

MEDICAL MARIHUANA CASE LAW SUMMARY

JANUARY 2016



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This material was developed through a project funded by the Michigan Office of Highway Safety Planning and the National Highway Traffic Safety Administration.

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CASE LAW SUMMARY

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UNITED STATES SUPREME COURT DECISIONS

Gonzalez v. Raich, 545 U.S. 1; 125 S Ct 2195; 162 L Ed 2d 1 (2005):

Issue: Can Congress criminalize the production and use of homegrown cannabis even where states approve its use for medicinal purposes?

Holding: Yes, the court held that the Commerce Clause gives Congress the authority to prohibit the local cultivation and use of Marihuana contrary to state law.

The United States Supreme Court ruled that under the Commerce Clause of the United States Constitution, the United States Congress may criminalize the production and use of home-grown cannabis even where states approve its use for medicinal purposes.

In a 6-3 opinion delivered by Justice John Paul Stevens, the Court held that the commerce clause gave Congress authority to prohibit the local cultivation and use of marihuana, despite state law to the contrary. Stevens believed that the Court's precedent "firmly established" Congress' commerce clause power to regulate purely local activities that are part of a "class of activities" with a substantial effect on interstate commerce.

The majority ruled that Congress could ban local marihuana use because it was part of such a "class of activities": the national marihuana market. Local use affected supply and demand in the national marihuana market, making the regulation of intrastate use "essential" to regulating the drug's national market.

The majority distinguished the case from *United States v. Alfonso Lopez, Jr.*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000). In those cases, statutes regulated non-economic activity and fell entirely outside Congress' commerce power. In this case, the Court was asked to strike down a particular application of a valid statutory scheme.

United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483; 121 S Ct 1711; 149 L Ed 2d 722 (2001):

Issue: Does the Controlled Substance Act contain a common law medical necessity defense?

Holding: No, the court held that there were no common law crimes in federal law and the Controlled Substance Act did not recognize a medical necessity exception regardless of their legal status under states' laws.

The United States Supreme Court rejected the common-law medical necessity defense to crimes enacted under the Federal Controlled Substances Act of 1970, regardless of their legal status under the laws of states such as California that recognize a medical use for marihuana.

Justice Thomas wrote for the majority. The Oakland Cannabis Buyers' Cooperative contended that the Controlled Substances Act was susceptible of a medical necessity exception to the ban on distribution and manufacture of marihuana. The Court concluded otherwise.

Since 1812, the Court had held that there were no common-law crimes in federal law. See *United States v. Hudson and Goodwin*. That is, the law required Congress, rather than the federal courts, to define federal crimes. The Court noted that the Controlled Substances Act did not recognize a medical necessity exception. Thus "a medical necessity exception for marihuana is at odds with the terms of the Controlled Substances Act." When it passed the Controlled Substances Act, Congress made a value judgment that marihuana had "no currently accepted medical use." It was not the province of the Court to usurp this value judgment made by the legislature. Thus, it was wrong for the Ninth Circuit to hold that the Controlled Substances Act did contain a medical necessity defense. It was also wrong for the Ninth Circuit to order the district court to fashion a more limited injunction that would take into account the fact that marihuana was necessary for certain people to obtain relief from symptoms of chronic illnesses.

FEDERAL COURT DECISIONS

Americans for Safe Access, Et. Al, v Drug Enforcement Administration, 706 F3d 438 (DC Cir, 2013)

Issue: Should the DEA initiate proceedings to reschedule marijuana?

Holding: NO. The Court upheld the DEA’s decision not to reschedule marijuana.

Americans for Safe Access challenged the decision of the Drug Enforcement Administration not to initiate proceedings to reschedule marijuana as a Schedule I controlled substance. The Department had denied the petition to reschedule marijuana in 2011 finding that “[t]here is no currently accepted medical use of marijuana in the United States” and that “[t]he limited existing clinical evidence is not adequate to warrant rescheduling of marijuana under the CSA.” The DEA had requested that the Department of Health & Human Services (DHHS) conduct a scientific and medical evaluation as well as a recommendation regarding scheduling. The DHHS concluded that marijuana lacks a currently accepted medical use in the United States. In addition, the DHHS concluded that though there was on-going research, there were no studies of sufficient quality to assess “the efficacy and full safety profile of marijuana for any medical condition.” Further there was “a material conflict of opinion among experts” as to medical safety and efficacy, thereby precluding a finding that qualified experts accepted marijuana as medicine. The DEA indicated that anecdotal reports and isolated case reports are not adequate evidence to support an accepted medical use of marijuana. The Court deferred to the DEA’s decision.

Casias v. Wal-Mart, 695 F3d 428 (CA 6, 2012)

Issue: Does the Michigan Medical Marijuana Act (MMMA) regulate private employment?

Holding: NO, the court held that the MMMA provides a potential defense to criminal prosecution or other adverse action by the state, not private employment disputes.

Plaintiff Joseph Casias used to work as an at-will employee for a Wal-Mart store in Battle Creek, Michigan. The company fired him under its drug use policy after he tested positive for marijuana. Mr. Casias sued Wal-Mart Stores East, L.P. in state court for wrongful discharge, claiming that Wal-Mart’s application of its drug use policy to him violated the Michigan Medical Marijuana Act (“MMMA”).

The Court of Appeals agreed with the district court that accepting Plaintiff's public policy interpretation could potentially prohibit any Michigan business from issuing any disciplinary action against a qualifying patient who uses marihuana in accordance with the Act. Such a broad extension of Michigan law would be at odds with the reasonable expectation that such a far-reaching revision of Michigan law would be expressly enacted.

The Court stated that "Such a broad extension would also run counter to other Michigan statutes that clearly and expressly impose duties on private employers when the duties imposed fundamentally affect the employment relationship. *See, e.g.*, Michigan Elliott-Civil Rights Act of 1976, Mich. Comp. Laws § 37.2202(1) ("An employers shall not . . . discriminate against an individual with respect to employment . . ."); Persons With Disabilities Civil Rights Act of 1976, Mich. Comp. Laws § 37.1102(1) ("[A]n employer shall not . . . discharge or otherwise discriminate against an individual . . . because of a disability . . ."); and Michigan's Occupational Safety and Health Act, Mich. Comp. Laws § 4008.1002 ("This act shall apply to all places of employment in the state . . .")."

The Court concluded that the "The MMMA does not include any such language nor does it confer this responsibility upon private employers."

United States of America v. Michigan Department of Community Health, 2011 US Dist LEXIS 59445 (WD Mich, June 3, 2011) [Case No. 1:10-MC-109]

Issue: Can the DEA have documents turned over to them that involve marihuana illegal activities?

Holding: Yes, the court stated that the DEA is charged with investigating the possession, manufacture and disposition of marihuana and the subpoena issued for the documents pertained to the DEA's investigation.

The Court ordered the Michigan Department of Community Health to turn over the documents to the DEA.

The Court stated that "The subpoena was issued as part of an investigation for violations of the Controlled Substances Act. The DEA is a federal law enforcement agency. It is charged with, among other things, investigating the possession, manufacture and disposition of marihuana, a controlled substance, which are violations of federal law.

The documents sought here include cards identifying persons who are presumably involved in possessing and distributing marihuana contrary to federal law. The subpoena clearly seeks documents relevant to the investigation, the conduct of which is a lawful function of the DEA

MICHIGAN SUPREME COURT DECISIONS

People v. Hartwick/Tuttle, Mich ; NW2d (2015):

Issue: Whether the defendants are entitled to immunity under Section 4 and/or section 8 of the Michigan Medical Marihuana Act (MMMA)?

Holding: As to the defendant, Hartwick, the Court concluded that (1) the trial court must hold a new evidentiary hearing to determine Hartwick's immunity under Section 4, and (2) Hartwick was not entitled to an affirmative defense under Section 8.

As to the defendant, Tuttle, the Court concluded that (1) the trial court must hold a new evidentiary hearing to determine Tuttle's entitlement to immunity under Section 4, and (2) Tuttle was not entitled to an affirmative defense under Section 8.

The Court stated as to Section 4 of the Michigan Medical Marihuana Act (MMMA) as follows:

(1) entitlement to Section 4 immunity is a question of law to be decided by the trial court before trial;

(2) the trial court must resolve factual disputes relating to Section 4 immunity, and such factual findings are reviewed on appeal for clear error;

(3) the trial court's legal determinations under the MMMA are reviewed de novo on appeal;

(4) a defendant may claim immunity under Section 4 for each charged offense if the defendant shows by a preponderance of the evidence that, at the time of the charged offense, the defendant

(i) possessed a valid registry identification card,

(ii) complied with the requisite volume limitations of Section 4(a) and § 4(b),

(iii) stored any marihuana plants in an enclosed, locked facility, and

(iv) was engaged in the medical use of marihuana;

(5) the burden of proving Section 4 immunity is separate and distinct for each charged offense;

(6) a marihuana transaction by a registered qualifying patient or a registered primary caregiver that is not in conformity with the MMMA does not *per se* taint all aspects of the registered qualifying patient's or registered primary caregiver's marihuana-related

conduct;

(7) a defendant is entitled to a presumption under Section 4(d) that he or she was engaged in the medical use of marihuana if the defendant has shown by a preponderance of the evidence that, at the time of the charged offense, the defendant

(i) possessed a valid registry identification card, and

(ii) complied with the requisite volume limitations of Sections 4(a) and 4(b);

(8) the prosecution may rebut the Section 4(d) presumption that the defendant was engaged in the medical use of marihuana by presenting evidence that the defendant's conduct was not for the purpose of alleviating the registered qualifying patient's debilitating medical condition;

(9) non-MMMA-compliant conduct may rebut the Section 4(d) presumption of medical use for otherwise MMMA-compliant conduct if a nexus exists between the non-MMMA-compliant conduct and the otherwise MMMA-compliant conduct;

(10) if the prosecution rebuts the Section 4(d) presumption of the medical use of marihuana, the defendant may still establish, on a charge-by-charge basis, that the conduct underlying a particular charge was for the medical use of marihuana; and

(11) the trial court must ultimately weigh the evidence to determine if the defendant has met the requisite burden of proof as to all elements of Section 4 immunity.

The Court held as to Section 8 of the MMMA as follows:

(1) a defendant must present prima facie evidence of each element of Section 8(a) in order to be entitled to present a Section 8 affirmative defense to a fact-finder;

(2) if the defendant meets this burden, then the defendant must prove each element of Section 8(a) by a preponderance of the evidence; and

(3) a valid registry identification card does not establish any presumption under Section 8.

People v. Mazur, Mich ; NW2d (2015):

Issue: Whether the defendant was entitled to have her drug charges dismissed based on the immunity provision of the MMMA because office "sticky notes" should be considered "drug paraphernalia" under the PHC.

The defendant argued that she was entitled to immunity under the MCL 333.26424(g) for her marihuana manufacturing and possession with intent to deliver charges. Under the MMMA, a person may not be prosecuted for "providing a registered qualifying patient or

a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana.

The defendant claimed that the two "sticky notes" containing marijuana "harvest dates" that she gave to her husband constituted "marihuana paraphernalia." She claimed that "these acts were all that is required for immunity."

Holding: The Michigan Supreme Court held as follows:

“Marihuana paraphernalia,” as that phrase is used in MCL 333.26424(g), includes items that are both specifically designed or actually employed for the medical use of marijuana.

Under section 4(g) of the MMMA, an individual may claim immunity for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient’s medical use of marihuana.

The Court ruled that: "In this case, defendant provided her husband with sticky notes for the purpose of detailing the harvest dates of his plants. This activity constituted the provision of 'marihuana paraphernalia' because the objects were actually used in the cultivation or manufacture of marijuana and fell within the scope of section 4(g)."

Reversed and remanded to the circuit court.

Ter Beek v. City of Wyoming, Mich ; NW2d (2014):

Issue: Whether the immunity provisions of the MMMA are preempted by the Federal Controlled Substances Act, and therefore, a municipality can enact an ordinance that prohibits growing, possessing or using medical marijuana in compliance with the MMMA

Holding: The Michigan Supreme Court held as follows:

The immunity provisions of the MMMA are not preempted by the Federal Controlled Substances Act, and that a municipality cannot enact an ordinance that prohibits growing, possessing or using medical marijuana in compliance with the MMMA

People v. Green, 494 Mich 865; 831 NW2d 460 (2013):

Issue: Whether the Michigan Court of Appeals’ published case of *People v. Green*, decided January 19, 2013 should be overturned?

In the published Michigan Court of Appeals decision of *People v. Tony Green* decided January 19, 2013, the Court ruled that a registered qualifying patient under the Michigan Medical Marihuana Act (MMMA), MCL 333.26421, who transferred a small

uncompensated amount of marihuana to another person who was a registered qualifying patient pursuant to MCL 333.26429(b), is legally allowed to do so pursuant to the MMMA.

Holding: The Michigan Supreme Court held as follows:

"In *Michigan v. McQueen*, 493 Mich 135 (2013), this Court held that, under the MMMA, "§ 4 immunity does not extend to a registered qualifying patient who transfers marihuana to another registered qualifying patient for the transferee's use because the transferor is not engaging in conduct related to marihuana for the purpose of relieving the transferor's own condition or symptoms."

Therefore, the Court ordered the case to be remanded back to the Barry County Circuit for reinstatement of the delivery of marihuana charges.

People v. Koon, 494 Mich 1; 832 NW2d 724 (2013):

Issue: Whether the MMMA's protection supersedes the Michigan Vehicle Code's prohibition and allows a registered patient to drive when he or she has indications of marihuana in his or her system but is not otherwise under the influence of marihuana?

Holding: The Michigan Supreme Court held that the "The immunity from prosecution provided under the MMMA to a registered patient who drives with indications of marihuana in his or her system but is not otherwise under the influence of marihuana inescapably conflicts with MCL 257.625(8), which prohibits a person from driving with any amount of marihuana in her or system. Under the MMMA, all other acts and parts of acts inconsistent with the MMMA do not apply to the medical use of marihuana. Consequently, MCL 257.625(8) does not apply to the medical use of marihuana."

Therefore the Michigan Court held that the "Court of Appeals incorrectly concluded that defendant could be convicted under MCL 257.625(8) without proof that he had acted in violation of the MMMA by operating a motor vehicle while under the influence of marihuana."

The Michigan Supreme Court reversed the Michigan Court of Appeals and reinstated the judgment of the Grand Traverse Circuit Court, and remanded the case to the district court for further proceedings.

State of Michigan v. McQueen, 493 Mich 135; 828 NW2d 644 (2013):

Issue: Whether the definition of "medical use" in the Michigan Medical Marihuana Act (MMMA) includes the sale of marihuana?

Holding: “Contrary to the conclusion of the Court of Appeals, the definition of “medical use” in the MMMA includes the sale of marihuana.

Issue: Whether the MMMA permits a registered qualifying patient to transfer marihuana for another registered qualifying patient’s medical use?

Holding: The MMMA does not permit a registered qualifying patient to transfer marihuana for another registered qualifying patient’s medical use.

The Court made the following ruling in its decision:

“Section 4 immunity does not extend to a registered qualifying patient who transfers marihuana to another registered qualifying patient for the transferee’s use because the transferor is not engaging in conduct related to marihuana for the purpose of relieving the transferor’s own condition or symptoms.

Similarly, Section 4 immunity does not extend to a registered primary caregiver who transfers marihuana for any purpose other than to alleviate the condition or symptoms of a specific patient with whom the caregiver is connected through the MDCH’s registration process.”

Additionally, on page 20, the Court held that McQueen was not entitled to protection under 4(i) of the Michigan Medical Marihuana Act:

“In this context, the terms “using” and “administering” are limited to conduct involving the actual ingestion of marihuana. Thus, by its plain language, § 4(i) permits, for example, the spouse of a registered qualifying patient to assist the patient in ingesting marihuana, regardless of the spouse’s status. However, § 4(i) does not permit defendants’ conduct in this case. Defendants transferred and delivered marihuana to patients by facilitating patient-to-patient sales; in doing so, they assisted those patients in acquiring marihuana.

The transfer, delivery, and acquisition of marihuana are three activities that are part of the “medical use” of marihuana that the drafters of the MMMA chose not to include as protected activities within § 4(i). As a result, defendants’ actions were not in accordance with the MMMA under that provision.”

Therefore, the prosecuting attorney was entitled to injunctive relief to enjoin the operation of defendants’ business because it constituted a public nuisance.

Affirmed on alternative grounds.

People v. Bylsma, 493 Mich 17; 825 NW2d 543 (2012):

Ryan M. Bylsma, a registered primary caregiver under the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, was charged in the Kent Circuit Court with

manufacturing marihuana in violation of MCL 333.7401(1) and (2)(d). Defendant moved to dismiss the charge, asserting that as the registered primary caregiver of two registered qualifying patients, he was allowed to possess 24 marihuana plants and that the remainder of the 88 plants seized by the police from his leased unit in a building belonged to other registered primary caregivers and registered qualifying patients whom defendant had offered to assist in growing and cultivating the plants.

Issue: Whether the Defendant was in violation of the Michigan Medical Marihuana Act (MMMA) by failing to comply with Section 4 and Section of the Act?

Holding: The Michigan Supreme Court held that:

“Section 4 does not allow the collective action that defendant has undertaken because only one of two people may possess marihuana plants pursuant to §§ 4(a) and 4(b): a registered qualifying patient or the primary caregiver with whom the qualifying patient is connected through the registration process of the Michigan Department of Community Health (MDCH). Because defendant possessed more plants than § 4 allows and he possessed plants on behalf of patients with whom he was *not* connected through the MDCH’s registration process, defendant is not entitled to § 4 immunity.”

However, the Court further held that:

“The Court of Appeals erred when it concluded that defendant was not entitled to assert the § 8 affirmative defense solely because he did not satisfy the possession limits of § 4. Rather, in *People v Kolanek*, we held that a defendant need not establish the elements of § 4 immunity in order to establish the elements of the § 8 defense.”

It should be noted that on page 8 of its opinion, the Court stated that “In contrast to other states’ medical marihuana provisions, the MMMA does not explicitly provide for collective operations such as defendant’s.”

In conclusion, the Court affirmed the judgment of the Court of Appeals in part, reversed it in part, and remanded the case to the Kent County Circuit Court for further proceedings.

People v. Kolanek & King, 491 Mich 382; 817 NW2d 528 (2012):

Issue: Whether the plain language of the MMMA requires that a defendant asserting the affirmative defense under § 8 also meet the requirements under § 4?

Holding: The court held, in pertinent part:

- 1. The plain language of the MMMA does not require that a defendant asserting the affirmative defense under § 8 also meet the requirements of § 4.**

2. **Additionally, to meet the requirements of § 8(a)(1), a defendant must establish that the physician’s statement occurred after the enactment of the MMMA and before the commission of the offense.**
3. **If a circuit court denies a defendant’s motion to dismiss under § 8 and there are no material questions of fact, then the defendant may not reassert the defense at trial; rather, the appropriate remedy is to apply for interlocutory leave to appeal.**

The Michigan Court Supreme Court stated as follows:

“The stricter requirements of § 4 are intended to encourage patients to register with the state and comply with the act in order to avoid arrest and the initiation of charges and obtain protection for other rights and privileges. If registered patients choose not to abide by the stricter requirements of § 4, they will not be able to claim this broad immunity, but will be forced to assert the affirmative defense under § 8, just like unregistered patients.

In that instance, registered patients will be entitled to the same lower level of protection provided to unregistered patients under § 8. This result is not absurd, but is the consequence of the incentives created by the wider protections of § 4.”

The Court further stated as follows:

“In *Kolanek*, neither the post-arrest physician’s statements nor the physician’s statements made before the enactment of the MMMA satisfy, as a matter of law, the requirement under § 8(a)(1). Thus, Kolanek, although entitled to raise the § 8 defense in a motion for an evidentiary hearing, failed to establish at that hearing the requirements of the § 8 affirmative defense and he cannot now, for reasons we will explain, present the defense to the jury.

People v. Feezel, 486 Mich 184; 783 NW2d 67 (2010):

Issue: Is 11-Carboxy-THC a derivative of Marihuana and a Schedule 1 Controlled substance?

Holding: No, the court held that 11-Carboxy-THC is not a derivative of marihuana and therefore is not a Schedule 1 Controlled substance.

The victim was walking in the paved portion of a 5 lane road. His BAC was .268. It was dark and raining. The Defendant struck the victim and left the scene. The trial judge precluded admission of any evidence regarding the victim’s intoxication. The Defendant was convicted of operating with the presence of a schedule 1 controlled substance causing death, leaving the scene of an accident resulting in death, and OWI, 2nd offense.

The Defendant appealed, claiming that evidence of the victim’s intoxication should have been admitted on the issuance of causation, and that the presence of 11-carboxy-THC in his blood did not constitute a schedule 1 controlled substance.

In *People v Derror*, 475 Mich 316 (2006) the Michigan Supreme Court ruled in a 4-3 decision that 11-carboxy-THC, a metabolite of marihuana, is included in the statutory definition as a derivative of marihuana. Accordingly, the *Derror* majority upheld the Defendant's conviction for operating with a schedule 1 controlled substance in her system based upon the presence of 11-carboxy-THC in her blood. Justice Hathaway joined the three *Derror* dissenters in this case to overrule *Derror*.

The majority held that 11-carboxy-THC is not a derivative of marihuana, and therefore is not a schedule 1 controlled substance. Accordingly, they reversed this Defendant's conviction for operating with the presence of a schedule 1 controlled substance causing death. Justices Young, Markman and Corrigan dissented from this holding.

On the other issue, a unanimous Court held that evidence of the victim's extreme intoxication in this case should have been admitted to support the Defendant's claim that the victim's intoxication constituted a superseding cause of his death. They emphasized that intoxication evidence may not be relevant or admissible in all cases.

They emphasize, however, "That evidence of a victim's intoxication may not be relevant or admissible in all cases. Indeed, the primary focus in a criminal trial remains on the Defendant's conduct. Accordingly, any level of intoxication on the part of a victim is not automatically relevant, and the mere consumption of alcohol by a victim does not automatically amount to a superseding cause or de facto gross negligence."

Instead, under MRE 401, a trial Court must determine whether the evidence tends to make the existence of gross negligence more probably or less probable than it would be without the evidence and, if relevant, whether the evidence is inadmissible under the balancing test of MRE 403.

MICHIGAN COURT OF APPEALS DECISIONS

PUBLISHED CASES

People v Carlton, Mich App ___ ; ___ NW2d ___ (2015):

The defendant went to the Soaring Eagle Casino and parked his car in the casino parking lot. Security personnel saw Carlton smoking what they believed to be marijuana inside his car. The security personnel called police officers and the officers went to the parking lot to investigate. Carlton admitted to the officers that he had been smoking marijuana and the officers saw a marijuana roach on the car's dashboard. The officers searched the car and found four bags of marijuana in a Styrofoam cooler that was on the floor board of the front passenger's seat. Carlton was the only person in the car at the time.

Issue: Whether the immunity and defenses under MCL 333.26424 and 333.26428 of the Michigan Medical Marijuana Act (MMMA) apply to a person who smokes marijuana in his or her own car while that car is parked in the parking lot of a private business that is open to the general public. The prosecution relied on MCL 333.26427(b)(3)(B) which specifically reads that the MMMA does not "permit any person to smoke marijuana in any other place." Therefore, the defendant is not entitled to immunity because the defendant was smoking in a public place which is prohibited under MCL 333.26427(b)(3)(B).

The Court of Appeals agreed with the prosecution.

Holding: The Court held "Because Carlton was smoking marijuana in a "public place," MCL 333.26427(b)(3)(B), he could not assert the immunity or defense provided under that act."

The Court reasoned "Because the electors chose to define the exception by reference to the character of the place rather than by the specifics attending the act, whether members of the general public might stumble upon the patient smoking the medical marijuana, or otherwise detect the patient's smoking, is not relevant to determining whether the exception applies."

The Court further reasoned "For similar reasons, the fact that a public place was intended to be used in private does not alter the public character of that place. A person who goes into a restroom that is generally open to the public, enters a stall, and closes the door, does not thereby transform the stall from a public place to a private place. Stated another way, even if a patient successfully conceals his or her smoking of medical marijuana from detection, the patient will not be entitled to the protections of the act if he or she smoked the marijuana in a public place. The relevant inquiry is whether the place at issue is generally open to use by the public without reference to a patient's efforts or ability to conceal his or her smoking of marijuana."

The Court of Appeals reversed the circuit court opinion's and order affirming the district court's opinion and order.

People v Lois Butler-Jackson, Mich App ___; ___ NW2d ___ (2014):

Issue: Whether defendant's was immune from prosecution under MCL 333.26424(f) of the Michigan Medical Marihuana Act (MMMA)?

Holding: NO

Issue: Whether the defendant's conspiracy conviction must be vacated because her conduct was not illegal?

Holding: YES

Defendant appeals as of right her jury convictions for conspiracy to commit a legal act in an illegal manner, MCL 750.157a, and intentionally placing false information in a patient's medical record, MCL 750.492a(1)(a).

As to the first issue, Defendant argued that she was entitled to immunity because she had bona fide relationships with her customers and stated that, in her professional opinion, each of her customers were likely to benefit from the medical use of marijuana. At the time she was charged, the phrase "bona fide relationship" was not defined in the MMMA; however, defendant argues, she did not have to physically meet with patients to have "bona fide physician-patient relationships."

The Court of Appeals disagreed.

The Court held that "There was no evidence that defendant had "bona fide physician-patient relationships" with the undercover police officers, or similar persons, seeking certifications, or that she completed full assessments of their medical histories before signing the written certifications that were filled out and issued by Deloose."

"And there was no evidence that defendant could have formulated any "professional opinion" regarding the likelihood that the undercover police officers, or similar persons—who only saw and paid Deloose for the certifications—would likely benefit from the medical use of marijuana to treat or alleviate serious or debilitating medical conditions or related symptoms."

As to the second issue, the defendant argued that she could not be convicted of conspiracy to commit a legal act in an unlawful manner for failing to comply with MCL 333.26424(f) because such conduct is not illegal. In essence, defendant is arguing on appeal, and argued in the trial court, that the allegations set forth in the information did not constitute the crime of conspiracy to commit a legal act in an illegal manner.

The Court of Appeals agreed.

The Court held that “MCL 333.26424(f) does not prohibit physicians from issuing written certifications in the absence of a bona fide physician-patient, without conducting a full assessment of medical history, and when a “professional opinion” cannot be formulated. That is, this statute does not define any prohibited conduct, does not characterize any such conduct as constituting either a misdemeanor or felony, and does not provide for any punishment.”

The conspiracy conviction of the defendant is vacated. In all other respects, the Court affirmed.

Braska v Department of Licensing and Regulatory Affairs, Mich App ; NW2d (2014):

Issue: Whether an employee who possesses a registration identification card under the Michigan Medical Marihuana Act (MMMA) is disqualified from receiving unemployment benefits under the Michigan Employment Security Act (MESA) after the employee has been terminated for failing to pass a drug test?

Holding: NO

The Court held that “because there was no evidence to suggest that the positive drug tests were caused by anything other than claimants’ use of medical marijuana in accordance with the terms of the MMMA, the denial of the benefits constituted an improper penalty for the medical use of marijuana under the MMMA, MCL 333.26424(a).

Because the MMMA preempts the MESA, the circuit courts did not err in reversing the MCAC’s rulings that claimants were not entitled to unemployment compensation benefits.”

Affirmed.

People v Johnson et al, Mich App ; NW2d (2013):

Issue: Is the rule of lenity applicable when construing the MMMA?

Holding: NO.

Issue: Should the Court of Appeals’ and Supreme Court’s decisions in *State v McQueen*, be retroactively applied?

Holding: YES.

These consolidated cases arose from the operation of a marijuana dispensary. After indicating that due process ramifications exist in criminal cases, the trial court held that the rule of lenity should be applied under the circumstances of this case. The trial court granted defendants' joint motion to dismiss all charges pursuant to the Michigan Medical Marihuana Act (MMMA).

The prosecutor first argued that the trial court erroneously dismissed the charges against all seven defendants without requiring defendants to first demonstrate that they were entitled to the protections afforded under the MMMA. The Michigan Court of Appeals agreed.

The Court noted "None of the defendants argued or attempted to establish that any one of them was entitled to the protection afforded under MCL 333.26428(a) as either "a patient" or "a patient's primary caregiver. In other words, in their joint motion for dismissal, defendants did not argue or attempt to establish that they had the legal right to seek the protections from arrest, prosecution, or penalty afforded under the MMMA for their marijuana-related activities. And they did not challenge as ambiguous any specific term as relates to their alleged right to seek the protections afforded under the MMMA.

Defendants' brief on appeal likewise fails to assert any such arguments. Again, on appeal, defendants merely appear to argue that the entirety of the MMMA is ambiguous.

In light of all of these considerations, we conclude that the trial court abused its discretion when it dismissed the charges against all seven defendants without determining whether any of the defendants were specifically entitled to the protections afforded under either MCL 333.26424 or MCL 333.26428."

Next, the prosecutor argued trial court erroneously held that the rule of lenity applied under the circumstances of this case. The defendants argued in the trial court, and argued in the Court of Appeals, that the rule of lenity should be applied under the circumstances of this case because they were denied "due process and advanced notice of the conduct being prohibited," i.e., they lacked "fair warning." The Michigan Court of Appeals agreed with the prosecutor.

The 'rule of lenity' provides that courts should mitigate punishment when the punishment in a criminal statute is unclear." *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997).

The Court held that "Accordingly, the retroactive application of this Court's decision in *McQueen*, although rendered after defendants' arrests, does not present a due process concern because this decision does not operate as an ex post facto law. Here, none of the defendants are deprived of "due process of law in the sense of fair warning that his contemplated conduct constitutes a *crime*." *Bouie*, 378 US at 353 (emphasis supplied). Neither our holding in *McQueen*, nor our Supreme Court's subsequent holding in *McQueen*, 493 Mich at 135, had the effect of criminalizing previously innocent conduct. This is not a case in which marijuana dispensaries were authorized by statute and then, by judicial interpretation, deemed illegal."

Therefore, the Michigan Court of Appeals reversed and remanded for reinstatement of the charges against the defendants.

People v Carruthers, ___ Mich App ___; ___ NW2d ___ (2013):

Issue: Whether edibles made from resin (which contain THC) qualify as usable marihuana?

Holding: NO. Because the definition of “usable marihuana” only refers to leaves and flowers, edibles made purely of resin do not constitute “usable marihuana.”

Issue: Whether, if a defendant possesses marihuana which does not meet the definition of “usable marihuana,” does he qualify for immunity under §4 (MCL 333.26424)?

Holding: NO.

Issue: Whether, if a defendant possesses marihuana which does not meet the definition of “usable marihuana” can he attempt to avail of the affirmative defense listed in §8 (MCL 333.26428)?

Holding: YES.

Defendant was stopped at a traffic stop possessing edibles weighing 54.9 ounces as well as 9.1 ounces of raw marihuana. The edibles in his possession were made from straining the resin from marihuana plant and mixing it with baking ingredients. He claimed that he was entitled to avail of the immunity from prosecution listed in §4 since he was a patient and a caregiver and he had four patients. Defendant claimed that the court should only count the pure resin in the amount requirements. Defendant asserted that though the baked goods weighed 54.9 ounces, the pure resin weighed under 12.5 ounces and therefore he was entitled to avail of the immunity from prosecution listed in §4.

The Court found that because the baked goods were not made with leaves and flowers of the plant but instead were made of resin, the marihuana that he possessed in the baked goods did not qualify as “usable marihuana.” The MMMA defines “usable marihuana” as “the dried leaves and flowers of the marijuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.” MCL 333.26423(k). The Court then indicated that because §4 only provided individuals with an immunity from prosecution if they possessed “an amount of marihuana that does not exceed 2.5 ounces of usable marihuana,” (MCL 333.26424(a),(b)) because defendant possessed marihuana which did not fall under the definition of “usable marihuana” he could not avail of the protection in §4.

However, the Court was careful to note that if the edibles were made from leaves and flowers, then the edibles would meet the definition of “usable marihuana.” Furthermore, the Court held that the defendant could seek to avail of the affirmative defense listed in

§8 and remanded for a hearing. (The case had been decided in the lower court before the Supreme Court reversed *People v King*, 291 Mich App 503; 804 NW2d 911 (2011))

People v Anderson (After Remand), 298 Mich App 10; 825 NW2d 641 (2012)

Issue: Whether the court erred in determining that the amount restrictions in §4 were pertinent on whether the defendant could avail of the affirmative defense?

Holding: YES.

Issue: Whether the court erred by precluding the defense based on credibility findings?

Holding: YES. The trial court’s sole function at the hearing was to assess the evidence and to determine whether as a matter of law, the defendant presented sufficient evidence to establish a prima facie defense under §8, and if he did whether there were any material factual disputes on the elements of the defense that must be resolved by the jury.

The case was heard before the Supreme Court’s decision in *Kolanek, supra*, and the trial court at the §8 hearing had determined in part that because the defendant failed to comply with the requirements in §4, he could not avail of the affirmative defense. The trial court also made credibility findings regarding the expert witness who was called by the defense. The Court of Appeals reversed and remanded based on *Kolanek*, but indicated that the parties were entitled to a new §8 hearing because the parties were functioning under pre-*Kolanek* case law when conducting the previous hearing.

People v. Brown, 297 Mich App 670; 825 NW2d 91 (2012):

Issue: Whether there was sufficient probable cause in the search warrant to have it issued by the magistrate?

The Court held in pertinent part, that “We conclude that to establish probable cause, a search-warrant affidavit need not provide facts from which a magistrate could conclude that a suspect’s marihuana-related activities are specifically not legal under the MMMA.”

“Probable cause exists if there is a substantial basis for inferring a fair probability that contraband or evidence of a crime exists in the stated place. *Kazmierczak*, 461 Mich 417-418. Defendant has presented no authority indicating that for probable cause to exist, there must be a substantial basis for inferring that defenses do not apply.”

The Court did note, however, “While we decline, in light of the pertinent case law, to impose an affirmative duty on the police to obtain information pertaining to a person’s noncompliance with the MMMA before seeking a search warrant for marijuana, if the police do have clear and uncontroverted evidence that a person is in full compliance with the MMMA, this evidence must be included as part of the affidavit because such a situation would not justify the issuance of a warrant. This scheme will reduce any

potential (however unlikely) for police overreach in attempting to obtain search warrants.”

People v. Nicholson, 297 Mich App 191; ___ NW2d ___ (2012):

Issue: Whether the defendant was immune from arrest because his application paperwork for a registry identification card under the MMMA was "not reasonably accessible at the location of his arrest.

Holding: The court held that the defendant was not immune from arrest because his application paperwork for a registry identification card under the MMMA was "not reasonably accessible at the location of his arrest."

However, the court further held that because he possessed a registry identification card that had been issued before his arrest when being prosecuted, he was immune from prosecution unless there is evidence showing that his possession of marihuana at the time was not in accordance with "medical use" as defined in the MMMA or otherwise not in accordance with the MMMA.

People v. Danto, 294 Mich App 596; 822 NW2d 600 (2011) [abrogated in part by 491 Mich 382; 817 NW2d 528 (2012)]:

Much of *Danto*'s holding regarding the MMMA has been abrogated by the Supreme Court's decision in *King & Kolanek*, that a defendant's failure to follow the requirements in §4 do not preclude him from attempting to avail of the affirmative defense listed in §8.

However, the Court found that because the defendants had marihuana growing in various places around the house where they all lived, they did not demonstrate that the house itself qualified an enclosed, locked facility.

The Court also made the following finding:

Nater has identified no provision in the MMA that would have authorized him to sell marijuana to the undercover officers. MCL 333.26424(b) provides that “[a] primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty . . . for assisting a qualifying patient to whom he or she is connected through the [Michigan Department of Community Health's] registration process with the medical use of marihuana in accordance with this act” Nater does not claim or offer evidence that he was connected through the department's registration process with the undercover officers to whom he sold marijuana.

People v. Brian Bebout Reed, 294 Mich App 78; 819 NW2d 3 (2011)

Issue: For a Section 8 affirmative defense to apply, does the physician statement have to occur before the purportedly illegal conduct?

Holding: The Court held as follows: “We stated in *People v Kolanek*, ___ Mich App ___; ___ NW2d ___; 2011 WL 92996 (2011), lv granted 489 Mich 956; 798 NW2d 509 (2011), slip op at 7, that the relevant deadline for obtaining the physician’s statement required to establish the affirmative defense in MCL 333.26428 was the time of a defendant’s arrest.

We now extend that ruling and hold that, for the affirmative defense to apply, the physician’s statement must occur before the commission of the purported offense. We further hold that defendant has no immunity under MCL 333.26424 because defendant did not possess a registry identification card at the time of the purported offense.”

In essence, “In light of the above-considerations, we hold that, for a Section 8 affirmative defense to apply, the physician’s statement must occur before the purportedly illegal conduct.”

In this case, the Defendant’s marihuana plants were discovered before any physician authorization, but defendant was not arrested until after he had obtained physician authorization, as well as a registry identification card from the Michigan Department of Community Health (MDCH). See MCL 333.26424.

Because the Defendant’s Motion to Dismiss was denied, the Court stated that “No reasonable jury could find that defendant is entitled to the Section 8 defense, and thus defendant is barred from asserting it at trial.”

People v. King, 291 Mich App 503; 804 NW2d 911 (2011) [abrogated in part by 491 Mich 382; 817 NW2d 528 (2012)]:

Much of *King*’s holding regarding the MMMA has been abrogated by the Supreme Court’s decision in *King & Kolanek*, that a defendant’s failure to follow the requirements in §4 do not preclude him from attempting to avail of the affirmative defense listed in §8.

However, (though the definition of enclosed locked facility has now been changed by statute, MCL 333.26423(d)) for pre-April 1, 2013 cases, *King*’s definition of enclosed-locked facility is pertinent.

Issue: What is an “enclosed locked facility”?

Holding: **The enclosed area itself must have a lock or other security device to prevent access by anyone other than the person licensed to grow marihuana.**

The facts of the case are that on May 13, 2009, the Michigan State Police received an anonymous tip that someone was growing marihuana in the backyard of a house. The

officers saw a chain-link dog kennel behind the house. Although the sides of the kennel were covered with black plastic, some areas of the kennel were uncovered and, using binoculars. The officer could see marihuana plants growing inside.

The Defendant, who was at home at the time, showed the officers medical marihuana card that was issued on April 20, 2009. The officers asked him to show them the marihuana plants and he unlocked a chain lock on the kennel. The kennel was six feet tall, but had an open top and was not anchored to the ground. Defendant disclosed that he had more marihuana plants inside the house. After they obtained a search warrant, the officers found marihuana plants growing inside Defendant's unlocked living room closet. Defendant was charged with two counts of manufacturing marihuana.

The Defendant argued that he was entitled to the limited protections of the MMA because he complied with its statutory provisions including meeting the definition of “Enclosed, locked facility.” The trial court agreed.

The court held that the trial court incorrectly interpreted and applied the phrase "Enclosed, locked facility." The court further held that, although the plants inside Defendant's home were kept in a closet, which is the type of enclosure specifically mentioned in the statute, there was no lock on the closet door. The statute explicitly states that the enclosed area itself must have a lock or other security device to prevent access by anyone other than the person licensed to grow marihuana under the MMA.

Lastly, the court noted that the “Trial court’s conclusion that Defendant acted as a “security device” for the marihuana growing inside his home is pure sophistry and belied by defense counsel’s unsurprising admission at oral argument that, at times, Defendant left the property, thus leaving the marihuana without a “security device” and accessible to someone other than Defendant as the registered patient.”

People v. Redden, 290 Mich App 65; 799 NW2d 184 (2010):

Issue: Can Defendants use the affirmative defense contained in §8 of the Michigan Medical Marihuana Act (MMMA), MCL 333.26428, if their registry identification card was acquired after the offense?

Holding: Yes, the court held that registered patients under §4 and unregistered patients under §8 would be able to assert medical use of marihuana as a defense even though the defendant does not satisfy the registry identification card requirement of §4.

Issue: What constitutes a physician-patient relationship?

Holding: The doctor’s recommendations have to result from assessments made in the course of bona fide physician-patient relationships and the Defendants have to see the physician for good-faith medical treatment not in order to obtain marihuana under false pretenses. [The Legislature has now passed a definitional statute: MCL 333.26423(a)]

Defendant Robert Lee Redden and Defendant Torey Alison Clark appealed by leave granted from a December 10, 2009, circuit court order reversing for each Defendant the district court's dismissal of a single count of manufacturing 20 or more but less than 200 marihuana plants.

This case arose from the execution of a search warrant on March 30, 2009, at Defendants' residence, which resulted in the discovery of approximately one and one-half ounces of marihuana and 21 marihuana plants. Defendants were in the residence at the time of the search. The officers found 3 bags of marihuana in a bedroom and 21 marihuana plants on the floor of the closet in the same bedroom.

It should be noted that although the MMMA went into effect on December 4, 2008, the State of Michigan did not begin issuing registry identification cards until April 4, 2009. The Michigan Department of Community Health issued medical marihuana registry identification cards to each Defendant on April 20, 2009.

As part of the preliminary examination, Defendants asserted the affirmative defense contained in § 8 of the MMMA, MCL 333.26428. In support of the defense, Defendants presented testimony from Dr. Eric Eisenbud, M.D., licensed to practice in the State of Michigan. Dr. Eisenbud testified that Defendants were his patients and he examined each of them on March 3, 2009, when both were seeking to be permitted to use medical marihuana under the MMMA.

Dr. Eisenbud testified that he signed the authorization for each Defendant in his professional capacity because each qualified under the MMMA and each would benefit from using medical marihuana. He opined that his relationship with each Defendant was a bona fide physician-patient relationship because he interviewed Defendants, examined them, and looked at their medical records in order to gain a full understanding of their medical problems.

The prosecution has argued throughout each stage of the judicial process that Defendants were not entitled to assert the affirmative defense from § 8 of the MMMA because they did not each have a registry identification card at the time of the offense as required by § 4(a) of the MMMA, MCL 333.26424(a).

On the other hand, the Defendants argued that they each met the requirements of § 8 because they each had a signed authorization from a licensed physician with whom they had a bona fide physician-patient relationship and who concluded that they each had conditions covered under the MMMA. Defendants also argued that the amount of marihuana was reasonably necessary.

The Court noted that "Individuals may either register and obtain a registry identification card under § 4 or remain unregistered and, if facing criminal prosecution, be forced to assert the affirmative defense in § 8. The Court stated "That adherence to § 4 provides protection that differs from that of § 8. Because of the differing levels of protection in

sections 4 and 8, the plain language of the statute establishes that § 8 is applicable for a patient who does not satisfy § 4."

The Court also mentioned the ballot proposal language, specifically, the following language:

- Permit registered and unregistered patients and primary caregivers to assert medical reasons for using marihuana as a defense to any prosecution involving marihuana.

Based on this language, the Court ruled that "The language supports the view that registered patients under § 4 and unregistered patients under § 8 would be able to assert medical use of marihuana as a defense."

Therefore, the Court held that the district court did not err by permitting Defendants to raise the affirmative defense even though neither satisfied the registry-identification-card requirement of § 4.

The next issue is whether there was a bona fide physician-patient relationship. The Court stated that "We find that there was evidence in this particular case that the doctor's recommendations did not result from assessments made in the course of bona fide physician-patient relationships. The Court ruled that "The facts at least raise an inference that Defendants saw Dr. Eisenbud not for good-faith medical treatment but in order to obtain marihuana under false pretenses."

The circuit court's decision to reverse the district court's bindover was affirmed.

People v. Campbell, 289 Mich App 533; 798 NW2d 514 (2010):

Issue: Should the Michigan Medical Marihuana Act (MMMA) be retroactively applied?

Holding: The court held that the MMMA should not be retroactively applied.

Defendant was charged with manufacture of marihuana, MCL 333.7401(2)(d)(iii), possession with intent to deliver marihuana, MCL 333.7401(2)(d)(iii), possession of a firearm during the commission of a felony (two counts), MCL 750.227b, and misdemeanor possession of marihuana, MCL 333.7403(2)(d). The trial court granted Defendant's motion to dismiss after concluding that the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 et seq., should be retroactively applied. Plaintiff appealed as of right.

The charges against Defendant resulted from a search, pursuant to a warrant, of his home and vehicle on December 3, 2007. Nine marihuana plants, two bags of dried marihuana, and assorted drug paraphernalia were discovered in the search. A shotgun was also recovered from Defendant's home. Defendant stated to the police who executed the warrant that the marihuana was for medicinal use. While Defendant's criminal charges were pending, the MMMA was enacted and became effective on December 4, 2008.

Defendant moved to dismiss the charges against him based on the MMMA, which provides an affirmative defense for a criminal Defendant facing marihuana-related charges. MCL 333.26428(a). The trial court granted Defendant's motion, despite the prosecutor's assertion that Defendant was not entitled to the defense because his arrest occurred before the MMMA became effective.

The sole issue on appeal was whether the MMMA should be retroactively applied. A trial court's decision on a motion to dismiss is reviewed for an abuse of discretion.

Generally, statutes are presumed to operate prospectively unless the Legislature either expressly or impliedly indicates an intention to give the statute retroactive effect. *People v Conyer*, 281 Mich App 526, 529; 762 NW2d 198 (2008).

The Court rejected Defendant's argument that MCL 333.26428(a) was subject to retroactive application because there is an indication that the Legislature intended such. The sections of the MMMA that Defendant relies on to support this position, specifically MCL 333.26425 and MCL 333.26429, do not relate to whether the provision should be retroactively or prospectively applied.

Instead, those sections provide a timeline for actions to be taken by the Department of Community Health to implement the registered user provisions of the MMMA, as well as a self-executing alternative if the department fails to take the necessary actions within the specified timeline.

The case was reversed and remanded for reinstatement of the charges against Defendant.

MICHIGAN COURT OF APPEALS DECISIONS
UNPUBLISHED CASES

People v Carruthers, et. al., Nos. 319991, 319992, 319993, 319994, 319995, 319996,
December 15, 2015 (Michigan Court of Appeals):

In these consolidated cases, the prosecutor appealed the circuit court’s dismissal of the charges against defendants on the basis of entrapment.

Defendants operated and worked for G3, a marijuana dispensary in Southfield. G3 was a sophisticated entity that stocked and sold a wide variety of marijuana products to individuals it had selected as “members” of the dispensary. Prospective members were required to provide documentation that they were authorized to use marijuana for medical purposes under the MMMA. Defendants Earl and Ryan Carruthers also ran a separate entity, Graceful Financial Solutions, to manage G3’s payments and revenue.

In 2011, the Oakland County Sherriff began to investigate G3 to ensure the business complied with the MMMA. The sheriff’s deputy assigned to visit G3 used an undercover persona, and assembled the following documents to use in his interactions with the staff: (1) a driver’s license; (2) an application for a medical marijuana registry identification card, and a copy of a cashed money order payable to “State of MI – MMMP” to show that the state had accepted his application; and (3) a photocopied certification from a doctor recommending the use of marijuana for medical purposes.

On December 5, 2011, the deputy took these documents to G3, and presented them to defendant Sheralyn Geer. Thereafter, he filled out a membership form to become a member of G3—which would allow him to purchase marijuana from the organization—and was accepted as a member.

After the deputy completed the relevant membership paperwork, defendant Geer took him to meet defendant Derrick Holoman in another room, which contained jars of marijuana and marijuana edibles. Holoman provided the deputy with a price list for the various types of marijuana on sale, and sold the deputy a wide assortment of marijuana products. Before leaving the G3 office, defendant Geer gave the deputy a G3 membership card, and told him that he only needed to provide the membership card to purchase marijuana from G3 in the future.

Throughout December 2011 and January 2012, defendants sold the deputy marijuana and other marijuana products.

Thereafter, the police conducted a raid on G3’s premises, and found the following: 31 jars of marijuana weighing a combined total of 8,456 grams, marijuana cigarettes, liquid marijuana, marijuana rice crispy treats, marijuana brownies, 2 containers of marijuana weighing a combined total of 55 grams. G3’s offices also contained packaging materials,

scales, heat sealers, marijuana grinders, FedEx receipts, and various other marijuana paraphernalia.

The prosecution charged defendants with conspiracy to deliver marijuana, in violation of MCL 750.157a and MCL 333.7401(2)(d)(iii).

Issue: Whether the police entrapped the defendants?

Holding: Clearly, this case does not involve entrapment. In fact, “the government simply provided defendant[s] with an additional opportunity to commit a crime that [they] had previously committed.” Johnson, 466 Mich at 503. This investigation and prosecution is a textbook example of basic undercover police work to expose and prosecute ongoing illegality perpetrated by defendants that, by definition, cannot cause entrapment. The trial court made a number of legal errors when it held that the police entrapped these defendants. In so doing, the trial court ignored basic textbook, black letter law. And, such a ruling, if allowed to stand, would seriously undermine law enforcement’s ability to uncover crime.

Reversed and remanded.

People v Auernhammer, No. 322800, November 10, 2015 (Michigan Court of Appeals):

Defendant argued that the trial court abused its discretion and interfered with his right to present a defense when it prohibited the introduction of evidence that his roommate Star Majors had a medical marijuana card and suffered from medical conditions for which she required medical marihuana.

Before trial, defendant brought a motion in limine, seeking to introduce evidence that the marihuana belonged to Majors, that Majors needed the marihuana for serious medical issues, and that Majors had a medical marihuana patient card and used marihuana for her medical issues. Defense counsel asserted that defendant was being charged with possessing Majors’s medicine, and that the evidence related to her medical use of marihuana was relevant to explain why the marihuana was there.

Issue: Whether the defendant is allowed to introduce evidence that the marihuana belonged to Majors, and that Majors had a medical marihuana patient card and used marihuana for her medical issues?

Holding: However, as the trial court noted, the defense that Majors possessed the marihuana was not dependent on whether her possession was lawful, and raising the medical marihuana issue would force the prosecutor to present evidence that her possession was not lawful under the MMMA, which would tend to confuse or mislead the jury as to the real issue: whether defendant possessed the marihuana. Additionally, even if Majors could possess the marihuana legally pursuant to the MMMA, that in no way prevented defendant from also possessing the marihuana.

Affirmed.

People v Agro, No. 320927, October 20, 2015 (Michigan Court of Appeals):

This case arose from a search that occurred on August 25, 2010, at defendant's home. Members from the Oakland County Narcotics Enforcement Team (NET) executed a search warrant and discovered 17 marijuana plants growing in defendant's basement, a brownie containing marijuana in the freezer, and a bottle of marijuana oil in the bathroom, along with a large amount of cash. Defendant and her husband were qualifying registered patients under the MMMA, and defendant was also a registered caregiver under the Act. Defendant filed a pretrial motion to dismiss the charges or, in the alternative, to raise a defense under § 8 of the MMMA, MCL 333.26428. The prosecution argued that defendant was precluded from raising a defense under § 4, MCL 333.26424, or § 8 of the MMMA because she did not keep her marijuana plants in an enclosed, locked facility as required by § 4(a) and (b).

In asserting that she had a bona fide physician-patient relationship with her certifying physician, defendant relied upon her MMMA registry identification card and her own testimony that Dr. Bridges conducted a full medical assessment of her condition and symptoms before determining that she would likely receive a therapeutic or palliative benefit from the medical use of marijuana.

Issue: Whether the defendant met the elements under section 8 of the Michigan Medical Marijuana Act (MMMA)?

Holding: NO. “We hold that the trial court properly denied defendant’s motion to assert a defense under § 8 of the MMMA, MCL 333.26428.”

The Court reasoned that “Defendant already had a family physician that she had been treating with for over 35 years, but he did not supply medical marijuana certifications. It appears clear that defendant did not plan on establishing a physician-patient relationship with Dr. Bridges, but instead simply wanted to obtain a certification to use medical marijuana. Defendant’s relationship with Dr. Bridges was neither pre-existing nor ongoing. Based upon the testimony presented, Dr. Bridges was a certifying, rather than a treating, physician, and did not have a bona fide physician-patient relationship with defendant. Accordingly, the trial court did not err in finding that defendant failed to establish a prima facie showing under § 8(a)(1).”

The Court also stated “Defendant also failed to meet the two other elements needed to assert a defense under § 8. With regard to § 8(a)(2), and by relation (3), defendant needed to present evidence that she was not in possession of more marijuana than was “reasonably necessary for her treatment.” Possession of a registry identification card does not constitute prima facie evidence under either § 8(a)(2) or (3). Hartwick, ___ Mich at ___; slip op at 37, 40.”

Affirmed.

People v Randall, No. 318740, January 13, 2015 (Michigan Court of Appeals):

Defendant appealed as of right from his convictions following a bench trial of manufacturing more than 20 but less than 200 marijuana plants, MCL 333.7401(2)(d)(ii), and possession of marijuana, MCL 333.7403(2)(d).

Defendant moved under Section 4 of the MMMA to dismiss the charges filed. At an evidentiary hearing on his motion, defendant testified that at the time of the raid, he was a designated caregiver for five patients and also was a patient himself. The trial court found that the issue, defendant was indeed “the caregiver to five patients plus he had a patient card himself, making him eligible to possess quantities for six individuals under the [MMMA].” Consequently, the MMMA authorized defendant to possess 15 ounces of usable marijuana and 72 marijuana plants. MCL 333.26424(a), (b)(1)-(2).

The trial court found that defendant possessed 68 plants and, thus, was “in compliance as far as plants go.” However, the trial court found that “usable marijuana” “doesn’t necessarily have to be dry and ready to smoke” and, thus, the 92.8 ounces of seized marijuana, not even considering the amount seized from the traffic stop, was in excess of the 15 total ounces defendant was permitted to possess under Section 4.

The Court of Appeals disagreed.

The Court held that "...Because the material seized in the building was not “dried,” it was not usable marijuana under the MMMA. Accordingly, the trial court erred as a matter of law when it considered the material seized from the building as being usable marijuana. Thus, the only usable marijuana that defendant possessed was from the 7.58 ounces from the traffic stop, which is less than the 15 ounces he was permitted to possess and still fall under the protections of Section 4."

The Court reasoned that " While wet marijuana may, indeed, be “usable” in some circumstances, it is not “usable” for purposes of the MMMA. In order to be usable under the MMMA, the marijuana must be dried. MCL 333.26423(k). “Dried” is the past participle or past tense of the verb “dry.” Random House Webster’s College Dictionary (1997). Therefore, the term “dried” clearly indicates a completed condition."

The Court vacated the defendant's convictions and reversed the trial court's denial of his motion to dismiss.

Kent County Prosecuting Attorney v. City of Grand Rapids, No. 316422, January 8, 2015 (Michigan Court of Appeals), leave denied, No. 151067, December 11, 2015:

The Plaintiff, Kent County Prosecuting Attorney, appealed as of right the May 6, 2013, order granting defendant City of Grand Rapids and intervening defendant Decriminalize GR summary disposition regarding plaintiff’s complaint that an amendment to the Grand Rapids City Charter was preempted by state law.

The primary argument by the Plaintiff was subsections (a) and (b) of the Charter Amendment decriminalize marijuana and therefore conflicted with MCL 333.7401(2)(d) and MCL 333.7403(2)(d). MCL 333.7401(2)(d) provides that the manufacture, delivery, or possession with intent to manufacture or deliver marijuana is a felony and MCL 333.7403(2)(d) provides that possession of marijuana is a misdemeanor.

The Court of Appeals disagreed with the Plaintiff and stated that "Nothing in subsections (a) and (b) of the Charter Amendment purports to prevent the application of state law as it relates to marijuana offenses. Instead, subsections (a) and (b) of the Charter Amendment create civil infractions for certain actions related to marijuana. This is not a case where the Charter Amendment permits what state law prohibits or prohibits what state law permits as required to show a direct conflict for the purpose of preemption. Accordingly, subsections (a) and (b) of the Charter Amendment do not directly conflict with the portions of state law that criminalize actions related to marijuana."

The Plaintiff also argued that the portions of subsections (d) and (e) of the Charter Amendment that bar Grand Rapids police officers from reporting marijuana infractions under the Charter Amendment to plaintiff are invalid. The Court of Appeals disagreed with the Plaintiff and stated that "Plaintiff provides no authority for the proposition that it is entitled to reports from the Grand Rapids Police Department, and that argument consequently is abandoned.

The Court further stated that the "Plaintiff also relies on MCL 49.153, which provides that "[t]he prosecuting attorneys shall, in their respective counties, appear for the state or county, and prosecute or defend in all the courts of the county, all prosecutions, suits, applications and motions whether civil or criminal, in which the state or county may be a party or interested." But subsections (d) and (e) of the Charter Amendment do not prohibit plaintiff from prosecuting marijuana offenses under state law, which means that those subsections are not preempted by plaintiff's powers under MCL 49.153."

Therefore, the Court held that the Charter Amendment is not preempted by state law. The parties do not identify a genuine issue as to a material fact in this case, and the trial court did not err in granting summary disposition under MCR 2.116c(10).

Affirmed.

People v Amsdill, No. 317875, December 2, 2014 (Michigan Court of Appeals):

Issue: Whether the trial court erred when it ruled that the State of Michigan Supreme Court decision of State of Michigan v. McQueen should not be applied retroactively?

Holding: Yes

The Court of Appeals citing *People v Johnson*, 302 Mich app 450 (2013) held “that “In Johnson, we held that “defendants were never led to believe by a judicial decision of this Court or our Supreme Court that operating a marijuana dispensary was permitted under the MMMA” and that because the McQueen decisions did not overrule clear and uncontradicted case law, they warrant “retroactive application.” 302 Mich App at 465-466. We also declined to apply the rule of lenity because: “The MMMA did not, and still does not, include any provision that states that marijuana dispensaries are or were legal business entities.” 302 Mich App at 463; see also *People v Vansickle*, 303 Mich App 111, 119-120; 842 NW2d 289 (2013) (“the retroactive application of our decision in McQueen did not present due process concerns because it did not operate as an ex post facto law.”).”

Reversed and remanded.

People v Grant, No. 316487, September 23, 2014 (Michigan Court of Appeals):

Issue: Whether the defendant should be excused from liability for the charged offenses because he reasonably – albeit mistakenly – believed that the co-defendant was growing marihuana in **compliance with the Michigan Medical Marihuana Act (MMMA)?**

Holding: NO

The Court held that “The fact that defendant may have acted under a mistaken belief as to the legality of the marijuana grow operation is no defense under Michigan law because “ignorance of the law or a mistake of law is no defense to a criminal prosecution.” *People v Motor City Hosp & Surgical Supply, Inc*, 227 Mich App 209, 215; 575 NW2d 95 (1997). As such, the trial court properly precluded defendant from admitting evidence concerning the MMMA or medical marijuana in an effort to show that his actions should be excused. Moreover, we note that reference to the MMMA and medical marijuana was irrelevant given defendant’s theory of defense.”

People v. O’Connor, No. 312843, January 16, 2014 (Michigan Court of Appeals):

Issue: Whether the defendant met the requirements under Section 8 of the MMMA?

Holding: NO.

The Defendant asserted that the trial court improperly denied his motion to present a § 8 defense because the defense is available to unregistered patients, including unregistered caregivers.

The Court of Appeals disagreed. The Court ruled as follows:

“We conclude that the trial court properly dismissed O’Connor’s untimely motion. MCL 333.26427(b) requires a person to bring a pretrial evidentiary hearing to prove the

elements of MCL 333.26427(a)—the defense cannot be asserted for the first time at trial. Here, O'Connor moved to present a § 8 defense at the conclusion of the first day of trial. Thus, O'Connor did not comply with the provisions of the act because he asserted the defense for the first time during trial. We conclude that the trial court did not err by denying O'Connor's motion to present a § 8 defense."

Affirmed.

People v. Dehko, No. 305041, March 21, 2013 (Michigan Court of Appeals):

Defendant was granted an evidentiary hearing and provided with numerous opportunities to present evidence on the elements of the MMMA's affirmative defense, up to the eve of trial. Defendant declined to do so. Instead, the defendant maintained that he would continue to rely on his physician's certification and evaluation and a proposed marijuana cultivation expert.

Issue: Whether the defendant met the requirements under Section 8 of the MMMA?

Holding: The Court ruled held that "Given defendant's chosen evidence, there is no question of fact regarding whether defendant satisfied the second element under § 8(a)(2)."

"Here, even if the physician certification raised an inference of a bona fide patient physician relationship, because defendant failed to present any evidence regarding whether the amount of marijuana he possessed was reasonable, it is not necessary to determine whether he also established a question of fact with respect to the other elements of a § 8 defense, including whether he had a bona fide physician-patient relationship with his respective certifying physician."

The Court reasoned as follows:

"Although afforded the opportunity to do so, defendant did not present any evidence that he possessed only the amount of marijuana reasonably necessary to ensure him an uninterrupted supply for the treatment or alleviation of his alleged serious or debilitating medical condition or symptoms of that condition. Defendant did not testify and did not present any medical records, or medically-based evidence or testimony from Dr. May or another knowledgeable doctor regarding how much marijuana he was instructed to use or needed to use at a time to address his condition, and how often and how long he needed to use it.

The mere certification does not provide any information regarding how much marijuana defendant should use for treatment. Further, defendant did not explain below how a marijuana cultivation expert possessed the medical knowledge or information to address defendant's medical condition and the amount of marijuana defendant needed for his allegedly serious or debilitating health condition. Because defendant failed to establish a

question of fact with respect to this element of the § 8 defense, he was not entitled to assert the § 8 defense at trial.”

People v. Hinzman, No. 309351, February 5, 2013 (Michigan Court of Appeals):

The defendant was charged with perjury, MCL 750.422. Defendant appealed by leave granted the circuit court’s order denying defendant’s motion to exclude evidence. On appeal, defendant argued that the circuit court erred in denying her motion.

The defendant and her husband were originally charged as codefendants with illegally delivering/manufacturing marihuana. During an evidentiary hearing in that matter, defendant testified that on May 25, 2010, she was a registered medical marihuana caregiver to three patients. Subsequently, in order to verify this testimony, the prosecutor obtained a subpoena from the trial court, directed to the Department of Licensing and Regulatory Affairs (DLRA), for the production of documents pertaining to defendant’s asserted status as a registered medical marihuana caregiver.

In response to the subpoena, Celeste Clarkston, the Compliance Section Manager of the Health Regulatory Division in the DLRA, gathered and provided the following information: three Caregiver Attestations (dated May 10, May 14, and July 20, 2010); three Change Forms (dated May 10, May 14, and July 20, 2010); a photocopy of a check for \$10 made out to “State of Michigan –MMMP”; a photocopy of a money order for \$10 made out to “Michigan Department of Community Health”; three photocopies of a Physician’s Statement (dated March 27, 2010); photocopies of three driver’s licenses; and a letter from Clarkston summarizing the information contained in the records and certifying that the documents are true copies of those contained in the master file.

During trial in the illegal delivery/manufacture case, the prosecutor marked as Exhibit 19 all of the documents obtained by subpoena from the DLRA, and sought their admission into evidence. Defendant challenged the admission of this evidence, arguing that the information produced under subpoena was illegally produced and, alternatively, that the information produced was beyond the scope of information permitted to be disclosed by MCL 333.26423(i).

Issue: Whether the trial court properly denied the motion to exclude this evidence?

Defendant first argued that the information contained in Exhibit 19 was obtained in violation of MCL 333.26426 and Mich Admin Code, R 333.121 (Rule 333.121) and that as a result, the exhibit should be suppressed. The Court of Appeals disagreed.

Defendant claimed, without citation to any authority, that a LEIN inquiry is the sole method by which law enforcement can verify the validity of MMMA registry cards. The Court of Appeals rejected this argument as without merit. The Court noted that “LEIN is not mentioned in the statute at all, let alone established as the only permissible way of verifying the validity of registry cards.

Defendant next argued that the information provided exceeded what was permissible under statute and rule. The Court noted that “Both MCL 333.26426(h)(3) and Rule 333.121(3) provide that information *shall* be provided to law enforcement upon request and that the disclosure should not contain “more information than is reasonably necessary to verify the authenticity of the registry identification card.”

Holding: The Court held that “Exhibit 19 does not disclose more information than necessary to determine the authenticity of defendant’s registry card and caregiver status as of May 25, 2010. The only identifying information disclosed in the records are defendant’s name, date of birth, home address and telephone number, social security number, and driver’s license number. All the information pertaining to her patients is redacted. Each document is necessary to determine whether defendant was, in fact, a registered caregiver for three patients on May 25, 2010.

Therefore, the trial court properly concluded that information contained in Exhibit 19 complied with the requirement in both the statute and the administrative rule to avoid disclosure of more information than reasonably necessary.”

People v. Hinzman, No. 308909, July 24, 2012 (Michigan Court of Appeals):

Issue: Whether the Defendant was able to successfully assert the affirmative defense under Section 8 of the MMMA?

Holding: Applying the Section 8 defense as interpreted by the Supreme Court in *King* and *Kolanek*, the Court held, in pertinent part, that defendants could not establish that the amount of marihuana they possessed was not more than “reasonably necessary” to provide uninterrupted availability.

People v. Kiel, No. 301427, July 17, 2012 (Michigan Court of Appeals):

Issue: Whether the Defendant was entitled to present an affirmative defense as to all of the marihuana plants on his property?

Holding: The Court held that In light of the most recent Michigan Supreme Court decision of *People v. Kolanek*, No. 142695, decided May 31, 2012, which was decided after Kiel’s conviction, the *Kiel* Court of Appeals held that “While this instruction matches the requirements under § 4, the trial court erred in giving this instruction to the jury because, as discussed, *supra*, defendant was entitled to assert a § 8 affirmative defense at trial. As clarified by our Supreme Court, § 4 applies only to *registered* qualifying patients, while § 8 provides an affirmative defense to “patients” generally. *Kolanek*, ___ Mich at ___ (slip op at 19). Because the jury was not properly instructed concerning the applicable affirmative defense, defendant is entitled to a new trial.”

People v. Keller, Case No. 304022, May 10, 2012 (Michigan Court of Appeals):

Issue: Whether the plants on defendant's property were in an "enclosed, locked facility?"

Holding: The Court held that "Those plants joined all the others as being readily accessible to a member of defendant's family, or any passerby his dogs did not decide to treat as a foe. The statute's requirement that the facility be enclosed and locked indicates that access to them is to be secured by something more than the grower's withholding of permission to unauthorized persons to access them. Because defendant grew more than 12 plants and failed to keep them in a secure, enclosed facility, the MMMA afforded him no defense to that general prohibition."

Note the new definition of "enclosed locked facility" in MCL 333.26423(d) which went into effect on April 1, 2013.

People v. Malik, Case No. 293397, August 10, 2010 (Michigan Court of Appeals):

Issue: Can a Defendant be criminalized for the operation of a motor vehicle while having any amount of a schedule 1 controlled substance in his or her body, regardless of whether that individual has exhibited signs of impairment? Is the Medical Marihuana Act retroactive?

Holding: Yes, the court held that while evidence of a positive test for 11-Carboxy-THC is inadmissible, evidence of the presence of tetrahydrocannabinol (THC) in a Defendant's system is still relevant in determining whether the Defendant was operating the vehicle while intoxicated. The Court rejected the application of the Medical Marihuana Act retroactively.

The prosecution presented only one issue on appeal, arguing that the trial court erroneously invalidated MCL 257.625(8) on due process grounds in contravention of the Supreme Court's decision in *People v Derror*, 475 Mich 316; 715 NW2d 822 (2006).

On October 17, 2008, Defendant's automobile collided with the victim's motorcycle. Defendant's blood test revealed four nanograms of parent tetrahydrocannabinol (THC), and 15 nanograms of 11- carboxy-THC. Defendant was charged, as an habitual offender, second offense, MCL 769.10, with operating a vehicle while intoxicated and causing death, MCL 257.625(4)(a), operating a vehicle with a suspended or revoked license and causing death, MCL 257.904(4), and negligent homicide, MCL 750.324.

In order to secure a conviction for violation of MCL 257.625(4)(a), the prosecution sought to prove that Defendant violated MCL 257.625(8).MCL 257.625(8), which criminalizes the operation of a motor vehicle by an individual who has any amount of a schedule I controlled substance in his or her body, regardless of whether that individual has exhibited signs of impairment.

It should be noted that MCL 333.7211 provides a general definition of schedule 1 controlled substances, while MCL 333.7212 designates specific substances as schedule 1 controlled substances. THC is one such schedule 1 controlled substance.

Defendant filed a number of pretrial motions, including a challenge to the constitutionality of MCL 257.625(4). The Barry County Circuit Court ruled that “MCL 257.625(8) is fundamentally unfair, does nothing to promote public safety, and bears no rational relationship to any legitimate governmental interest,” and it invalidated MCL 257.625(8) on due process grounds.

In an unpublished opinion, the Court of Appeals reversed and remanded. The Court ruled as follows:

“Defendant has not alleged that it is unconstitutional to criminalize operating a motor vehicle while under the influence of THC. Consequently, we hold that the trial court’s ruling regarding the constitutionality of MCL 333.7212 must be reversed and this matter is remanded for trial. At trial, the evidence of the positive test for 11-carboxy-THC is inadmissible as it is now irrelevant. However, the evidence of the presence of THC in Defendant’s system is still relevant in determining whether he was operating his motor vehicle while intoxicated.”

Lastly, the Court rejected the argument about the Michigan Medical Marihuana Act being applicable and retroactive under *People v Conyer*, 281 Mich App 526 (2008).

MICHIGAN ATTORNEY GENERAL'S OPINIONS

Attorney General Opinion 7270, released May 10, 2013:

The Attorney General was asked several questions concerning the application of the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, in child-protective proceedings brought under the Michigan Juvenile Code (Juvenile Code), MCL 712A.1 *et seq.*

Based on the questions asked of him, the Attorney general opined on 4 key issues:

1. A properly registered patient or primary caregiver, who engages in the “medical use” of marihuana “in accordance with” the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, may invoke the protections provided in sections 4(a) and (b) of the Act in a child-protective proceeding under the Michigan Juvenile Code, MCL 712A.1 *et seq.* MCL 333.26424(a) and (b). But the protections are subject to the exception in section 4(c) of the MMMA for behavior that creates an unreasonable danger to a minor that can be clearly articulated and substantiated. MCL 333.26424(c).
2. Whether a person’s actions associated with the medical use of marihuana present an “unreasonable danger” to a child under section 4(c) of the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26424(c), is a fact-specific inquiry dependent upon the circumstances of each case. Any assertion that a person’s behavior associated with the medical use of marihuana presents an unreasonable danger to a child must be clearly expressed and supported by evidence.
3. To invoke the protections provided for in sections 4(a) and (b) of the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26424(a) and (b), in a child-protective proceeding under the Michigan Juvenile Code, MCL 712A.1 *et seq.*, a patient or primary caregiver must have been issued and possess a valid registry identification card. The affirmative defense provided for in section 8(a) of the MMMA only applies in a criminal prosecution, and thus is not available in a child-protective proceeding under the Juvenile Code. MCL 333.264248(a).
4. The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, does not permit a court in a child-protective proceeding under the Michigan Juvenile Code, MCL 712A.1 *et seq.*, to independently determine whether a person is a qualifying patient. But the court may review evidence to determine whether a person’s conduct related to marihuana is for the purpose of treating or alleviating the person’s debilitating medical condition or symptoms associated with the condition. MCL 333.26424(d)(2). If the person’s use or possession of marihuana is not for that purpose, and thus not “in accordance with”

the MMMA, the person is not entitled to invoke the protections offered in section 4(a) in a child-protective proceeding. MCL 333.26424(a), MCL 333.26427(a).

Attorney General Opinion 7262, released November 10, 2011:

The Attorney General was asked whether a law enforcement officer who arrests a patient or primary caregiver registered under the Michigan Medical Marihuana Act (MMMA or Act), Initiated Law 1 of 2008, MCL 333.26241 *et seq.*, must return marihuana found in the possession of the patient or primary caregiver upon his or her release from custody.

The Attorney General noted "That under section 4(h) of the MMMA, a law enforcement officer must return marihuana to a registered patient or caregiver if the individual's possession complies with the MMMA. But the federal Controlled Substance Act (CSA) prohibits the possession or distribution of marihuana under any circumstance."

He further noted that "If a law enforcement officer returns marihuana to a patient or caregiver as required by section 4(h), the officer is distributing or aiding and abetting the distribution or possession of marihuana by the patient or caregiver in violation of the CSA. Thus, a Michigan law enforcement officer cannot simultaneously comply with the federal prohibition against distribution or aiding and abetting the distribution or possession of marihuana and the state prohibition against forfeiture of marihuana. By returning marihuana to a registered patient or caregiver, a law enforcement officer is exposing himself or herself to potential criminal and civil penalties under the CSA for the distribution of marihuana or for aiding or abetting the possession or distribution of marihuana."

Therefore, the Attorney General opined that "Section 4(h) of the Michigan Medical Marihuana Act, MCL 333.26424(h), which prohibits the forfeiture of marihuana possessed for medical use, directly conflicts with and is thus preempted by, the federal Controlled Substances Act, 21 USC 801 *et seq.*, to the extent section 4(h) requires a law enforcement officer to return marihuana to a registered patient or primary caregiver upon release from custody."

Attorney General Opinion 7261, released September 15, 2011:

Attorney General opined that "2009 PA 188, which prohibits smoking in public places and food service establishments, applies exclusively to the smoking of tobacco products. Because marihuana is not a tobacco product, the smoking ban does not apply to the smoking of medical marihuana."

He further opined that "The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, prohibits qualifying registered patients from smoking marihuana in the public areas of food service establishments, hotels, motels, apartment buildings, and any other place open to the public."

Lastly, he opined that “An owner of a hotel, motel, apartment building, or other similar facility can prohibit the smoking of marihuana and the growing of marihuana plants anywhere within the facility, and imposing such a prohibition does not violate the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq.*”

Attorney General Opinion 7259, released June 28, 2011:

The Attorney General opined that “The Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et. seq.* prohibits the joint cooperative cultivation or sharing of marihuana plants because each patient’s plants must be grown and maintained in a separate enclosed, locked facility that is only accessible to the registered patient or the patient’s registered primary caregiver.”

Further, he states on page 8 of his opinion that “It also protects against unauthorized access to marihuana plants because, at any given time, there is only one person responsible and accountable for a patient’s plants. The plain language of the MMMA thus prohibits the joint cooperative cultivating or sharing of marihuana plants because only the individual authorized to cultivate the marihuana plants, either the registered patient or the patient’s registered primary caregiver, may have access to the enclosed, locker facility housing the marihuana plants intended for the individual patient’s use.”

Attorney General Opinion Number 7250, August 31, 2010:

The Michigan Attorney General opined that the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, does not prohibit the Department of Community Health from entering into an agreement or contract with an outside vendor to assist the department in processing applications, eligibility determinations, and the issuance of identification cards to patients and caregivers, if the Department of Community Health retains its authority to approve or deny issuance of registry identification cards.

However, 2009 AACRS, R 333.121(2) promulgated by the Department of Community Health under the Michigan Medical Marihuana Act, Initiated Law 1 of 2008, MCL 333.26421 *et seq.*, which provides that the confidential information "may only be accessed or released to authorized employees of the department," prevents the Department of Community Health from entering into a contract with an outside vendor to process registry applications or renewals.

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