

MICHIGAN SUPREME COURT BANS MEDICAL MARIJUANA DISPENSARIES

The Michigan Supreme Court in *State of Michigan v McQueen*, -- N.W.2d -- , 2013 WL 490682 Mich, released February 8, 2013 (No. 143824), recently issued a significant medical marijuana decision which prohibits dispensaries from selling marijuana, holding that dispensaries are illegal under the Michigan Medical Marijuana Act (“MMMA”).

In this case, the Court ruled that defendants’ business, Compassion Apothecary in Mount Pleasant, which facilitated patient to patient sales of marijuana, operated in violation of the MMMA because such patient to patient transfers and sales of marijuana were illegal under the MMMA. In reaching its decision, the Court concluded that the MMMA did not contemplate patient to patient sales of marijuana for medical use, and that by facilitating such sales, defendants’ business constituted a public nuisance.

This ruling is decisive in clarifying the 2011 Michigan Court of Appeals’ decision of *People v McQueen*, 293 Mich App 644 (2011), which ruled that dispensaries were illegal under the MMMA, but was ambiguous as to the legality of patient to patient transfers. The Supreme Court made it clear that dispensaries or compassion centers who distribute or sell medical marijuana are illegal, that the defendants operating such businesses are not entitled to immunity from prosecution under the MMMA, and that patient to patient transfers of medical marijuana are prohibited.

The Supreme Court’s ruling is important for several reasons. First, the ruling concluded that the only legal sales of medical marijuana in Michigan are those specifically set forth in the MMMA. As such, five state approved medical marijuana users may register with a single state-approved caregiver, who may act as a long term provider of the drug, but only to those five users. The Supreme Court was unwavering in its conclusion that the MMMA is not an open door to unrestricted retail marijuana sales. The *McQueen* decision clarifies the law with respect to the sale of marijuana and quashes the dispensaries’ argument that they could sell or distribute marijuana pursuant to the MMMA. The Supreme Court ruled that the Michigan Court of Appeals erred in the earlier *McQueen* decision that the sale of medical marijuana was not a “medical use”.

Another key aspect of the case is the Court’s determination that the operation of a medical marijuana dispensary is an enjoined public nuisance. Accordingly, municipalities will be able to obtain an injunction to shut down illegal medical marijuana dispensaries or compassion centers in their communities who sell or distribute medical marijuana.

Our website will continue to post all updates and changes in the law regarding medical marijuana.