believes it's a regulation challenge and you're challenging the regulation of confidentiality and that you should do that in the appropriate form by way of the analysis of the Administrative Procedures Act and not by way of mandamus. The City says you've got it wrong in that to fully analyze the regulation, you've got to join in as a special party as an alternative argument which would be the Division so they can be here represented by the Attorney General and tell us what they meant by that. It's an interesting alternative argument.

MR. GLOGOVAC: I understand the argument. But first of all, it is a public records proceeding because it's a fight over whether the City has to produce documents.

THE COURT: Uh-huh.

MR. GLOGOVAC: So I don't think there's any question it's a public records proceeding and mandamus is the appropriate way to get there.

As to the regulation itself, our position is you don't even get to the regulation. No one is challenging the regulation. We are asking this Court can the respondent point to a statute that provides confidentiality? That expressly and unequivocally provides confidentiality. The answer to that is no, it can't. There isn't one listed in NRS 239.010 and they haven't raised -- on top of that, they haven't raised the Donrey balancing test. So we aren't challenging the validity of a regulation. We are not attacking the regulation and again asking that it not be on the books.

This Court has experience, obviously, in deciding cases all the time that are going to have precedential effects that go beyond the parties in the courtroom. That's just the nature of our legal system. So the fact that other municipalities might ultimately be interested in this case, well, sure, if this Court makes a decision that has a certain binding effect relative to what the obligations of the

municipalities are, it does.

THE COURT: I don't find that to be -- I don't give that that much weight. We are dealing with the facts of the here and now, and whatever happens happens.

MR. GLOGOVAC: And then, Your Honor, ultimately in public records cases, they are unique. In the public records setting, it's unique. It's not the role of Courts in public records cases to clean up the legislature's sloppiness and the legislature's mess. That is the role of Courts in other contexts, but it isn't in the public records context. The only question in a public records context is did the legislature get it right. That's the question. And if they didn't get it right, then whatever feelings people may have about it, public records are going to have to be produced. This Court's task isn't to search for a way to sustain some supposed legislative intent through a vague statute and then a regulation promulgated under it. It's to ask did the legislature do it right, and when the legislature did it right in two specific context, you can only conclude they didn't do it right here. The legislature said the names of attending physicians are confidential, the names of registry cardholders are confidential. If it wanted to make an express and unequivocal declaration of confidentiality for any business license holder, it should have followed the law in the Supreme

Court cases I cited. And all of the municipalities are, just as I can read the Nevada Supreme Court cases, they and their lawyers should read them and understand them. And they should understand what the law is in terms of how you enforce provisions of the law under the Public Records Act.

This can't come as any surprise to anybody. There is no statute, Your Honor, and the final analysis that provides confidentiality, and that's what governs this Court's ruling. The Nevada Supreme Court in a Public Records Act isn't going to jump through hoops to get to a decision. They are going to ask the questions Justice Hardesty in the *Ace* and Justice Parraguirre asked in the *PERS* case. Is there a statute that's unequivocally and expressly declares confidentiality for MME business license holders, just as with attending physicians and registry cardholders. And when the answer to that is no, the result in this case is going to be the records have to be provided. The legislature has to do it right. If this is what they wanted, they should have done it right instead of creating a vagueness that they created and left it up to -- I'm not disparaging anybody here, but left it up to a bureaucrat, basically, to promulgate a regulation that has two inconsistent sentences, one is specific, one is general. The general one applies across the board. The specific one is superfluous. So you get this kind of

moving-parts regulation. And I think that's the very reason why the Nevada Supreme Court has required either the balancing test or a statute. The legislature needs to do its job. It's the entity that declares confidentiality, and it didn't do it in this specific context.

So again, Your Honor, we would request that the writ issue. Thank you very much.

THE COURT: Very good arguments by both of you. I appreciate it. I will take it under submission. I'm going to do some research, obviously, in addition to what I've already read, and identify what would be the correct analysis and make my decision accordingly.

Thank you. Submitted?

MR. GLOGOVAC: It is, Your Honor.

THE COURT: Submitted?

MR. THORNLEY: Yes, Your Honor.

THE COURT: Thank you for your time. Very good arguments. I appreciate it. I'll have my order out as soon as I can.

We'll be in recess.

(Proceedings concluded.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, SUSAN KIGER, an Official Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, State of Nevada, DO HEREBY CERTIFY:

That I am not a relative, employee or independent contractor of counsel to any of the parties, or a relative, employee or independent contractor of the parties involved in the proceeding, or a person financially interested in the proceedings;

That I was present in Department No. 9 of the above-entitled Court on January 14, 2016, and took verbatim stenotype notes of the proceedings had upon the matter captioned within, and thereafter transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 48, is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 15th day of March, 2016.

/s/ Susan Kiger

SUSAN KIGER, CCR No. 343

F I L E D
Electronically
2016-01-22 11:15:07 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 5332254

CASE NO. CV15-01871 RENO NEWSPAPERS, INC. VS. CITY OF SPARKS

DATE, JUDGE
OFFICERS OF
COURT PRESENT APPEARANCES-HEARING

1/14/16
HON. SCOTT N. FREEMAN
DEPT. NO. 9
L. Sabo (Clerk)
S. Kiger (Reporter)
P. Sewell (Bailiff)

ORAL ARGUMENTS - PETITION FOR WRIT OF MANDAMUS

Petitioner Reno Newspaper, Inc. was being represented by counsel, Scott Glogovac.
Assistant City Attorney, Douglas Thornley, was representing the City of Sparks.
Counsel Glogovac addressed the Court regarding the factual context of this case that being a public records dispute regarding business license holders and discussed the applicable statutes and related case law.
Counsel Glogovac presented argument in support of the Petition and responded to the Court's questions and comments.
Assistant C.A. Thornley addressed the Court regarding the position of the City of Sparks and argued in opposition to said Petition for Writ of Mandamus.
Counsel Thornley further responded to the Court's questions and comments.
Counsel Glogovac presented a final argument in support of the Petition for Writ of Mandamus.
COURT ORDERED: Matter taken under advisement.

FILED
Electronically
2016-01-28 04:38:04 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5343273

CODE: 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO NEWSPAPERS, INC.,
a Nevada Corporation,

Petitioner,

v.

CITY OF SPARKS, a Municipal Corporation,

Respondent.
_____/

Case No. CV15-01871
Dept. No. 9

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This case came on for hearing on January 14, 2016. At the time of the hearing, the Court was in receipt of Petitioner RENO NEWSPAPERS, INC. d/b/a RENO GAZETTE NEWSPAPER's ("RGJ") *Request for Oral Argument* filed on October 21, 2015. The Court was also in receipt of Petitioner's *Petition for Writ of Mandamus* filed on September 18, 2015. On October 8, 2015, Respondent, CITY OF SPARKS ("City of Sparks") filed a *Response in Opposition to Petition for Writ of Mandamus*. Petitioner filed a *Reply in Support of Petition for Writ of Mandamus* on October 20, 2015.

Upon review of the oral arguments, moving papers and exhibits, the Court GRANTS Petitioner RENO NEWSPAPERS' *Petition for Writ of Mandamus* and directs Respondent CITY OF SPARKS to provide Petitioner with copies of the public records at issue in the above entitled matter.

BACKGROUND

On August 20, 2015, Reno Gazette Journal reporter Chanelle Bessette sent an email to the City of Sparks requesting copies of business licenses of medical marijuana establishments in

Sparks, Nevada, including the names of the applicants/licensees. The City of Sparks denied the request on August 24, 2015 asserting that the names of the medical marijuana establishments ("MME's") were confidential under Nevada law and not subject to disclosure. The City of Sparks provided the licenses, but redacted the names of the holders. RGJ sent a second request, which was also denied by the City of Sparks.

STANDARD OF REVIEW

"A writ of mandamus may be issued by . . . a district court to compel the performance of an act of an inferior state tribunal, corporation, board or person." NRS 34.160. A court has complete discretion in deciding whether to consider a petition for mandamus. *Sims v. Eight Jud. Dist. Ct. ex rel. Cnty. Of Clark*, 125 Nev. 126, 129, 206 P.3d 980, 982 (2009). The issuance of a writ of mandamus to compel an officer of the state must be for a duty resulting from the office and required by law. *State ex rel. McGuire v. Watterman,* 5 Nev. 323, 326 (1869).

Before a writ of mandamus may be issued, certain requirements must be met: first, the act required to be performed must be a duty resulting from the office and required by law. *Id.* It must appear that the defendant has it in his power to perform the duty required and the writ will have a beneficial effect to the applying party. *Id.*

Mandamus should not be used unless the usual and ordinary remedies fail to provide a plain, speedy, and adequate remedy, and without it there would be a failure of justice. *Sims* at 129, 982. A petition will only be granted when the petitioner has a clear right to the relief requested and has met the burden of establishing that writ relief is appropriate. *Halverson v. Miller*, 124 Nev. 484, 488, 186 P.3d 893, 896 (2008). To have standing, the petitioner must demonstrate that it possesses a "beneficial interest" in obtaining writ relief. *Mesagate Homeowners' Ass'n v. City of Fernley*, 124 Nev. 1092, 1097, 194 P.3d 1248, 1251 (2008). The court will not conduct a hearing de novo.

DISCUSSION

I. *Petitioner's Petition for Writ of Mandamus is Not Procedurally Deficient*

As a preliminary matter, the Court first addresses Respondent's assertion that Petitioner's petition is procedurally deficient insofar as Petitioner did not exhaust all available administrative remedies before lodging the petition with the Court. *See* (Opposition, 5 citing

Allstate Ins. Co. v. Thorpe, 170 P.3d 989, 993 (Nev. 2007)). Respondent argues that pursuant to NRS 233B.110(1), the Court is explicitly prohibited from rendering a judgment in this case until all administrative procedures have been exhausted. *Id.* Petitioner should have filed for a declaratory judgment and not a petition for writ of mandamus. *Id.*

The Court disagrees with Respondent's reading of NRS 233B.110. Upon a plain language reading of the statute, nothing mandates Petitioner bring a declaratory judgment. Pursuant to the statute, "[t]he validity of applicability of any regulation *may* be determined in a proceeding for a declaratory judgment in the district court . . . when it is alleged that the regulation, or its proposed application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff." (emphasis added). The statute clearly and unambiguously uses permissive language; nothing requires Petitioner to assert declaratory relief.

Further, the Court agrees that *Allstate* requires a person to "exhaust all available administrative remedies before proceeding in district court renders the matter unripe for judicial review." 170 P.3d 989, 993 (Nev. 2007). However, NRS 239.011(1) provides a specific remedy for denied requests of public records documents: "[i]f a request for inspection, copying or copies of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order." Insofar as NRS 239.011(1) provides a specific and separate remedy for denied requests of public record documents, the Court finds Petitioner's petition for writ of mandamus is the proper vehicle for judicial review of the issues.

II. *A Duty Exists Under NRS Chapter 239 Requiring the City of Sparks to Disclose the Public Records*

The primary issue before the Court is whether the names of the holders of MME licenses are "otherwise declared by law to be confidential" within the meaning of the NRS 239.010. The Court finds that the names of holders of MME licenses are not protected under the confidentiality provision exceptions of NRS 239.010.

Pursuant to NRS 239.0105, "[r]ecords of a local government entity are confidential and not public books or records within the meaning of NRS 239.010" if the records meet certain provision outlined in the statute. NRS 329.010 outlines a list of the public books and records

that are not open to public inspection "unless otherwise declared by law to be confidential." *Reno Newspapers v. Sheriff*, 126 New. 211, 214, 234 P.3d 922, 924 (2010) states

> The purpose of the [Nevada Public Records] Act is to foster principles of democracy by allowing the public access to information about government activities. NRS 239.001(1); *see Dr. Partners v. Bd. Of County Comm'rs*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000). In 2007, the Legislature amended the Act to ensure the presumption of openness, and provided that all statutory provisions related to the Act must be construed liberally in favor of the Act's purpose. NRS 239.001(2); 2007 Nev. Stat., Ch. 435 § 2, at 2061. In contrast, any exemption, exception, or a balancing of interests that restricts the public's right to access a governmental entity's records *must be construed narrowly*. NRS 239.001(3); 2007 Nev. Stat., ch. 435 § 2, at 2061. Thus, this court will presume that all public records are open to disclosure unless either (1) the Legislature has expressly and unequivocally created an exemption or exception by statute, . . .; or (2) balancing the private or law enforcement interests for nondisclosure against the general policy in favor of an open and accessible government requires restricting public access to government records.

(referencing *Cowles Pub. Co v. Kootenai County Bd.*, 144 Idaho 259, 159 P.3d 896, 899 (2007); *Kroeplin v. Wisconsin DNR*, 297 Wis.2d 254, 725 N.W.2d 286, 292 (Wis.Ct.App2006); and *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 635-36, 798 P.2d 144, 147-48 (1990).[1]

Therefore, this Court follows the test laid out in *Sheriff* and finds that the Nevada Legislature did not expressly or unequivocally create an exemption or exception by statute protecting MME license holders under NRS 239.010.[2] NRS 239.010 added two specific sections regarding medical marijuana establishments in 2013. *See* AB31, 78th Nevada Legislative Session (2013). First, NRS 453A.610 keeps information regarding research at the University of Nevada School of Medicine confidential. Second, NRS 453A.700 keeps certain information regarding physicians prescribing medical marijuana and those prescribed medical marijuana confidential. NRS 239.010 is current through 2015 and the most recent legislative session. The Court finds

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[1] In meeting minutes of the 2013 Legislative Session, Keith Munro, Assistant Attorney General, Office of the Attorney General, stated in regards to Assembly Bill 31, which added NRS 453A.610 and NRS 453A.700 to the list of public records not subject to disclosure, "[t]his bill proposes changes to NRS Chapter 239, the Nevada Public Records Law . . . The intent of this legislation is to provide procedures for members of the public seeking access to records and for agencies responding to public records requests in a timely, consistent, and efficient manner . . . Both public agencies and the public should have better clarity as to that process. Disagreements should not be left to expensive litigation." *See* Assembly Committee on Government Affairs, Minutes at page 25 (February 7, 2013).

[2] The second element was not at issue before the Court.

NRS 453A.610 and 453A.710 are currently the only two exemptions regarding medical marijuana to NRS 239.010.

Respondent argues that NAC 453A.714 lays out another exemption, specifically for the names of MME license holders, to public records disclosure under NRS 239.010. (Opposition, 6). On April 1, 2014, the Division of Health and Human Services enacted NAC 453A.714, which provides,

> [e]xcept as otherwise provided in this section and NRS 239.0115, the Division will and any designee of the Division shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who facilitates or delivers services pursuant to this chapter or chapter 453A of NRS. Except as otherwise provided in NRS 239.0115, the name and any other identifying information of any person who facilitates or delivers services pursuant to this chapter or chapter 453A of NRS are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

Respondent argues that "the name or any other identifying information of any person who facilitates or delivers services pursuant to this chapter" includes license holders of MME's. *Id.* at 7. According to Respondent, a person who "delivers services" necessarily includes the license holders of MME's. However, the Court disagrees with Respondent's arguments. *Id.*

Following the specific test laid out by *Sheriff*, public records are subject to disclosure only if the Legislature has created an express and unequivocal exception or exemption. Respondent argues that the exception is found in the catchall phrase, "unless otherwise declared by law to be confidential." This phrase thus leads to a parallel construction with NAC 453A.714, which provides that specific exemption for MME license holders. However, NAC 453A.714 is silent as to who is included under the phrase "delivers services."

The Court finds that silence of NAC 453A.714 regarding who exactly "delivers services" is ambiguous and thus not express or unequivocal pursuant to *Sheriff*. Currently, MME license holders are not expressly or unequivocally protected under the confidentiality protections of NRS 239.010. The Court finds that in order to bring another exception into NRS 239.010 through the phrase "unless otherwise declared by law," any separate exception not included under NRS 239.010 must also comply with the express and unequivocal test laid out by *Sheriff*. The ambiguity of those who "deliver services" does not bring MME license holders

within the purview of as "otherwise declared by law" under NRS 239.010. Therefore, MME license holders are not protected under NRS 239.010. A duty exists under NRS Chapter 239 requiring the City of Sparks to disclose the requested public records.

III. *Conclusion*

THEREFORE, and good cause appearing, a petition for writ of mandamus is therefore **GRANTED** insofar as Petitioner has established it has a clear right to the relief requested. *Halverson v. Miller*, 124 Nev. 484, 488, 186 P.3d 893, 896 (2008).

THE COURT HEREBY ORDERS issuance of a writ of mandamus directing Respondent the CITY OF SPARKS to provide Petitioner RGJ unredacted copies of the requested MME business licenses.

IT IS FURTHER ORDERED the City of Sparks pay RGJ an award of its reasonable attorneys fees and costs incurred in this action as provided by NRS 239.011(2). The Court will award said fees upon a showing of proof by motion and affidavit.

DATED: this 28 day of January, 2016.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ___ day of _____, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Further, I certify that on the 28th day of January, 2016, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

SCOTT GLOGOVAC, ESQ. for RENO NEWSPAPER, INC.
DOUGLAS THORNLEY, ESQ. for CITY OF SPARKS
CHESTER ADAMS, ESQ. for CITY OF SPARKS

Brianne Anderson
Judicial Assistant

FILED
Electronically
2016-02-02 12:00:30 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5348624

CODE: 2540
SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 226
GLOGOVAC & PINTAR
427 West Plumb Lane
Reno, Nevada 89509
Telephone: 775-333-0400
Facsimile: 775-333-0412
sglogovac@gplawreno.net

Attorneys for Petitioner
Reno Newspapers, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO NEWSPAPERS, INC., a Nevada Corporation, Petitioner, vs. CITY OF SPARKS, a Municipal Corporation, Respondent.	Case No. CV15-01871 Dept. No. 9

NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

PLEASE TAKE NOTICE that an Order Granting Petition for Writ of Mandamus was entered by the Court in this matter on January 28, 2016.

A copy of the Order is attached hereto as Exhibit 1.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 2nd day of February, 2016.

GLOGOVAC & PINTAR

By: _____

SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 226

Attorneys for Petitioner
Reno Newspapers, Inc.

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
RENO, NEVADA 89509-3766
(775) 333-0400

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 West Plumb Lane, Reno, NV 89509, and that on the 2nd day of February 2016, I served the foregoing document(s) described as follows:

NOTICE OF ENTRY OF ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

On the party(s) set forth below by:

___ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices, addressed as follows:

_X_ I electronically filed with the Clerk of the Court, using ECF which sends an immediate notice of the electronic filing to the following registered e-filers for their review of the document in the ECF System:

SCOTT A. GLOGOVAC, ESQ. for RENO NEWSPAPERS, INC.
DOUGLAS R. THORNLEY, ESQ. for CITY OF SPARKS
CHESTER ADAMS, ESQ. for CITY OF SPARKS

_____ Personal delivery via messenger.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

Dated this 2nd day of February 2016.

Mele Fonokalafi

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
RENO, NEVADA 89509-3766
(775) 333-0400

INDEX OF EXHIBITS

Exhibit No.	Description	Pages
1	Order Granting Petition for Writ of Mandamus	7

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
RENO, NEVADA 89509-3786
(775) 333-0400

F I L E D
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Jacqueline Bryant
Clerk of the Court
Transaction # 5348624

EXHIBIT 1

EXHIBIT 1

FILED
Electronically
2016-01-28 04:38:04 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5343273

CODE: 3370

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

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Petitioner,

v.

CITY OF SPARKS, a Municipal Corporation,

Respondent.

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Case No. CV15-01871
Dept. No. 9

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within the purview of as "otherwise declared by law" under NRS 239.010. Therefore, MME license holders are not protected under NRS 239.010. A duty exists under NRS Chapter 239 requiring the City of Sparks to disclose the requested public records.

III. *Conclusion*

THEREFORE, and good cause appearing, a petition for writ of mandamus is therefore **GRANTED** insofar as Petitioner has established it has a clear right to the relief requested. *Halverson v. Miller*, 124 Nev. 484, 488, 186 P.3d 893, 896 (2008).

THE COURT HEREBY ORDERS issuance of a writ of mandamus directing Respondent the CITY OF SPARKS to provide Petitioner RGJ unredacted copies of the requested MME business licenses.

IT IS FURTHER ORDERED the City of Sparks pay RGJ an award of its reasonable attorneys fees and costs incurred in this action as provided by NRS 239.011(2). The Court will award said fees upon a showing of proof by motion and affidavit.

DATED: this 28 day of January, 2016.

DISTRICT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this — day of —, 2016, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Further, I certify that on the 28th day of January, 2016, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

SCOTT GLOGOVAC, ESQ. for RENO NEWSPAPER, INC.
DOUGLAS THORNLEY, ESQ. for CITY OF SPARKS
CHESTER ADAMS, ESQ. for CITY OF SPARKS

Brianne Anderson
Judicial Assistant

ORIGINAL

FILED

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District Court 02/08/2016 03:34 PM
Washoe County $2515

Code $2515
CHESTER H. ADAMS, #3009
Sparks City Attorney
DOUGLAS R. THORNLEY, #10455
Senior Assistant City Attorney
P.O. Box 857
Sparks, Nevada 89431
(775) 353-2324
Attorneys for Respondent

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO NEWSPAPERS, INC., a Nevada Corporation,

Petitioner,

vs.

CITY OF SPARKS, a Municipal Corporation,

Respondent.

Case No. CV15-01871

Dept. No. 9

NOTICE OF APPEAL

Notice is hereby given that Respondent City of Sparks, hereby appeals to the Supreme Court of Nevada from the ***Order Granting Petition for Writ of Mandamus*** entered in this action on January 28, 2016.

This document does not contain the Social Security Number of any person.

Respectfully submitted this 8th day of February, 2016.

CHESTER H. ADAMS
Sparks City Attorney

By: _____
DOUGLAS R. THORNLEY
Senior Assistant City Attorney
Attorneys for Respondent

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(5)(c)(1), I hereby certify that I am an employee of the Sparks City Attorney's Office, Sparks, Nevada, and that on this date, I am serving the foregoing document(s) entitled **NOTICE OF APPEAL** on the person(s) set forth below by:

✓ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Sparks, Nevada, postage prepaid, following ordinary business practices.

___ Personal Delivery.

___ Facsimile (FAX).

___ Federal Express or other overnight delivery.

___ Reno/Carson Messenger Service.

If physically delivered, each is addressed as follows:

Scott A. Glogovac, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, Nevada 89509
Attorneys for Petitioner, Reno Newspapers, Inc.

DATED this 8th day of February, 2016.

Kember Murphy

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Jacqueline Bryant
Clerk of the Court
Transaction # 5360768

Code 1350

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RENO NEWSPAPERS, INC.,
a Nevada Corporation,

Petitioner,

vs.

CITY OF SPARKS,

Respondent.
_____/

Case No. CV15-01871

Dept. No. 9

CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 9th day of February, 2016, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

Dated this 9th day of February, 2016

Jacqueline Bryant
Clerk of the Court

By /s/ Yvonne Viloria
Yvonne Viloria
Deputy Clerk

valid registry identification card or the designated primary caregiver of such a patient.

2. Acquiring usable marijuana or mature marijuana plants from any person other than a medical marijuana establishment agent, another medical marijuana establishment, a patient who holds a valid registry identification card or the designated primary caregiver of such a patient.

3. Violating a regulation of the Division, the violation of which is stated to be grounds for immediate revocation of a medical marijuana establishment registration certificate.

Sec. 17. *The following acts constitute grounds for the immediate revocation of the medical marijuana establishment agent registration card of a medical marijuana establishment agent:*

1. Having committed or committing any excluded felony offense.

2. Dispensing, delivering or otherwise transferring marijuana to a person other than a medical marijuana establishment agent, another medical marijuana establishment, a patient who holds a valid registry identification card or the designated primary caregiver of such a patient.

3. Violating a regulation of the Division, the violation of which is stated to be grounds for immediate revocation of a medical marijuana establishment agent registration card.

Sec. 18. *The purpose for registering medical marijuana establishments and medical marijuana establishment agents is to protect the public health and safety and the general welfare of the people of this State. Any medical marijuana establishment registration certificate issued pursuant to section 10 of this act and any medical marijuana establishment agent registration card issued pursuant to section 13 of this act is a revocable privilege and the holder of such a certificate or card, as applicable, does not acquire thereby any vested right.*

Sec. 19. *1. The operating documents of a medical marijuana establishment must include procedures:*

(a) For the oversight of the medical marijuana establishment; and

(b) To ensure accurate recordkeeping, including, without limitation, the provisions of sections 19.1 and 19.2 of this act.

2. Except as otherwise provided in this subsection, a medical marijuana establishment:

(a) That is a medical marijuana dispensary must have a single entrance for patrons, which must be secure, and shall implement

strict security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana.

(b) That is not a medical marijuana dispensary must have a single secure entrance and shall implement strict security measures to deter and prevent the theft of marijuana and unauthorized entrance into areas containing marijuana.

➥ The provisions of this subsection do not supersede any state or local requirements relating to minimum numbers of points of entry or exit, or any state or local requirements relating to fire safety.

3. A medical marijuana establishment is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to:

(a) Directly or indirectly assist patients who possess valid registry identification cards; and

(b) Assist patients who possess valid registry identification cards by way of those patients' designated primary caregivers.

➥ For the purposes of this subsection, a person shall be deemed to be a patient who possesses a valid registry identification card if he or she qualifies for nonresident reciprocity pursuant to section 19.5 of this act.

4. All cultivation or production of marijuana that a cultivation facility carries out or causes to be carried out must take place in an enclosed, locked facility at the physical address provided to the Division during the registration process for the cultivation facility. Such an enclosed, locked facility must be accessible only by medical marijuana establishment agents who are lawfully associated with the cultivation facility, except that limited access by persons necessary to perform construction or repairs or provide other labor is permissible if such persons are supervised by a medical marijuana establishment agent.

5. A medical marijuana dispensary and a cultivation facility may acquire usable marijuana or marijuana plants from a patient who holds a valid registry identification card, or the designated primary caregiver of such a patient. Except as otherwise provided in this subsection, the patient or caregiver, as applicable, must receive no compensation for the marijuana. A patient who holds a valid registry identification card, and the designated primary caregiver of such a patient, may sell usable marijuana to a medical marijuana dispensary one time and may sell marijuana plants to a cultivation facility one time.

6. A medical marijuana establishment shall not allow any person to consume marijuana on the property or premises of the establishment.

7. Medical marijuana establishments are subject to reasonable inspection by the Division at any time, and a person who holds a medical marijuana establishment registration certificate must make himself or herself, or a designee thereof, available and present for any inspection by the Division of the establishment.

Sec. 19.1. *1. Each medical marijuana establishment, in consultation with the Division, shall maintain an electronic verification system.*

2. The electronic verification system required pursuant to subsection 1 must be able to monitor and report information, including, without limitation:

(a) In the case of a medical marijuana dispensary, for each person who holds a valid registry identification card and who purchased marijuana from the dispensary in the immediately preceding 60-day period:

(1) The number of the card;

(2) The date on which the card was issued; and

(3) The date on which the card will expire.

(b) For each medical marijuana establishment agent who is employed by or volunteers at the medical marijuana establishment, the number of the person's medical marijuana establishment agent registration card.

(c) In the case of a medical marijuana dispensary, such information as may be required by the Division by regulation regarding persons who are not residents of this State and who have purchased marijuana from the dispensary.

(d) Verification of the identity of a person to whom marijuana, edible marijuana products or marijuana-infused products are sold or otherwise distributed.

(e) Such other information as the Division may require.

3. Nothing in this section prohibits more than one medical marijuana establishment from co-owning an electronic verification system in cooperation with other medical marijuana establishments, or sharing the information obtained therefrom.

4. A medical marijuana establishment must exercise reasonable care to ensure that the personal identifying information of persons who hold registry identification cards which is contained in an electronic verification system is encrypted, protected and not divulged for any purpose not specifically authorized by law.

Sec. 19.2. *1. Each medical marijuana establishment, in consultation with the Division, shall maintain an inventory control system.*

2. The inventory control system required pursuant to subsection 1 must be able to monitor and report information, including, without limitation:

(a) Insofar as is practicable, the chain of custody and current whereabouts, in real time, of medical marijuana from the point that it is harvested at a cultivation facility until it is sold at a medical marijuana dispensary and, if applicable, if it is processed at a facility for the production of edible marijuana products or marijuana-infused products;

(b) The name of each person or other medical marijuana establishment, or both, to which the establishment sold marijuana;

(c) In the case of a medical marijuana dispensary, the date on which it sold marijuana to a person who holds a registry identification card and, if any, the quantity of edible marijuana products or marijuana-infused products sold, measured both by weight and potency; and

(d) Such other information as the Division may require.

3. Nothing in this section prohibits more than one medical marijuana establishment from co-owning an inventory control system in cooperation with other medical marijuana establishments, or sharing the information obtained therefrom.

4. A medical marijuana establishment must exercise reasonable care to ensure that the personal identifying information of persons who hold registry identification cards which is contained in an inventory control system is encrypted, protected and not divulged for any purpose not specifically authorized by law.

Sec. 19.3. *Each medical marijuana dispensary shall ensure all of the following:*

1. The weight, concentration and content of THC in all marijuana, edible marijuana products and marijuana-infused products that the dispensary sells is clearly and accurately stated on the product sold.

2. That the dispensary does not sell to a person, in any one 14-day period, an amount of marijuana for medical purposes that exceeds the limits set forth in NRS 453A.200.

3. That, posted clearly and conspicuously within the dispensary, are the legal limits on the possession of marijuana for medical purposes, as set forth in NRS 453A.200.

4. That, posted clearly and conspicuously within the dispensary, is a sign stating unambiguously the legal limits on the

possession of marijuana for medical purposes, as set forth in NRS 453A.200.

Sec. 19.4. *1. At each medical marijuana establishment, medical marijuana must be stored only in an enclosed, locked facility.*

2. Except as otherwise provided in subsection 3, at each medical marijuana dispensary, medical marijuana must be stored in a secure, locked device, display case, cabinet or room within the enclosed, locked facility. The secure, locked device, display case, cabinet or room must be protected by a lock or locking mechanism that meets at least the security rating established by Underwriters Laboratories for key locks.

3. At a medical marijuana dispensary, medical marijuana may be removed from the secure setting described in subsection 2:

(a) Only for the purpose of dispensing the marijuana;

(b) Only immediately before the marijuana is dispensed; and

(c) Only by a medical marijuana establishment agent who is employed by or volunteers at the dispensary.

Sec. 19.5. *1. The State of Nevada and the medical marijuana dispensaries in this State which hold valid medical marijuana establishment registration certificates will recognize a nonresident card only under the following circumstances:*

(a) The state or jurisdiction from which the holder or bearer obtained the nonresident card grants an exemption from criminal prosecution for the medical use of marijuana;

(b) The state or jurisdiction from which the holder or bearer obtained the nonresident card requires, as a prerequisite to the issuance of such a card, that a physician advise the person that the medical use of marijuana may mitigate the symptoms or effects of the person's medical condition;

(c) The nonresident card has an expiration date and has not yet expired;

(d) The holder or bearer of the nonresident card signs an affidavit in a form prescribed by the Division which sets forth that the holder or bearer is entitled to engage in the medical use of marijuana in his or her state or jurisdiction of residence; and

(e) The holder or bearer of the nonresident card agrees to abide by, and does abide by, the legal limits on the possession of marijuana for medical purposes in this State, as set forth in NRS 453A.200.

2. For the purposes of the reciprocity described in this section:

(a) The amount of medical marijuana that the holder or bearer of a nonresident card is entitled to possess in his or her state or jurisdiction of residence is not relevant; and

(b) Under no circumstances, while in this State, may the holder or bearer of a nonresident card possess marijuana for medical purposes in excess of the limits set forth in NRS 453A.200.

3. As used in this section, "nonresident card" means a card or other identification that:

(a) Is issued by a state or jurisdiction other than Nevada; and

(b) Is the functional equivalent of a registry identification card, as determined by the Division.

Sec. 19.6. *1. A patient who holds a valid registry identification card and his or her designated primary caregiver, if any, may select one medical marijuana dispensary to serve as his or her designated medical marijuana dispensary at any one time.*

2. A patient who designates a medical marijuana dispensary as described in subsection 1:

(a) Shall communicate the designation to the Division within the time specified by the Division.

(b) May change his or her designation not more than once in a 30-day period.

Sec. 19.7. *Each medical marijuana dispensary and facility for the production of edible marijuana products or marijuana-infused products shall, in consultation with the Division, cooperate to ensure that all edible marijuana products and marijuana-infused products offered for sale:*

1. Are labeled clearly and unambiguously as medical marijuana.

2. Are not presented in packaging that is appealing to children.

3. Are regulated and sold on the basis of the concentration of THC in the products and not by weight.

4. Are packaged and labeled in such a manner as to allow tracking by way of an inventory control system.

Sec. 19.8. *1. If a law enforcement agency legally and justly seizes evidence from a medical marijuana establishment on a basis that, in consideration of due process and viewed in the manner most favorable to the establishment, would lead a reasonable person to believe that a crime has been committed, the relevant provisions of NRS 179.1156 to 179.121, inclusive, apply insofar as they do not conflict with the provisions of this chapter.*

2. As used in this section, "law enforcement agency" has the meaning ascribed to it in NRS 239C.065.

Sec. 19.9. *1. The Division shall establish standards for and certify one or more private and independent testing laboratories to test marijuana, edible marijuana products and marijuana-infused products that are to be sold in this State.*

2. Such an independent testing laboratory must be able to determine accurately, with respect to marijuana, edible marijuana products and marijuana-infused products that are sold or will be sold at medical marijuana dispensaries in this State:

(a) The concentration therein of THC and cannabidiol.

(b) Whether the tested material is organic or non-organic.

(c) The presence and identification of molds and fungus.

(d) The presence and concentration of fertilizers and other nutrients.

3. To obtain certification by the Division on behalf of an independent testing laboratory, an applicant must:

(a) Apply successfully as required pursuant to section 10 of this act.

(b) Pay the fees required pursuant to section 12 of this act.

Sec. 20. *The Division shall adopt such regulations as it determines to be necessary or advisable to carry out the provisions of sections 10 to 20, inclusive, of this act. Such regulations are in addition to any requirements set forth in statute and must, without limitation:*

1. Prescribe the form and any additional required content of registration and renewal applications submitted pursuant to sections 10 and 13 of this act.

2. Set forth rules pertaining to the safe and healthful operation of medical marijuana establishments, including, without limitation:

(a) The manner of protecting against diversion and theft without imposing an undue burden on medical marijuana establishments or compromising the confidentiality of the holders of registry identification cards.

(b) Minimum requirements for the oversight of medical marijuana establishments.

(c) Minimum requirements for the keeping of records by medical marijuana establishments.

(d) Provisions for the security of medical marijuana establishments, including, without limitation, requirements for the protection by a fully operational security alarm system of each medical marijuana establishment.

(e) Procedures pursuant to which medical marijuana dispensaries must use the services of an independent testing laboratory to ensure that any marijuana, edible marijuana

products and marijuana-infused products sold by the dispensaries to end users are tested for content, quality and potency in accordance with standards established by the Division.

(f) Procedures pursuant to which a medical marijuana dispensary will be notified by the Division if a patient who holds a valid registry identification card has chosen the dispensary as his or her designated medical marijuana dispensary, as described in section 19.6 of this act.

3. Establish circumstances and procedures pursuant to which the maximum fees set forth in section 12 of this act may be reduced over time:

(a) To ensure that the fees imposed pursuant to section 12 of this act are, insofar as may be practicable, revenue neutral; and

(b) To reflect gifts and grants received by the Division pursuant to NRS 453A.720.

4. Set forth the amount of usable marijuana that a medical marijuana dispensary may dispense to a person who holds a valid registry identification card, or the designated primary caregiver of such a person, in any one 14-day period. Such an amount must not exceed the limits set forth in NRS 453A.200.

5. As far as possible while maintaining accountability, protect the identity and personal identifying information of each person who receives, facilitates or delivers services in accordance with this chapter.

6. In cooperation with the Board of Medical Examiners and the State Board of Osteopathic Medicine, establish a system to:

(a) Register and track attending physicians who advise their patients that the medical use of marijuana may mitigate the symptoms or effects of the patient's medical condition;

(b) Insofar as is possible, track and quantify the number of times an attending physician described in paragraph (a) makes such an advisement; and

(c) Provide for the progressive discipline of attending physicians who advise the medical use of marijuana at a rate at which the Division and Board determine and agree to be unreasonably high.

7. Establish different categories of medical marijuana establishment agent registration cards, including, without limitation, criteria for training and certification, for each of the different types of medical marijuana establishments at which such an agent may be employed or volunteer.

8. Provide for the maintenance of a log by the Division of each person who is authorized to cultivate, grow or produce marijuana pursuant to subsection 6 of NRS 453A.220. The

Division shall ensure that the contents of the log are available for verification by law enforcement personnel 24 hours a day.

9. Address such other matters as may assist in implementing the program of dispensation contemplated by sections 10 to 20, inclusive, of this act.

Sec. 21. NRS 453A.010 is hereby amended to read as follows:

453A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 453A.020 to 453A.170, inclusive, ***and sections 3 to 9, inclusive, of this act*** have the meanings ascribed to them in those sections.

Sec. 21.5. NRS 453A.100 is hereby amended to read as follows:

453A.100 ~~["Drug paraphernalia" has the meaning ascribed to it in NRS 453.554.]~~ ***"Paraphernalia" means accessories, devices and other equipment that is necessary or useful for a person to engage in the medical use of marijuana.***

Sec. 22. NRS 453A.200 is hereby amended to read as follows:

453A.200 1. Except as otherwise provided in this section and NRS 453A.300, a person who holds a valid registry identification card issued to the person pursuant to NRS 453A.220 or 453A.250 is exempt from state prosecution for:

(a) Possession, delivery or production of marijuana;

(b) Possession or delivery of ~~[drug]~~ paraphernalia;

(c) Aiding and abetting another in the possession, delivery or production of marijuana;

(d) Aiding and abetting another in the possession or delivery of ~~[drug]~~ paraphernalia;

(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and

(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of ~~[drug]~~ paraphernalia is an element.

2. In addition to the provisions of ~~[subsection]~~ ***subsections*** 1 ~~[,]~~ ***and 5,*** no person may be subject to state prosecution for constructive possession, conspiracy or any other criminal offense solely for being in the presence or vicinity of the medical use of marijuana in accordance with the provisions of this chapter.

3. The exemption from state prosecution set forth in subsection 1 applies only to the extent that a person who holds a registry identification card issued to the person pursuant to paragraph (a) of subsection 1 of NRS 453A.220 and the designated primary caregiver, if any, of such a person:

(a) Engage in or assist in, as applicable, the medical use of marijuana in accordance with the provisions of this chapter as

justified to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; and

(b) Do not, at any one time, collectively possess, deliver or produce more than:

(1) ~~[One ounce]~~ ***Two and one-half ounces*** of usable marijuana ~~[;]~~ ***in any one 14-day period;***

(2) ~~[Three mature]~~ ***Twelve*** marijuana plants ~~[; and~~

~~(3) Four immature marijuana plants.]~~ ***, irrespective of whether the marijuana plants are mature or immature; and***

(3) A maximum allowable quantity of edible marijuana products and marijuana-infused products as established by regulation of the Division.

➥ ***The persons described in this subsection must ensure that the usable marijuana and marijuana plants described in this subsection are safeguarded in an enclosed, secure location.***

4. If the persons described in subsection 3 possess, deliver or produce marijuana in an amount which exceeds the amount described in paragraph (b) of that subsection, those persons:

(a) Are not exempt from state prosecution for possession, delivery or production of marijuana.

(b) May establish an affirmative defense to charges of possession, delivery or production of marijuana, or any combination of those acts, in the manner set forth in NRS 453A.310.

5. A person who holds a valid medical marijuana establishment registration certificate issued to the person pursuant to section 10 of this act or a valid medical marijuana establishment agent registration card issued to the person pursuant to section 13 of this act, and who confines his or her activities to those authorized by sections 10 to 20, inclusive, of this act and the regulations adopted by the Division pursuant thereto, is exempt from state prosecution for:

(a) Possession, delivery or production of marijuana;

(b) Possession or delivery of paraphernalia;

(c) Aiding and abetting another in the possession, delivery or production of marijuana;

(d) Aiding and abetting another in the possession or delivery of paraphernalia;

(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and

(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of paraphernalia is an element.

6. Notwithstanding any other provision of law and except as otherwise provided in this subsection, after a medical marijuana

dispensary opens in the county of residence of a person who holds a registry identification card or his or her designated primary caregiver, if any, such persons are not authorized to cultivate, grow or produce marijuana. The provisions of this subsection do not apply if:

(a) The person who holds the registry identification card or his or her designated primary caregiver, if any, was cultivating, growing or producing marijuana in accordance with this chapter on or before July 1, 2013;

(b) All the medical marijuana dispensaries in the county of residence of the person who holds the registry identification card or his or her designated primary caregiver, if any, close or are unable to supply the quantity or strain of marijuana necessary for the medical use of the person to treat his or her specific medical condition;

(c) Because of illness or lack of transportation, the person who holds the registry identification card and his or her designated primary caregiver, if any, are unable reasonably to travel to a medical marijuana dispensary; or

(d) No medical marijuana dispensary was operating within 25 miles of the residence of the person who holds the registry identification card at the time the person first applied for his or her registry identification card.

7. As used in this section, "marijuana" includes, without limitation, edible marijuana products and marijuana-infused products.

Sec. 22.3. NRS 453A.200 is hereby amended to read as follows:

453A.200 1. Except as otherwise provided in this section and NRS 453A.300, a person who holds a valid registry identification card issued to the person pursuant to NRS 453A.220 or 453A.250 is exempt from state prosecution for:

(a) Possession, delivery or production of marijuana;

(b) Possession or delivery of paraphernalia;

(c) Aiding and abetting another in the possession, delivery or production of marijuana;

(d) Aiding and abetting another in the possession or delivery of paraphernalia;

(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and

(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of paraphernalia is an element.

2. In addition to the provisions of subsections 1 and 5, no person may be subject to state prosecution for constructive possession, conspiracy or any other criminal offense solely for being in the presence or vicinity of the medical use of marijuana in accordance with the provisions of this chapter.

3. The exemption from state prosecution set forth in subsection 1 applies only to the extent that a person who holds a registry identification card issued to the person pursuant to paragraph (a) of subsection 1 of NRS 453A.220 and the designated primary caregiver, if any, of such a person:

(a) Engage in or assist in, as applicable, the medical use of marijuana in accordance with the provisions of this chapter as justified to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; and

(b) Do not, at any one time, collectively possess, deliver or produce more than:

(1) Two and one-half ounces of usable marijuana in any one 14-day period;

(2) Twelve marijuana plants, irrespective of whether the marijuana plants are mature or immature; and

(3) A maximum allowable quantity of edible marijuana products and marijuana-infused products as established by regulation of the Division.

➥ The persons described in this subsection must ensure that the usable marijuana and marijuana plants described in this subsection are safeguarded in an enclosed, secure location.

4. If the persons described in subsection 3 possess, deliver or produce marijuana in an amount which exceeds the amount described in paragraph (b) of that subsection, those persons:

(a) Are not exempt from state prosecution for possession, delivery or production of marijuana.

(b) May establish an affirmative defense to charges of possession, delivery or production of marijuana, or any combination of those acts, in the manner set forth in NRS 453A.310.

5. A person who holds a valid medical marijuana establishment registration certificate issued to the person pursuant to section 10 of this act or a valid medical marijuana establishment agent registration card issued to the person pursuant to section 13 of this act, and who confines his or her activities to those authorized by sections 10 to 20, inclusive, of this act and the regulations adopted by the Division pursuant thereto, is exempt from state prosecution for:

(a) Possession, delivery or production of marijuana;

(b) Possession or delivery of paraphernalia;

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EXHIBIT 2
(Part 3)

(c) Aiding and abetting another in the possession, delivery or production of marijuana;

(d) Aiding and abetting another in the possession or delivery of paraphernalia;

(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and

(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of paraphernalia is an element.

6. Notwithstanding any other provision of law and except as otherwise provided in this subsection, after a medical marijuana dispensary opens in the county of residence of a person who holds a registry identification card or his or her designated primary caregiver, if any, such persons are not authorized to cultivate, grow or produce marijuana. The provisions of this subsection do not apply if:

(a) ~~[The person who holds the registry identification card or his or her designated primary caregiver, if any, was cultivating, growing or producing marijuana in accordance with this chapter on or before July 1, 2013;~~

~~(b)]~~ All the medical marijuana dispensaries in the county of residence of the person who holds the registry identification card or his or her designated primary caregiver, if any, close or are unable to supply the quantity or strain of marijuana necessary for the medical use of the person to treat his or her specific medical condition;

~~[(c)]~~ *(b)* Because of illness or lack of transportation, the person who holds the registry identification card and his or her designated primary caregiver, if any, are unable reasonably to travel to a medical marijuana dispensary; or

~~[(d)]~~ *(c)* No medical marijuana dispensary was operating within 25 miles of the residence of the person who holds the registry identification card at the time the person first applied for his or her registry identification card.

7. As used in this section, "marijuana" includes, without limitation, edible marijuana products and marijuana-infused products.

Sec. 22.35. NRS 453A.210 is hereby amended to read as follows:

453A.210 1. The Division shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section.

2. Except as otherwise provided in subsections 3 and 5 and NRS 453A.225, the Division or its designee shall issue a registry

identification card to a person who is a resident of this State and who submits an application on a form prescribed by the Division accompanied by the following:

(a) Valid, written documentation from the person's attending physician stating that:

(1) The person has been diagnosed with a chronic or debilitating medical condition;

(2) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(3) The attending physician has explained the possible risks and benefits of the medical use of marijuana;

(b) The name, address, telephone number, social security number and date of birth of the person;

(c) Proof satisfactory to the Division that the person is a resident of this State;

(d) The name, address and telephone number of the person's attending physician; ~~[and]~~

(e) If the person elects to designate a primary caregiver at the time of application:

(1) The name, address, telephone number and social security number of the designated primary caregiver; and

(2) A written, signed statement from the person's attending physician in which the attending physician approves of the designation of the primary caregiver ~~[.]~~ ***; and***

(f) If the person elects to designate a medical marijuana dispensary at the time of application, the name of the medical marijuana dispensary.

3. The Division or its designee shall issue a registry identification card to a person who is under 18 years of age if:

(a) The person submits the materials required pursuant to subsection 2; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement setting forth that:

(1) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(2) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(3) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(4) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

4. The form prescribed by the Division to be used by a person applying for a registry identification card pursuant to this section must be a form that is in quintuplicate. Upon receipt of an application that is completed and submitted pursuant to this section, the Division shall:

(a) Record on the application the date on which it was received;

(b) Retain one copy of the application for the records of the Division; and

(c) Distribute the other four copies of the application in the following manner:

(1) One copy to the person who submitted the application;

(2) One copy to the applicant's designated primary caregiver, if any;

(3) One copy to the Central Repository for Nevada Records of Criminal History; and

(4) One copy to:

(I) If the attending physician of the applicant is licensed to practice medicine pursuant to the provisions of chapter 630 of NRS, the Board of Medical Examiners; or

(II) If the attending physician of the applicant is licensed to practice osteopathic medicine pursuant to the provisions of chapter 633 of NRS, the State Board of Osteopathic Medicine.

➥ The Central Repository for Nevada Records of Criminal History shall report to the Division its findings as to the criminal history, if any, of an applicant within 15 days after receiving a copy of an application pursuant to subparagraph (3) of paragraph (c). The Board of Medical Examiners or the State Board of Osteopathic Medicine, as applicable, shall report to the Division its findings as to the licensure and standing of the applicant's attending physician within 15 days after receiving a copy of an application pursuant to subparagraph (4) of paragraph (c).

5. The Division shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days after receiving the application. The Division may contact an applicant, the applicant's attending physician and designated primary caregiver, if any, by telephone to

determine that the information provided on or accompanying the application is accurate. The Division may deny an application only on the following grounds:

(a) The applicant failed to provide the information required pursuant to subsections 2 and 3 to:

(1) Establish the applicant's chronic or debilitating medical condition; or

(2) Document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with that condition;

(b) The applicant failed to comply with regulations adopted by the Division, including, without limitation, the regulations adopted by the Administrator pursuant to NRS 453A.740;

(c) The Division determines that the information provided by the applicant was falsified;

(d) The Division determines that the attending physician of the applicant is not licensed to practice medicine or osteopathic medicine in this State or is not in good standing, as reported by the Board of Medical Examiners or the State Board of Osteopathic Medicine, as applicable;

(e) The Division determines that the applicant, or the applicant's designated primary caregiver, if applicable, has been convicted of knowingly or intentionally selling a controlled substance;

(f) The Division has prohibited the applicant from obtaining or using a registry identification card pursuant to subsection 2 of NRS 453A.300;

(g) The Division determines that the applicant, or the applicant's designated primary caregiver, if applicable, has had a registry identification card revoked pursuant to NRS 453A.225; or

(h) In the case of a person under 18 years of age, the custodial parent or legal guardian with responsibility for health care decisions for the person has not signed the written statement required pursuant to paragraph (b) of subsection 3.

6. The decision of the Division to deny an application for a registry identification card is a final decision for the purposes of judicial review. Only the person whose application has been denied or, in the case of a person under 18 years of age whose application has been denied, the person's parent or legal guardian, has standing to contest the determination of the Division. A judicial review authorized pursuant to this subsection must be limited to a determination of whether the denial was arbitrary, capricious or otherwise characterized by an abuse of discretion and must be conducted in accordance with the procedures set forth in chapter 233B of NRS for reviewing a final decision of an agency.

7. A person whose application has been denied may not reapply for 6 months after the date of the denial, unless the Division or a court of competent jurisdiction authorizes reapplication in a shorter time.

8. Except as otherwise provided in this subsection, if a person has applied for a registry identification card pursuant to this section and the Division has not yet approved or denied the application, the person, and the person's designated primary caregiver, if any, shall be deemed to hold a registry identification card upon the presentation to a law enforcement officer of the copy of the application provided to him or her pursuant to subsection 4. ~~[A person may not be deemed to hold a registry identification card for a period of more than 30 days after the date on which the Division received the application.]~~

9. As used in this section, "resident" has the meaning ascribed to it in NRS 483.141.

Sec. 22.4. NRS 453A.220 is hereby amended to read as follows:

453A.220 1. If the Division approves an application pursuant to subsection 5 of NRS 453A.210, the Division or its designee shall, as soon as practicable after the Division approves the application:

(a) Issue a serially numbered registry identification card to the applicant; and

(b) If the applicant has designated a primary caregiver, issue a serially numbered registry identification card to the designated primary caregiver.

2. A registry identification card issued pursuant to paragraph (a) of subsection 1 must set forth:

(a) The name, address, photograph and date of birth of the applicant;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant's designated primary caregiver, if any; ~~[and]~~

(d) ***The name of the applicant's designated medical marijuana dispensary, if any;***

(e) Whether the applicant is authorized to cultivate, grow or produce marijuana pursuant to subsection 6 of NRS 453A.200; and

(f) Any other information prescribed by regulation of the Division.

3. A registry identification card issued pursuant to paragraph (b) of subsection 1 must set forth:

(a) The name, address and photograph of the designated primary caregiver;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant for whom the person is the designated primary caregiver; ~~[and]~~

(d) ***The name of the designated primary caregiver's designated medical marijuana dispensary, if any;***

(e) Whether the designated primary caregiver is authorized to cultivate, grow or produce marijuana pursuant to subsection 6 of NRS 453A.200; and

(f) Any other information prescribed by regulation of the Division.

4. Except as otherwise provided in NRS 453A.225, subsection 3 of NRS 453A.230 and subsection 2 of NRS 453A.300, a registry identification card issued pursuant to this section is valid for a period of 1 year and may be renewed in accordance with regulations adopted by the Division.

Sec. 22.45. NRS 453A.230 is hereby amended to read as follows:

453A.230 1. A person to whom the Division or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of NRS 453A.220 shall, in accordance with regulations adopted by the Division:

(a) Notify the Division of any change in the person's name, address, telephone number, ***designated medical marijuana dispensary,*** attending physician or designated primary caregiver, if any; and

(b) Submit annually to the Division:

(1) Updated written documentation from the person's attending physician in which the attending physician sets forth that:

(I) The person continues to suffer from a chronic or debilitating medical condition;

(II) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(III) The attending physician has explained to the person the possible risks and benefits of the medical use of marijuana; and

(2) If the person elects to designate a primary caregiver for the subsequent year and the primary caregiver so designated was not the person's designated primary caregiver during the previous year:

(I) The name, address, telephone number and social security number of the designated primary caregiver; and

(II) A written, signed statement from the person's attending physician in which the attending physician approves of the designation of the primary caregiver.

2. A person to whom the Division or its designee has issued a registry identification card pursuant to paragraph (b) of subsection 1 of NRS 453A.220 or pursuant to NRS 453A.250 shall, in accordance with regulations adopted by the Division, notify the Division of any change in the person's name, address, telephone number , ***designated medical marijuana dispensary*** or the identity of the person for whom he or she acts as designated primary caregiver.

3. If a person fails to comply with the provisions of subsection 1 or 2, the registry identification card issued to the person shall be deemed expired. If the registry identification card of a person to whom the Division or its designee issued the card pursuant to paragraph (a) of subsection 1 of NRS 453A.220 is deemed expired pursuant to this subsection, a registry identification card issued to the person's designated primary caregiver, if any, shall also be deemed expired. Upon the deemed expiration of a registry identification card pursuant to this subsection:

(a) The Division shall send, by certified mail, return receipt requested, notice to the person whose registry identification card has been deemed expired, advising the person of the requirements of paragraph (b); and

(b) The person shall return his or her registry identification card to the Division within 7 days after receiving the notice sent pursuant to paragraph (a).

Sec. 22.5. NRS 453A.300 is hereby amended to read as follows:

453A.300 1. A person who holds a registry identification card issued to him or her pursuant to NRS 453A.220 or 453A.250 is not exempt from state prosecution for, nor may the person establish an affirmative defense to charges arising from, any of the following acts:

(a) Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

(b) Engaging in any other conduct prohibited by NRS 484C.110, 484C.120, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420, 488.425 or 493.130.

(c) Possessing a firearm in violation of paragraph (b) of subsection 1 of NRS 202.257.

(d) Possessing marijuana in violation of NRS 453.336 or possessing ~~[drug]~~ paraphernalia in violation of NRS 453.560 or

453.566, if the possession of the marijuana or ~~[drug]~~ paraphernalia is discovered because the person engaged or assisted in the medical use of marijuana in:

(1) Any public place or in any place open to the public or exposed to public view; or

(2) Any local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders.

(e) Delivering marijuana to another person who he or she knows does not lawfully hold a registry identification card issued by the Division or its designee pursuant to NRS 453A.220 or 453A.250.

(f) Delivering marijuana for consideration to any person, regardless of whether the recipient lawfully holds a registry identification card issued by the Division or its designee pursuant to NRS 453A.220 or 453A.250.

2. Except as otherwise provided in NRS 453A.225 and in addition to any other penalty provided by law, if the Division determines that a person has willfully violated a provision of this chapter or any regulation adopted by the Division to carry out the provisions of this chapter, the Division may, at its own discretion, prohibit the person from obtaining or using a registry identification card for a period of up to 6 months.

Sec. 23. NRS 453A.400 is hereby amended to read as follows:

453A.400 1. The fact that a person possesses a registry identification card issued to the person by the Division or its designee pursuant to NRS 453A.220 or 453A.250, ***a medical marijuana establishment registration certificate issued to the person by the Division or its designee pursuant to section 10 of this act or a medical marijuana establishment agent registration card issued to the person by the Division or its designee pursuant to section 13 of this act*** does not, alone:

(a) Constitute probable cause to search the person or the person's property; or

(b) Subject the person or the person's property to inspection by any governmental agency.

2. Except as otherwise provided in this subsection, if officers of a state or local law enforcement agency seize marijuana, ~~[drug]~~ paraphernalia or other related property from a person engaged ***in, facilitating*** or assisting in the medical use of marijuana:

(a) The law enforcement agency shall ensure that the marijuana, ~~[drug]~~ paraphernalia or other related property is not destroyed while in the possession of the law enforcement agency.

(b) Any property interest of the person from whom the marijuana, ~~[drug]~~ paraphernalia or other related property was seized

must not be forfeited pursuant to any provision of law providing for the forfeiture of property, except as part of a sentence imposed after conviction of a criminal offense.

(c) Upon a determination by the district attorney of the county in which the marijuana, ~~[drug]~~ paraphernalia or other related property was seized, or the district attorney's designee, that the person from whom the marijuana, ~~[drug]~~ paraphernalia or other related property was seized is engaging in or assisting in the medical use of marijuana in accordance with the provisions of this chapter, the law enforcement agency shall immediately return to that person any usable marijuana, marijuana plants, ~~[drug]~~ paraphernalia or other related property that was seized.

➥ The provisions of this subsection do not require a law enforcement agency to care for live marijuana plants.

3. For the purposes of paragraph (c) of subsection 2, the determination of a district attorney or the district attorney's designee that a person is engaging in or assisting in the medical use of marijuana in accordance with the provisions of this chapter shall be deemed to be evidenced by:

(a) A decision not to prosecute;

(b) The dismissal of charges; or

(c) Acquittal.

Sec. 24. NRS 453A.740 is hereby amended to read as follows:

453A.740 The Administrator of the Division shall adopt such regulations as the Administrator determines are necessary to carry out the provisions of this chapter. The regulations must set forth, without limitation:

1. Procedures pursuant to which the Division will, in cooperation with the Department of Motor Vehicles, cause a registry identification card to be prepared and issued to a qualified person as a type of identification card described in NRS 483.810 to 483.890, inclusive. The procedures described in this subsection must provide that the Division will:

(a) Issue a registry identification card to a qualified person after the card has been prepared by the Department of Motor Vehicles; or

(b) Designate the Department of Motor Vehicles to issue a registry identification card to a person if:

(1) The person presents to the Department of Motor Vehicles valid documentation issued by the Division indicating that the Division has approved the issuance of a registry identification card to the person; and

(2) The Department of Motor Vehicles, before issuing the registry identification card, confirms by telephone or other reliable

means that the Division has approved the issuance of a registry identification card to the person.

2. ~~[Criteria for determining whether a marijuana plant is a mature marijuana plant or an immature marijuana plant.~~

~~3.]~~ Fees for:

(a) Providing to an applicant an application for a registry identification card, which fee must not exceed ~~[$50;]~~ ***$25;*** and

(b) Processing and issuing a registry identification card, which fee must not exceed ~~[$150.]~~ ***$75.***

Sec. 24.3. NRS 453A.800 is hereby amended to read as follows:

453A.800 The provisions of this chapter do not:

1. Require an insurer, organization for managed care or any person or entity who provides coverage for a medical or health care service to pay for or reimburse a person for costs associated with the medical use of marijuana.

2. Require any employer to ~~[accommodate]~~ ***allow*** the medical use of marijuana in the workplace.

3. Require an employer to modify the job or working conditions of a person who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer but the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card, provided that such reasonable accommodation would not:

(a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or

(b) Prohibit the employee from fulfilling any and all of his or her job responsibilities.

Sec. 24.4. Chapter 372A of NRS is hereby amended by adding thereto a new section to read as follows:

1. An excise tax is hereby imposed on each wholesale sale in this State of marijuana by a cultivation facility to another medical marijuana establishment at the rate of 2 percent of the sales price of the marijuana. The excise tax imposed pursuant to this subsection is the obligation of the cultivation facility.

2. An excise tax is hereby imposed on each wholesale sale in this State of edible marijuana products or marijuana-infused products by a facility for the production of edible marijuana products or marijuana-infused products to another medical marijuana establishment at the rate of 2 percent of the sales price of those products. The excise tax imposed pursuant to this subsection is the obligation of the facility for the production of

2. Any expense incurred as a result of any test is a charge against the division.

Sec. 46. NRS 616C.230 is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(a) Caused by the employee's willful intention to injure himself.

(b) Caused by the employee's willful intention to injure another.

(c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

(d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name [.] ***or that he was not using in accordance with the provisions of sections 2 to 33, inclusive, of this act,*** the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS 50.315 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, the laboratory that conducts the testing must be licensed pursuant to the provisions of chapter 652 of NRS.

3. No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.

4. If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended.

5. An injured employee's compensation, other than accident benefits, must be suspended if:

(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury.

The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.

Sec. 47. NRS 630.3066 is hereby amended to read as follows:

630.3066 A physician is not subject to disciplinary action solely for [~~prescribing~~] *:*

1. ***Prescribing*** or administering to a patient under his care a controlled substance which is listed in schedule II, III, IV or V by the state board of pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with regulations adopted by the board.

2. Engaging in any activity in accordance with the provisions of sections 2 to 33, inclusive, of this act.

Sec. 48. (Deleted by amendment.)

Sec. 48.5. 1. The 72nd session of the Nevada legislature shall review statistics provided by the legislative counsel bureau with respect to:

(a) Whether persons exempt from state prosecution pursuant to section 17 of this act have been subject to federal prosecution for carrying out the activities concerning which they are exempt from state prosecution pursuant to that section;

(b) The number of persons who participate in the medical use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act; and

(c) The number of persons who are arrested and convicted for drug related offenses within the State of Nevada, to enable appropriations for budgets to be established at levels to provide adequate and appropriate drug treatment within this state.

2. If, after conducting the review described in subsection 1, the 72nd session of the Nevada legislature determines that the medical use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act is not in the best interests of the residents of this state, the legislature shall revise those provisions as it deems appropriate.

Sec. 49. The amendatory provisions of this act do not apply to offenses committed before October 1, 2001.

Sec. 50. 1. This section becomes effective upon passage and approval.

2. Sections 6, 20, 21, 30 and 32 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2001, for all other purposes.

3. Sections 1 to 5, inclusive, 7 to 19, inclusive, 22 to 29, inclusive, 30.1 to 30.5, inclusive, 31, 31.3, 31.7, 33 to 36, inclusive, 38 to 47, inclusive, 48.5 and 49 of this act become effective on October 1, 2001.

4. Section 37 of this act becomes effective at 12:01 a.m. on October 1, 2001.

F I L E D
Electronically
2015-10-08 03:00:44 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5179475 : mcholico

EXHIBIT 2
(Part 1)

Senate Bill No. 374–Senators Segerblom, Hutchison; and Manendo

Joint Sponsors: Assemblymen Aizley; Hogan and Swank

CHAPTER.....

AN ACT relating to medical marijuana; making it a crime to counterfeit or forge, or attempt to counterfeit or forge, a registry identification card for the medical use of marijuana; making it a crime for a person to grow, harvest or process more than 12 marijuana plants; providing for the registration of medical marijuana establishments authorized to cultivate or dispense marijuana or manufacture edible marijuana products or marijuana-infused products for sale to persons authorized to engage in the medical use of marijuana; providing for the registration of agents who are employed by or volunteer at medical marijuana establishments; setting forth the manner in which such establishments must register and operate; creating the Subcommittee on the Medical Use of Marijuana of the Advisory Commission on the Administration of Justice; requiring the Health Division of the Department of Health and Human Services to adopt regulations; imposing an excise tax on each sale of marijuana, edible marijuana products and marijuana-infused products; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the State of Nevada provides immunity from state and local prosecution for possessing, delivering and producing marijuana in certain limited amounts for patients with qualifying medical conditions, and their designated primary caregivers, who apply to and receive from the Health Division of the Department of Health and Human Services a registry identification card. Existing law does not specify the manner in which qualifying patients and their designated primary caregivers are to obtain marijuana. (Chapter 453A of NRS)

Section 1 of this bill makes it a crime, punishable as a category E felony, for a person to counterfeit or forge or attempt to counterfeit or forge a registry identification card, which is the instrument that indicates a bearer is entitled to engage in the medical use of marijuana. **Section 1.7** of this bill makes it a crime, punishable as a category E felony, for a person to grow, harvest or process more than 12 marijuana plants, and also makes such a person liable for costs of cleanup and disposal.

Sections 3.5, 7.3, 7.5, 8 and 8.3 of this bill define what is meant by a "medical marijuana establishment," which includes: (1) cultivation facilities; (2) facilities for the production of edible marijuana products or marijuana-infused products; (3) independent testing laboratories; and (4) medical marijuana dispensaries.

Section 1.4 of this bill creates the Subcommittee on the Medical Use of Marijuana of the Advisory Commission on the Administration of Justice. The Subcommittee is tasked with considering, evaluating, reviewing and reporting on the medical use of marijuana, the dispensation of marijuana for medical use and laws providing for the dispensation of marijuana for medical use.

Sections 10-11.7 of this bill set forth the manner in which a person may apply to obtain a registration certificate to operate a medical marijuana establishment. **Section 10** mandates background checks for persons proposed to be owners, officers or board members of medical marijuana establishments, and requires such establishments to be sited at least 1,000 feet from existing schools and at least 300 feet from certain existing community facilities. **Section 10.5** requires that medical marijuana establishments be located in accordance with local governmental ordinances on zoning and land use, and be professional in appearance. **Section 11** limits, by the size of the population of each county, the number of medical marijuana establishments that may be certified in each county, and also limits the Division to accepting applications for the certification of the establishments to not more than 10 business days in any one calendar year. **Section 11.5** imposes limits to prevent the overconcentration of medical marijuana establishments in one part of a county and to prevent situations of ownership that are geographically monopolistic. **Section 11.7** sets forth the merit-based criteria to be used by the Health Division of the Department of Health and Human Services in determining whether to issue a registration certificate for the operation of a medical marijuana establishment, including such criteria as financial solvency, experience in running businesses, knowledge of medical marijuana and financial contributions by way of the payment of taxes or otherwise to the State of Nevada and its political subdivisions.

Section 13 of this bill sets forth the procedure to apply for a medical marijuana establishment agent registration card, including background checks, and specifies that the application shall be deemed conditionally approved if the Division does not act upon the application within 30 days, but the conditional approval is limited to the period until such time as the Division acts upon the application.

Section 12 of this bill provides the maximum fees to be charged by the Division for the initial issuance and renewal of medical marijuana establishment registration certificates and medical marijuana establishment agent registration cards. **Section 12** also imposes, in the case of applications to operate a medical marijuana establishment, a nonrefundable application fee of $5,000. **Section 13.5** states that the registration certificates and registration cards are nontransferable.

Sections 14 and 15 of this bill, in accordance with federal law, outline the procedure for the suspension of medical marijuana establishment registration certificates and medical marijuana establishment agent registration cards in the event that the holder fails to comply with certain requirements pertaining to the payment of child support. **Sections 16 and 17** of this bill set forth the acts that are immediate grounds for the Division to revoke a registration certificate or registration card. **Section 18** of this bill provides that it is a privilege to hold a registration certificate or registration card and holding such an instrument conveys no vested rights.

Section 19 of this bill sets forth requirements for the secure and lawful operation of medical marijuana establishments. **Sections 19.1 and 19.2** of this bill, respectively, require medical marijuana establishments to maintain an electronic verification system and an inventory control system. Both systems are intended to work together to ensure that marijuana cultivated for medical use is dispensed only in accordance with chapter 453A of NRS and only to persons authorized to engage in the medical use of marijuana.

Sections 19.3 and 20 of this bill require medical marijuana dispensaries to use an independent testing laboratory to ensure that the products sold to end users are tested for content, quality and potency. **Section 19.4** of this bill sets forth that medical marijuana establishments are to use certain security protocols.

Sections 19.5 and 24.9 of this bill provide for the dispensation of marijuana and related products to persons who are not residents of this State. From April 1, 2014, through March 31, 2016, a nonresident purchaser must sign an affidavit attesting to the fact that he or she is entitled to engage in the medical use of marijuana in his or her state or jurisdiction of residency. On and after April 1, 2016, the requirement for such

an affidavit is replaced by computer cross-checking between the State of Nevada and other jurisdictions.

Sections 19.6, 22.35, 22.4 and 22.45 of this bill allow a registry identification cardholder and his or her designated primary caregiver, if any, to choose a particular medical marijuana dispensary to be his or her designated medical marijuana dispensary. The designation of a medical marijuana dispensary may be changed not more than once every 30 days.

Section 19.7 of this bill requires that marijuana, edible marijuana products and marijuana-infused products be labeled and packaged in a safe manner.

Section 19.8 of this bill allows the seizure of certain property possessed by a medical marijuana establishment under certain strictly prescribed circumstances.

Section 19.9 of this bill requires the Division to prescribe standards for the operation of independent testing laboratories.

Section 20 of this bill authorizes the Division to adopt any regulations the Division determines to be necessary or advisable to carry out the program of dispensing marijuana and related products to persons authorized by law to engage in the medical use of marijuana.

Sections 22 and 22.3 of this bill increase the amounts of marijuana, edible marijuana products and marijuana-infused products that may be possessed collectively by a registry identification cardholder and his or her designated primary caregiver, if any. The increased amounts are derived, in substantial part, from the limits established by the State of Arizona. **Sections 22 and 22.3** also provide a 2-year period, beginning on April 1, 2014, and ending on March 31, 2016, during which persons who are authorized to engage in the medical use of marijuana and who were cultivating, growing or producing marijuana on or before July 1, 2013, are "grandfathered" to continue such activity until March 31, 2016. On and after April 1, 2016, self-cultivation, self-growing and self-production is prohibited unless the person engaging in such activity qualifies for one of the compassionate exceptions from the prohibition, including illness that precludes travel to a medical marijuana dispensary, and the lack of a medical marijuana dispensary within 25 miles of the person's residence.

Section 22.4 of this bill stipulates that a registry identification card must indicate whether or not the holder is authorized to engage in the self-cultivation, self-growing or self-production of marijuana for medical purposes.

Section 24 of this bill reduces by 50 percent the fees currently charged by the Division to provide an applicant with an application for a registry identification card, and to process the application and issue the card.

Section 24.4 of this bill: (1) imposes an excise tax of 2 percent on each wholesale sale of marijuana, edible marijuana products and marijuana-infused products between medical marijuana establishments; (2) imposes an excise tax of 2 percent on the retail sale of marijuana and such products from a medical marijuana dispensary to an end user; and (3) makes clear that the 2 percent excise tax on retail sales is in addition to the state and local sales and use taxes that are otherwise imposed on the sale of tangible personal property.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 207 of NRS is hereby amended by adding thereto a new section to read as follows:

1. It is unlawful for any person to counterfeit or forge or attempt to counterfeit or forge a registry identification card.

2. Any person who violates the provisions of subsection 1 is guilty of a category E felony and shall be punished as provided in NRS 193.130.

3. As used in this section, "registry identification card" has the meaning ascribed to it in NRS 453A.140.

Sec. 1.3. NRS 207.360 is hereby amended to read as follows:

207.360 "Crime related to racketeering" means the commission of, attempt to commit or conspiracy to commit any of the following crimes:

1. Murder;
2. Manslaughter, except vehicular manslaughter as described in NRS 484B.657;
3. Mayhem;
4. Battery which is punished as a felony;
5. Kidnapping;
6. Sexual assault;
7. Arson;
8. Robbery;
9. Taking property from another under circumstances not amounting to robbery;
10. Extortion;
11. Statutory sexual seduction;
12. Extortionate collection of debt in violation of NRS 205.322;
13. Forgery;
14. Any violation of NRS 199.280 which is punished as a felony;
15. Burglary;
16. Grand larceny;
17. Bribery or asking for or receiving a bribe in violation of chapter 197 or 199 of NRS which is punished as a felony;
18. Battery with intent to commit a crime in violation of NRS 200.400;
19. Assault with a deadly weapon;

20. Any violation of NRS 453.232, 453.316 to 453.3395, inclusive, ***except a violation of section 1.7 of this act,*** or ***NRS*** 453.375 to 453.401, inclusive;

21. Receiving or transferring a stolen vehicle;

22. Any violation of NRS 202.260, 202.275 or 202.350 which is punished as a felony;

23. Any violation of subsection 2 or 3 of NRS 463.360 or chapter 465 of NRS;

24. Receiving, possessing or withholding stolen goods valued at $650 or more;

25. Embezzlement of money or property valued at $650 or more;

26. Obtaining possession of money or property valued at $650 or more, or obtaining a signature by means of false pretenses;

27. Perjury or subornation of perjury;

28. Offering false evidence;

29. Any violation of NRS 201.300 or 201.360;

30. Any violation of NRS 90.570, 91.230 or 686A.290, or insurance fraud pursuant to NRS 686A.291;

31. Any violation of NRS 205.506, 205.920 or 205.930;

32. Any violation of NRS 202.445 or 202.446; or

33. Any violation of NRS 205.377.

Sec. 1.4. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. There is hereby created the Subcommittee on the Medical Use of Marijuana of the Commission.

2. The Chair of the Commission shall appoint the members of the Subcommittee. The Subcommittee must consist of legislative and nonlegislative members, including, without limitation:

(a) At least four Legislators, who may or may not be members of the Commission.

(b) A representative of the Health Division of the Department of Health and Human Services.

(c) A patient who holds a valid registry identification card to engage in the medical use of marijuana pursuant to chapter 453A of NRS.

(d) An owner or operator of a cultivation facility that is certified to operate pursuant to chapter 453A of NRS.

(e) An owner or operator of a facility for the production of edible marijuana products or marijuana-infused products that is certified to operate pursuant to chapter 453A of NRS.

(f) An owner or operator of a medical marijuana dispensary that is certified to operate pursuant to chapter 453A of NRS.

(g) A representative of the Attorney General.

(h) A representative of a civil liberties organization.

(i) A representative of an organization which advocates for persons who use marijuana for medicinal purposes.

(j) A representative of a law enforcement agency located within the jurisdiction of Clark County.

(k) A representative of a law enforcement agency located within the jurisdiction of Washoe County.

(l) A representative of local government.

3. The Chair of the Commission shall designate one of the legislative members of the Commission as Chair of the Subcommittee.

4. The Subcommittee shall meet at the times and places specified by a call of the Chair. A majority of the members of the Subcommittee constitutes a quorum, and a quorum may exercise any power or authority conferred on the Subcommittee.

5. The Subcommittee shall:

(a) Consider issues concerning the medical use of marijuana, the dispensation of marijuana for medical use and the implementation of provisions of law providing for the dispensation of marijuana for medical use; and

(b) Evaluate, review and submit a report to the Commission with recommendations concerning such issues.

6. Any Legislators who are members of the Subcommittee are entitled to receive the salary provided for a majority of the members of the Legislature during the first 60 days of the preceding session for each day's attendance at a meeting of the Subcommittee.

7. While engaged in the business of the Subcommittee, to the extent of legislative appropriation, each member of the Subcommittee is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 1.45. NRS 176.0121 is hereby amended to read as follows:

176.0121 As used in NRS 176.0121 to 176.0129, inclusive, ***and section 1.4 of this act,*** "Commission" means the Advisory Commission on the Administration of Justice.

Sec. 1.5. NRS 391.311 is hereby amended to read as follows:

391.311 As used in NRS 391.311 to 391.3197, inclusive, unless the context otherwise requires:

1. "Administrator" means any employee who holds a license as an administrator and who is employed in that capacity by a school district.

2. "Board" means the board of trustees of the school district in which a licensed employee affected by NRS 391.311 to 391.3197, inclusive, is employed.

3. "Demotion" means demotion of an administrator to a position of lesser rank, responsibility or pay and does not include transfer or reassignment for purposes of an administrative reorganization.

4. "Immorality" means:

(a) An act forbidden by NRS 200.366, 200.368, 200.400, 200.508, 201.180, 201.190, 201.210, 201.220, 201.230, 201.265, 201.540, 201.560, 207.260, 453.316 to 453.336, inclusive, ***except an act forbidden by section 1.7 of this act, NRS*** 453.337, 453.338, 453.3385 to 453.3405, inclusive, 453.560 or 453.562; or

(b) An act forbidden by NRS 201.540 or any other sexual conduct or attempted sexual conduct with a pupil enrolled in an elementary or secondary school. As used in this paragraph, "sexual conduct" has the meaning ascribed to it in NRS 201.520.

5. "Postprobationary employee" means an administrator or a teacher who has completed the probationary period as provided in NRS 391.3197 and has been given notice of reemployment. The term does not include a person who is deemed to be a probationary employee pursuant to NRS 391.3129.

6. "Probationary employee" means:

(a) An administrator or a teacher who is employed for the period set forth in NRS 391.3197; and

(b) A person who is deemed to be a probationary employee pursuant to NRS 391.3129.

7. "Superintendent" means the superintendent of a school district or a person designated by the board or superintendent to act as superintendent during the absence of the superintendent.

8. "Teacher" means a licensed employee the majority of whose working time is devoted to the rendering of direct educational service to pupils of a school district.

Sec. 1.7. Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person shall not knowingly or intentionally manufacture, grow, plant, cultivate, harvest, dry, propagate or process marijuana, except as specifically authorized by the provisions of this chapter or chapter 453A of NRS.

2. Unless a greater penalty is provided in NRS 453.339, a person who violates subsection 1, if the quantity involved is more than 12 marijuana plants, irrespective of whether the marijuana plants are mature or immature, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

3. In addition to any punishment imposed pursuant to subsection 2, the court shall order a person convicted of a violation of subsection 1 to pay all costs associated with any necessary cleanup and disposal related to the manufacturing, growing, planting, cultivation, harvesting, drying, propagation or processing of the marijuana.

Sec. 2. Chapter 453A of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 20, inclusive, of this act.

Sec. 3. *"Crime of violence" means any felony:*

1. Involving the use or threatened use of force or violence against the person or property of another; or

2. For which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

Sec. 3.5. *"Cultivation facility" means a business that:*

1. Is registered with the Division pursuant to section 10 of this act; and

2. Acquires, possesses, cultivates, delivers, transfers, transports, supplies or sells marijuana and related supplies to:

(a) Medical marijuana dispensaries;

(b) Facilities for the production of edible marijuana products or marijuana-infused products; or

(c) Other cultivation facilities.

Secs. 4 and 5. (Deleted by amendment.)

Sec. 5.3. *"Edible marijuana products" means products that:*

1. Contain marijuana or an extract thereof;

2. Are intended for human consumption by oral ingestion; and

3. Are presented in the form of foodstuffs, extracts, oils, tinctures and other similar products.

Sec. 5.5. *"Electronic verification system" means an electronic database that:*

1. Keeps track of data in real time; and

2. Is accessible by the Division and by registered medical marijuana establishments.

Sec. 6. *"Enclosed, locked facility" means a closet, display case, room, greenhouse or other enclosed area that meets the requirements of section 19.4 of this act and is equipped with locks or other security devices which allow access only by a medical marijuana establishment agent and the holder of a valid registry identification card.*

Sec. 7. *1. "Excluded felony offense" means:*

(a) A crime of violence; or

(b) A violation of a state or federal law pertaining to controlled substances, if the law was punishable as a felony in the jurisdiction where the person was convicted.

2. The term does not include:

(a) A criminal offense for which the sentence, including any term of probation, incarceration or supervised release, was completed more than 10 years before; or

(b) An offense involving conduct that would be immune from arrest, prosecution or penalty pursuant to sections 10 to 20, inclusive, of this act, except that the conduct occurred before April 1, 2014, or was prosecuted by an authority other than the State of Nevada.

Sec. 7.3. *"Facility for the production of edible marijuana products or marijuana-infused products" means a business that:*

1. Is registered with the Division pursuant to section 10 of this act; and

2. Acquires, possesses, manufactures, delivers, transfers, transports, supplies or sells edible marijuana products or marijuana-infused products to medical marijuana dispensaries.

Sec. 7.5. *"Independent testing laboratory" means a facility described in section 19.9 of this act.*

Sec. 7.7. *"Inventory control system" means a process, device or other contrivance that may be used to monitor the chain of custody of marijuana used for medical purposes from the point of cultivation to the end consumer.*

Sec. 7.9. *1. "Marijuana-infused products" means products that:*

(a) Are infused with marijuana or an extract thereof; and

(b) Are intended for use or consumption by humans through means other than inhalation or oral ingestion.

2. The term includes, without limitation, topical products, ointments, oils and tinctures.

Sec. 8. *"Medical marijuana dispensary" means a business that:*

1. Is registered with the Division pursuant to section 10 of this act; and

2. Acquires, possesses, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to the holder of a valid registry identification card.

Sec. 8.3. *"Medical marijuana establishment" means:*

1. An independent testing laboratory;

2. A cultivation facility;

3. A facility for the production of edible marijuana products or marijuana-infused products;

4. A medical marijuana dispensary; or

5. A business that has registered with the Division and paid the requisite fees to act as more than one of the types of businesses listed in subsections 2, 3 and 4.

Sec. 8.5. *"Medical marijuana establishment agent" means an owner, officer, board member, employee or volunteer of a medical marijuana establishment.*

Sec. 8.6. *"Medical marijuana establishment agent registration card" means a registration card that is issued by the Division pursuant to section 13 of this act to authorize a person to volunteer or work at a medical marijuana establishment.*

Sec. 8.7. *"Medical marijuana establishment registration certificate" means a registration certificate that is issued by the Division pursuant to section 10 of this act to authorize the operation of a medical marijuana establishment.*

Sec. 8.8. *"THC" means delta-9-tetrahydrocannabinol, which is the primary active ingredient in marijuana.*

Sec. 9. (Deleted by amendment.)

Sec. 10. *1. Each medical marijuana establishment must register with the Division.*

2. A person who wishes to operate a medical marijuana establishment must submit to the Division an application on a form prescribed by the Division.

3. Except as otherwise provided in sections 11, 11.5, 11.7 and 16 of this act, not later than 90 days after receiving an application to operate a medical marijuana establishment, the Division shall register the medical marijuana establishment and issue a medical marijuana establishment registration certificate and a random 20-digit alphanumeric identification number if:

(a) The person who wishes to operate the proposed medical marijuana establishment has submitted to the Division all of the following:

(1) The application fee, as set forth in section 12 of this act;

(2) An application, which must include:

(I) The legal name of the proposed medical marijuana establishment;

(II) The physical address where the proposed medical marijuana establishment will be located and the physical address of any co-owned additional or otherwise associated medical marijuana establishments, the locations of which may not be within 1,000 feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten

through grade 12 and that existed on the date on which the application for the proposed medical marijuana establishment was submitted to the Division, or within 300 feet of a community facility that existed on the date on which the application for the proposed medical marijuana establishment was submitted to the Division;

(III) Evidence that the applicant controls not less than $250,000 in liquid assets to cover the initial expenses of opening the proposed medical marijuana establishment and complying with the provisions of sections 10 to 20, inclusive, of this act;

(IV) Evidence that the applicant owns the property on which the proposed medical marijuana establishment will be located or has the written permission of the property owner to operate the proposed medical marijuana establishment on that property;

(V) For the applicant and each person who is proposed to be an owner, officer or board member of the proposed medical marijuana establishment, a complete set of the person's fingerprints and written permission of the person authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(VI) The name, address and date of birth of each person who is proposed to be an owner, officer or board member of the proposed medical marijuana establishment; and

(VII) The name, address and date of birth of each person who is proposed to be employed by or otherwise provide labor at the proposed medical marijuana establishment as a medical marijuana establishment agent;

(3) Operating procedures consistent with rules of the Division for oversight of the proposed medical marijuana establishment, including, without limitation:

(I) Procedures to ensure the use of adequate security measures; and

(II) The use of an electronic verification system and an inventory control system, pursuant to sections 19.1 and 19.2 of this act;

(4) If the proposed medical marijuana establishment will sell or deliver edible marijuana products or marijuana-infused products, proposed operating procedures for handling such products which must be preapproved by the Division;

(5) If the city, town or county in which the proposed medical marijuana establishment will be located has enacted zoning restrictions, proof of licensure with the applicable local

governmental authority or a letter from the applicable local governmental authority certifying that the proposed medical marijuana establishment is in compliance with those restrictions and satisfies all applicable building requirements; and

(6) Such other information as the Division may require by regulation;

(b) None of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment have been convicted of an excluded felony offense;

(c) None of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment have:

(1) Served as an owner, officer or board member for a medical marijuana establishment that has had its medical marijuana establishment registration certificate revoked; or

(2) Previously had a medical marijuana establishment agent registration card revoked; and

(d) None of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment are under 21 years of age.

4. For each person who submits an application pursuant to this section, and each person who is proposed to be an owner, officer or board member of a proposed medical marijuana establishment, the Division shall submit the fingerprints of the person to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the criminal history of that person.

5. Except as otherwise provided in subsection 6, if an application for registration as a medical marijuana establishment satisfies the requirements of this section and the establishment is not disqualified from being registered as a medical marijuana establishment pursuant to this section or other applicable law, the Division shall issue to the establishment a medical marijuana establishment registration certificate. A medical marijuana establishment registration certificate expires 1 year after the date of issuance and may be renewed upon:

(a) Resubmission of the information set forth in this section; and

(b) Payment of the renewal fee set forth in section 12 of this act.

6. In determining whether to issue a medical marijuana establishment registration certificate pursuant to this section, the Division shall consider the criteria of merit set forth in section 11.7 of this act.

7. As used in this section, "community facility" means:

(a) A facility that provides day care to children.

(b) A public park.

(c) A playground.

(d) A public swimming pool.

(e) A center or facility, the primary purpose of which is to provide recreational opportunities or services to children or adolescents.

(f) A church, synagogue or other building, structure or place used for religious worship or other religious purpose.

Sec. 10.5. *Each medical marijuana establishment must:*

1. Be located in a separate building or facility that is located in a commercial or industrial zone or overlay;

2. Comply with all local ordinances and rules pertaining to zoning, land use and signage;

3. Have an appearance, both as to the interior and exterior, that is professional, orderly, dignified and consistent with the traditional style of pharmacies and medical offices; and

4. Have discreet and professional signage that is consistent with the traditional style of signage for pharmacies and medical offices.

Sec. 11. *1. Except as otherwise provided in this section and section 11.5 of this act, the Division shall issue medical marijuana establishment registration certificates for medical marijuana dispensaries in the following quantities for applicants who qualify pursuant to section 10 of this act:*

(a) In a county whose population is 700,000 or more, 40 certificates;

(b) In a county whose population is 100,000 or more but less than 700,000, 10 certificates;

(c) In a county whose population is 55,000 or more but less than 100,000, 2 certificates; and

(d) In each other county, 1 certificate.

2. Notwithstanding the provisions of subsection 1, the Division shall not issue medical marijuana establishment registration certificates for medical marijuana dispensaries in such a quantity as to cause the existence within the applicable county of more than one medical marijuana dispensary for every 10 pharmacies that have been licensed in the county pursuant to chapter 639 of NRS. The Division may issue medical marijuana establishment registration certificates for medical marijuana dispensaries in excess of the ratio otherwise allowed pursuant to this subsection if to do so is necessary to ensure that the Division issues at least one medical marijuana establishment registration

certificate in each county of this State in which the Division has approved an application for such an establishment to operate.

3. With respect to medical marijuana establishments that are not medical marijuana dispensaries, the Division shall determine the appropriate number of such establishments as are necessary to serve and supply the medical marijuana dispensaries to which the Division has granted medical marijuana establishment registration certificates.

4. The Division shall not, for more than a total of 10 business days in any 1 calendar year, accept applications to operate medical marijuana establishments.

Sec. 11.5. *1. Except as otherwise provided in this subsection, in a county whose population is 100,000 or more, the Division shall ensure that not more than 25 percent of the total number of medical marijuana dispensaries that may be certified in the county, as set forth in section 11 of this act, are located in any one local governmental jurisdiction within the county. The board of county commissioners of the county may increase the percentage described in this subsection if it determines that to do so is necessary to ensure that the more populous areas of the county have access to sufficient distribution of marijuana for medical use.*

2. To prevent monopolistic practices, the Division shall ensure, in a county whose population is 100,000 or more, that it does not issue, to any one person, group of persons or entity, the greater of:

(a) One medical marijuana establishment registration certificate; or

(b) More than 10 percent of the medical marijuana establishment registration certificates otherwise allocable in the county.

3. In a local governmental jurisdiction that issues business licenses, the issuance by the Division of a medical marijuana establishment registration certificate shall be deemed to be provisional until such time as:

(a) The establishment is in compliance with all applicable local governmental ordinances or rules; and

(b) The local government has issued a business license for the operation of the establishment.

4. As used in this section, "local governmental jurisdiction" means a city, town, township or unincorporated area within a county.

Sec. 11.7. *In determining whether to issue a medical marijuana establishment registration certificate pursuant to*

section 10 of this act, the Division shall, in addition to the factors set forth in that section, consider the following criteria of merit:

1. The total financial resources of the applicant, both liquid and illiquid;

2. The previous experience of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment at operating other businesses or nonprofit organizations;

3. The educational achievements of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment;

4. Any demonstrated knowledge or expertise on the part of the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment with respect to the compassionate use of marijuana to treat medical conditions;

5. Whether the proposed location of the proposed medical marijuana establishment would be convenient to serve the needs of persons who are authorized to engage in the medical use of marijuana;

6. The likely impact of the proposed medical marijuana establishment on the community in which it is proposed to be located;

7. The adequacy of the size of the proposed medical marijuana establishment to serve the needs of persons who are authorized to engage in the medical use of marijuana;

8. Whether the applicant has an integrated plan for the care, quality and safekeeping of medical marijuana from seed to sale;

9. The amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada or its political subdivisions by the applicant or the persons who are proposed to be owners, officers or board members of the proposed medical marijuana establishment; and

10. Any other criteria of merit that the Division determines to be relevant.

Sec. 12. *1. Except as otherwise provided in subsection 2, the Division shall collect not more than the following maximum fees:*

For the initial issuance of a medical marijuana establishment registration certificate for a medical marijuana dispensary	*$30,000*

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Jacqueline Bryant
Clerk of the Court
Transaction # 5179475 : mcholico

EXHIBIT 2
(Part 2)

For the renewal of a medical marijuana establishment registration certificate for a medical marijuana dispensary $5,000
For the initial issuance of a medical marijuana establishment registration certificate for a cultivation facility 3,000
For the renewal of a medical marijuana establishment registration certificate for a cultivation facility 1,000
For the initial issuance of a medical marijuana establishment registration certificate for a facility for the production of edible marijuana products or marijuana-infused products 3,000
For the renewal of a medical marijuana establishment registration certificate for a facility for the production of edible marijuana products or marijuana-infused products 1,000
For the initial issuance of a medical marijuana establishment agent registration card 75
For the renewal of a medical marijuana establishment agent registration card 75
For the initial issuance of a medical marijuana establishment registration certificate for an independent testing laboratory 5,000
For the renewal of a medical marijuana establishment registration certificate for an independent testing laboratory 3,000

2. In addition to the fees described in subsection 1, each applicant for a medical marijuana establishment registration certificate must pay to the Division:

(a) A one-time, nonrefundable application fee of $5,000; and

(b) The actual costs incurred by the Division in processing the application, including, without limitation, conducting background checks.

3. Any revenue generated from the fees imposed pursuant to this section:

(a) Must be expended first to pay the costs of the Division in carrying out the provisions of sections 10 to 20, inclusive of this act; and

(b) If any excess revenue remains after paying the costs described in paragraph (a), such excess revenue must be paid over to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.

Sec. 13. *1. Except as otherwise provided in this section, a person shall not volunteer or work at a medical marijuana establishment as a medical marijuana establishment agent unless the person is registered with the Division pursuant to this section.*

2. A medical marijuana establishment that wishes to retain as a volunteer or employ a medical marijuana establishment agent shall submit to the Division an application on a form prescribed by the Division. The application must be accompanied by:

(a) The name, address and date of birth of the prospective medical marijuana establishment agent;

(b) A statement signed by the prospective medical marijuana establishment agent pledging not to dispense or otherwise divert marijuana to any person who is not authorized to possess marijuana in accordance with the provisions of this chapter;

(c) A statement signed by the prospective medical marijuana establishment agent asserting that he or she has not previously had a medical marijuana establishment agent registration card revoked;

(d) A complete set of the fingerprints and written permission of the prospective medical marijuana establishment agent authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(e) The application fee, as set forth in section 12 of this act; and

(f) Such other information as the Division may require by regulation.

3. A medical marijuana establishment shall notify the Division within 10 days after a medical marijuana establishment agent ceases to be employed by or volunteer at the medical marijuana establishment.

4. A person who:

(a) Has been convicted of an excluded felony offense; or

(b) Is less than 21 years of age,

➥ shall not serve as a medical marijuana establishment agent.

5. The Division shall submit the fingerprints of an applicant for registration as a medical marijuana establishment agent to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation to determine the criminal history of the applicant.

6. The provisions of this section do not require a person who is an owner, officer or board member of a medical marijuana establishment to resubmit information already furnished to the

Division at the time the establishment was registered with the Division.

7. If an applicant for registration as a medical marijuana establishment agent satisfies the requirements of this section and is not disqualified from serving as such an agent pursuant to this section or any other applicable law, the Division shall issue to the person a medical marijuana establishment agent registration card. If the Division does not act upon an application for a medical marijuana establishment agent registration card within 30 days after the date on which the application is received, the application shall be deemed conditionally approved until such time as the Division acts upon the application. A medical marijuana establishment agent registration card expires 1 year after the date of issuance and may be renewed upon:

(a) Resubmission of the information set forth in this section; and

(b) Payment of the renewal fee set forth in section 12 of this act.

Sec. 13.5. *The following are nontransferable:*

1. A medical marijuana establishment agent registration card.

2. A medical marijuana establishment registration certificate.

Sec. 14. *1. In addition to any other requirements set forth in this chapter, an applicant for the issuance or renewal of a medical marijuana establishment agent registration card or medical marijuana establishment registration certificate shall:*

(a) Include the social security number of the applicant in the application submitted to the Division.

(b) Submit to the Division the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Division shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the medical marijuana establishment agent registration card or medical marijuana establishment registration certificate; or

(b) A separate form prescribed by the Division.

3. A medical marijuana establishment agent registration card or medical marijuana establishment registration certificate may not be issued or renewed by the Division if the applicant:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Division shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

Sec. 15. *1. If the Division receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a medical marijuana establishment agent registration card or medical marijuana establishment registration certificate, the Division shall deem the card or certificate issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Division receives a letter issued to the holder of the card or certificate by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the card or certificate has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

2. The Division shall reinstate a medical marijuana establishment agent registration card or medical marijuana establishment registration certificate that has been suspended by a district court pursuant to NRS 425.540 if the Division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose card or certificate was suspended stating that the person whose card or certificate was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 16. *The following acts constitute grounds for immediate revocation of a medical marijuana establishment registration certificate:*

1. Dispensing, delivering or otherwise transferring marijuana to a person other than a medical marijuana establishment agent, another medical marijuana establishment, a patient who holds a

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF SPARKS, a Municipal Corporation,

Appellant,

vs.

RENO NEWSPAPER, INC., a Nevada Corporation,

Respondent.

Supreme Court Case No. 69749

District Case No. CV15-01871

Electronically Filed
Jun 08 2016 08:39 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

On Appeal from an Order Granting Petition for Writ of Mandamus from the Second Judicial District Court of the County of Washoe in the State of Nevada

JOINT APPENDIX

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Docket 69749 Document 2016-17758

CHRONOLOGICAL INDEX

ALPHABETICAL INDEX

FILED
Electronically
2015-09-18 03:27:06 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5148893 : csulezic

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Reno Newspapers, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO NEWSPAPERS, INC., a Nevada corporation,

Petitioner,

vs.

CITY OF SPARKS, a municipal corporation,

Respondent.
_____/

Case No.

Dept. No.

PETITION FOR WRIT OF MANDAMUS

Pursuant to NRS Chapter 239, the Nevada Public Records Act, Petitioner Reno Newspapers, Inc. petitions the Court for issuance of a writ of mandamus directing Respondent City of Sparks to provide Petitioner with copies of the public records described herein.

Petitioner additionally requests an award of all costs and attorney's fees it incurs in prosecuting this matter, together with such other relief as the Court deems proper.

This Petition is brought on the following grounds:

Jurisdiction and Venue

1. This Court has jurisdiction to issue writs of mandamus. Nev. Const., Art. 6, §6; NRS 34.160. Venue lies in this Court pursuant to NRS 239.011(1) because the public records at issue are located in Washoe County, Nevada.

Parties

2. Petitioner Reno Newspapers, Inc. is a Nevada corporation doing business as the Reno Gazette-Journal ("RGJ"). The RGJ is a newspaper published daily in Reno, Nevada, with circulation throughout northern Nevada.

3. Among other things, the RGJ provides coverage of state and local governmental affairs, including the affairs of Respondent City of Sparks ("the City"). This coverage is important to the public as it provides a main source of information regarding the activities the City, including the City's performance of its regulatory powers under state and local law.

4. The City is a municipal corporation duly organized and existing under Nevada law, and, as such, is a "governmental entity" subject to the requirements of the Nevada Public Records Act as set forth in NRS Chapter 239.

Factual Background

5. Chapter 453A of the Nevada Revised Statutes provides the legislative framework by which medical use of marijuana is permitted in the State of Nevada. Included in that framework are statutory provisions governing the registration of medical marijuana establishments ("MMEs"). See NRS 453A.320 through NRS 453A.344. As expressly stated by the Nevada Legislature, the purpose of such statutory provisions "is to protect the public health and safety and the general welfare of the people of this State." See NRS 453A.320.

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(775) 333-0400

6. The foregoing statutory provisions not only mandate the registration of MMEs with the requisite division of the Nevada state government, they also recognize that an MME seeking to do business in a local governmental jurisdiction that issues business licenses will be subject to the local business licensing requirements of that jurisdiction. See NRS 453A.326(3). Consistent with this recognition, the City requires any MME seeking to do business within the City to obtain a City-issued business license.

7. The identity of any person or entity who obtains a business license from the City to operate an MME within the City is a matter of clear public interest in northern Nevada and throughout the State. Indeed, as stated above, the Nevada Legislature has expressly pronounced that its statutory framework for the regulation of MMEs exists to protect the public health and safety and the general welfare of the people of Nevada.

8. In furtherance of the foregoing public interest, and in the course of the RGJ's newsreporting activities, RGJ reporter Chanelle Bessette sent an August 20, 2015 e-mail to the City making a request under the Nevada Public Records Act for "copies of the business licenses of medical marijuana establishments in Sparks, including the names of the applicants/licensees." A copy of that e-mail is attached hereto as Exhibit 1.

9. The City responded to the RGJ's request by letter dated August 24, 2015. A copy of that letter is attached hereto as Exhibit 2. In that letter, the City asserted that the names of the MME business license holders are confidential under Nevada law, and are therefore not subject to disclosure under the Nevada Public Records Act. The City thus produced copies of the requested business licenses, but redacted the names of the license holders.

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10. The City's claim of confidentiality is limited to a single, narrow contention -- that NAC 453A.714(1), which is a regulation promulgated by the State of Nevada Division of Public and Behavioral Health ("the Division"), confers confidentiality on the names of the MME business license holders. This claim, however, is without merit, and thus the RGJ asked the City to reconsider its position. The City subsequently refused to do so, thereby compelling the RGJ to commence this mandamus action.

Legal Authority

A. The Nevada Public Records Act.

11. The basic mandate of the Nevada Public Records Act is set forth in NRS 239.010. Subsection 1 of that statute states that other than as provided in certain confidentiality statutes contained in the Nevada Revised Statutes (all of which are individually specified in Subsection 1), and "unless otherwise declared by law to be confidential," all public records of a governmental entity in Nevada "must be open at all times during office hours to inspection by any person..." NRS 239.010(1).

12. The purpose of the Nevada Public Records Act is to ensure the accountability of the government to members of the public by facilitating public access to vital information about government activities. DR Partners v. Board of County Comm'rs, 116 Nev. 616, 6 P.3d 465 (2000); Reno Newspapers v. Sheriff, 126 Nev. Adv. Op. 23, 234 P.3d 922, 924 (2010).

13. In order to enforce the Nevada Public Records Act, NRS 239.011(1) states that: "If a request for inspection, copying or copies of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order...permitting the requester to inspect or copy the book or records...or requiring the person who has

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legal custody or control of the public book or record to provide a copy to the requester..."

14. In any action for such an order, the governmental entity bears the burden of establishing that the requested records are confidential under the law. DR Partners v. Board of County Comm'rs, 116 Nev. 616, 6 P.3d 465 (2000); NRS 239.0113.

15. Moreover, the Nevada Legislature has mandated that the Nevada Public Records Act "be construed liberally", and that any limitations on public disclosure be "construed narrowly". NRS 239.001; DR Partners v. Bd. of County Comm'rs, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000); Reno Newspapers v. Sheriff, 126 Nev. Adv. Op. 23, 234 P.3d 922 (2010).

16. Based on the foregoing legal principles, unless some provision of the law clearly and unambiguously confers confidentiality on the names of MME business license holders in the City, those names are not confidential, and the City must produce unredacted copies of the requested MME business licenses to the RGJ. Public Employees Retirement System of Nevada v Reno Newspapers, Inc., 129 Nev. Adv.Op. 88, p. 5 (2013).

B. The City's Claim Of Confidentiality Is Meritless.

17. As it must, the City concedes that any business license it issues to an MME is a public record. As a result, unless the name of the licensee appearing in any such license falls within one of the specified confidentiality statutes listed in NRS 239.010(1), or is "otherwise declared by law to be confidential," that name is public and must be provided to the RGJ.

18. As to the confidentiality statutes listed in NRS 239.010(1), two are contained in NRS Chapter 453A, which, as previously stated, is the NRS chapter that governs medical use of marijuana in Nevada. However, neither of those statutes

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confers confidentiality on the name of the licensee appearing in an MME business license issued by the City.

19. The first statute is NRS 453A.610, which contains a declaration of confidentiality limited to certain documentation and information generated or received by the University of Nevada School of Medicine as part of the program it has established for research related to the medical use of marijuana. This confidentiality provision clearly does not extend to the name of an MME business license holder in the City.

20. The second provision is NRS 453A.700, which contains a declaration of confidentiality limited to the name and any other identifying information of an "attending physician" or a person who has applied for or obtained a "registry identification card." The phrase "attending physician" is defined in NRS 453A.030 as a duly licensed medical doctor or osteopath who has responsibility for the care and treatment of a person with a chronic or debilitating medical condition. The phrase "registry identification card" is defined in NRS 453A.140 as a document issued by the Division, or its designee, that identifies a person who is exempt from state prosecution for engaging in the medical use of marijuana, or that person's designated primary caregiver. Given these definitions, the confidentiality conferred by NRS 453A.700 just as clearly does not extend to the name of an MME business license holder in the City.

21. Under the circumstances, unless the name of such a license holder is "otherwise declared by law to be confidential," that name is a matter of public record. In this regard, as stated above, the City has advanced only a single argument: that confidentiality is conferred on the name of an MME business license holder by NAC 453A.714(1), which, as also stated above, is an administrative regulation promulgated by the Division. This argument, however, is without merit.

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22. First, NAC 453A.714(1) makes no reference to MMEs at all, let alone to the names of the owners or licensees of those establishments. Rather, it merely refers to "any person who facilitates or delivers services" pursuant to NRS Chapter 453A, without defining or otherwise identifying the persons or entities who are intended to be included in that class of "persons." Similarly, the underlying statutory provisions of NRS Chapter 453A contain no definition of that phrase. It is thus improper, and a violation of the Nevada Public Records Act, for the City to expansively interpret the phrase and assume that it extends all the way to a licensee's name on a business license issued by the City to an MME.

23. In addition, the very first sentence of the regulation imposes a duty of maintaining confidentiality only on the Division and its designees. Nowhere in the regulation is such a duty expressly imposed on any counties or municipalities in this state, including the City. While the City observed in its August 24, 2015 letter to the RGJ (Exhibit 2) that the second sentence of the regulation restates the duty of confidentiality without limiting it to the Division and its designees, that sentence merely injects confusion and ambiguity into the regulation. And, in such a circumstance, the Nevada Public Records Act mandates resolution of the ambiguity in favor of public access.

24. Moreover, the City's interpretation of NAC 453A.714(1) forces a meaning on the regulation that far exceeds the regulation-making authority given to the Division under NRS Chapter 453A.

25. In this regard, pursuant to NRS 233B.040, state agencies such as the Division are vested with regulation-making authority. However, in any specific regulation-making circumstance, that authority is limited to the grant of authority

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provided by the Nevada Legislature in the statutory provisions which underly the regulations in question. NRS 233B.040(1).

26. In this instance, the Division's regulation-making authority under NRS Chapter 453A is granted by NRS 453A.370. While subsection 5 of that statute confers authority on the Division to promulgate regulations that "[a]s far as possible while maintaining accountability, protect the identity and personal identifying information of each person who receives, facilitates or delivers services in accordance with this chapter," nowhere in NRS Chapter 453A is the phrase "person who receives, facilitates or delivers services in accordance with this chapter" defined. This absence has clear significance because, as discussed above, the only persons whose identities are expressly declared by NRS Chapter 453A to be confidential are "attending physicians" and persons who apply for or hold "registry identification cards." See NRS 453A.700(1). As a consequence, because NRS 453A.370(5) is not, itself, a confidentiality statute (indeed, it is not included in the comprehensive list of confidentiality statutes contained in NRS 239.010(1)), but rather, merely contains a grant of regulation-making authority under the substantive provisions of NRS Chapter 453A, it must be concluded that as it pertains to the confidentiality of persons' names and other identifying characteristics, the Division's regulation-making authority was and is limited to "attending physicians" and applicants for and holders of "registry identification cards."

27. The Nevada Legislature, in enacting NRS Chapter 453A, knew how to impose confidentiality for the identities of specific classes of persons who would be involved in the medical marijuana industry. Indeed, that is precisely what the Legislature did with "attending physicians" and applicants for and holders of "registry identification cards." But the Legislature specifically chose not to impose any such

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confidentiality for the owners or business licensees of MMEs. The Legislature thus obviously did not intend to create any such confidentiality. It would therefore far exceed the authority of the Division, based upon a vaguely worded, ill-defined statutory grant of regulation-making authority, to supply such confidentiality through an equally vaguely-worded, ill-defined regulation.

28. Under the circumstances, the City, through its overly-expansive interpretation of NAC 453A.714(1), has done exactly what the Nevada Legislature and the Nevada Supreme Court have instructed government agencies in this state not to do in public records matters - - it has wrongfully given the broadest possible interpretation to an unclear, ambiguous regulation for the purpose of defeating public access to public information.

29. A writ of mandamus is the appropriate procedural remedy under Nevada law to address such unlawful conduct. DR Partners v. Board of County Comm'rs., 116 Nev. 616, 6 P.3d 465 (2000). The RGJ thus brings this mandamus action to compel production of unredacted copies of the requested MME business licenses.

Claim for Relief

30. The RGJ re-alleges and incorporates by reference Paragraphs 1 through 29 of this Petition.

31. The City has refused to follow the open record mandate of the Nevada Public Records Act. Notwithstanding the clear public interest in the records requested by the RGJ, and notwithstanding the absence of any applicable or properly applied law declaring the names of MME business license holders to be confidential and unavailable to the public, the City has unlawfully refused to produce unredacted copies of the MME business licenses requested by the RGJ.

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(775) 333-0400

32. A writ of mandamus as requested by the RGJ is thus necessary in order to compel the City to comply with the Nevada Public Records Act.[1]

Prayer for Relief

Based upon the foregoing, the RGJ respectfully requests:

1. Issuance of a writ of mandamus directing the City to provide to the RGJ unredacted copies of the requested MME business licenses;

2. An award to the RGJ of its reasonable attorney's fees and costs incurred in this action, as provided by NRS 239.011(2); and

3. Such other and further relief as this Court may deem just and proper.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 18th day of September, 2015.

GLOGOVAC & PINTAR

By: _____
SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 000226

Attorneys for Plaintiff
Reno Newspapers, Inc.

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
RENO, NEVADA 89509-3766
(775) 333-0400

[1] Attached hereto as Exhibit 3 is an Affidavit of RGJ reporter Chanelle Bessette submitted in support of the requested writ.

INDEX OF EXHIBITS

Exhibit No.	Description	Pages
1	August 20, 2105 e-mail from RGJ reporter Chanelle Bessette to the City of Sparks	1
2	August 24, 2015 letter from City of Sparks	12
3	Affidavit of Chanelle Bessette	1

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
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(775) 333-0400

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2015-09-18 03:27:06 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5148893 : csulezic

EXHIBIT 1

EXHIBIT 1

Thornley, Doug

From:	Bessette, Chanelle <cbessette@reno.gannett.com>
Sent:	Thursday, August 20, 2015 11:25 AM
To:	Thornley, Doug
Cc:	Mayberry, Adam; Santoro, Peggy; Scott, Kelly
Subject:	Public records request: names of MME licensees

Dear Mr. Thornley,

This letter is a formal request for provision of records under the requirements of NRS 239.010.

As you are aware, that statute requires that public records be make available "at all times during office hours to inspection by any person."

For inspection, I am requesting copies of the business licenses of medical marijuana establishments in Sparks, including the names of the applicants/licensees.

As to any portion of documents you withhold, please state with specificity, the legal and factual basis for withholding each such portion.

Please contact me as soon as possible regarding this request. Thank you for your assistance.

Chanelle Bessette
Sparks Reporter
cbessette@rgj.com
Office: 775-788-6334
Cell: 775-203-5386
Twitter: @crbessette
Support local journalism in the Sierra Nevada: Click here

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Jacqueline Bryant
Clerk of the Court
Transaction # 5148893 : csulezic

EXHIBIT 2

EXHIBIT 2

City of Sparks

Chet Adams
Sparks City Attorney

August 24, 2015

VIA U.S. MAIL AND E-MAIL
Chanelle Bessette
cbesette@rgj.com
Reno Gazette-Journal
955 Kuenzil Street
Reno, Nevada 89502

RE: Business Licenses for Medical Marijuana Establishments

Ms. Bessette,

You have requested copies of "the business licenses of medical marijuana establishments in Sparks, including the names of the applicants/licensees." *See* August 20, 2015 Public Records Request (attached as "**Exhibit A**"). Business licenses issued by the City are public records, and the documents which satisfy your primary request are attached to this letter as "**Exhibit B.**" Pursuant to state law, however, the names and identifying information of the licensees are confidential and have been redacted. *See Reno Newspapers v. Gibbons*, 266 P.3d 623, 628 (Nev. 2011); NRS 239.010(3).

Specifically, NAC 453A.714(1) provides:

> *Except as otherwise provided in this section and NRS 239.0115, the Division will and any designee of the Division shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who facilitates of delivers services pursuant to this chapter or chapter 453A of NRS. Except as otherwise provided in NRS 239.0115, the name and any other identifying information of any person who facilitates or delivers services pursuant to this chapter or chapter 453A of NRS are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.*

The Supreme Court of Nevada has explained that "[N]o part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided." *Paramount Ins. v. Rayson & Smitley*, 472 P.2d 530, 533 (Nev. 1970) (quoting *Torreyson v. Board of Examiners*, 7 Nev. 19, 22 (1871)). Restricting the application of this rule to the Nevada Division of Public and Behavioral Health and its designees would render the second sentence duplicative and meaningless. Therefore, the second sentence is properly read as prohibiting

governmental entities - other than the Division and its designees, which are addressed in the first sentence - that maintain records related to medical marijuana establishments from disseminating the names and identifying information of the individuals associated therewith.

Very truly yours,

Douglas R. Thomley
Senior Assistant City Attorney

DRT/km

Exhibit A

Thornley, Doug

From: Bessette, Chanelle <cbessette@reno.gannett.com>
Sent: Thursday, August 20, 2015 11:25 AM
To: Thornley, Doug
Cc: Mayberry, Adam; Santoro, Peggy; Scott, Kelly
Subject: Public records request: names of MME licensees

Dear Mr. Thornley,

This letter is a formal request for provision of records under the requirements of NRS 239.010.

As you are aware, that statute requires that public records be make available "at all times during office hours to inspection by any person."

For inspection, I am requesting copies of the business licenses of medical marijuana establishments in Sparks, including the names of the applicants/licensees.

As to any portion of documents you withhold, please state with specificity, the legal and factual basis for withholding each such portion.

Please contact me as soon as possible regarding this request. Thank you for your assistance.

Chanelle Bessette
Sparks Reporter
cbessette@rgj.com
Office: 775-788-6334
Cell: 775-203-5386
Twitter: @crbessette
Support local journalism in the Sierra Nevada: Click here

Exhibit B

Thanks for doing business in the City of Sparks !

BUSINESS LICENSE

Licensed business to be conducted in whole or in part within the City of Sparks in conformity with and subject to the provisions of the law

BUSINESS CLASSIFICATION Production-Medical Marijuana

DESCRIPTION Medical Marijuana

BUSINESS NAME Newa LLC
Grass Roots

BUSINESS LOCATION 1061 Pacific Ave, Sparks, NV 89431

LICENSEE [redacted]
RK Holdings LLC

CITY OF SPARKS

County of Washoe, State of Nevada
431 Prater Way, P.O. Box 857
Sparks, Nevada 89432
Attn: Finance Department
(775) 353-2360

Business License Number: 074779
Issue Date: June 10, 2015
Expiration Date: September 30, 2015
Amount: $ 3,000.00

Gina R. Martin
Finance Director

TO BE POSTED IN A CONSPICUOUS PLACE
NOT TRANSFERABLE

'See Reverse Side For Easy Opening Instructions'

City of Sparks
P.O. Box 857
Sparks, NV 89432-0857

BUSINESS LICENSE ENCLOSED

Newa LLC
Grass Roots
1061 Pacific Ave
Sparks, NV 89431

Thanks for doing business in the City of Sparks !

BUSINESS LICENSE

Licensed business to be conducted in whole or in part within the City of Sparks in conformity with and subject to the provisions of the law

BUSINESS CLASSIFICATION Cultivation-Medical Marijuana

DESCRIPTION Medical Marijuana Cultivation

BUSINESS NAME NNV Operations I LLC
Silver State Trading

BUSINESS LOCATION 695 S 21st St, Sparks, NV 89431

LICENSEE [redacted]

CITY OF SPARKS

County of Washoe, State of Nevada
431 Prater Way, P.O. Box 857
Sparks, Nevada 89432
Attn: Finance Department
(775) 353-2360

Business License Number: 074828
Issue Date: August 10, 2015
Expiration Date: September 30, 2015
Amount: $ 3,000.00

Mayor

Finance Director

TO BE POSTED IN A CONSPICUOUS PLACE
NOT TRANSFERABLE

"See Reverse Side For Easy Opening Instructions"

City of Sparks
P.O. Box 857
Sparks, NV 89432-0857

BUSINESS LICENSE ENCLOSED

NNV Operations I LLC
Silver State Trading
930 Tahoe Blvd #802-433
Incline Village, NV 89451

Thanks for doing business in the City of Sparks !

BUSINESS LICENSE

Licensed business to be conducted in whole or in part within the City of Sparks in conformity with and subject to the provisions of the law

BUSINESS CLASSIFICATION Production-Medical Marijuana

DESCRIPTION Medical Marijuana Production

BUSINESS NAME Silver State Cultivation LLC
Silver State Cultivation

BUSINESS LOCATION 250 S Stanford Wy. Sparks NV 89431

LICENSEE [redacted]

CITY OF SPARKS

County of Washoe, State of Nevada
431 Prater Way, P.O. Box 857
Sparks, Nevada 89432
Attn: Finance Department
(775) 353-2360

Business License Number: 074479
Issue Date: June 12, 2015
Expiration Date: September 30, 2015
Amount: $ 3,000.00

Gene R. Martin
Treasurer

Finance Director

TO BE POSTED IN A CONSPICUOUS PLACE
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See Reverse Side For Easy Opening Instructions

City of Sparks
P.O. Box 857
Sparks, NV 89432-0857

BUSINESS LICENSE ENCLOSED

Silver State Cultivation LLC
9455 Double R Blvd
Reno, NV 89521

Thanks for doing business in the City of Sparks !

BUSINESS LICENSE

Licensed business to be conducted in whole or in part within the City of Sparks in conformity with and subject to the provisions of the law

BUSINESS CLASSIFICATION Cultivation-Medical Marijuana

DESCRIPTION Medical Marijuana Cultivation

BUSINESS NAME Silver State Cultivation LLC
Silver State Cultivation

BUSINESS LOCATION 250 S Stanford Wy, Sparks, NV 89431

LICENSEE [redacted]

CITY OF SPARKS

County of Washoe, State of Nevada
431 Prater Way, P.O. Box 857
Sparks, Nevada 89432
Attn: Finance Department
(775) 353-2360

Business License Number: 074480
Issue Date: June 17, 2015
Expiration Date: September 30, 2015
Amount: $ 3,000.00

Finance Director

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City of Sparks
P.O. Box 857
Sparks, NV 89432-0857

BUSINESS LICENSE ENCLOSED

Silver State Cultivation LLC
9455 Double R Blvd
Reno, NV 89521

Thanks for doing business in the City of Sparks !

BUSINESS LICENSE

Licensed business to be conducted in whole or in part within the City of Sparks in conformity with and subject to the provisions of the law

BUSINESS CLASSIFICATION Dispensary - Medical Marijuana

DESCRIPTION Medical Marijuana Dispensary

BUSINESS NAME Silver State Relief LLC
Silver State Relief

BUSINESS LOCATION 175 E Greg St Sparks, NV 89431

LICENSEE [redacted]

CITY OF SPARKS

County of Washoe, State of Nevada
431 Prater Way, P.O. Box 857
Sparks, Nevada 89432
Attn: Finance Department
(775) 353-2300

Business License Number: 074478
Issue Date: June 19, 2015
Expiration Date: September 30, 2015
Amount: $ 0.00

Finance Director

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City of Sparks
P.O. Box 857
Sparks, NV 89432-0857

BUSINESS LICENSE ENCLOSED

Silver State Relief LLC
Silver State Relief
9455 Double R Blvd
Reno, NV 89521

Thanks for doing business in the City of Sparks !

BUSINESS LICENSE

Licensed business to be conducted in whole or in part within the City of Sparks in conformity with and subject to the provisions of the law

BUSINESS CLASSIFICATION General License

DESCRIPTION Medical Marijuana

BUSINESS NAME 374 Labs LLC

BUSINESS LOCATION 10 Greg St, #148 Sparks NV 89431

LICENSEE [redacted]

CITY OF SPARKS

County of Washoe, State of Nevada
431 Prater Way, P.O. Box 857
Sparks, Nevada 89432
Attn: Finance Department
(775) 353-2360

Business License Number: 074243
Issue Date: April 20, 2015
Expiration Date: April 20, 2016
Amount: $ 105.00

Finance Director

TO BE POSTED IN A CONSPICUOUS PLACE
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City of Sparks
P.O. Box 857
Sparks, NV 89432-0857

BUSINESS LICENSE ENCLOSED

374 Labs LLC
Pmb #118
550 W Plumb Ln #B
Sparks, NV 89431

Thanks for doing business in the City of Sparks !

BUSINESS LICENSE

Licensed business to be conducted in whole or in part within the City of Sparks in conformity with and subject to the provisions of the law

BUSINESS CLASSIFICATION General License

DESCRIPTION MME TESTING LAB

BUSINESS NAME Certified Ag Lab LLC

BUSINESS LOCATION 10 Greg St, #110 Sparks, NV 89431

LICENSEE

CITY OF SPARKS

County of Washoe, State of Nevada
431 Prater Way, P.O. Box 857
Sparks, Nevada 89432
Attn: Finance Department
(775) 353-2380

Business License Number: 074313
Issue Date: February 25, 2015
Expiration Date: February 01, 2016
Amount: $ 105.00

Finance Director

TO BE POSTED IN A CONSPICUOUS PLACE
NOT TRANSFERABLE

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City of Sparks
P.O. Box 857
Sparks, NV 89432-0857

BUSINESS LICENSE ENCLOSED

Certified Ag Lab LLC
255 Glendale Ave #21
Sparks, NV 89431

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Clerk of the Court
Transaction # 5148893 : csulezic

EXHIBIT 3

EXHIBIT 3

AFFIDAVIT OF CHANELLE BESSETTE

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, CHANELLE BESSETTE, being first duly sworn, do hereby depose and state under penalty of perjury, that the assertions of this Affidavit are true:

1. I am a resident of Reno, Nevada, and am employed as a reporter by the Reno Gazette-Journal ("RGJ").

2. I make this affidavit in support of the Petition for Writ of Mandamus filed in this action by the RGJ. With the exception of any matters stated on information and belief, I have personal knowledge of each of the factual matters stated in this Affidavit and could testify to the same in a court of law if called upon to do so.

3. I am the RGJ reporter who submitted the request, pursuant to Nevada's Public Records Act, for the documents at issue in this case. In that capacity, I have reviewed the Petition for Writ of Mandamus filed herein by the RGJ and believe all of the factual allegations therein to be true and accurate.

DATED this 18th day of September, 2015.

CHANELLE BESSETTE

SUBSCRIBED and SWORN to before me on this 18 day of September 2015.

NOTARY PUBLIC

G. RIEDI
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 09-9611-2 - Expires April 1, 2017

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Jacqueline Bryant
Clerk of the Court
Transaction # 5151142 : yviloria

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SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 00226
GLOGOVAC & PINTAR
427 West Plumb Lane
Reno, NV 89509
Telephone: 775-333-0400
Facsimile: 775-333-0412
sglogovac@gplawreno.net

Attorneys for Petitioner
Reno Newspapers, Inc.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RENO NEWSPAPERS, INC., a Nevada corporation,

Petitioner,

vs.

CITY OF SPARKS, a municipal corporation,

Respondent.
_____/

Case No. CV15-01871

Dept. No. 9

ACCEPTANCE OF SERVICE OF PROCESS

I, Douglas R. Thornley, Esq., for and on behalf of Respondent City of Sparks, hereby accept service of copies of the Summons and Petition for Writ of Mandamus in this matter. Such acceptance shall satisfy all service of process requirements for said Respondent herein.

I am employed as a Senior Assistant City Attorney for the Sparks City Attorney's Office, and have authority to accept service of process in this matter on behalf of Respondent.

DATED this 21st day of September, 2015.

SPARKS CITY ATTORNEY OFFICE

By: _____
DOUGLAS R. THORNLEY, ESQ.
Nevada Bar No. 10455

Attorneys for Respondent
City of Sparks

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
RENO, NEVADA 89509-3766
(775) 333-0400

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 21st day of September, 2015.

GLOGOVAC & PINTAR

By: _____
SCOTT A. GLOGOVAC, ESQ.
Nevada Bar No. 000226

Attorneys for Petitioner
Reno Newspapers, Inc.

GLOGOVAC & PINTAR
427 WEST PLUMB LANE
RENO, NEVADA 89509-3788
(775) 333-0400

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2015-10-08 03:00:44 PM
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Clerk of the Court
Transaction # 5179475 : mcholico

Code 2650
CHESTER H. ADAMS, #3009
Sparks City Attorney
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

RENO NEWSPAPERS, INC. a Nevada corporation,

Petitioner,

vs.

CITY OF SPARKS, a municipal corporation,

Respondent.

_____/

Case No. CV15-01871

Dept. No. 9

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS

Respondent City of Sparks (the "City") by and through the undersigned, hereby opposes the above-captioned Petition for Writ of Mandamus. This Opposition is made and based upon the attached Memorandum of Points and Authorities, all pleadings, papers, and files herein, along with any oral argument or other evidence the Court wishes to entertain.

Dated this 8th day of October, 2015.

CHESTER H. ADAMS
Sparks City Attorney

By: /s/ Douglas R. Thornley
DOUGLAS R. THORNLEY
Assistant City Attorney
Attorneys for Respondent

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MEMORANDUM OF POINTS AND AUTHORITIES

On August 20, 2015, the Reno Gazette Journal (the "Newspaper") requested that the City provide it with "copies of the business licenses of medical marijuana establishments in Sparks, including the names of the applicant/licensees." Petition, p. 3:19-20. Subject to a list of exceptions or "unless otherwise declared by law to be confidential," the Nevada Public Records Law requires that the records of a governmental entity be made available for inspection and reproduction by the public. Nev.Rev.Stat. § 239.010(1). Citing Nev.Admin.Code § 453A.714(1), the City produced the business licenses sought by the Newspaper but redacted the personal names and identifying information of the licensees from the documents. Petition, pp. 3:26-4:4; *see also Reno Newspapers Inc. v. Gibbons*, 266 P.3d 623, 628 (Nev. 2011) (allowing for redaction of confidential information from otherwise public records); Nev.Rev.Stat. § 239.010(3); Nev.Rev.Stat. § 239.0107(1)(d). The corporate names, locations, and contact information of the businesses at issue remained unaltered on the produced documents.[1] Petition, Exhibit 2. The Newspaper renewed its demand for the personal names of the licensees operating medical marijuana establishments in Sparks and the request was denied once more. Petition, p. 4:4-6. As a result, the Newspaper filed the instant Petition.[2] Petition, p.4:7.

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[1] The City interprets the declaration of confidentiality as applicable only to individual persons involved in Nevada's medical marijuana industry and not the corporate identity of similarly involved organizations. *See FCC v. AT&T Inc.*, 562 U.S. 397 (2011) (concluding that exemptions from disclosure requirements of the Freedom of Information Act governing law enforcement records which "could reasonably be expected to constitute an unwarranted invasion of personal privacy" does not protect information related to corporate privacy).

[2] The Newspaper asserts that the personal identity of individuals who operate medical marijuana establishments in Nevada has been "expressly pronounced" as a matter of public interest by the Nevada Legislature. Petition, pp. 2:20-3:15. The Legislature's statement of purpose in Nev.Rev.Stat. § 453A.320 is actually just an invocation of the state's general police power. *See generally In re Boyce*, 75 P. 1 (Nev. 1904). Whatever "public interest" may exist in the information sought by the Newspaper is abrogated by the Legislature's direction to the Division to "protect the identity" of individuals who receive, facilitate, or deliver medical marijuana services [Nev.Rev.Stat. § 453A.370(5)] and the Division's resultant declaration that the names and identifying information of such persons are "confidential, not subject to subpoena or discovery and *not subject to inspection by the general public*." Nev.Admin.Code. § 453A.714(1) (emphasis added).

I.

RELEVANT HISTORY OF MEDICAL MARIJUANA IN NEVADA

On November 7, 2000, Nevada voters approved Ballot Question 9, amending the state constitution to provide for lawful medical use of marijuana. *See* Nevada Constitution, Art. 4, § 38. The law took effect on October 1, 2001, and removed state-level criminal penalties on the use, possession, and cultivation of marijuana by patients who have written documentation from their physician stating that marijuana may alleviate the patient's condition. *Id.* As a result of the constitutional change, the state established a confidential patient registry that issues identification cards to qualifying patients. *See* Assembly Bill ("AB") 453, 71st Nevada Legislature (2001) (attached hereto as "**Exhibit 1**"), §§ 14 - 25 (now codified at Nev.Rev.Stat.§§ 453A.200-453A.310). What Nevada's early medical marijuana laws did not provide for, however, was a legal avenue to obtain the drug for medical consumption. In 2013, the 77th Nevada Legislature addressed this issue by passing Senate Bill ("SB") 374 (attached hereto as "**Exhibit 2**").

Generally speaking, SB 374 established the medical marijuana industry in Nevada. The bill amended Nev.Rev.Stat. Chapter 453A to include the parameters within which marijuana could be cultivated, processed, and distributed for medical purposes and added the framework governing the licensure of *commercial* participants in the newly-legitimized economy. Exhibit 2, §§ 3.5-20. But SB 374 was only the foundation; as part of the bill, the Legislature directed the Division of Public and Behavioral Health of the Department of Health and Human Services to adopt regulations that the Division determined "to be necessary or advisable to carry out the program of dispensing marijuana." *Id*. at p. 3; §20.

The Division promulgated a comprehensive scheme of regulations - codified at Nev.Admin.Code Chapter 453A - concerning both the application process for a state-issued medical marijuana establishment registration certificate and the actual operation of medical marijuana establishments in Nevada.[3] Because the Legislature limited the number of establishments that could be registered in each county [Nev.Rev.Stat. § 453A.324] and delineated the contents of an application

[3] Properly adopted provisions of the Nevada Administrative Code "have the force of law." Nev.Rev.Stat. § 233B.040(1)(a).

for a registration certificate [Nev.Rev.Stat. § 453A.322] the Division was charged with determining how to best resolve the surplus of applications against the restricted number of available licenses. The Division's adopted method ranks the applicants within each local jurisdiction based on four distinct criteria [Nev.Admin.Code. § 453A.310] and then grants medical marijuana establishment registration certificates "to the highest ranked applicants" until the pre-designated number of licenses, by type of establishment and jurisdiction, are issued. Nev.Admin.Code. § 453A.312.[4] The medical marijuana establishment may not commence operations until it demonstrates compliance "with all applicable local governmental ordinances and rules," and secures a business license.[5] Nev.Admin.Code § 453A.316(1).

Included in the Legislature's direction to the Division concerning the adoption of regulations related to the operation of medical marijuana establishments is a clear mandate: that the regulations "must, without limitation... As far as possible while maintaining accountability, protect the identity and personal identifying information of each person who receives, facilitates or delivers services" under the authority of Nev.Rev.Stat. Chapter 453A. Nev.Rev.Stat. § 453A.370(5). The Division responded by declaring:

> Except as otherwise provided in this section and NRS 239.0115, the Division shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who facilitates or delivers services pursuant to this chapter or chapter 453A of NRS. Except as otherwise provided in NRS 239.0115, *the name and any other identifying information of any person who facilitates or delivers*

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[4] In that way, local jurisdictions were not *originally* allowed to select the operators of medical marijuana establishments within their municipal boundaries - only the best qualified candidates were licensed by the state, and only candidates who were licensed by the state were eligible for a local business license. In 2015, however, the Legislature passed SB 276 which afforded greater local control to the process by essentially creating a race to licensure: now, if a local government so chooses, it may issue a business license to a potential medical marijuana establishment operator without regard for the operator's ranking on the state list, and so long as the state has not previously issued all of the statutorily allocated medical marijuana establishment certificates for the local jurisdiction, the state must issue a certificate. *See* SB 276, §§ 3-4. The City of Sparks has intentionally avoided this issue by requiring applicants for a business license to operate a medical marijuana establishment in Sparks to first obtain the state issued registration certificate. Sparks Municipal Code § 5.80.050(F).

[5] If a local government does not issue business licenses or utilize some other form of authorizing a medical marijuana establishment, the state-issued registration certificate serves as the approval to begin operations. Nev.Admin.Code § 453A.316(2).

> *services pursuant to this chapter or chapter 453A of NRS is confidential, not subject to subpoena or discovery and not subject to inspection by the general public.* Nev.Admin.Code § 453A.714(1) (emphasis added).

The Newspaper argues that Nev.Admin.Code § 453A.714(1) does not apply to the circumstances of the immediate action and that the Division's adoption of the regulation exceeded the authority conferred upon the Division by the Legislature. Petition, p. 7:1-21; pp. 7:25-9:6. These arguments are fatal to the Petition itself: Nev.Rev.Stat. § 233B.110 governs actions brought to determine the applicability or validity of administrative regulations, rendering extraordinary writ relief unavailable. Moreover, the Newspaper's tortured reading and interpretation of the code provision at issue wholly undermines the expressed intent of the Legislature and renders an entire section of the Nevada Administrative Code meaningless. The Petition should be denied.

II.

REASONS FOR DENYING THE PETITION

A. The Petition is Procedurally Deficient and Nonjusticiable.

1. A plain, speedy, and adequate remedy exists at law.

Mandamus is an extraordinary remedy that is unavailable when a petitioner has a "plain, speedy, and adequate remedy in the ordinary course of law." *Aspen Financial Services, Inc. v. Eighth Judicial District Court*, 313 P.3d 875, 877-88 (Nev. 2013); *see also* Nev.Rev.Stat. § 34.170. The Newspaper's Petition directly challenges the validity and applicability of Nev.Admin.Code. § 453A.714. Petition, p. 7:1-21; pp. 7:25-9:6. The Nevada Legislature has mandated a uniform vehicle for resolving the Newspaper's instant claims - an action for declaratory relief brought under Nev.Rev.Stat. § 233B.110.

The purpose of the Nevada Administrative Procedure Act is to "establish minimum procedural requirements for... judicial review of [regulations adopted by state agencies]." Nev.Rev.Stat. § 233B.020(1). The Legislature's imposition of additional prerequisites to relief in this type of action ensures that the state agencies which adopt regulations are given the opportunity to interpret and defend their regulations from attack. As a result, the Newspaper's failure to utilize the appropriate remedial vehicle is a substantive procedural failure that legally precludes the issuance of writ relief. Nev.Rev.Stat. § 34.170.

2. The Newspaper has not exhausted its administrative remedies.

The Supreme Court of Nevada has declared that "a person generally must exhaust all available administrative remedies before initiating a lawsuit, and failure to do so renders the controversy nonjusticiable." *Allstate Ins. Co. v. Thorpe*, 170 P.3d 989, 993 (Nev. 2007). Nev.Rev.Stat. § 233B.110(1) specifically prohibits the Court from rendering judgment in cases concerning the applicability of the Administrative Code until "after the plaintiff has first requested the agency to pass upon the validity of the regulation in question."

There is no evidence or claim that the Newspaper availed itself of this statutorily prescribed process. The exhaustion doctrine gives administrative agencies an opportunity to correct mistakes and conserves judicial resources, so its purpose is valuable; requiring exhaustion of administrative remedies often resolves disputes without the need for judicial involvement. *Thorpe,* 170 P.3d at 993-94. In its rush to litigation, the Newspaper has completely circumvented the statutory process specifically enacted by the Nevada Legislature to resolve this type of dispute and the Petition should be denied.

3. The Newspaper has failed to join an indispensable party.

Under Nev.R.Civ.P. 19(a), a party must be joined to an action if that party claims an interest "in the subject matter of the action and adjudication of the action in the individual's absence may inhibit the individual's ability to protect a claimed interest," or when the absence of an individual who has claimed an interest in the subject matter of the action could subject an existing party "to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations." *Anderson v. Sanchez*, 131 Nev.Adv.Op. 51, 4 (July 23, 2015). The failure to join indispensable parties invalidates a judgment. *Schwob v. Hemsath*, 646 P.2d 1212 (Nev. 1982) ("Failure to join an indispensable party is fatal to a judgment); *Johnson v. Johnson*, 572 P.2d 925, 927 (Nev. 1977) (relief granted in an indispensable party's absence is essentially nugatory).

In all cases concerning a challenge to the validity or applicability of a provision of the Nevada Administrative Code, "[t]he agency whose regulation is made the subject of the declaratory action

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shall be made a party to the action." Nev.Rev.Stat. § 233B.110(1) (emphasis added).[6] The Newspaper has failed to satisfy *any* of the statutory requirements for challenging the applicability or validity of Nev.Admin.Code. § 453A.714. The Petition should be denied on that basis alone.

B. Nev.Admin.Code § 453A.714 Is a Comprehensive Declaration of Confidentiality.

1. The plain language of the administrative code provision in question is clear.

The Newspaper complains that because Nev.Admin.Code. § 453A.714 does not define or identify "the persons or entities who are intended to be included" in the regulation's guarantee of confidentiality to any person who facilitates or delivers services under the authority of Nev.Rev.Stat. Chapter 453A, that it is improper for the City to read the statute as applicable to municipal business licenses. Petition, p.7:1-10. But that argument presupposes that the Legislature intended to impose such a restriction, which is a difficult conclusion to reach given the Legislature's explicit direction that the Division "protect the identity and personal identifying information of *each* person who receives, facilitates or delivers" services related to the lawful use of medical marijuana in Nevada,[7] and the Division's resultant use of the word "any" in the code provision now at issue.[8] *Compare* Nev.Rev.Stat. § 453A.370(5) *with* Nev.Admin.Code § 453A.714(1). The Newspaper takes further issue with the fact that Nev.Admin.Code § 453A.714(1) "makes no reference to [medical marijuana establishments] at all, let alone the names of the owners or licensees of those establishments." Petition, p. 7:1-2. This pedantic argument is wholly without merit and a distortion of the truth. Nev.Admin.Code § 453A.714(1) refers to the provision of services under the authority of Nev.Admin.Code Chapter 453A and Nev.Rev.Stat. Chapter 453A, both of which regulate the consumption and distribution of medical marijuana in Nevada.

When interpreting a statute, a court's first point of examination is the plain meaning of the language used. *Arguello v. Sunset Station, Inc.*, 252 P.3d 206, 209 (Nev. 2011). "When the language

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[6] Similarly, Nevada law requires that in every action to determine the validity or applicability of an administrative regulation, "the plaintiff shall serve a copy of the complaint upon the Attorney General, who is also entitled to be heard." Nev.Rev.Stat. § 233B.110(3). The Newspaper, again, has not complied with this directive.

[7] "Each" means "every." *See* Black's Law Dictionary 597 (rev. 4th ed. 1968).

[8] "Any" means "every." *See* Black's Law Dictionary 120 (rev. 4th ed. 1968).

of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it." *City of Reno v. Reno Newspapers, Inc.*, 784 P.2d 974, 977 (Nev. 1989). In drawing conclusions under the plain meaning doctrine, the meaning a court gives to a statute should be reasonable and harmonize different statutory provisions where possible. *Rose v. First Federal Savings & Loan*, 777 P.2d 1318, 1319 (Nev. 1989) (citing *Board of School Trustees v. Bray*, 109 P.2d 274, 278 (Nev. 1941)).

In the context of Nev.Rev.Stat. Chapter 453A, the term "deliver" means "the actual, constructive or attempted transfer from one person to another of a controlled substance." Nev.Rev.Stat. § 453A.060; Nev.Rev.Stat. § 453.051. Nev.Rev.Stat. § 453A.116 defines the term "medical marijuana establishment" as an independent testing laboratory, a cultivation facility, a facility for the production of edible marijuana products or marijuana-infused products, a medical marijuana dispensary, or a business that has registered as more than one of the foregoing. A "cultivation facility" is a business that "acquires, possesses, cultivates, *delivers*, transfers, transports or sells marijuana and related supplies" to other medical marijuana establishments. Nev.Rev.Stat. § 453A.056 (emphasis added). Similarly, a "facility for the production of edible marijuana products or marijuana-infused products" is a business that "acquires, possesses, manufactures, *delivers*, transfers, transports, supplies, or sells edible marijuana products or marijuana-infused products to medical marijuana dispensaries." Nev.Rev.Stat. § 453A.105 (emphasis added). Finally, a "medical marijuana dispensary" is a business that "acquires, possesses, *delivers*, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to the holder of a valid registry identification card." Nev.Rev.Stat. § 453A.115 (emphasis added).

By statutory definition, every type of medical marijuana establishment allowed by Nevada law "delivers" services under the authority of Nev.Rev.Stat. Chapter 453A. Logically presuming consistent usage of the term "deliver" within Chapters 453A of the Nevada Revised Statutes and the Nevada Administrative Code, the names of individuals licensed to operate medical marijuana establishments - and thereby "deliver" services under the authority of Nev.Rev.Stat. Chapter 453A - fall decidedly within the grasp of Nev.Admin.Code § 453A.714(1) and its declaration of confidentiality.

2. Nev.Rev.Stat. § 453A.370(5) is an unambiguous statement of the Legislature's intent.

The Newspaper explains that the Nevada Legislature "in enacting NRS Chapter 453A, knew how to impose confidentiality for the identities of specific classes of persons who would be involved in the medical marijuana industry." Petition, p. 8:24-26. That premise is, of course, correct: the Legislature is presumed to understand the reach of its declarations of confidentiality. *See Reno Newspapers v. Sheriff*, 234 P.3d 922, 926 (Nev. 2010) ("If the Legislature had intended post-application information about a permit's status to be confidential, it could and would have stated that, but it did not."). On that basis, the Newspaper argues that the statutory grant of confidentiality - and with it the Division's regulatory authority - extends only to "attending physicians" and persons who hold "registry identification cards." Petition, p. 8:3:23. That analysis is wrong.

Had the 77th Nevada Legislature intended for Nev.Rev.Stat. § 453A.370(5) - as the Newspaper supposes - to limit the protection of anonymity to a restricted class of participants in the state's medical marijuana industry, it could have relied on its *already existing* declarations of confidentiality by using identical language or by doing nothing at all. *See* Nev.Rev.Stat. § 453A.610(1) (materials generated as part of the University of Nevada's research related to the medical use of marijuana) *and* Nev.Rev.Stat. § 453A.700(1) (names and identifying information of patients who use medical marijuana and their attending physicians) (*both enacted in 2001*). But it didn't. Instead, the Legislature directed the Division of Public and Behavioral Health to adopt a regulation which "protect[s] the identity and personal identifying information of *each person* who receives, facilitates or delivers services in accordance with [Nev.Rev.Stat. Chapter 453A]." Nev.Rev.Stat. § 453A.370(5) (emphasis added). Once more, the Legislature's use of the term "deliver" has important implications: the statutory definition of "deliver" was adopted in 2001, as part of the same bill that made materials generated as part of the University of Nevada's research related to the medical use of marijuana and the names and identifying information of patients who use medical marijuana and their doctors confidential and defined the terms "attending physician" and "registry identification card." *See* Exhibit 1, §§ 4; 14; 29; 30.2. That in 2013, the Legislature subsequently used the term "deliver" in Nev.Rev.Stat. § 453A.370(5) and also included it the statutory definitions of "cultivation

facility," facility for the production of edible marijuana products or marijuana-infused products," and "medical marijuana dispensary," demonstrates that the linguistic variation is intentional, meaningful, and a clear grant of authority to the Division.

Moreover, Nev.Admin.Code. § 453A.714 was approved by the Legislative Commission on March 28, 2014 - which means that the Commission had an opportunity to object to the regulation as nonconforming to the statutory authority bestowed by the Legislature or as not carrying out the intent of the Legislature. Nev.Rev.Stat. § 233B.067(5)(b)-(c); *see also* Div. of Pub. & Behavioral Health R004-14. But, again, it didn't. On these facts, the reasonable conclusion is that the Nevada Legislature intended exactly what it said: to "protect the identity and personal identifying information of each person who receives, facilitates or delivers services" under the authority of Nev.Rev.Stat. Chapter 453A. Read in conjunction with the entirety of the bill in which it was adopted, and in the face of already existing declarations of confidentiality in the law to which it was added, there is no doubt that in expanding Nev.Rev.Stat. Chapter 453A to legalize the distribution of medical marijuana in Nevada, the Legislature intended to shield the identities of individuals who operate medical marijuana establishments from public disclosure. The Newspaper's unsupported contention that Nev.Admin.Code § 453A.714 exceeds the regulation-making authority of the Division is meritless.

3. The Newspaper's interpretation of Nev.Admin.Code § 453A.714 undermines the express purpose of the regulation.

The Newspaper argues that the first sentence of Nev.Admin.Code § 453A.714(1) imposes the duty of confidentiality on the Division alone,[9] and that the second sentence "merely injects confusion and ambiguity into the regulation." Petition, p. 7:11-21. "Statutory language is ambiguous if it is capable of more than one reasonable interpretation." *In re Candelaria*, 245 P.3d 518, 520 (Nev. 2010). An ambiguous statutory provision should be interpreted in accordance with "what reason and public policy would indicate the legislature intended." *McKay v. Board of Sup'rs of Carson City*, 730

[9] In cases where no business license issues, the Newspaper's interpretation results in inconsistent application of the law amongst identically situated operators: the identities of those individuals who operate a medical marijuana establishment in a jurisdiction that requires a business license would be public information, while those operating in jurisdictions which do not issue a business license would remain confidential. *See* Nev.Admin.Code § 453A.316(2).

P.2d 438, 442 (Nev. 1986). Statutes are generally construed "to give meaning to all of their parts and language, and [a] court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation," *Coast Hotels v. State, Labor Comm'n*, 34 P.3d 546, 550 (Nev. 2001), and no part of a statute should be rendered meaningless. *Banegas v. State Indus. Ins. System*, 19 P.3d 245, 249 (Nev. 2001).

Here, both the first and second sentences of Nev.Admin.Code § 453A.714(1) bestow confidentiality:

> Except as otherwise provided in this section and NRS 239.0115, the Division shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who facilitates or delivers services pursuant to this chapter or chapter 453A of NRS. Except as otherwise provided in NRS 239.0115, the name and any other identifying information of any person who facilitates or delivers services pursuant to this chapter or chapter 453A of NRS is confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

The first sentence is obviously self-limiting, applicable only to the Division and its designees, while the second is a generally applicable declaration of confidentiality. The Newspaper would disregard the entirety of the second sentence as redundant of the first. Petition, p. 7:11-20. But statutory interpretations which render portions of the law redundant and with no meaning or effect are disfavored and typically rejected. *See National Ass'n of Home Builders v. Defenders of Wildlife,* 551 U.S. 644, 669 (2007) ("[W]e have cautioned against reading a text in a way that makes part of it redundant."); *Singer v. United States,* 323 U.S. 338, 344 (1945) ("[W]e would be reluctant to give a statute that construction which makes it wholly redundant. Only a clear legislative purpose should lead to that result here."); *Rogers v. State*, 773 P.2d 1226, 1227 (Nev. 1989) (assuming that statute's use of distinct terms was intentional and refusing to interpret the terms as redundant). Had the Division intended for Nev.Admin.Code § 453A.714(1) to apply only to the records of the state, the second sentence would have been completely unnecessary; the presence of the exception to confidentiality under Nev.Rev.Stat. § 239.0115 in both sentences underscores that the sentences apply independently of each other. Absent a clear showing of legislative intent to the contrary, the Court should interpret Nev.Admin.Code § 453A.714(1) in accordance with the long-accepted canons of statutory construction by giving meaning to all of the statutory language.

Finally, the language of a statute "should not be read to produce absurd or unreasonable

results." *Glover v. Concerned Citizens for Fuji Park and Fairgrounds*, 50 P.3d 546, 548 (Nev. 2002), *overruled in part on other grounds by Garvin v. Ninth Judicial Dist. Court ex rel. Cnty. of Douglas*, 59 P.3d 1180 (Nev. 2002). It is unlawful for a medical marijuana establishment to operate prior to the issuance of a local business license. Nev.Admin.Code § 453A.316(1)(b); *see also* Nev.Rev.Stat. § 453A.326(3)(b) (instructing that state-issued registration certificates are "provisional" until a local business license is acquired). On that basis, it is impossible to *legally* "deliver" medical marijuana in Nevada without first obtaining a local business license.[10] The Newspaper's position reduces the second sentence of Nev.Admin.Code § 453A.714(1) to surplusage by interpreting the issuance of a local business license - which the Legislature requires as a mandatory component of the regulatory scheme governing the legal delivery of medical marijuana in Nevada - as simultaneously bestowing confidentiality on state records *and* stripping the information in question of that protection at the local level. This absurdity renders the entirety of the regulation unworkable and wholly meaningless. Information that is confidential in the files of the state but public record on the forms of a local government is not confidential at all. The information sought by the Newspaper is protected from public disclosure under Nevada law and the Petition should be denied.

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[10] Legally delivering medical marijuana versus illegally delivering medical marijuana is an important distinction: in the context of taxation on illegal drug sales, the Legislature has protected the "name, address or other identifying information" of dealers of controlled substances. Nev.Rev.Stat. § 372A.080(1). In Nevada, marijuana is a schedule I controlled substance [Nev.Admin.Code § 453.510(4)] and prior to the 2013 changes to Nev.Rev.Stat. Chapter 453A, it was impossible to legally deliver medical marijuana under state law. SB 374 imposed a new tax on *legally-delivered* medical marijuana and removed the same from the Fifth Amendment protection of Nev.Rev.Stat. § 372A.080; most likely because the licensed sale of medical marijuana no longer violated Nevada Law. Exhibit 2, §§ 24.4-24.5. The possession and sale of medical marijuana does still violate federal law, however, and there is a legitimate public safety issue in publishing the names and identifying information of people involved in the all-cash business of manufacturing and distributing exceptionally potent strains of common street drugs. To that end, the Legislature's direction that the identities of those involved in Nevada's medical marijuana industry be "protected," is an easily understood mandate. *See* Nev.Rev.Stat. § 453A.370(5). That the Newspaper disagrees with the policy is a political question that cannot be resolved in this forum. *See N. Lake Tahoe Fire v. Washoe Cnty. Comm'rs*, 310 P.3d 583, 587 (Nev. 2013) ("Under the political question doctrine, controversies are precluded from judicial review when they 'revolve around policy choices and value determinations constitutionally committed for resolution to the legislative and executive branches.'").

III.

CONCLUSION

Confidentiality is a two-part equation; on the one side, an expectation of - or right to - privacy and protection, on the other, a duty of non-dissemination. *See Whitehead v. Nevada Comm'n on Judicial Discipline*, 873 P.2d 946, 958-959 (Nev. 1994). At the explicit direction of the Legislature [Nev.Rev.Stat. § 453A.370(5)] the Division unambiguously declared the names and identifying information of every person who delivers medical marijuana under the auspices of Nevada law "confidential, not subject to subpoena or discovery and not subject to inspection by the general public." Nev.Admin.Code. § 453A.714. That guarantee of anonymity is wholly abrogated by the approach pressed by the Newspaper, which flies in the face of logical reasoning and the generally accepted practices for statutory construction. Even the narrow reading of Nev.Admin.Code. § 453A.714 compelled by the Public Records Law is required to be reasonable, and a complete erosion of the stated purpose of the law surely does not meet that standard. The Newspaper's procedurally deficient, legally unsupported, and illogical Petition should be denied.

Respectfully submitted this 8th day of October, 2015.

CHESTER H. ADAMS
Sparks City Attorney

By: /s/ Douglas R. Thornley
DOUGLAS R. THORNLEY
Assistant City Attorney
Attorneys for Respondent

AFFIRMATION

The undersigned does hereby affirms that the preceding document does not contain the Social Security Number of any person.

/s/ Douglas R. Thornley
DOUGLAS R. THORNLEY

CERTIFICATE OF SERVICE

Pursuant to Nev.R.Civ.P. 5(b), I hereby certify that I am an employee of the Sparks City Attorney's Office, Sparks, Nevada, and that on this date, I am serving the foregoing document(s) entitled **RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF MANDAMUS** on the person(s) set forth below by:

✓ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Sparks, Nevada, postage prepaid, following ordinary business practices.

___ Personal Delivery.

___ Facsimile (FAX).

___ Federal Express or other overnight delivery.

___ Reno/Carson Messenger Service.

If physically delivered, each is addressed as follows:

Scott A. Glogovac, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, NV 89509
Attorneys for Plaintiff, Reno Newspapers, Inc.

DATED this 8th day of October, 2015.

/s/ Kember Murphy
Kember Murphy

INDEX OF EXHIBITS

Exhibit 1	Assembly Bill 435, 71st Nevada Legislature (2001)
Exhibit 2	Senate Bill 374, 77th Nevada Legislature (2013)

F I L E D
Electronically
2015-10-08 03:00:44 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5179475 : mcholico

EXHIBIT 1

Assembly Bill No. 453–Assemblywoman Giunchigliani

CHAPTER.....

AN ACT relating to controlled substances; exempting the medical use of marijuana from state prosecution in certain circumstances; revising the penalties for possessing marijuana; and providing other matters properly relating thereto.

WHEREAS, Modern medical research, including the report *Marijuana and Medicine: Assessing the Science Base* that was released by the Institute of Medicine in 1999, indicates that there is a potential therapeutic value of using marijuana for alleviating pain and other symptoms associated with certain chronic or debilitating medical conditions, including, without limitation, cancer, glaucoma, acquired immunodeficiency syndrome, epilepsy and multiple sclerosis; and

WHEREAS, The State of Nevada has a high incidence of such medical conditions and also has a large and increasing population of senior citizens who may suffer from medical conditions for which the use of marijuana may be useful in managing the pain that results from those conditions; and

WHEREAS, The people of the State of Nevada recognized the importance of this research and the need to provide the option for those suffering from certain medical conditions to alleviate their pain with the medical use of marijuana, and in the general elections held in 1998 and 2000, voiced their overwhelming support for a constitutional amendment to allow for the medical use of marijuana in this state under certain circumstances; and

WHEREAS, While the legislature respects the important and difficult decisions the Federal Government faces in exercising the powers delegated to it by the United States Constitution to establish policies and rules that are in the best interest of this nation, the State of Nevada as a sovereign state has the duty to carry out the will of the people of this state and to regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana; and

WHEREAS, This state should continue to study the benefits of the medical use of marijuana to develop new ways in which the medical use of marijuana may improve the lives of residents of this state who are suffering from chronic or debilitating conditions, and to include in such a study an examination of all established and approved federal protocols; and

WHEREAS, Many residents of this state have suffered the negative consequences of abuse of and addiction to marijuana, and it is important for the legislature to ensure that the program established for the distribution and medical use of marijuana is designed in such a manner as not to harm the residents of this state by contributing to the general abuse of and addiction to marijuana; and

WHEREAS, A majority of the men and women in our penal institutions have been convicted of offenses that involve the unlawful use of drugs, many involving marijuana, and there is a need for revising our statutes concerning persons who unlawfully possess smaller quantities of marijuana based on the premise that the rehabilitation of such users is a more appropriate and economical way to prevent recidivism and to address the problems that result from the abuse of marijuana; and

WHEREAS, The legislature is strongly committed to evaluating the medical use of marijuana and recognizes the importance of its obligation to review the program for the distribution and medical use of marijuana and any related study conducted by the University of Nevada School of Medicine, to determine whether the program and study are effectively addressing the best interests of the people of the State of Nevada; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 40 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 33, inclusive, of this act.

Sec. 2. ***As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Administer" has the meaning ascribed to it in NRS 453.021.***

Sec. 4. ***"Attending physician" means a physician who:***

1. Is licensed to practice medicine pursuant to the provisions of chapter 630 of NRS; and

2. Has primary responsibility for the care and treatment of a person diagnosed with a chronic or debilitating medical condition.

Sec. 5. ***"Cachexia" means general physical wasting and malnutrition associated with chronic disease.***

Sec. 6. ***"Chronic or debilitating medical condition" means:***

1. Acquired immune deficiency syndrome;

2. Cancer;

3. Glaucoma;

4. A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(a) Cachexia;

(b) Persistent muscle spasms, including, without limitation, spasms caused by multiple sclerosis;

(c) Seizures, including, without limitation, seizures caused by epilepsy;

(d) Severe nausea; or

(e) Severe pain; or

5. Any other medical condition or treatment for a medical condition that is:

(a) Classified as a chronic or debilitating medical condition by regulation of the division; or

(b) Approved as a chronic or debilitating medical condition pursuant to a petition submitted in accordance with section 30 of this act.

Sec. 7. ***"Deliver" or "delivery" has the meaning ascribed to it in NRS 453.051.***

Sec. 8. ***"Department" means the state department of agriculture.***

Sec. 9. ***1. "Designated primary caregiver" means a person who:***

(a) Is 18 years of age or older;

(b) Has significant responsibility for managing the well-being of a person diagnosed with a chronic or debilitating medical condition; and

(c) Is designated as such in the manner required pursuant to section 23 of this act.

2. The term does not include the attending physician of a person diagnosed with a chronic or debilitating medical condition.

Sec. 10. *"Division" means the health division of the department of human resources.*

Sec. 11. *"Drug paraphernalia" has the meaning ascribed to it in NRS 453.554.*

Sec. 12. *"Marijuana" has the meaning ascribed to it in NRS 453.096.*

Sec. 13. *"Medical use of marijuana" means:*

1. The possession, delivery, production or use of marijuana;

2. The possession, delivery or use of paraphernalia used to administer marijuana; or

3. Any combination of the acts described in subsections 1 and 2,

as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his chronic or debilitating medical condition.

Sec. 13.5. *"Production" has the meaning ascribed to it in NRS 453.131.*

Sec. 14. *"Registry identification card" means a document issued by the department or its designee that identifies:*

1. A person who is exempt from state prosecution for engaging in the medical use of marijuana; or

2. The designated primary caregiver, if any, of a person described in subsection 1.

Sec. 14.5. *"State prosecution" means prosecution initiated or maintained by the State of Nevada or an agency or political subdivision of the State of Nevada.*

Sec. 15. *1. "Usable marijuana" means the dried leaves and flowers of a plant of the genus Cannabis, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana.*

2. The term does not include the seeds, stalks and roots of the plant.

Sec. 16. *"Written documentation" means:*

1. A statement signed by the attending physician of a person diagnosed with a chronic or debilitating medical condition; or

2. Copies of the relevant medical records of a person diagnosed with a chronic or debilitating medical condition.

Sec. 17. *1. Except as otherwise provided in this section and section 24 of this act, a person who holds a valid registry identification card issued to him pursuant to section 20 or 23 of this act is exempt from state prosecution for:*

(a) Possession, delivery or production of marijuana;

(b) Possession or delivery of drug paraphernalia;

(c) Aiding and abetting another in the possession, delivery or production of marijuana;

(d) Aiding and abetting another in the possession or delivery of drug paraphernalia;

(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and

(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of drug paraphernalia is an element.

2. In addition to the provisions of subsection 1, no person may be subject to state prosecution for constructive possession, conspiracy or any other criminal offense solely for being in the presence or vicinity of the medical use of marijuana in accordance with the provisions of this chapter.

3. The exemption from state prosecution set forth in subsection 1 applies only to the extent that a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act, and the designated primary caregiver, if any, of such a person:

(a) Engage in or assist in, as applicable, the medical use of marijuana in accordance with the provisions of this chapter as justified to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; and

(b) Do not, at any one time, collectively possess, deliver or produce more than:

(1) One ounce of usable marijuana;

(2) Three mature marijuana plants; and

(3) Four immature marijuana plants.

4. If the persons described in subsection 3 possess, deliver or produce marijuana in an amount which exceeds the amount described in paragraph (b) of that subsection, those persons:

(a) Are not exempt from state prosecution for possession, delivery or production of marijuana.

(b) May establish an affirmative defense to charges of possession, delivery or production of marijuana, or any combination of those acts, in the manner set forth in section 25 of this act.

Sec. 18. (Deleted by amendment.)

Sec. 19. *1. The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section.*

2. Except as otherwise provided in subsections 3 and 5, the department or its designee shall issue a registry identification card to a person who submits an application on a form prescribed by the department accompanied by the following:

(a) Valid, written documentation from the person's attending physician stating that:

(1) The person has been diagnosed with a chronic or debilitating medical condition;

(2) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(3) The attending physician has explained the possible risks and benefits of the medical use of marijuana;

(b) The name, address, telephone number, social security number and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician; and

(d) If the person elects to designate a primary caregiver at the time of application:

(1) The name, address, telephone number and social security number of the designated primary caregiver; and

(2) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

3. The department or its designee shall issue a registry identification card to a person who is under 18 years of age if:

(a) The person submits the materials required pursuant to subsection 2; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement setting forth that:

(1) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(2) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(3) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(4) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

4. The form prescribed by the department to be used by a person applying for a registry identification card pursuant to this section must be a form that is in quintuplicate. Upon receipt of an application that is completed and submitted pursuant to this section, the department shall:

(a) Record on the application the date on which it was received;

(b) Retain one copy of the application for the records of the department; and

(c) Distribute the other four copies of the application in the following manner:

(1) One copy to the person who submitted the application;

(2) One copy to the applicant's designated primary caregiver, if any;

(3) One copy to the central repository for Nevada records of criminal history; and

(4) One copy to the board of medical examiners.

The central repository for Nevada records of criminal history shall report to the department its findings as to the criminal history, if any, of an

applicant within 15 days after receiving a copy of an application pursuant to subparagraph (3) of paragraph (c). The board of medical examiners shall report to the department its findings as to the licensure and standing of the applicant's attending physician within 15 days after receiving a copy of an application pursuant to subparagraph (4) of paragraph (c).

5. The department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days after receiving the application. The department may contact an applicant, his attending physician and designated primary caregiver, if any, by telephone to determine that the information provided on or accompanying the application is accurate. The department may deny an application only on the following grounds:

(a) The applicant failed to provide the information required pursuant to subsections 2 and 3 to:

(1) Establish his chronic or debilitating medical condition; or

(2) Document his consultation with an attending physician regarding the medical use of marijuana in connection with that condition;

(b) The applicant failed to comply with regulations adopted by the department, including, without limitation, the regulations adopted by the director pursuant to section 32 of this act;

(c) The department determines that the information provided by the applicant was falsified;

(d) The department determines that the attending physician of the applicant is not licensed to practice medicine in this state or is not in good standing, as reported by the board of medical examiners;

(e) The department determines that the applicant, or his designated primary caregiver, if applicable, has been convicted of knowingly or intentionally selling a controlled substance;

(f) The department has prohibited the applicant from obtaining or using a registry identification card pursuant to subsection 2 of section 24 of this act; or

(g) In the case of a person under 18 years of age, the custodial parent or legal guardian with responsibility for health care decisions for the person has not signed the written statement required pursuant to paragraph (b) of subsection 3.

6. The decision of the department to deny an application for a registry identification card is a final decision for the purposes of judicial review. Only the person whose application has been denied or, in the case of a person under 18 years of age whose application has been denied, the person's parent or legal guardian, has standing to contest the determination of the department. A judicial review authorized pursuant to this subsection must be limited to a determination of whether the denial was arbitrary, capricious or otherwise characterized by an abuse of discretion and must be conducted in accordance with the procedures set forth in chapter 233B of NRS for reviewing a final decision of an agency.

7. A person whose application has been denied may not reapply for 6 months after the date of the denial, unless the department or a court of competent jurisdiction authorizes reapplication in a shorter time.

8. Except as otherwise provided in this subsection, if a person has applied for a registry identification card pursuant to this section and the department has not yet approved or denied the application, the person, and his designated primary caregiver, if any, shall be deemed to hold a registry identification card upon the presentation to a law enforcement officer of the copy of the application provided to him pursuant to subsection 4. A person may not be deemed to hold a registry identification card for a period of more than 30 days after the date on which the department received the application.

Sec. 20. *1. If the department approves an application pursuant to subsection 5 of section 19 of this act, the department or its designee shall, as soon as practicable after the department approves the application:*

(a) Issue a serially numbered registry identification card to the applicant; and

(b) If the applicant has designated a primary caregiver, issue a serially numbered registry identification card to the designated primary caregiver.

2. A registry identification card issued pursuant to paragraph (a) of subsection 1 must set forth:

(a) The name, address, photograph and date of birth of the applicant;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant's designated primary caregiver, if any; and

(d) Any other information prescribed by regulation of the department.

3. A registry identification card issued pursuant to paragraph (b) of subsection 1 must set forth:

(a) The name, address and photograph of the designated primary caregiver;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant for whom the person is the designated primary caregiver; and

(d) Any other information prescribed by regulation of the department.

4. A registry identification card issued pursuant to this section is valid for a period of 1 year and may be renewed in accordance with regulations adopted by the department.

Sec. 21. *1. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act shall, in accordance with regulations adopted by the department:*

(a) Notify the department of any change in his name, address, telephone number, attending physician or designated primary caregiver, if any; and

(b) Submit annually to the department:

(1) Updated written documentation from his attending physician in which the attending physician sets forth that:

(I) The person continues to suffer from a chronic or debilitating medical condition;

(II) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(III) He has explained to the person the possible risks and benefits of the medical use of marijuana; and

(2) If he elects to designate a primary caregiver for the subsequent year and the primary caregiver so designated was not the person's designated primary caregiver during the previous year:

(I) The name, address, telephone number and social security number of the designated primary caregiver; and

(II) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

2. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (b) of subsection 1 of section 20 of this act or pursuant to section 23 of this act shall, in accordance with regulations adopted by the department, notify the department of any change in his name, address, telephone number or the identity of the person for whom he acts as designated primary caregiver.

3. If a person fails to comply with the provisions of subsection 1 or 2, the registry identification card issued to him shall be deemed expired. If the registry identification card of a person to whom the department or its designee issued the card pursuant to paragraph (a) of subsection 1 of section 20 of this act is deemed expired pursuant to this subsection, a registry identification card issued to the person's designated primary caregiver, if any, shall also be deemed expired. Upon the deemed expiration of a registry identification card pursuant to this subsection:

(a) The department shall send, by certified mail, return receipt requested, notice to the person whose registry identification card has been deemed expired, advising the person of the requirements of paragraph (b); and

(b) The person shall return his registry identification card to the department within 7 days after receiving the notice sent pursuant to paragraph (a).

Sec. 22. *If a person to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act is diagnosed by his attending physician as no longer having a chronic or debilitating medical condition, the person and his designated primary caregiver, if any, shall return their registry identification cards to the department within 7 days after notification of the diagnosis.*

Sec. 23. *1. If a person who applies to the department for a registry identification card or to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act desires to designate a primary caregiver, the person must:*

(a) To designate a primary caregiver at the time of application, submit to the department the information required pursuant to paragraph (d) of subsection 2 of section 19 of this act; or

(b) To designate a primary caregiver after the department or its designee has issued a registry identification card to him, submit to the department the information required pursuant to subparagraph (2) of paragraph (b) of subsection 1 of section 21 of this act.

2. A person may have only one designated primary caregiver at any one time.

3. If a person designates a primary caregiver after the time that he initially applies for a registry identification card, the department or its designee shall, except as otherwise provided in subsection 5 of section 19 of this act, issue a registry identification card to the designated primary caregiver as soon as practicable after receiving the information submitted pursuant to paragraph (b) of subsection 1.

Sec. 24. *1. A person who holds a registry identification card issued to him pursuant to section 20 or 23 of this act is not exempt from state prosecution for, nor may he establish an affirmative defense to charges arising from, any of the following acts:*

(a) Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

(b) Engaging in any other conduct prohibited by NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 493.130.

(c) Possessing a firearm in violation of paragraph (b) of subsection 1 of NRS 202.257.

(d) Possessing marijuana in violation of NRS 453.336 or possessing drug paraphernalia in violation of NRS 453.560 or 453.566, if the possession of the marijuana or drug paraphernalia is discovered because the person engaged or assisted in the medical use of marijuana in:

(1) Any public place or in any place open to the public or exposed to public view; or

(2) Any local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders.

(e) Delivering marijuana to another person who he knows does not lawfully hold a registry identification card issued by the department or its designee pursuant to section 20 or 23 of this act.

(f) Delivering marijuana for consideration to any person, regardless of whether the recipient lawfully holds a registry identification card issued by the department or its designee pursuant to section 20 or 23 of this act.

2. In addition to any other penalty provided by law, if the department determines that a person has willfully violated a provision of this chapter or any regulation adopted by the department or division to carry out the provisions of this chapter, the department may, at its own discretion, prohibit the person from obtaining or using a registry identification card for a period of up to 6 months.

Sec. 25. *1. Except as otherwise provided in this section and section 24 of this act, it is an affirmative defense to a criminal charge of possession, delivery or production of marijuana, or any other criminal offense in which possession, delivery or production of marijuana is an element, that the person charged with the offense:*

(a) Is a person who:

(1) Has been diagnosed with a chronic or debilitating medical condition within the 12-month period preceding his arrest and has been advised by his attending physician that the medical use of marijuana may mitigate the symptoms or effects of that chronic or debilitating medical condition;

(2) Is engaged in the medical use of marijuana; and

(3) Possesses, delivers or produces marijuana only in the amount described in paragraph (b) of subsection 3 of section 17 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; or

(b) Is a person who:

(1) Is assisting a person described in paragraph (a) in the medical use of marijuana; and

(2) Possesses, delivers or produces marijuana only in the amount described in paragraph (b) of subsection 3 of section 17 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the assisted person's attending physician to mitigate the symptoms or effects of the assisted person's chronic or debilitating medical condition.

2. A person need not hold a registry identification card issued to him by the department or its designee pursuant to section 20 or 23 of this act to assert an affirmative defense described in this section.

3. Except as otherwise provided in this section and in addition to the affirmative defense described in subsection 1, a person engaged or assisting in the medical use of marijuana who is charged with a crime pertaining to the medical use of marijuana is not precluded from:

(a) Asserting a defense of medical necessity; or

(b) Presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition,

if the amount of marijuana at issue is not greater than the amount described in paragraph (b) of subsection 3 of section 17 of this act and the person has taken steps to comply substantially with the provisions of this chapter.

4. A defendant who intends to offer an affirmative defense described in this section shall, not less than 5 days before trial or at such other time as the court directs, file and serve upon the prosecuting attorney a written notice of his intent to claim the affirmative defense. The written notice must:

(a) State specifically why the defendant believes he is entitled to assert the affirmative defense; and

(b) Set forth the factual basis for the affirmative defense.

A defendant who fails to provide notice of his intent to claim an affirmative defense as required pursuant to this subsection may not assert the affirmative defense at trial unless the court, for good cause shown, orders otherwise.

Sec. 26. *1. The fact that a person possesses a registry identification card issued to him by the department or its designee pursuant to section 20 or 23 of this act does not, alone:*

(a) Constitute probable cause to search the person or his property; or

(b) Subject the person or his property to inspection by any governmental agency.

2. Except as otherwise provided in this subsection, if officers of a state or local law enforcement agency seize marijuana, drug paraphernalia or other related property from a person engaged or assisting in the medical use of marijuana:

(a) The law enforcement agency shall ensure that the marijuana, drug paraphernalia or other related property is not destroyed while in the possession of the law enforcement agency.

(b) Any property interest of the person from whom the marijuana, drug paraphernalia or other related property was seized must not be forfeited pursuant to any provision of law providing for the forfeiture of property, except as part of a sentence imposed after conviction of a criminal offense.

(c) Upon a determination by the district attorney of the county in which the marijuana, drug paraphernalia or other related property was seized, or his designee, that the person from whom the marijuana, drug paraphernalia or other related property was seized is engaging in or assisting in the medical use of marijuana in accordance with the provisions of this chapter, the law enforcement agency shall immediately return to that person any usable marijuana, marijuana plants, drug paraphernalia or other related property that was seized.

The provisions of this subsection do not require a law enforcement agency to care for live marijuana plants.

3. For the purposes of paragraph (c) of subsection 2, the determination of a district attorney or his designee that a person is engaging in or assisting in the medical use of marijuana in accordance with the provisions of this chapter shall be deemed to be evidenced by:

(a) A decision not to prosecute;

(b) The dismissal of charges; or

(c) Acquittal.

Sec. 27. *The board of medical examiners shall not take any disciplinary action against an attending physician on the basis that the attending physician:*

1. Advised a person whom the attending physician has diagnosed as having a chronic or debilitating medical condition, or a person whom the attending physician knows has been so diagnosed by another physician licensed to practice medicine pursuant to the provisions of chapter 630 of NRS:

(a) About the possible risks and benefits of the medical use of marijuana; or

(b) That the medical use of marijuana may mitigate the symptoms or effects of the person's chronic or debilitating medical condition,

if the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition.

2. Provided the written documentation required pursuant to paragraph (a) of subsection 2 of section 19 of this act for the issuance of a registry identification card or pursuant to subparagraph (1) of paragraph (b) of subsection 1 of section 21 of this act for the renewal of a registry identification card, if:

(a) Such documentation is based on the attending physician's personal assessment of the person's medical history and current medical condition; and

(b) The physician has advised the person about the possible risks and benefits of the medical use of marijuana.

Sec. 28. *A professional licensing board shall not take any disciplinary action against a person licensed by the board on the basis that:*

1. The person engages in or has engaged in the medical use of marijuana in accordance with the provisions of this chapter; or

2. The person acts as or has acted as the designated primary caregiver of a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act.

Sec. 29. *1. Except as otherwise provided in this section and subsection 4 of section 19 of this act, the department and any designee of the department shall maintain the confidentiality of and shall not disclose:*

(a) The contents of any applications, records or other written documentation that the department or its designee creates or receives pursuant to the provisions of this chapter; or

(b) The name or any other identifying information of:

(1) An attending physician; or

(2) A person who has applied for or to whom the department or its designee has issued a registry identification card.

The items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the department or its designee may release the name and other identifying information of a person to whom the department or its designee has issued a registry identification card to:

(a) Authorized employees of the department or its designee as necessary to perform official duties of the department; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is the lawful holder of a registry identification card issued to him pursuant to section 20 or 23 of this act.

Sec. 30. *1. A person may submit to the division a petition requesting that a particular disease or condition be included among the diseases and conditions that qualify as chronic or debilitating medical conditions pursuant to section 6 of this act.*

2. The division shall adopt regulations setting forth the manner in which the division will accept and evaluate petitions submitted pursuant to this section. The regulations must provide, without limitation, that:

(a) The division will approve or deny a petition within 180 days after the division receives the petition;

(b) If the division approves a petition, the division will, as soon as practicable thereafter, transmit to the department information concerning the disease or condition that the division has approved; and

(c) The decision of the division to deny a petition is a final decision for the purposes of judicial review.

Sec. 30.1. *1. The University of Nevada School of Medicine shall establish a program for the evaluation and research of the medical use of marijuana in the care and treatment of persons who have been diagnosed with a chronic or debilitating medical condition.*

2. Before the School of Medicine establishes a program pursuant to subsection 1, the School of Medicine shall aggressively seek and must receive approval of the program by the Federal Government pursuant to 21 U.S.C. § 823 or other applicable provisions of federal law, to allow the creation of a federally approved research program for the use and distribution of marijuana for medical purposes.

3. A research program established pursuant to this section must include residents of this state who volunteer to act as participants and subjects, as determined by the School of Medicine.

4. A resident of this state who wishes to serve as a participant and subject in a research program established pursuant to this section may notify the School of Medicine and may apply to participate by submitting an application on a form prescribed by the department of administration of the School of Medicine.

5. The School of Medicine shall, on a quarterly basis, report to the interim finance committee with respect to:

(a) The progress made by the School of Medicine in obtaining federal approval for the research program; and

(b) If the research program receives federal approval, the status of, activities of and information received from the research program.

Sec. 30.2. *1. Except as otherwise provided in this section, the University of Nevada School of Medicine shall maintain the confidentiality of and shall not disclose:*

(a) The contents of any applications, records or other written materials that the School of Medicine creates or receives pursuant to the research program described in section 30.1 of this act; or

(b) The name or any other identifying information of a person who has applied to or who participates in the research program described in section 30.1 of this act.

The items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the School of Medicine may release the name and other identifying information of a person who has applied to or who participates in the research program described in section 30.1 to:

(a) Authorized employees of the State of Nevada as necessary to perform official duties related to the research program; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is a lawful participant in the research program.

Sec. 30.3. *1. The department of administration of the University of Nevada School of Medicine may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of section 30.1 of this act.*

2. Any money the department of administration receives pursuant to subsection 1 must be deposited in the state treasury pursuant to section 30.4 of this act.

Sec. 30.4. *1. Any money the department of administration of the University of Nevada School of Medicine receives pursuant to section 30.3 of this act or that is appropriated to carry out the provisions of section 30.1 of this act:*

(a) Must be deposited in the state treasury and accounted for separately in the state general fund;

(b) May only be used to carry out the provisions of section 30.1 of this act, including the dissemination of information concerning the provisions of that section and such other information as is determined appropriate by the department of administration; and

(c) Does not revert to the state general fund at the end of any fiscal year.

2. The department of administration of the School of Medicine shall administer the account. Any interest or income earned on the money in the account must be credited to the account. Any claims against the account must be paid as other claims against the state are paid.

Sec. 30.5. *The department shall vigorously pursue the approval of the Federal Government to establish:*

1. A bank or repository of seeds that may be used to grow marijuana by persons who use marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act.

2. A program pursuant to which the department may produce and deliver marijuana to persons who use marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act.

Sec. 31. *The provisions of this chapter do not:*

1. Require an insurer, organization for managed care or any person or entity who provides coverage for a medical or health care service to pay for or reimburse a person for costs associated with the medical use of marijuana.

2. Require any employer to accommodate the medical use of marijuana in the workplace.

Sec. 31.3. *1. The director of the department may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of this chapter.*

2. Any money the director receives pursuant to subsection 1 must be deposited in the state treasury pursuant to section 31.7 of this act.

Sec. 31.7. *1. Any money the director of the department receives pursuant to section 31.3 of this act or that is appropriated to carry out the provisions of this chapter:*

(a) Must be deposited in the state treasury and accounted for separately in the state general fund;

(b) May only be used to carry out the provisions of this chapter, including the dissemination of information concerning the provisions of

sections 2 to 33, inclusive, of this act and such other information as determined appropriate by the director; and

(c) Does not revert to the state general fund at the end of any fiscal year.

2. The director of the department shall administer the account. Any interest or income earned on the money in the account must be credited to the account. Any claims against the account must be paid as other claims against the state are paid.

Sec. 32. *The director of the department shall adopt such regulations as the director determines are necessary to carry out the provisions of this chapter. The regulations must set forth, without limitation:*

1. Procedures pursuant to which the state department of agriculture will, in cooperation with the department of motor vehicles and public safety, cause a registry identification card to be prepared and issued to a qualified person as a type of identification card described in NRS 483.810 to 483.890, inclusive. The procedures described in this subsection must provide that the state department of agriculture will:

(a) Issue a registry identification card to a qualified person after the card has been prepared by the department of motor vehicles and public safety; or

(b) Designate the department of motor vehicles and public safety to issue a registry identification card to a person if:

(1) The person presents to the department of motor vehicles and public safety valid documentation issued by the state department of agriculture indicating that the state department of agriculture has approved the issuance of a registry identification card to the person; and

(2) The department of motor vehicles and public safety, before issuing the registry identification card, confirms by telephone or other reliable means that the state department of agriculture has approved the issuance of a registry identification card to the person.

2. Criteria for determining whether a marijuana plant is a mature marijuana plant or an immature marijuana plant.

Sec. 33. *The state must not be held responsible for any deleterious outcomes from the medical use of marijuana by any person.*

Sec. 34. Chapter 453 of NRS is hereby amended by adding thereto the provisions set forth as sections 35 and 36 of this act.

Sec. 35. *The provisions of this chapter do not apply to the extent that they are inconsistent with the provisions of sections 2 to 33, inclusive, of this act.*

Sec. 36. *1. A local authority may enact an ordinance adopting the penalties set forth for misdemeanors in NRS 453.336 for similar offenses under a local ordinance. The ordinance must set forth the manner in which money collected from fines imposed by a court for a violation of the ordinance must be disbursed in accordance with subsection 2.*

2. Money collected from fines imposed by a court for a violation of an ordinance enacted pursuant to subsection 1 must be evenly allocated among:

(a) Nonprofit programs for the treatment of abuse of alcohol or drugs that are certified by the bureau of alcohol and drug abuse in the department;

(b) A program of treatment and rehabilitation established by a court pursuant to NRS 453.580, if any; and

(c) Local law enforcement agencies,

in a manner determined by the court.

3. As used in this section, "local authority" means the governing board of a county, city or other political subdivision having authority to enact ordinances.

Sec. 37. NRS 453.336 is hereby amended to read as follows:

453.336 1. A person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, osteopathic physician's assistant, physician assistant, dentist, podiatric physician, optometrist, advanced practitioner of nursing or veterinarian while acting in the course of his professional practice, or except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive ~~.~~ *, and sections 35 and 36 of this act.*

2. Except as otherwise provided in subsections 3 ~~, 4 and 5~~ *and 4* and in NRS 453.3363, and unless a greater penalty is provided in NRS 212.160, 453.3385, 453.339 or 453.3395, a person who violates this section shall be punished:

(a) For the first or second offense, if the controlled substance is listed in schedule I, II, III or IV, for a category E felony as provided in NRS 193.130.

(b) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, for a category D felony as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.

(c) For the first offense, if the controlled substance is listed in schedule V, for a category E felony as provided in NRS 193.130.

(d) For a second or subsequent offense, if the controlled substance is listed in schedule V, for a category D felony as provided in NRS 193.130.

3. Unless a greater penalty is provided in NRS 212.160, 453.337 or 453.3385, a person who is convicted of the possession of flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years.

4. ~~Unless a greater penalty is provided in NRS 212.160, a person who is less than 21 years of age and is convicted of the possession of less than 1 ounce of marijuana:~~

~~(a) For the first and second offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.~~

~~(b) For a third or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.~~

~~5. Before sentencing under the provisions of subsection 4 for a first offense, the court shall require the parole and probation officer to submit a~~

~~presentencing report on the person convicted in accordance with the provisions of NRS 176A.200. After the report is received but before sentence is pronounced the court shall:~~

~~(a) Interview the person convicted and make a determination as to the possibility of his rehabilitation; and~~

~~(b) Conduct a hearing at which evidence may be presented as to the possibility of rehabilitation and any other relevant information.~~

~~6.~~ ***Unless a greater penalty is provided pursuant to NRS 212.160, a person who is convicted of the possession of 1 ounce or less of marijuana:***

(a) For the first offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $600; or

(2) Examined by an approved facility for the treatment of abuse of drugs to determine whether he is a drug addict and is likely to be rehabilitated through treatment and, if the examination reveals that he is a drug addict and is likely to be rehabilitated through treatment, assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(b) For the second offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $1,000; or

(2) Assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(c) For the third offense, is guilty of a gross misdemeanor and shall be punished as provided in NRS 193.140.

(d) For a fourth or subsequent offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

5. As used in this section, "controlled substance" includes flunitrazepam, gamma-hydroxybutyrate and each substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor.

Sec. 38. NRS 453.3363 is hereby amended to read as follows:

453.3363 1. If a person who has not previously been convicted of any offense pursuant to NRS 453.011 to 453.552, inclusive, and sections 2 to 12, inclusive, of ***Senate Bill No. 397 of*** this ~~[act]~~ ***session*** or pursuant to any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant or hallucinogenic substances tenders a plea of guilty, guilty but mentally ill, nolo contendere or similar plea to a charge pursuant to ***subsection 2 or 3 of*** NRS 453.336, ***NRS*** 453.411 or 454.351, or is found guilty of one of those charges, the court, without entering a judgment of conviction and with the consent of the accused, may suspend further proceedings and place him on probation upon terms and conditions that must include attendance and successful completion of an educational program or, in the case of a person dependent upon drugs, of a program of treatment and rehabilitation pursuant to NRS 453.580.

2. Upon violation of a term or condition, the court may enter a judgment of conviction and proceed as provided in the section pursuant to which the accused was charged. Notwithstanding the provisions of paragraph (e) of subsection 2 of NRS 193.130, upon violation of a term or condition, the court may order the person to the custody of the department of prisons.

3. Upon fulfillment of the terms and conditions, the court shall discharge the accused and dismiss the proceedings against him. A

nonpublic record of the dismissal must be transmitted to and retained by the division of parole and probation of the department of motor vehicles and public safety solely for the use of the courts in determining whether, in later proceedings, the person qualifies under this section.

4. Except as otherwise provided in subsection 5, discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of this section or for purposes of employment, civil rights or any statute or regulation or license or questionnaire or for any other public or private purpose, but is a conviction for the purpose of additional penalties imposed for second or subsequent convictions or the setting of bail. Discharge and dismissal restores the person discharged, in the contemplation of the law, to the status occupied before the arrest, indictment or information. He may not be held thereafter under any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge that arrest, indictment, information or trial in response to an inquiry made of him for any purpose. Discharge and dismissal under this section may occur only once with respect to any person.

5. A professional licensing board may consider a proceeding under this section in determining suitability for a license or liability to discipline for misconduct. Such a board is entitled for those purposes to a truthful answer from the applicant or licensee concerning any such proceeding with respect to him.

Sec. 39. NRS 453.401 is hereby amended to read as follows:

453.401 1. Except as otherwise provided in subsections 3 and 4, if two or more persons conspire to commit an offense which is a felony under the Uniform Controlled Substances Act or conspire to defraud the State of Nevada or an agency of the state in connection with its enforcement of the Uniform Controlled Substances Act, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator:

(a) For a first offense, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(b) For a second offense, or if, in the case of a first conviction of violating this subsection, the conspirator has previously been convicted of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or of any state, territory or district which if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than $10,000.

(c) For a third or subsequent offense, or if the conspirator has previously been convicted two or more times of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or any state, territory or district which, if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than $20,000 for each offense.

2. Except as otherwise provided in subsection 3, if two or more persons conspire to commit an offense in violation of the Uniform Controlled Substances Act and the offense does not constitute a felony, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator shall be punished by imprisonment, or by imprisonment and fine, for not more than the maximum punishment provided for the offense which they conspired to commit.

3. If two or more persons conspire to possess ***more than 1 ounce of*** marijuana unlawfully, except for the purpose of sale, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator is guilty of a gross misdemeanor.

4. If the conspiracy subjects the conspirators to criminal liability under NRS 207.400, the persons so conspiring shall be punished in the manner provided in NRS 207.400.

5. The court shall not grant probation to or suspend the sentence of a person convicted of violating this section and punishable pursuant to paragraph (b) or (c) of subsection 1.

Sec. 40. NRS 453.580 is hereby amended to read as follows:

453.580 1. A court may establish an appropriate treatment program to which it may assign a person pursuant to ***subsection 4 of NRS 453.336,*** NRS 453.3363 or 458.300 or it may assign such a person to an appropriate facility for the treatment of abuse of alcohol or drugs which is certified by the health division of the department of human resources. The assignment must include the terms and conditions for successful completion of the program and provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress towards completion of the program.

2. A program to which a court assigns a person pursuant to subsection 1 must include:

(a) Information and encouragement for the participant to cease abusing alcohol or using controlled substances through educational, counseling and support sessions developed with the cooperation of various community, health, substance abuse, religious, social service and youth organizations;

(b) The opportunity for the participant to understand the medical, psychological and social implications of substance abuse; and

(c) Alternate courses within the program based on the different substances abused and the addictions of participants.

3. If the offense with which the person was charged involved the use or possession of a controlled substance, in addition to the program or as a part of the program the court must also require frequent urinalysis to determine that the person is not using a controlled substance. The court shall specify how frequent such examinations must be and how many must be successfully completed, independently of other requisites for successful completion of the program.

4. Before the court assigns a person to a program pursuant to this section, the person must agree to pay the cost of the program to which he is assigned and the cost of any additional supervision required pursuant to subsection 3, to the extent of his financial resources. If the person does not have the financial resources to pay all of the related costs, the court shall, to the extent practicable, arrange for the person to be assigned to a program

at a facility that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

Sec. 41. NRS 455B.080 is hereby amended to read as follows:

455B.080 1. A passenger shall not embark on an amusement ride while intoxicated or under the influence of a controlled substance, unless in accordance with ~~[a]~~ *:*

(a) A prescription lawfully issued to the person ~~[.]~~ *; or*

(b) The provisions of sections 2 to 33, inclusive, of this act.

2. An authorized agent or employee of an operator may prohibit a passenger from boarding an amusement ride if he reasonably believes that the passenger is under the influence of alcohol, prescription drugs or a controlled substance. An agent or employee of an operator is not civilly or criminally liable for prohibiting a passenger from boarding an amusement ride pursuant to this subsection.

Sec. 42. NRS 52.395 is hereby amended to read as follows:

52.395 *Except as otherwise provided in section 26 of this act:*

1. When any substance alleged to be a controlled substance, dangerous drug or immediate precursor is seized from a defendant by a peace officer, the law enforcement agency of which the officer is a member may, with the prior approval of the prosecuting attorney, petition the district court in the county in which the defendant is charged to secure permission to destroy a part of the substance.

2. Upon receipt of a petition filed pursuant to subsection 1, the district court shall order the substance to be accurately weighed and the weight thereof accurately recorded. The prosecuting attorney or his representative and the defendant or his representative must be allowed to inspect and weigh the substance.

3. If after completion of the weighing process the defendant does not knowingly and voluntarily stipulate to the weight of the substance, the district court shall hold a hearing to make a judicial determination of the weight of the substance. The defendant, his attorney and any other witness the defendant may designate may be present and testify at the hearing.

4. After a determination has been made as to the weight of the substance, the district court may order all of the substance destroyed except that amount which is reasonably necessary to enable each interested party to analyze the substance to determine the composition of the substance. The district court shall order the remaining sample to be sealed and maintained for analysis before trial.

5. If the substance is finally determined not to be a controlled substance, dangerous drug or immediate precursor, unless the substance was destroyed pursuant to subsection 7, the owner may file a claim against the county to recover the reasonable value of the property destroyed pursuant to this section.

6. The district court's finding as to the weight of a substance destroyed pursuant to this section is admissible in any subsequent proceeding arising out of the same transaction.

7. If at the time that a peace officer seizes from a defendant a substance believed to be a controlled substance, dangerous drug or immediate precursor, the peace officer discovers any material or substance that he reasonably believes is hazardous waste, the peace officer may

appropriately dispose of the material or substance without securing the permission of a court.

8. As used in this section:

(a) "Dangerous drug" has the meaning ascribed to it in NRS 454.201.

(b) "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

(c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

Sec. 43. (Deleted by amendment.)

Sec. 44. NRS 159.061 is hereby amended to read as follows:

159.061 1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. In determining whether the parents of a minor, or either parent, is qualified and suitable, the court shall consider, without limitation:

(a) Which parent has physical custody of the minor;

(b) The ability of the parents or parent to provide for the basic needs of the child, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents or parent has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months ~~[.]~~ ***, except the use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act;*** and

(d) Whether the parents or parent has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the exploitation of a child.

2. Subject to the preference set forth in subsection 1, the court shall appoint as guardian for an incompetent, a person of limited capacity or minor the qualified person who is most suitable and is willing to serve.

3. In determining who is most suitable, the court shall give consideration, among other factors, to:

(a) Any request for the appointment as guardian for an incompetent contained in a written instrument executed by the incompetent while competent.

(b) Any nomination of a guardian for an incompetent, minor or person of limited capacity contained in a will or other written instrument executed by a parent or spouse of the proposed ward.

(c) Any request for the appointment as guardian for a minor 14 years of age or older made by the minor.

(d) The relationship by blood or marriage of the proposed guardian to the proposed ward.

(e) Any recommendation made by a special master pursuant to NRS 159.0615.

Sec. 45. NRS 213.123 is hereby amended to read as follows:

213.123 1. Upon the granting of parole to a prisoner, the board may, when the circumstances warrant, require as a condition of parole that the parolee submit to periodic tests to determine whether the parolee is using any controlled substance. Any such use ***, except the use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act,*** or any failure or refusal to submit to a test is a ground for revocation of parole.