

DISTRICT COURT, _____ COUNTY, COLORADO  Court Address:  Phone Number:	<b>COURT USE ONLY</b>
<b>People of the State of Colorado vs.</b>  <b>Defendant: [defendant name]</b>	
Attorney for Defendant:	Case Number:
<b>MOTION FOR SANCTIONS (DESTRUCTION OF EVIDENCE)</b>	

**COMES NOW**, Defendant, by and through the undersigned attorney, and respectfully requests the Court to sanction the State for destroying evidence in direct violation of the Colorado Constitution. As grounds therefore, Defendant alleges and states:

**The Colorado Constitution**

1. In the 2000 election, 915,527 Coloradans voted in favor of Amendment 20, which won by an impressive margin of 128,544 votes. Amendment 20 is Colorado’s medical marijuana law, and is now in Article XVIII, §14 of Colorado’s Constitution. This law allows certain patients and their care-givers to legally grow and possess marijuana for medicinal use.

2. Under Article XVIII, §14 of the Colorado Constitution (2)(b):

It shall be an exception from the State’s criminal laws for any patient or primary care-giver in lawful possession of a registry identification card to engage or assist in the medical use of marijuana except as otherwise provided in sections 5 and 8 of this section.

3. Under Article XVIII, §14 of the Colorado Constitution (2)(e):

Any property interest that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to such use, *shall not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials* where such property has been seized in connection with the claimed medical use of marijuana.

Any such property interest *shall not be forfeited under any provision of state law providing for the forfeiture of property other than as a sentence imposed after conviction* of a criminal offense or entry of a plea of guilty to such offense. Marijuana and paraphernalia seized by state or local law enforcement officials from a patient or primary care-giver in connection with the claimed medical use of marijuana *shall be returned immediately upon the determination of the district attorney or his or her designee that the patient or primary care-giver is entitled to the protection contained in this section as may be evidenced, for example, by a decision not to prosecute, the dismissal of charges, or acquittal.* (emphasis added)

4. Under Article XVIII, §14 of the Colorado Constitution (1)(f):

"Primary care-giver" means a person, other than the patient and the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.

5. Under Article XVIII, §14 of the Colorado Constitution (1)(g):

"Registry identification card" means that document, issued by the state health agency, which identifies a patient authorized to engage in the medical use of marijuana and such patient's primary care-giver, if any has been designated.

6. Under Article XVIII, §14 of the Colorado Constitution (1)(b):

"Medical use" means the acquisition, possession, production, use, or transportation of marijuana or paraphernalia related to the administration of such marijuana to address the symptoms or effects of a patient's debilitating medical condition, which may be authorized only after a diagnosis of the patient's debilitating medical condition by a physician or physicians, as provided by this section.

7. Under Article XVIII, §14 of the Colorado Constitution (4):

(a) A patient may engage in the medical use of marijuana, with no more marijuana than is medically necessary to address a debilitating medical condition. A patient's medical use of marijuana, within the following limits, is lawful:

(I) No more than two ounces of a usable form of marijuana; and

(II) No more than six marijuana plants, with three or fewer being mature, flowering plants that are producing a usable form of marijuana.

(b) For quantities of marijuana in excess of these amounts, a patient or his or her primary care-giver may raise as an affirmative defense to charges of violation of state law and such greater amounts were medically necessary to address the patient's debilitating medical condition.

### **Law Enforcement Agency's Violation of the Colorado Constitution**

8. On [date], [identify law enforcement agency] officers executed a search warrant against Defendant's home in [location].

9. The officers seized, among other items, marijuana plants.

10. [Explain facts: did cops have a search warrant, # of plants, loose marijuana seized, explain if defendant was a patient or care-giver, etc]

14. Despite being advised of the Defendant's status as a [patient or care-giver], officers destroyed all marijuana plants [or loose marijuana] found in Defendant's home. The plants were destroyed on [date].

15. The police destruction of Defendant's medical marijuana was a flagrant violation of Article XVIII, §14 of the Colorado Constitution (2)(e), which prohibits the police from harming, neglecting, injuring, or destroying her property while it is in the possession of state or local law enforcement officials. The police actions will also make it impossible to return the marijuana in the event of Defendant's acquittal.

16. The destruction of Defendant's medical marijuana is a violation of the procedural due process rights under Article XVIII, §14 of the Colorado Constitution.

17. Because the police destroyed the evidence, Defendant is unable to have a botanist or other expert examine it

18. Defendant cannot now obtain comparable evidence by any reasonable available means. **People v. Greathouse**, 742 P.2d 334 (Colo. 1987).

19. The destroyed evidence was potentially useful, and the police acted in bad faith. **Arizona v. Youngblood**, 488 U.S. 51 (1988).

20. Where evidence can be collected in the course of routine procedures, as in this case, then the state has a duty to collect and preserve such evidence. **People ex rel. Gallagher v. District Court**, 656 P.2d 1287 (Colo. 1983).

21. Defendant requests a hearing on this motion. "Whether a due process violation has occurred requires an evaluation of all the evidence by the finder of fact." **People v. Enriquez**, 763 P.2d 1033 (Colo. 1988).

### An Appropriate Sanction

22. The choice of an appropriate sanction for a violation of a discovery rule lies within the sound discretion of the trial court. *People v. Copeland*, 976 P.2d 334 (Colo.App.1998), *aff'd*, 2 P.3d 1283 (Colo.2000). An order imposing sanctions will not amount to an abuse of discretion unless it is manifestly arbitrary, unreasonable, or unfair. *People v. Castro*, 854 P.2d 1262 (Colo.1993).

23. A trial court's discretion must be exercised with due regard for the purposes of the discovery rules themselves and the manner in which those purposes can be furthered by discovery sanctions. The imposition of discovery sanctions generally serves the dual purposes of protecting the integrity of the truth-finding process and deterring discovery-related misconduct. *People v. Cobb*, 962 P.2d 944, 949 (Colo.1998); *People v. District Court*, 808 P.2d at 836.

24. Under certain circumstances, the exclusion of evidence or even complete dismissal can be proper remedies to assure compliance with discovery orders. *See, e.g.,* *People v. Thurman*, 787 P.2d 646, 655 (Colo.1990) (holding that trial court did not abuse its discretion in dismissing criminal charges pursuant to Crim. P. 16(III)(g) in response to prosecution's willful and continuing refusal to disclose confidential informant's address and place of employment notwithstanding court order to do so); *People v. District Court*, 664 P.2d at 252 (approving trial court's sanction excluding fingerprint evidence implicating defendant where district attorney failed to comply with a specific discovery order or obtain defendant's fingerprints for nearly nine months, causing a mistrial).

25. Defendant submits that the Colorado Constitution is just as important as the Rules of Criminal Procedure and orders of the court. The police's willful violation of the Constitution is no less serious than a willful violation of a court order or Rule 16.

26. Evidence obtained in violation of the Fourth or Fifth Amendments is suppressed (and the case dismissed) in order to deter future violations by the police. In this case, the police intentionally destroyed the evidence in violation of the Colorado Constitution. The only meaningful way to deter such willful misconduct in the future is to either suppress the marijuana or dismiss this action.

WHEREFORE, Defendant respectfully requests that the Court sanction the State for the actions of the police by dismissing this action.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 200\_

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Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 200\_, I hand delivered and/or mailed a true and correct copy of the foregoing **MOTION FOR SANCTIONS (DESTRUCTION OF EVIDENCE)**, postage prepaid in the United States Mail, to the following:

District Attorney

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