

COURT OF APPEALS BANS MARIJUANA DISPENSARIES

In a major published decision, the Michigan Court of Appeals in *State of Michigan v McQueen*, -- N.W.2d -- , Mich App., August 23, 2011 (No. 301951), has recently ruled that dispensaries selling marijuana are illegal under the state's voter-initiated medical marijuana law. In this case, the Court ruled that Compassion Apothecary, a marijuana dispensary in Mount Pleasant, violated the state's 2008 Michigan Medical Marijuana Act ("MMMA") because the owners of the dispensary not only facilitated sales between patients and care givers, but also sold the marijuana for a percentage of the sales. The Court concluded that the law does not allow sales of marijuana and therefore, the dispensary may be shut down as a public nuisance. This ruling will have significant statewide impact upon businesses operating as dispensaries or compassion centers who distribute and sell medical marijuana, as well as upon local municipalities who have attempted to ban or restrict such dispensaries.

The Court reached several noteworthy conclusions in issuing its decision. First, the Court determined that the operation of a medical marijuana dispensary is an enjoined public nuisance. In making this determination, the Court held that the operation of a dispensary violates the Michigan Public Health Code, which prohibits the possession and delivery of marijuana. Because of this decision, it appears that municipalities may now obtain an injunction to shut down these illegal medical marijuana dispensaries or compassion centers in their communities, if such dispensaries sell marijuana.

Furthermore, the Court ruled that the defendants in *McQueen* were not excused or shielded by the MMMA because they were not operating the dispensary in accordance with the Act. Specifically, the Court held that the medical use of marijuana, as defined by the

MMMA, does not include patient to patient sales of marijuana, and that no other provision of the Act can be read to permit such sales. Significantly, the Court noted that MMMA does not authorize medical marijuana dispensaries, and accordingly, there is no authority to actively engage in the selling of marijuana between dispensary members. Prior to the *McQueen* decision, dispensaries were distributing and selling marijuana purportedly, under the guise that the MMMA protected their activities. The *McQueen* decision clarifies the law with respect to the sale of marijuana and appears to quash the dispensaries' notion that they can sell marijuana pursuant to the MMMA.

Although the Court of Appeals has ruled on other issues regarding the medical marijuana law, this is the first time the Court has weighed in on a commercial marijuana sales case. The law is still unclear on the issue of how qualifying medical marijuana patients may obtain their marijuana, and it is anticipated that the Michigan Supreme Court will hear appeals on this aspect of the medical marijuana law, as well as other provisions of the MMMA in the near future. Additionally, there are a number of bills pending in the Michigan legislature which could clarify and/or restrict the MMMA. Our website will continue to post all updates and changes in the law regarding medical marijuana.