

Courier METROLIFE

Tuesday, July 22, 1997

Nancy Raffensperger Newhoff, Managing Editor (291-1445) ■ Larry Ballard, Regional Editor (291-1451)

Prosecutors want new look at ill pot-smoker's case

By NATHAN PHELPS
Courier Staff Writer

WATERLOO

Prosecutors in the case of a Waterloo man who says he smokes marijuana to deal with chronic pain are asking that the case be re-examined.

District Court Judge Jon Fister ruled last week that Allen Douglas Helmers — a convicted drug dealer — should not have his probation revoked for testing positive for marijuana.

Fister pointed out alleged differences in federal and state laws, which Assistant Black Hawk County Attorney Tony Janney contends are invalid without the state pharmacy board's endorsement.

Janney said the Board of Pharmacy Examiners does not find medicinal value in marijuana, and classifies it as a Schedule 1 drug.

"Since Iowa is not at odds with federal law on this issue and (Helmers') physicians cannot prescribe marijuana



Jon Fister
cites differences
in laws



Allen Helmers
says marijuana
needed for pain

"The only issue decided was whether Helmers' probation should be revoked because he did not have a doctor's prescription for marijuana," Fister said.

The ruling does not condone legalization of marijuana, Fister said, but points out discrepancies in state and federal laws regarding its use.

Fister wrote if marijuana is "reclassified" by the Legislature as a Schedule 1 drug, he would have "no problem finding a violation and imposing an appropriate remedy."

Under federal law, it is illegal for physicians to prescribe marijuana, and both of Helmers' doctors could have been prosecuted.

According to Special Agent Michael Dixon of the federal Drug Enforcement Agency in St. Louis, marijuana is a Schedule 1 drug because it has no proven medicinal value.

"It's really not supposed to be out there in the public," he said.

Janney contends Fister ruled marijuana is a Schedule 2 controlled substance. Iowa law states Schedule 2 drugs that

are proven addictive can be prescribed if they have medicinal value.

Except for a subsections in Schedules 1 and 2 stating marijuana can be prescribed "for medicinal purposes pursuant to the board of pharmacy examiners" it is considered a Schedule 1 drug.

Terry Witkowski, administrative assistant for the Board of Pharmacy Examiners in Des Moines, said the board does not see any medicinal use of marijuana, and the Iowa law is moot — a position with which Janney concurs.

"The board's position is not in support of marijuana for medicinal uses," Witkowski said.

She added there are no board rules that permit the prescription of medical marijuana in Iowa.

Janney said the motion speaks for itself.

"We'd like to have the court ... re-examine the ruling," he said.

Helmers has been diagnosed with fibromyalgia syndrome, a mysterious

condition whose sufferers claim they are in almost constant pain. He also has back problems after the motorcycle he was riding was struck by a drunken driver in 1994.

He is reportedly allergic to such drugs as morphine, commonly prescribed to treat chronic pain, and contends the only thing that alleviates his condition is smoking marijuana.

Helmers has been on probation since 1995 for possession of marijuana with intent to deliver and failure to have an Iowa drug tax stamp.

The county attorney's office requested Helmers, who admitted using marijuana for at least 30 years, be sent to the violators program — a semi-lockdown residential center in Newton — instead of jail because the facility has a staff member with fibromyalgia who is familiar with steps for treating the condition.

At a probation revocation hearing last week, Janney recommended Helmers be sent to in-patient treatment at Covenant Medical Center.