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# Americans for Safe Access

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April 7, 2005

Joan Borucki, Director  
Department of Motor Vehicles  
2415 1st Avenue Mail Station F101  
Sacramento, CA 95818

**Re: Amanda Whittemore, DL File No. B7273208**  
**Notice of Reexamination**

Dear Ms. Borucki:

Please be advised that I am a staff attorney for Americans for Safe Access and I have recently been retained to represent Amanda Whittemore regarding the attached Notice of Reexamination, issued by the Department of Motor Vehicles (“DMV”) issued on or about February 15, 2005. This letter is to request that the DMV immediately rescind this inappropriate notice and to cease and desist from any further attempts to adversely affect Ms. Whittemore’s right to drive in California, an attempt which is based solely on her status as a qualified medical marijuana patient. Under California law, “seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana. . . .” (Cal. Health & Safety Code § 11362.5(b)(1)(A)) Ms. Whittemore was not cited for driving under the influence of a controlled substance and there is no evidence that her exercise of her statutory right to use medical marijuana has or ill adversely affect her driving. I request that you immediately rescind the Notice of Reexamination for the following reasons.

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*Defending Patients’ Access to Medical Marijuana!*

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*First*, the DMV does not have the discretion to reexamine one's driver's license simply for possessing documentation indicating her status as a qualified patient. (See Cal. Health & Safety Code § 11362.5(b)(1)(A)) The statutory provisions authorizing a license reexamination, Vehicle Code sections 113800 and 13801, do so only for serious driving offenses, such as accidents causing death or serious injury to persons or property, serial accidents or drunk driving offenses, and fraudulent use of a driver's license. (See Vehicle Code §§ 13800(a), (b) & (e)) While a record of *conviction* for a driving offense involving the use of a controlled substance is sufficient to trigger an investigation (Vehicle Code §§ 13800(f)), this is most assuredly not the case here. Falling well short statutorily authorized basis for reexamination, the DMV lacks the discretion to require the submission of a medical questionnaire. (Cf. *Kriesel v. McCarthy* (1963) 214 Cal.App.2d 69, 72 ["Section 12810 of the Vehicle Code does not confer the basic authority upon the Department of Motor Vehicles to suspend or revoke an operator's license."]; *Beamon v. DMV* (1960) 180 Cal.App.2d 200, 207 ["The authority to initiate an investigation or require reexamination of the licensee is not the authority to state what acts violate the law"]).

*Second*, requiring reexamination of Ms. Whittemore's license solely because she presented documentation indicating her status as a qualified medical marijuana patient violates the Compassionate Use Act and the California Constitution. It appears from the facts that Ms. Whittemore is being singled out for reexamination solely for exercising the right promised to her by the California electorate through the passage of the Compassionate Use Act (see Cal. Health & Safety Code § 11362.5(b)(1)(A)), rather than for any wrongful driving or fault on her part. Any action taken by the DMV against her for exercising her statutory right is contrary to this law and is void for public policy. (Cf. *Semore v. Pool* (1990) 217 Cal.App.3d 1087, 1098 (holding that an employee fired for refusing to take drug test may maintain tort action for wrongful discharge in violation of public policy against the employer because the termination violates the right to privacy); see also Jeffrey Tanenbaum, *Marijuana in the Workplace The Impact of Proposition 215*, CALIFORNIA EMPLOYMENT LAW REPORTER (Dec. 1996) at 2 (stating that employers who discharge employees for medical marijuana usage run "a serious risk of a claim for tortious violation of public policy"). Furthermore, such action violates Article 3, Section 3.5 of the California Constitution, which forbids an administrative agency from refusing to enforce the laws of this State.

*Third*, the Notice of Reexamination is premature. Before such notice is sent under Vehicle Code section 13800, the DMV first must conduct an investigation. Any such investigation would reveal that Ms. Whittemore has a clean driving record with only several minor infractions.

For the foregoing reasons, I request that the DMV immediately rescind its previously sent Notice of Reexamination to Ms. Whittemore and to cease and desist from any further attempts to adversely affect her right to drive in California based solely on her status as a qualified medical marijuana patient. In the alternative, I would request a formal hearing on the matter and that the DMV extend the time for Ms. Whittemore to submit

*September 20, 2005*

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medical records to April 26, 2005, because I will be in Richmond, Virginia during the week of April 11-15, 2005.

Furthermore, to avoid this happening to other qualified medical marijuana patients in the future, I request that you declare as the policy of the DMV that it will not make any attempts to adversely affect the driving rights of any other California driver based solely on that driver's status as a qualified medical marijuana patient under the Compassionate Use Act.

I thank you in advance for your thoughtful consideration of this request.

Sincerely,

Joseph D. Elford

Cc: Governor Arnold Schwarzenegger  
Attorney General Bill Lockyer  
Amanda Whitemore  
DMV Licensing Operations Branch, Driver Safety Branch