

Michigan Supreme Court Rules: Medical marijuana users protected under law

Posted by Brandy on Jun 4, 2012 in News | 1 comment

May 31, 2012 at 6:37 pm

- By Jennifer Chambers
- The Detroit News

From The Detroit News:

<http://www.detroitnews.com/article/20120531/METRO/205310475#ixzz1wqCliRvk>

In its first major ruling on Michigan's controversial medical marijuana act, the Michigan Supreme Court said Thursday the 2008 voter-approved law provides legal protection from prosecution, even for users without state-issued medical marijuana cards.

In a 34-page decision, the Court said the law provides an affirmative defense to "individuals who are not registered cardholding patients to assert the affirmative defense" in criminal prosecutions involving marijuana.

In cases out of Oakland and Shiawassee counties, the court ruled unanimously that lower court interpretations of the statute had been too restrictive.

In the Oakland County case, the court said the law allows a person arrested on a marijuana-related offense to assert a medical marijuana defense as long as the defendant can show a physician's statement — which certifies a patient has a qualifying medical condition to use marijuana — was made after the law was passed but before the alleged crime occurred.

"Because the MMMA (Michigan Medical Marijuana Act) was the result of a voter initiative, our goal is to ascertain and give effect to the intent of the electorate, rather than the Legislature, as reflected in the language of the law itself. We must give the words of the MMMA their ordinary and plain meaning as would have been understood by the electorate," the opinion said.

The act does not create a general right for individuals to use and possess marijuana in Michigan, the court said, adding that the possession, manufacture and delivery of marijuana remain punishable offenses.

"Rather, the MMMA's protections are limited to individuals suffering from serious or debilitating medical conditions or symptoms. ..." the court said.

Michael Komorn, an attorney specializing in medical marijuana cases and the president of the Michigan Medical Marijuana Association, said the ruling from Michigan's high court now means that defendants in criminal cases will be allowed to present a defense to a jury that their use of marijuana was for medical purposes.

"Up to this point the Court of Appeals decisions have eliminated and eradicated the right of the people to present a defense to a jury," **Komorn** said. "This ruling will allow us to present a case and go to trial. It's a game changer. Police will continue to arrest first and ask questions later but prosecutors are going to have to rethink with what kind of cases they want to pursue."

Matthew Abel represents the defendant in the Shiawassee case, Owosso resident Larry King, who suffers from severe and chronic back pain. King was issued a medical marijuana card in 2009 by the state after being examined and approved by a doctor. He grew 12 marijuana plants for his own medical use. The Shiawassee County Prosecutor charged him with manufacturing marijuana, a felony, because some of his plants were being grown outside.

Drug charges against King initially were thrown out because he was a medical marijuana patient. But the Court of Appeals reinstated felony drug charges against him because it held that King would not be permitted to raise a medical defense at his trial. The court's decision reverses the appeals court.

Abel said he does not know if the ruling will reduce the number of arrests and prosecutions of medical marijuana users but it will directly impact all court cases in play now.

"It will make it more difficult for prosecutors to prevent medical marijuana patients from using the medial marijuana defense," said Abel, who has 25 such cases alone and estimates there are hundreds across the state of Michigan.

The ACLU of Michigan called the decision a victory for medical marijuana patients throughout the state.

"Across the state, patients have not been able to assert their rights under the Medical Marihuana Act because the Court of Appeals in this case misinterpreted the law. This decision makes it very clear: A patient who uses marijuana to treat their medical conditions with the approval by their doctor should not be punished for mere technical errors regarding the number of plants or how they were secured," Dan Korobkin, ACLU of Michigan staff attorney, said.

Advocates are hailing the ruling as a move toward more accurate interpretations of the law and less hassle for patients.

"People have been denied their rights," said Jamie Lowell, co-founder of Ypsilanti's 3rd Coast Compassion Center, an education and faith access center for medical marijuana patients. "People can finally do what was originally intended by the voters and by the drafters of the act."

Detroit News Staff Writer Mark Hicks contributed.

