

**UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION**

In the Matter of)
)
) Docket No. 05-16
LYLE H. CRAKER, PH.D)
_____)

**RESPONDENT'S FIFTH SUPPLEMENTAL PREHEARING STATEMENT AND
MOTION FOR LEAVE TO FILE IT**

Respondent respectfully submits the following Fifth Supplemental Prehearing Statement, and a motion for leave of court to file it, as follows:

RESPONDENT'S FIFTH SUPPLEMENTAL PREHEARING STATEMENT

Respondent submits the attached Affidavit of Emanuel Jacobowitz. The Affidavit provides authenticating information for Respondent's Exhibit 26, which was introduced during the first week of hearing in this matter.

**MOTION SEEKING LEAVE TO FILE
FIFTH SUPPLEMENTAL PREHEARING STATEMENT**

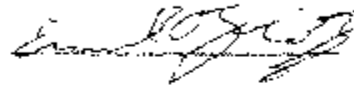
Respondent seeks leave to file the above Fifth Supplemental Prehearing Statement for the following reasons: The material is not voluminous. Further, this affidavit was discussed in detail at the hearing on August 26, 2005, and the government has been on notice since that date that Mr. Jacobowitz would file this affidavit, and of the nature of its contents. As discussed in

the exchange in court during the August 26 hearing, the purpose of the affidavit is to authenticate Respondent's Exhibit 26.

Respondent will fax this Fourth Supplemental Prehearing Statement to opposing counsel.

Respectfully submitted,

LYLE E. CRAKER, Ph.D.



By his counsel,

Emanuel Jacobowitz
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

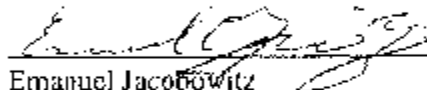
Julie M. Carpenter
Jenner & Bleck, LLP
601 13th Street, N.W.
Washington, DC 20005

Dated: November 22, 2005

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2005, I caused a copy of the foregoing Respondent's Fifth Supplemental Prehearing Statement and Motion for Leave to File It to be served on the following by facsimile transmission:

Brian Bayly, Esq.
Office of the Chief Counsel
Drug Enforcement Administration
600 Army-Navy Drive
Washington, DC 20537




Emanuel Jacobowitz
Stephoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
(202) 429-8149

and accurate reproduction except for the addition of identifying headers and footers inserted automatically by the electronic mail program, is attached as Exhibit C.

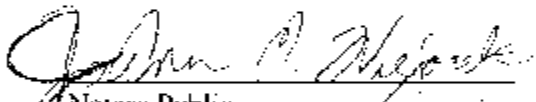
7. On July 26, 2005, I served a true and accurate copy of the Protocol upon adverse counsel in the above-captioned matter as Respondent's Exhibit No. 26, and on October 26, 2005 Respondent's Exhibit No. 26 was preferred for introduction at the hearing in this matter.
8. I declare under penalty of perjury that the above is true and correct.

Dated: November 22, 2005
District of Columbia


Emanuel Jacobowitz

DISTRICT OF COLUMBIA:

Taken, sworn to, and subscribed before me this 22nd day of November, 2005.


Notary Public
My Commission Expires: 12/7/06

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2005, I caused a copy of the foregoing Affidavit and attached exhibits to be served on the following by facsimile transmission:

Brian Bayley, Esq.
Office of the Chief Counsel
Drug Enforcement Administration
Washington, DC 20537

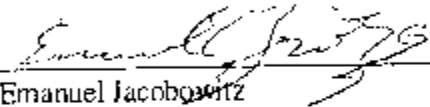

Emanuel Jacobowitz
Stepoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
(202) 429-8149

Exhibit A

Jacobowitz, Emanuel

From: MacFarlane Alan [Alan.MacFarlane@homeoffice.gsi.gov.uk]
Sent: Thursday, June 16, 2005 10:54 AM
To: Jacobowitz, Emanuel
Cc: Dean Jear
Subject: NATIONAL CANNABIS AGENCY?_.doc

Dear Mr Jacobowitz

With apologies for the delay, I now attach a copy of our recently established National Cannabis Agency, set up in furtherance of Article 28 of the Convention. Hopefully this will answer most of your questions.

As to the level of control actually exercised at QW's this was based on a risk assessment, the main element of which was the illicit value of the cannabis present on the premises at any one time, the other elements being the security features provided. This is our general approach in dealing with most of our licencees.

On first licensing the company, I had to be satisfied with bona fides, competence and experience as well as security provision. This did include site inspections followed by further regular checks on a standard operating basis and subsequent regular inspections of security, procedures and record keeping.

We have had one or two other research licencees but I am not at liberty to give their details. There has been one other commercial producer, but again I am unable to identify.

Yours sincerely

A D MACFARLANE
Chief Inspector, Drugs Branch
Home Office.

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UNITED KINGDOM NATIONAL CANNABIS AGENCY : PROTOCOL

Preamble

1. A country that permits the cultivation of cannabis for the production of cannabis or cannabis resin is required, under the terms of the UN Single Convention on Narcotic Drugs 1961, to apply a system of control. As part of the control mechanism, Articles 23 and 28 of the Convention provide for the establishment and maintenance of a government agency, or agencies, to oversee the cultivation and sale of cannabis. Such controls apply to the cultivation of cannabis for medical and research purposes but not when grown exclusively for industrial purposes.

Functions of the Agency

2. The Convention requires that an Agency apply the following provisions to the production of cannabis and cannabis resin:
 - a) designates areas to which, and the plots of land on which, cultivation of cannabis shall be permitted;
 - b) authorises only cultivators licensed by it to engage in such cultivation;
 - c) requires that each licensee shall specify the extent of the land on which cultivation is permitted;
 - d) requires that all cultivators shall deliver their total crops to the Agency who shall purchase and take physical possession as soon as possible, but not later than four months after the end of the harvest; and
 - e) has the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of cannabis and cannabis resin preparations.
3. It is a Convention requirement that the above functions be discharged by a single government agency.

Designation

4. For the purposes of the Convention and national controls, the agency shall be designated the “**United Kingdom National Cannabis Agency**” and be an office within the Home Office’s Drugs Branch.

Discharge of Functions

5. Under the Misuse of Drugs Act 1971, cannabis is a designated drug and can be produced only for research or other special purpose provided it is in the public interest. To comply with Convention requirements, and those of the Misuse of Drugs

legislation, any licence issued for the production of cannabis (other than for industrial purposes) will contain the following information:

- i) name and full address of licensee;
 - ii) the purpose(s) for which cannabis is to be grown, including whether the cannabis will be used solely as the raw material for the production of one or more of the cannabis based pharmaceutical products produced by the licensee and/or for internal analytical or research purposes; and
 - iii) the exact location(s) where cannabis will be grown.
6. Where such a licence has been issued, the following will apply:
- a) premises licensed to produce, possess or supply cannabis shall be designated as Agency sites for the purpose(s) for which the licence has been issued
 - b) whenever a producer harvests cannabis, which has been designated by that producer at point of cultivation for use solely as the raw material for the production of one or more of its cannabis-based pharmaceutical products and/or for internal analytical or research purposes, irrespective of frequency or amounts obtained, a form of constructive purchase and possession will be deemed to have taken place between the Agency and producer with actual ownership and possession of the material reverting immediately to the producer for the purposes for which the licence was granted.
 - c) any import, export or wholesale dealing from a licensed Agency site will be deemed to have taken place with the explicit authority of the Agency; and
 - d) cannabis on the premises of a producer will be regarded as stock held under paragraph 2(c) for the production of its cannabis-based pharmaceutical products or for internal analytical or research purposes unless the cannabis has at point of cultivation been designated by the producer for distribution to third parties. All cannabis so designated will, at all times, be separately identified as such on the premises of the producer

Coming into Force

7. The United Kingdom Cannabis Agency shall come into force with immediate effect.

Definition of Terms

8. "Cannabis" and "cannabis resin" shall retain the meanings accorded such terms under the Misuse of Drugs Act 1971, but shall not include cannabis-based pharmaceutical preparations that have been produced by a producer licensed in accordance with the Misuse of Drugs Act 1971
- "Cultivator" shall mean an individual or entity that cultivates cannabis for licensed purposes

"Producer" shall mean an individual or entity that processes cannabis raw material for licensed purposes.

An individual or entity may be licensed as both a cultivator and a producer.

Home Office
Drugs Branch
Borseferry House
Dean Ryle Street
London SW1P 2AW

Date :

Exhibit B

Jacobowitz, Emanuel

From: Evans Michael Anthony [mailto:MichaelAnthony.Evans@homeoffice.gsi.gov.uk]
Sent: Thursday, July 07, 2005 5:55 AM
To: Jacobowitz, Emanuel
Subject: RE: NATIONAL CANNABIS AGENCY

This is an internal working document and has not been published.

-----Original Message-----

From: Jacobowitz, Emanuel [mailto:ejacobowitz@steptoe.com]
Sent: 04 July 2005 8:52 PM
To: Evans Michael Anthony
Subject: RE: NATIONAL CANNABIS AGENCY

One more question, please: where is this protocol published? I would like to be able to cite to it, and I cannot find it on the web.

-----Original Message-----

From: Evans Michael Anthony [mailto:MichaelAnthony.Evans@homeoffice.gsi.gov.uk]
Sent: Tuesday, June 28, 2005 9:55 AM
To: Jacobowitz, Emanuel
Subject: NATIONAL CANNABIS AGENCY

Further to Mr Macfarlane's e-mail to you yesterday, please find attached a copy of the UK National Cannabis Agency's protocol. If I can be of further assistance, please let me know.

 This email and any files transmitted with it are private and intended solely for the use of the individual or entity to whom they are addressed.
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Exhibit C

Jacobowitz, Emanuel

From: Evans Michael Anthony [mailto:MichaelAnthony.Evans@homeoffice.gsi.gov.uk]
Sent: Tuesday, July 12, 2005 3:03 AM
To: Jacobowitz, Emanuel
Subject: RE: NATIONAL CANNABIS AGENCY

It is in final format and has been in force since 1 April 2005.

-----Original Message-----

From: Jacobowitz, Emanuel [mailto:ejacobowitz@steptoe.com]
Sent: 07 July 2005 2:58 PM
To: Evans Michael Anthony
Subject: RE: NATIONAL CANNABIS AGENCY

Does 'working document' mean it may not be in final form, and has as yet no force? If so, is there a similar notice of finality in effect currently? In particular, is there some document stating publicly as to the matters dealt with in Section 6 of this protocol? Thank you again for your attention, and I am sorry to be so fussy, but I do want to make sure I know what I am talking about.

Section 6 is:

6. Where such a licence has been issued, the following will apply:
- a) premises licensed to produce, possess or supply cannabis shall be designated as Agency sites for the purpose(s) for which the licence has been issued;
 - b) whenever a producer harvests cannabis, which has been designated by that producer at point of cultivation for use solely as the raw material for the production of one or more of its cannabis based pharmaceutical products and/or for internal analytical or research purposes, irrespective of frequency or amounts obtained, a form of constructive purchase and possession will be deemed to have taken place between the Agency and producer with actual ownership and possession of the material reverting immediately to the producer for the purposes for which the licence was granted;
 - c) any import, export or wholesale dealing from a licensed Agency site will be deemed to have taken place with the explicit authority of the Agency; and
 - d) cannabis on the premises of a producer will be regarded as stock held under paragraph 2(c) for the production of its cannabis-based pharmaceutical products or for internal analytical or research purposes unless the cannabis has at point of cultivation been designated by the producer for distribution to third parties. All cannabis so designated will, at all times, be separately identified as such on the premises of the producer.

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