

# Prosecutor, advocates react to appeals court ruling barring sale of medical marijuana

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Oakland County law enforcement officials and medical marijuana advocates are taking sides regarding a Court of Appeals' decision that states medical marijuana cannot be sold through private shops or dispensaries — estimated to currently number in the hundreds in Michigan.

Wednesday's ruling — a major decision that strikes at businesses trying to cash in on pot — is the first time the appeals court has ruled in a case involving commercial pot sales. The Michigan Supreme Court has agreed to hear appeals on other aspects of the medical marijuana law.

A three-judge panel said the 2008 medical marijuana law, as well as the state's public health code, does not allow people to sell pot to each other, even if they have state-issued marijuana cards.

Paul Walton, Oakland County chief assistant prosecutor, said given the Medical Marihuana Act's language, the ruling wasn't surprising.

“If you are a patient under the act, you can grow 12 plants yourself or you can designate a caregiver to grow for you,” he said. “Caregivers can have up to five patients. It's pretty clear — patients have to be linked to caregivers, and patient-to-patient sales are illegal.”

He explained that the Medical Marihuana Act provides an exemption to allow patients to use marijuana.

“If you don't fall within the four squares of the law, then you are engaged in illegal activity,” he said. “The Court of Appeals has repeatedly said, ‘This is an exemption.’”

Rick Thompson, editor of Oak Park-based Michigan Medical Marijuana Magazine, said the Court of Appeals ruling is a “direct contradiction” to the Medical Marihuana Act.

“The act states transfers don’t constitute sales of an illegal substance,” Thompson said.

Thompson estimated there may be 500 dispensaries currently operating in Michigan. Walton said he knows of dispensaries in Wayne and Macomb counties, and said Lansing just put a limit on having 48 in the city.

Thompson also referenced a number of medical marijuana-related bills recently supported by Attorney General Bill Schuette.

“There was no bill on dispensaries,” said Thompson. “Either he loves them or he already knew the Court of Appeals was going to strike them down.”

If the latter is true, said Thompson, “The Attorney General should not be privileged to knowing Court of Appeal rulings in advance. It’s inappropriate.”

The Court of Appeals ruling stems from a case out of Isabella County involving Compassionate Apothecary, a facility in which members who were either registered patients or their caregivers purchased marijuana from other members while the business owners retained at least 20 percent of the sale price. Prosecutors filed a complaint alleging that the operation of the facility was not in accordance with the state’s Medical Marihuana Act, and therefore a nuisance because it violated the public health code.

A trial court judge sided with Compassionate Apothecary. In reversing the lower court, the Court of Appeals said the operation of the business is an enjoined public nuisance and in violation of the health code, which prohibits the possession and delivery of marijuana.

The appellate judges also said the business is not operated within the provisions of the state’s Medical Marihuana Act because the medical use of marijuana, as defined by the Act, does not include patient-to-patient sales.

Gerald Fisher, a professor at Cooley Law School in Auburn Hills, wrote an extensive paper last fall on the Act for the Michigan Municipal League and the Michigan Townships Association. He said the Court of Appeals decision is consistent with his interpretation of the law.

“When you read the Act as a whole, the fundamental intent of the Act is to allow a caregiver to help up to five patients,” he said. “What we have here is not a caregiver helping five patients, but patients helping an unlimited number of other patients. That strays very far from the fundamental intent of the Act.”

Michael Komorn, an attorney who has defended medical marijuana cardholders, called the appellate court's ruling "an unfortunate decision for patients who are suffering."

He said that this opinion means "a cancer patient going through chemotherapy, vomiting and pain would not be able to acquire cannabis from another state license caregiver or patient.

"If they did, they would be labeled a criminal and the Court of Appeals would tell that cancer patient they would have to wait 3-4 months until they could grow their own plants or be arrested," Komorn said.

"I believe that the 63 percent of the voters in Michigan intended medical marijuana patients to have safe reliable access to cannabis. This decision does not recognize this very basic but important fact.

"It is easy to issue opinions from the comfort of judicial chambers when the Justices don't see the faces of pain and suffering of the sick."

Medical Marijuana Business Consultant Samantha Moffett of the Walled Lake-based Ambrose Law Group said she was disappointed with the ruling.

"It is not just business-minded patients and caregivers who believe dispensaries are a legal business structure in Michigan — multiple municipalities across the state have passed ordinances allowing and structuring such businesses," she said.

"Cities and townships have been able to fill commercial spaces dormant for years, generate jobs, collect licensing fees to fund the municipality, and most importantly, provide safe access to medicine for patients. The appellate court has taken these things from the people of Michigan today.

"As of right now, all dispensaries in the state are considered a nuisance and must be shut down unless they want to be pulled into court. It will be interesting to see how municipalities who have collected licensing fees from these businesses react."

Clarkston-based attorney Steve Reina, who has handled cases involving medical marijuana patients facing drug charges, said he said believes that political events and other factors will result in laws prohibiting marijuana use eventually becoming more lax.

"Those who cannot learn history's lessons are doomed to repeat them," he said. "From Prohibition on forward, a lesson in American history has been you cannot legislate morality. The Court of Appeals ruling, therefore, probably stands eventually to be reversed by history itself."

There are several medical marijuana-related cases working their way through Oakland County courts. A number of people were charged in connection with the raids of medical marijuana dispensaries Clinical Relief in Ferndale and Everybody's Cafe and Herbal Remedies in Waterford Township.

Oakland Circuit Judge Colleen O'Brien issued a ruling last week that said the Medical Marihuana Act does not provide protection from prosecution to medical marijuana dispensaries.

Michigan voters in 2008 approved a ballot proposal that included physician-approved use of marijuana by registered patients with debilitating medical conditions and allowed registered individuals to grow limited amounts of marijuana for patients.

Medical marijuana is a controversial topic, with some people saying that the laws related to marijuana use in Michigan are still unclear.