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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,) Case No. 2:11-CR-449-KJM
)
10 Plaintiff,) MOTION IN LIMINE TO EXCLUDE
) TESTIMONY OF CHRISTOPHER
11 v.) CONRAD
)
12 BRYAN SCHWEDER, et al.,) Date: September 4, 2014
) Time: 10:00 am
13 Defendants.) Judge: Hon. Kimberly J. Mueller
)
14)
15)

16 **NOTICE OF MOTION AND MOTION**

17 **TO DEFENDANTS AND THEIR COUNSEL OF RECORD:**

18 Please take notice that, on September 4, 2014, at 10:00 a.m. or at such other time as the Court
19 shall designate, in Courtroom 3 of the United States District Court, the United States will, and
20 hereby does, move this Court for an order excluding the testimony of Defendants' witness
21 Christopher Conrad on the grounds that such testimony is irrelevant and that he is unqualified to
22 offer the opinions contained in his declaration. This motion is made pursuant to Federal Rules of
23 Criminal Procedure 12 and 47, Local Rule 430.1, and this Court's May 23, 2014, Order (Dkt. No.
24 294).

25 DATED: August 12, 2013

BENJAMIN B. WAGNER
United States Attorney

26
27 By: /s/ Gregory T. Broderick
GREGORY T. BRODERICK
Assistant United States Attorney
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The opinions offered by Defendant’s proffered expert Christopher Conrad are irrelevant, and
4 he is unqualified to testify to them. First, most of Conrad’s opinions are irrelevant because they do
5 not speak to “the medical and scientific information” regarding marijuana’s “continued inclusion” as
6 a Schedule I controlled substance. Moreover, Conrad is unqualified to give the medical, chemistry,
7 and sociological opinions in his declaration. In reality, his declaration contains little more than
8 hearsay and talking points. Conrad’s declaration does not speak to the specific issues in dispute in
9 this evidentiary hearing, nor to the constitutionality of marijuana’s scheduling in general. His
10 declaration should thus be struck, and Conrad excluded from testifying in this proceeding.

11 **II. ANALYSIS**

12 **A. Conrad’s Opinions are Irrelevant.**

13 The purpose of this evidentiary hearing, as articulated in the Court’s April 22, 2014, Order is
14 to “probe the scientific and medical information” regarding the constitutionality of the “continued
15 inclusion of marijuana as a Schedule I controlled substance...” (Dkt. No. 271 at 3:10-14). Mr.
16 Conrad’s declaration does not speak to this issue. Rather, it is a collection of what other purported
17 experts say about the topic (aka hearsay), reports of irrelevant actions by other parts of government,
18 speculation about things that happened in the 18th or 19th century, and conjecture about why people
19 may or may not be moving to Colorado. None of these has any bearing on the question at hand.

20 Rule 401 generally requires that all evidence be relevant; that is, to have some bearing on a
21 “fact of consequence” in the proceeding. Fed. R. Evid. 401(b). In addition, Rule 702(a) requires
22 expert opinion to “help the trier of fact to understand the evidence or to determine a fact in issue.”
23 Fed. R. Evid. 702(a). This hearing is supposed to be about “scientific and medical information,” not
24 a free form hearing into marijuana policy. But Conrad’s declaration is little more than a collection
25 of unsupported talking points, thus fails the relevance test under both Rule 401 and Rule 702. It
26 should be struck, and he should be excluded from this proceeding.

27 **B. Conrad is Not Qualified to Offer the Opinions in His Declaration.**

28 Experts must be qualified before they may testify to scientific or technical opinions. *See Fed.*

1 R. Evid. 702. Conrad's declaration fails to establish that he is qualified to offer any of the opinions
2 contained in it. His experience appears to be in growing marijuana and agitating for its legality. But
3 the cultivation of marijuana or the history of the legalization movement are not at issue in this
4 proceeding, nor are they discussed in his declaration. Instead, his declaration purports to offer
5 medical, chemistry, and sociological opinions. He is clearly unqualified to do so.

6 Conrad has no medical training, education, or experience. He has a Bachelor degree in Fine
7 Arts and Communication, an Associate's degree in Humanities, and spent some time in seminary in
8 the late-1960s. (*See* Conrad Decl., Dkt. No. 311, at p. 13). He has never worked in a medical
9 capacity, nor does he have any education or experience in chemistry. Instead, he appears to be
10 something of a professional marijuana activist. (*See, e.g., id.* at 15) (named NORML's 2008
11 "Freedom Fighter of the Year."). With this background, Conrad may very well be qualified to
12 testify as an expert about *something*, but not the opinions in his declaration.

13 Rule 702 does not permit one to qualify as an expert generally; rather, the rule requires that
14 an expert be qualified to render the *specific opinions* offered. *See* Fed. R. Civ. P. 702; *see also*
15 *Diviero v. Uniroyal Goodrich Tire Co.*, 919 F.Supp. 1353, 1357 (D. Ariz. 1996) ("If scientific
16 knowledge is necessary the expertise must be coextensive with the particular scientific discipline.")
17 (*citing Thomas v. Newton Int'l. Enterprises*, 42 F.3d 1266, 1269-70 & n.3 (9th Cir. 1994) & *Claar v.*
18 *Burlington Northern Railroad Co.*, 29 F.3d 499, 502 (9th Cir. 1994)). That is, one must be qualified
19 to testify to each and every opinion offered. The fact that Conrad seems to know a lot about
20 marijuana does not mean he is qualified to speak to its chemical composition or its medical use. *See*
21 *Diviero*, 919 F.Supp at 1357-58. His education and experience simply do not "fit" the issues in
22 dispute in this proceeding. (*Id.* at 1358) (*citing Daubert*, 113 S.Ct. at 2796).

23 In particular, Conrad's opinion that marijuana's chemistry is "known and reproducible" is
24 outside of his expertise. (Conrad Decl., Dkt. No. 311 at ¶ 1). Neither his declaration nor his CV
25 show any experience in chemistry. He also appears to conflate reproducibility of marijuana's
26 chemistry with the reproduction of the plant. For the reasons set forth in Dr. Madras' declaration
27 (*see, e.g.,* Dkt. No. 324 at ¶¶ 26, 53, & 75), it is important to know the precise chemistry of anything
28 administered as a medicine. As DEA and FDA have explained,

1
2 although the structures of many cannabinoids found in marijuana have been
3 characterized, a complete scientific analysis of all the chemical components found in
4 marijuana has not been conducted. DEA notes that in addition to changes due to its
own genetic plasticity, marijuana and its chemistry have been throughout the ages,
and continue to be, modified by environmental factors and human manipulation.

5 76 Fed. Reg. at 40579. DEA and FDA have also explained that marijuana “derivatives contain a
6 complex mixture of chemicals.” *Id.* at 40558. Both agencies agree that “[i]f marijuana is to be
7 investigated more widely for medical use, information and data regarding the chemistry,
8 manufacturing, and specifications of marijuana must be developed.” (*Id.*; *see also id.* at 40563).
9 Conrad’s declaration, by contrast, contains no discussion of this issue and no basis to support a
10 finding that he is qualified to offer his bare conclusion that marijuana’s chemistry is known and
11 reproducible. Thus, Conrad cannot offer this opinion.

12 The balance of Conrad’s declaration largely regurgitates things he has heard from other
13 people. For example, Conrad states that patients in a particular program “report no ill effects from
14 their use of cannabis” and that “all available information suggests cannabis as a medicine is a
15 remarkable success.” (Conrad Decl., Dkt. No. 311 at ¶¶ 2-3). But he has no basis on which to draw
16 this conclusion—he is not a physician, and has no medical training or experience. If a nurse cannot
17 testify as to medical issues,¹ surely a Fine Arts and Communications major may not either. It is also
18 clear that Conrad’s sole basis for this conclusion is what he learned in interviewing “many” of the
19 participants. (Conrad Decl., Dkt. No. 311 at ¶¶ 2-3). Again, he is not qualified to evaluate their
20 statements or draw a conclusion. He is simply reporting hearsay. Thus, his entire declaration should
21 be struck, and his testimony excluded from this proceeding.

22 **C. Objections to Specific Portions of Conrad’s Declaration.**

23 If the Court does not exclude and strike the entirety of Conrad’s declaration, the United
24 States objects to the following specific portions of his declaration:

25 _____
26 ¹ *See, e.g., Gayton v. McCoy*, 593 F.3d 610, 616 (7th Cir. 2010); *Vaughn v. Mississippi Baptist Medical*
27 *Center*, 20 So.3d 645, 652 (Miss. 2009) (“nurses cannot testify as to medical causation.”); *see also Elswick*
28 *v. Nichols*, 144 F.Supp.2d 758, 767 (E.D. Ky. 2001) (nursing expert cannot testify as to how plaintiff
received infection because it was “outside [her] area of expertise”); *see also Long v. Methodist Hosp. of*
Indiana, Inc., 699 N.E.2d 1164, 1169 (Ind.Ct.App.1998) (“[W]e now hold that nurses are not qualified to
offer expert testimony as to the medical cause of injuries.”).

<p>1 Paragraphs 1-5</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p>	<p>Hearsay; FRE 702. These paragraphs merely report what others say, and Conrad is not qualified to evaluate these statements nor to offer the opinions contained in these paragraphs. <i>See Dura Automotive Systems of Indiana, Inc. v. CTS Corporation</i>, 285 F.3d 609, 613 (7th Cir. 2002) (expert in one area may not serve as “mouthpiece” for expert in another area); <i>see also See TK-7 Corp. v. Estate of Barbouti</i>, 993 F.2d 722, 730-33 (10th Cir. 1993); <i>In re Imperial Credit Industries, Inc. Securities Litigation</i> 252 F.Supp.2d 1005, 1012 (C.D. Cal. 2003) (<i>citing Tokio Marine & Fire Ins. Co. v. Norfolk & Western Ry. Co.</i>, 1999 WL 12931 at *4 (4th Cir. 1999) (“one expert may not give the opinion of another expert who does not testify”)).</p>
<p>8 Paragraph 6</p> <p>9</p> <p>10</p>	<p>Relevance; Hearsay; FRE 702. Conrad’s statements regarding the Iowa Board of Pharmacy are of no evidentiary value. Conrad is not qualified to evaluate the statements offered, and is therefore merely regurgitating what others have said and/or done.</p>
<p>11 Paragraph 7</p> <p>12</p>	<p>Relevance. The claim that hemp has historic and current uses in “commerce and national security” does not bear on any issue in dispute in this matter.</p>
<p>13 Paragraphs 8-9</p> <p>14</p>	<p>Hearsay; 702. Conrad has no medical training or experience. He is not qualified to speak for, or as a member of, the medical community.</p>
<p>15 Paragraphs 10-11</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p>	<p>Relevance; Hearsay, FRE 702. Paragraphs 10 and 11 merely report the actions of state, federal, and local governments with respect to marijuana. Moreover, Conrad offers no basis on which he is qualified to opine that people have moved to Colorado for easier access to marijuana, nor why that unsupported opinion matters. <i>See City of Pomona v. SQM North America Corp.</i>, 750 F.3d 1036, (9th Cir. 2014) (where opinions are “connected to existing data only by the ipse dixit of the expert” that is “too great an analytical gap between the data and the opinion preferred” to support inclusion of the testimony) (internal quotations omitted).</p>

21 **III. CONCLUSION**

22 For the foregoing reasons, the Court should grant this motion, exclude the testimony of
 23 Christopher Conrad, and strike his declaration from the record.

24 DATED: August 12, 2013

BENJAMIN B. WAGNER
 United States Attorney

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