STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BRANDON MCQUEEN, MATTHEW TAYLOR, D/B/A/ COMPASSIONATE APOTHECARY, LLC,

Defendants-Appellees.
/

Court of Appeals No. 301951

Isabella Circuit Court No. 10-8488-CZ

ATTORNEY GENERAL BILL SCHUETTE'S AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLANT

Respectfully submitted,

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STATEMENT OF JURISDICTION

Attorney General Bill Schuette adopts the Statement of Jurisdiction set forth in Plaintiff-Appellant People of the State of Michigan's brief on appeal.

STATEMENT OF QUESTION

I. Defendants' business activities of facilitating the transfer, delivery, or sale of marihuana between registered qualifying patients and registered primary caregivers are not protected by the Michigan Medical Marihuana Act. Because defendants' activities are unprotected, they violate other existing laws and are illegal. Activities that are proscribed by law constitute a public nuisance. Based on the facts and law, did the trial court err in denying the people's complaint for abatement of a public nuisance?

Trial Court's answer: "No."

Appellant's answer: "Yes."

Appellees' answer: "No."

STATEMENT OF INTEREST OF AMICUS CURIAE ATTORNEY GENERAL BILL SCHUETTE

The Attorney General is the chief law enforcement officer of the State of Michigan,[1] and as such has an interest in enforcing the civil and criminal laws of this State and protecting the safety of Michigan's citizens. The circuit court's decision in this case involves both these interests, because it hampers proper enforcement of the law and imperils the health and safety of Michigan residents by authorizing unlawful activity. It is necessary for this Court to reverse the lower court's decision in a published opinion, not only to correct the errors with respect to the instant defendants, but also to guide lower courts in the proper application of the Michigan Medical Marihuana Act (MMMA or Act), 2008 Initiated Law, MCL 333.26421 *et seq*.

The Attorney General strongly agrees with plaintiff that defendants' operation of the business at issue is illegal because: 1) the transfer of marihuana from a primary caregiver to another caregiver or to a qualifying patient with whom the caregiver does not have a registered connection is not protected by the MMMA; 2) any transfer of marihuana from one qualifying patient to another is not protected by the MMMA; and 3) in any event, the transfers here are sales that are not protected by the MMMA. Not protected by the MMMA, all of these activities remain illegal under Michigan law.

[1] *Fieger v Cox*, 274 Mich App 449, 451; 734 NW2d 602 (2007).

STATEMENT OF FACTS

The Attorney General adopts the Statement of Facts set forth in the people's brief on appeal.

ARGUMENT

I. Defendants' business activities of facilitating the transfer, delivery or sale of marihuana between registered qualifying patients and between registered primary caregivers and qualifying patients not in a registered relationship with the caregivers are not protected by the Michigan Medical Marihuana Act. Because defendants' activities are unprotected, they violate other existing laws and are illegal. Activities that are proscribed by law constitute a public nuisance. Based on the facts and law, the trial court erred in denying the people's complaint for abatement of a public nuisance.

A. Standard of Review

In its December 16, 2010, opinion and order denying the motion for preliminary injunction, the trial court expressly held that defendants' activities were not a nuisance per se or a public nuisance. The court stated that its opinion and order "resolve[d] the last pending claim and close[d] the case." Thus, the trial court denied relief on the merits of the people's complaint for abatement of a nuisance. Nuisance-abatement proceedings brought in the circuit court are generally equitable in nature.[2] Equitable decisions are reviewed de novo, but the findings of fact supporting those decisions are reviewed for clear error.[3] A finding is clearly erroneous if it leaves this Court with the definite and firm conviction that a mistake has been made.[4] Statutory construction is a question of law reviewed de novo.[5]

B. Analysis

The trial court concluded that defendants' business activities were protected by the MMMA based on an incorrect assumption—that any marihuana activity not expressly prohibited by the MMMA is made legal and protected. That assumption is exactly backwards; all marihuana activity that the MMMA does not expressly protect remains illegal under other anti-drug provisions of Michigan law. The MMMA does not give individuals a right to use

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[2] MCL 600.2940(5).
[3] *Yankee Springs Twp v Fox*, 264 Mich App 604, 611; 692 NW2d 728 (2004).
[4] *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008).
[5] *In re Petition by Wayne Co Treasurer*, 478 Mich 1, 6; 732 NW2d 458 (2007).

marihuana; it merely "sets forth particular circumstances under which they will not be arrested or otherwise prosecuted for their lawbreaking" but only if they "meet all the requirements of the MMMA."[6] If an individual engages in marihuana activity not within a particular circumstance authorized by the MMMA or out of compliance with any of its requirements, prosecution is appropriate.

That is exactly the case here, but the trial court got it wrong. Defendants apparently convinced the trial court that their business was protected with the vague notion that the business generally assists primary caregivers and qualified patients engage in MMMA-related activity. By accepting that argument the trial court erred. In essence, the trial court found that defendants and their business were protected simply because they assisted in the use or administration of medical marihuana to qualifying patients. But this is wrong. The specific protections of the MMMA do not cover the transfers or deliveries at issue here, nor should any such protection be read into the Act. The Attorney General strongly disagrees with the trial court's conclusion, and urges this Court to reverse the opinion and order denying the people's nuisance claim, and remand for entry of an order of abatement.

1. The MMMA does not permit or otherwise protect patient-to-patient, primary caregiver-to-unconnected patient, or primary caregiver-to-primary caregiver transfers or deliveries of marihuana.

The MMMA was passed by a majority of Michigan citizens on November 4, 2008, and became effective in December 2008. Under the MMMA, "[t]he medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act."[7] The Act protects qualifying patients with debilitating medical conditions, and their

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[6] *People v Redden*, ___ Mich App ___; ___ NW2d ___ (2010), 2010 Mich App LEXIS 1671, *36-38, (O'Connell concurring).
[7] MCL 333.26427(a).

primary caregivers, from arrest, prosecution, and penalty for the medical use of a limited amount of marihuana, but only if done in accordance with the MMMA.[8]

a. The people's intent controls the interpretation of the MMMA.

In *People v Redden*, this Court observed that because the Act was a citizen initiative under Const 1963, art 2, § 9, it must be interpreted in light of the rules governing the construction of citizen initiatives.[9] This Court has explained that initiatives should be construed to "effectuate their purposes" and to "facilitate rather than hamper the exercise of reserved rights by the people."[10] In addition, the words of an initiated law should be given their "ordinary and customary meaning as would have been understood by the voters."[11]

The purpose and intent of the people must be gleaned from the language of the MMMA itself. As the Michigan Supreme Court observed in interpreting Const 1963, art 1, § 25, a voter-approved initiative amending the Constitution:

> "The object of construction, as applied to a written constitution, is to give effect to the intent of the people in adopting it. *In the case of all written laws, it is the intent of the lawgiver that is to be enforced.* But this intent is to be found in the instrument itself. . . . '*Where a law is plain and unambiguous, whether it be expressed in general or limited terms, the [lawgiver] should be intended to mean what they have plainly expressed, and consequently no room is left for construction.*'"[12]

The same analysis can and should be applied here to this voter-approved legislative initiative.

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[8] MCL 333.26424(d)(1) and (2).
[9] *Redden*, 2010 Mich App LEXIS 1671, *14.
[10] *Welch Foods v Attorney General*, 213 Mich App 459, 461; 540 NW2d 693 (1995). See also OAG, 1985-1986, No 6370, p 310, 313-314 (June 10, 1986).
[11] *Welch Foods*, 213 Mich App at 461.
[12] *Nat'l Pride at Work, Inc v Governor of Mich*, 481 Mich 56, 80; 748 NW2d 524 (2008), quoting Cooley, Constitutional Limitations (1st ed), p 55 (emphasis in original omitted) (emphasis added). See also *People v Waterman*, 137 Mich App 429, 433; 358 NW2d 602 (1984) (Interpreting "Proposal B" a legislative initiative that revised parole standards for certain crimes.).

b. The purpose of the MMMA is to exempt qualifying patients with debilitating medical conditions, and their connected primary caregivers, from prosecution under existing drug laws.

The possession, use, sale, delivery, or manufacture of marihuana is unlawful in Michigan. The MMMA did not change that fact. By enacting the MMMA, the people did not repeal any statutory prohibitions regarding marihuana. Instead, the Act protected specific groups of persons, including qualifying patients and their primary caregivers, from arrest or prosecution under those laws with respect to certain limited marihuana activity.[13] Judge O'Connell, in his concurring opinion in *Redden*, expressed the Act's purpose succinctly and persuasively:

> The MMMA does not codify a right to use marijuana; instead, it merely provides a procedure through which seriously ill individuals using marijuana for its palliative effects can be identified and protected from prosecution under state law. Although these individuals are still violating the Public Health Code by using marijuana, the MMMA sets forth particular circumstances under which they will not be arrested or otherwise prosecuted for their lawbreaking. In so doing, the MMMA reflects the practical determination of the people of Michigan that, while marijuana is classified as a harmful substance and its use and manufacture should generally be prohibited, law enforcement resources should not be used to arrest and prosecute those with serious medical conditions who use marijuana for its palliative effects.
>
> Accordingly, the MMMA functions as an affirmative defense to prosecutions under the Public Health Code, allowing an individual to use marijuana by freeing him or her from the threat of arrest and prosecution if that user meets all the requirements of the MMMA, while permitting prosecution under the Public Health Code if the individual fails to meet any of the requirements set forth by the MMMA.[14]

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[13] Marihuana remains a Schedule 1 substance under the Public Health Code, MCL 333.7212(1)(c), meaning that "the substance has a high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision," MCL 333.7211. Similarly, possession of marihuana remains a misdemeanor offense, MCL 333.7403(2)(d), and the manufacture of marihuana remains a felony, MCL 333.7401(2)(d). The federal Controlled Substances Act, 21 USC 801 *et seq*, also classifies marihuana as a Schedule 1 substance and prohibits its possession. 21 USC 812(c), 823(f), and 844(a).

[14] *Redden*, 2010 Mich App LEXIS 1671, *39-40 (citations omitted) (footnotes omitted).

With this purpose in mind, this Court must decide whether the majority of citizens who enacted the MMMA intended the type of "business" activities at issue in this appeal.

c. The language of the MMMA does not expressly permit the operation of dispensaries, clubs, consignment shops, or any other type of business or storefront at which marihuana is transferred, delivered, or sold to registered patients or primary caregivers.

It is undisputed that the MMMA does not expressly authorize or provide any protection from prosecution, regarding the operation of dispensaries, clubs, consignment shops, or any other type of business or storefront at which marihuana is transferred, delivered, or sold to registered patients or primary caregivers. Despite this glaring absence, defendants assert that their business activities are authorized by the MMMA. The Act's purposeful silence, however, is telling if not dispositive of the issue.[15]

Other States with similarly silent medical marihuana acts have expressly enacted laws regulating the creation and operation of these types of business entities. The California voter-enacted Compassionate Use Act of 1996 (CUA) was silent on collectives, cooperatives, or dispensaries. In 2004, the California Legislature implemented the CUA with the Medical Marijuana Program Act (MMPA), including § 11362.775 that permits collective or cooperative cultivation of marihuana by patients or their primary caregivers.[16] As required by § 11362.81(d) of the MMPA, the California Attorney General adopted guidelines, which provide that the cooperatives and collectives permitted under § 11362.775, as well as individuals, may not

[15] It has been suggested that the Act's silence renders it ambiguous. However, "[a]n ambiguity exists only where the words of the statute can be viewed with more than one accepted meaning." *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 229; 779 NW2d 304 (2009). That is not the case here. The MMMA is not ambiguous with respect to whether it authorizes business activities. Rather, it does not provide for them at all.

[16] Cal Health & Safety Code § 11362.775.

recognize a profit—they must be organized and operated on a non-profit basis.[17] Further, the guidelines expressly state that "dispensaries . . . are *not* recognized under the law;" however, a lawfully formed "cooperative or collective that dispenses medical [marihuana] through a storefront *may* be lawful."[18] Colorado's similarly silent voter enactment was legislatively implemented by the Colorado Medical Marijuana Code that expressly provided for the operation of businesses supplying medical marihuana.[19]

As in the voter-initiated laws in California and Colorado, the MMMA is silent with respect to dispensaries and other types of storefronts. As in California and Colorado, protection for such activities must therefore be accomplished by separate law. There is no such law in Michigan and these activities remain illegal.

d. The plain language of the MMMA does not authorize transfers or deliveries of marihuana amongst qualifying patients, between primary caregivers and unconnected qualifying patients, or between primary caregivers.

The absence of express language leaves defendants with the burden of proving that the people nevertheless intended to permit their business activities. As the trial court observed, the MMMA is "silent as to patient-to-patient transfers or deliveries between registered qualifying patients of medical marihuana." But nothing may be read into a statute that is not within its intent, which is derived from the language of the statute itself.[20] Nothing in the MMMA suggests that the majority of people, in adopting the Act, intended that any person could engage

[17] Att'y Gen Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, August 2008, at 8-9, *available at* http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf.
[18] Att'y Gen Guidelines at 10.
[19] Colo Rev Stat § 12-43.3-101 *et seq* (2010).
[20] *Booker v Shannon*, 285 Mich App 573, 578; 776 NW2d 411 (2009).

in transfers or deliveries of medical marihuana *outside* of the specific qualifying patient/primary caregiver relationship established by the MMMA. [21]

(i) Patient-to-patient transfers are not made legal by the Act.

The Act contemplates that a registered qualifying patient will obtain marihuana in one of two ways. First, for a patient who does not designate a primary caregiver, the Act assumes that a patient will initially acquire marihuana, and then he or she may cultivate a limited number of marihuana plants for personal medical use.[22] The MMMA does not address how the initial acquisition of seeds or plants may be accomplished. But the Act's specific authorization of cultivation and its provision for a certain number of allowable marihuana plants strongly suggests that the intent is for patients (or primary caregivers) to become self-sufficient through their own cultivation of marihuana for medical use.

Second, for a patient who designates a registered primary caregiver, the patient acquires his or her marihuana from that primary caregiver. Once a patient designates a primary caregiver, the patient cannot acquire marihuana from anyone else, or cultivate marihuana for personal use.

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[21] The MMMA essentially operates as an exception from the generally applicable drug laws. Statutory exceptions are "strictly construed," and not "extended beyond their plain meaning." *Huggett v Dep't of Natural Resources*, 232 Mich App 188, 194; 590 NW2d 747 (1998); *People v Brooks*, 184 Mich App 793, 797; 459 NW2d 313 (1990). The Courts have repeatedly followed this principle. See *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 281; 713 NW2d 28 (2005) (FOIA exemptions must be narrowly construed.); *National Ctr for Mfg Sciences v City of Ann Arbor*, 221 Mich App 541, 546; 563 NW2d 65 (1997) (Tax exemption statutes must be strictly construed.); *Ross v Consumers Power Co (On Rehearing)*, 420 Mich 567, 618; 363 NW2d 641 (1984) (Exceptions to governmental immunity are to be narrowly construed.); *Mair v Consumers Power Co*, 419 Mich 74, 80; 348 NW2d 256 (1984) (Exceptions to statutes of limitations should be strictly construed.). See also 73 Am Jur 2d Statutes § 212; 2A Sands, Sutherland Statutory Construction (4th ed), § 47.11, p 144.

[22] MCL 333.26424(a) protects a registered qualifying patient for the "medical use" of marihuana. The term "medical use" mean" "the *acquisition*, possession, *cultivation*, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." MCL 333.26423(e) (emphasis added).

This is evident from the statutory language itself, which authorizes the primary caregiver to possess his or her patients' marihuana in the statutorily prescribed amount, and further provides that patients may not possess marihuana plants if they have designated a primary caregiver.[23] Otherwise, there would be no need for the creation of a patient/primary caregiver relationship, and patients could avoid the 12-plant per patient maximum set forth in MCL 333.26424(a).

There is nothing in the MMMA that would allow one qualified patient to transfer or deliver marihuana to another, a key feature of defendants' business. Those transfers remain illegal under Michigan law.

(ii) Primary caregivers may only transfer or deliver marihuana to a limited number of qualifying patients (not to other caregivers) and then only if their connection to those patients is registered with the Department of Community Health.

Primary caregivers, like patients, are simply left to acquire marihuana through their own devices, and then they may cultivate marihuana for their patients' medical use.[24] The MMMA does not provide that primary caregivers may acquire marihuana from other primary caregivers or from unconnected registered qualifying patients. The only relationship the MMMA recognizes—and provides any protection for—is between a registered primary caregiver and his or her registered qualifying patients.[25] Indeed, a caregiver is only protected from prosecution "for assisting a qualifying patient to whom he or she is *connected* through the department's registration process with the medical use of marihuana in accordance with this act."[26]

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[23] MCL 333.26424(a) ("[I]f the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility.") MCL 333.26424(b)(1) (Authorizing a caregiver to possess "2.5 ounces of usable marihuana for each qualifying patient to who her or she is connected through the department's registration process.").

[24] See MCL 333.26423(e) and 333.26424(b).

[25] MCL 333.26424(a) and 333.26424(b).

[26] MCL 333.26424(b) (emphasis added).

Thus, primary caregivers may not transfer or deliver medical marihuana to unconnected qualifying patients or to other primary caregivers for use by their qualifying patients. Any other conclusion renders nugatory the MMMA's express authorization of and registration process for qualifying patient/primary caregiver relationships. Further, a different conclusion would render meaningless the possession limits that the Act imposes on patients and caregivers with respect to usable marihuana and marihuana plants.

Notwithstanding these considerations, the trial court improperly concluded that there was nothing wrong with defendants' business, even though a key part of that business is the transfer or delivery of marihuana from primary caregivers to unconnected qualified patients, or to each other. Again, the trial court erred.

In sum, nothing in the plain language of the Act authorizes registered qualifying patients or registered primary caregivers to engage in various transfers or deliveries of medical marihuana *outside* of a lawful and registered qualifying patient/primary caregiver relationship. Thus, the Act provides *no protection* from prosecution or other penalty with respect to transactions that occur outside of a primary caregiver/qualified patient relationship.

This interpretation is consistent with both the plain language of the MMMA and its purpose, which was not to "legalize" the use of marihuana in any broad sense. Rather, its purpose was to allow its "medical use" by a very narrow segment of the population—those suffering from a diagnosed debilitating medical condition, and their primary caregivers in certain limited circumstances. Moreover, this construction does not hamper the patient/primary caregiver relationship; in fact, it preserves the integrity of that relationship as it was limited by the voters. The majority of people, in adopting the Act, certainly did not envisage the kind of "swap meet" that defendants are operating. Nor did they think they were authorizing the kind of

lucrative business activities that defendants are engaged in. Those activities have long been illegal under Michigan law, they continue to be illegal notwithstanding the MMMA, and the trial court erred in concluding otherwise.

e. The protection extended under MCL 333.26424(i) does not authorize defendants' unlawful transfers and deliveries of marihuana between patients, unconnected patients and caregivers, or between caregivers.

Defendants assert and the trial court agreed that defendants' transfer and delivery of marihuana to unconnected patients or other primary caregivers was authorized under MCL 333.26424(i), which states:

> A *person* shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege . . . solely for being in the presence or vicinity of the medical use of marihuana in accordance with this act, *or for assisting a registered qualifying patient with using or administering marihuana*.[27]

Defendants rely on subsection 4(i) and the italicized language as authorizing their transfers and deliveries of marihuana between patients, caregivers and unconnected patients, and between caregivers.

Under this subsection, a "person" is protected from arrest, prosecution, or penalty for being in the vicinity of the "medical use" of marihuana in accordance with the Act, or for assisting a registered qualifying patient with "using or administering" marihuana.[28] Defendants do not rely on the "vicinity" provision, as their activities are not merely being in the vicinity of the medical use of marihuana. Instead, they rely on the final clause of the subsection, whereby a person is protected for "assisting a registered qualifying patient with *using* or *administering* marihuana."[29] Importantly, in contrast to the "vicinity" clause, this clause does *not* provide protection for assisting a qualified patient with the "medical use" of marihuana, which includes a

[27] MCL 333.26424(g), (i).
[28] MCL 333.26424(i).
[29] MCL 333.26424(i).

litany of protected activities.[30] Instead, a person is protected only for assisting a qualified patient with "using or administering" marihuana.

The MMMA does not define the terms "using or administering." But the term "using" may be given its ordinary meaning: "[t]o *use*, avail, employ, utilize or exploit."[31] The term "use" has many meanings, but looking at the term in the context of subsection 4(i), the most logically applicable definition is to "[t]ake or consume (regularly or habitually)."[32] Notably, the example provided is: "'She uses drugs rarely.'"[33] Thus, utilizing the term's common sense meaning in light of the purpose of the MMMA, as intended by the people, "use" or "using" means the ingestion or consumption of marihuana by a qualified patient. An example of assisting in the "use" or "using" of marihuana includes rolling a marihuana cigarette for a qualified patient unable to do so without assistance.[34]

Turning to the word "administering," its definitions include "[t]o dispense," or "[t]o concoct or prepare."[35] The term "administer" means to "[g]ive or apply (medications);" "[t]o apply, as medicine or a remedy; to give, as a dose or something beneficial or suitable;" or "[t]o dispense; to serve out; to supply; execute; as, to administer relief . . . ."[36] Of course the term "administer" has other meanings, such as to "administer a program."[37] But given the purpose and structure of the MMMA, and the location of the word "using" immediately preceding the term,

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[30] Again, "medical use" means "the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." MCL 333.26423(e).
[31] See www.websters-online-dictionary.org/definitions/using?
[32] See www.websters-online-dictionary.org/definitions/use?
[33] See www.websters-online-dictionary.org/definitions/use?
[34] See *Redden*, 2010 Mich App LEXIS 1671, *76-77 (O'Connell, J., concurring).
[35] See www.websters-online-dictionary.org/definitions/administering?
[36] See www.websters-online-dictionary.org/definitions/administering?
[37] See www.websters-online-dictionary.org/definitions/administering?

the word "administering" should be accorded a similar meaning. In other words, for purposes of subsection 4(i) "administering" means to prepare, dispense, give, or apply marihuana. This construction makes sense because it allows the preceding term "using" to have a different, yet related meaning to the term "administering." An example of assisting in the "administering" of marihuana includes physically helping a qualified patient in the smoking or ingesting of marihuana.

This interpretation is also consistent with the use of the term "administration" in the definition of "medical use," which includes the clause "or *paraphernalia relating to the administration of marihuana* . . . ."[38] The term "administration" in that section refers or relates back to the word "paraphernalia." The Act does not define the term "paraphernalia." The common understanding of initiated laws is generally understood by applying each term's plain meaning at the time it is approved by the people. But if the law employs technical or legal terms, those terms must be construed according to their technical or legal sense.[39] The term "paraphernalia," when used in the context of controlled substance laws has acquired a technical or legal meaning. For example, Article 7, Controlled Substances, of the Public Health Code, MCL 333.7101 *et seq*, defines the term "drug paraphernalia" to mean, in part:

> [A]ny equipment, product, material, or combination of equipment, products, or materials, which is specifically designed for use in planting; propagating; cultivating; growing; harvesting; manufacturing; compounding; converting;

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[38] MCL 333.26423(e) (emphasis added). In subsection 4(g), a "person" is protected from arrest, prosecution, or penalty "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." MCL 333.26424(g). Similarly, subsection 4(h) provides that "[a]ny marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited." MCL 333.26424(h).

[39] *County of Wayne v Hathcock*, 471 Mich 445, 469 n 48; 684 NW2d 765 (2004). See also *Michigan Coalition of State Employee Unions v Michigan Civil Service Comm*, 465 Mich 212, 222-223; 634 NW2d 692 (2001).

> producing; processing; preparing; testing; analyzing; packaging; repackaging; storing; containing; concealing; *injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance . . . .*[40]

The word "paraphernalia" as used in the MMMA may thus be understood as incorporating a similar list of items, including items that are used to introduce marihuana into the human body.

With this understanding of the term "paraphernalia," the phrase "or *paraphernalia relating to the administration of marihuana*," in the definition of "medical use" simply refers to items used in, or relating to, the physical preparation, dispensing, or giving of marihuana to a qualifying patient. Such items would certainly include, for example, pipes and bongs, which are used to inhale or ingest marihuana. Arguably, equipment used to cultivate or manufacture marihuana, such as grow lights or items used to dry or package marihuana, are also included. However, in any event, under the definition of "medical use" a patient or caregiver may only acquire, possess, deliver, transfer, or transport "paraphernalia" that is used for or relates to the actual, physical "administration" of marihuana to a patient. Thus, the term "administration" in subsection 3(e) like the term "administering" in subsection 4(i) is properly construed in a narrow fashion.

The terms "administering" and "administration" cannot be given the broad meaning defendants would like. Defendants essentially read these terms as having a managerial or supervisory meaning—to "administer a program." They contend that subsection 4(i) is a far-reaching provision that provides protections to all persons, not just those that are registered qualified patients or primary caregivers, for "assisting" in the "using or administering" of marihuana by virtually any means imaginable.

[40] MCL 333.7451 (emphasis added).

This interpretation is overly broad and would render portions of the MMMA nugatory.[41] Indeed, if a "person" under subsection 4(i) can assist qualified patients in virtually the same capacity as a registered primary caregiver may under subsection 4(b), as defendants suggest, there would be little if any need for anyone to register as a primary caregiver. Plainly that is not the intent of the MMMA, which expressly creates and defines the patient/primary caregiver relationship, and provides the greatest protections to those individuals. The Act clearly contemplates that the activities constituting the "medical use" of marihuana will occur only in the context of a patient/primary caregiver relationship.

MCL 333.26424(i) is not a free pass for any "person" to conduct all marihuana-related activities. Instead, subsection 4(i) is a narrowly tailored provision that provides only limited protections to those "persons" that: (1) have incidental contact with qualified patients engaging in the "medical use" of marihuana or (2) assist qualified patients in their consumption of marihuana ("using"), or by physically preparing or dispensing marihuana to a patient ("administering").

f. The "presumption" set forth in MCL 333.26424(d) does not validate or protect defendants' activities where these activities are not authorized by the MMMA.

The trial court also relied on the "presumption" set forth in MCL 333.26424(d) to validate defendants' activities in light of the court's perceived ambiguity in the MMMA with respect to transfers and deliveries. But the court's reliance is misplaced because the presumption does not operate to protect individuals engaging in activities unprotected by the Act in the first instance. Moreover, defendants' were not entitled to the presumption on its face because they were in possession of an unauthorized amount of marihuana.

[41] This interpretation also nullifies the Michigan Public Health Code, which generally criminalizes conduct and affiliation with marihuana.

MCL 333.26424(d) provides that:

> There shall be a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver:
>
> (1) is in possession of a registry identification card; and
>
> (2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.

The Attorney General submits that this "presumption" only applies if the patient or primary caregiver is in compliance with all parts of the Act, and is engaging in conduct or activity falling within the plain language of the MMMA. In other words, mere possession of an identification card and an allowable amount of marihuana does not protect a patient or caregiver if they are otherwise out of compliance with the Act. For example, a patient who has an identification card and the allowable 2.5 ounces of usable marihuana still could not smoke on school grounds or in a public place.[42] Such an interpretation would allow the presumption to nullify other sections of the Act. But the Act plainly states that the medical use of marihuana is "allowed" only "to the extent that it is carried out in accordance with the provisions" of the Act.[43]

Here, as discussed above, the MMMA does not authorize or protect transfers or deliveries of marihuana between patients, patients and unconnected caregivers, or between caregivers. Nor does the Act authorize or protect the sale of marihuana. Thus, to the extent defendants engaged in transactions with persons other than defendants' own registered patients, or are selling marihuana, they are not entitled to the presumption set forth in MCL 333.26424(d).

[42] See MCL 333.26427(b)(2)(B) and (3)(B).
[43] MCL 333.26427(a).

Moreover, even if these transfers were contemplated and permissible, the presumption is inapplicable because defendants possess amounts of marihuana in excess of that legally allowed, as is required to take advantage of the presumption. MCL 333.26424(a) states that a qualified patient cannot possess more than 2.5 ounces of usable marihuana and, if the patient is not assigned to a particular caregiver, that the patient can possess up to 12 marihuana plants that are kept in an enclosed, locked facility.[44] Similarly, a primary caregiver that is properly registered by the State and associated with specific patients is permitted to be in possession of 2.5 ounces of usable marihuana, as well as up to 12 marihuana plants, for each qualified patient to whom the caregiver is registered.[45] The MMMA does not expressly allow two or more caregivers to combine their permitted amounts to skirt around limitations set forth in the Act.

Under this section, defendant McQueen, as both a qualified patient and registered caregiver, is permitted—at a maximum—to possess up to 15 ounces of usable marihuana and 72 marihuana plants. Defendant Taylor, who is not a qualified patient but is a registered caregiver, would similarly be permitted to possess, at a maximum, 12.5 ounces of usable marihuana and 60 marihuana plants.[46] Possession of amounts in excess of those stated above, or otherwise permitted due to the actual number of qualified patients to whom they are connected by registration is a clear and blatant violation of the MMMA, and is thus unprotected activity.

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[44] MCL 333.26424(a).
[45] MCL 333.26424(b).
[46] At the time of the evidentiary hearing, Defendant McQueen, as a caregiver, had three assigned patients. He was also a qualified patient. Thus, under the MMMA, he was permitted to possess no more than 10 ounces of usable marihuana and 48 marihuana plants. Similarly, Defendant Taylor had two assigned patients at the time of the hearing. He was thus permitted to posses only 5 ounces of usable marihuana and up to 24 plants. Defendants are required, however, to allocate the usable marihuana and plants in such a way as to ensure that no amount assigned to any one patient exceeds the statutory limits.

In Michigan, it is axiomatic that a person need not have physical possession of a controlled substance to be guilty of possessing it.[47] Possession may be either actual or constructive, and may be found even when the defendant is not the owner of the controlled substance.[48] In *People v Wolfe*, the Michigan Supreme Court stated, in pertinent part:

> [C]onstructive possession may be demonstrated by direct or circumstantial evidence that the defendant had the power to dispose of the drug, or "the ability to produce the drug . . .," or that the defendant had the "exclusive control or dominion over the property on which the contraband narcotics are found. . . ." *The ultimate question is whether . . . the evidence establishes a sufficient connection between the defendant and the contraband to support the inference that the defendant exercised a dominion and control over the substance*.[49]

Thus, if an individual exercises dominion and control over a controlled substance or the property at which the substance is located, or if the individual has the power to dispose of the substance, then that individual is considered to constructively possess the controlled substance.

In this case, the evidence establishes a sufficient connection between the defendants and the marihuana housed at their business to support the inference that, at a minimum, they constructively possess all amounts of marihuana housed there. First and foremost, defendants exercise exclusive dominion and control over the marihuana itself, as well as the physical property at which the marihuana is located. Defendants testified that they (or their employees) are the only individuals with access to the room housing the lockers in which various members store marihuana.[50] Members are granted free access to the lobby and other common areas, but

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[47] *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992).
[48] *People v Harper*, 365 Mich 494, 506-507; 113 NW2d 808 (1962). See also *People v Mumford*, 60 Mich App 279, 282-283; 230 NW2d 395 (1975); *People v Germaine*, 234 Mich 623, 627; 208 NW 705 (1926).
[49] *Wolfe*, 440 Mich at 521, quoting *United States v Disla*, 805 F2d 1340, 1350 (CA 9, 1986) (emphasis added).
[50] Transcript Vol II, Witness Matthew Taylor, pp 87-88.

do not have access to the room where the lockers are kept.[51] These admissions confirm that defendants exercise complete and unfettered dominion and control over the marihuana itself, as well as the property at which the marihuana is located.

Second, defendants have actual and constructive power to dispose of all marihuana housed at their business. Defendants (or their employees) are the only persons that actually access and exchange the marihuana during the sales process.[52] The persons producing the marihuana are wholly removed from the exchange process, and the buyers' involvement is limited to product selection and payment of the purchase price.[53] Furthermore, it is undisputed that as part of the membership application process, all members are required to grant defendants full authority to "transfer" their stored medical marihuana to other members without seeking consent for each transfer or even providing general notice that a transfer is occurring/has occurred. Thus, defendants have unfettered power to dispose of all marihuana deposited at their business.[54]

Because defendants, at the very least, constructively possess the marihuana deposited with their business by other individuals, and because these deposits are in addition to the defendants' personal stashes, it is clear that they possess amounts in excess of the strict limitations set forth in the MMMA. As set forth above, defendants, as registered caregivers, are specifically limited to possess those amounts of usable marihuana and marihuana plants that correspond to their respective numbers of assigned patients. Defendant McQueen is also permitted to possess a limited amount of usable marihuana and marihuana plants as a qualified

[51] Transcript Vol II, Witness Matthew Taylor, pp 87-88.
[52] Transcript Vol I, Witness Brandon McQueen, pp 16-17, 19-21. See also, Transcript Vol II, Witness Matthew Taylor, pgs 87-88.
[53] Transcript Vol II, Witness Matthew Taylor, pp 87-88.
[54] Each Defendant, as an individual, constructively possesses all marihuana stored at their business.

patient. Any of the marihuana housed at defendants' business, however, that is not allocated for either the personal medical use of defendant McQueen or for the defendants' assigned patients is outside the amounts permitted under the MMMA. As such, defendants' constructive possession of the marihuana housed at their business places them in possession of amounts that far exceed those permitted by the MMMA. Defendants are selling marihuana in violation of the MMMA and other existing drug laws.

2. Defendants are selling marihuana in violation of the MMMA and other existing drug laws.

Even if this Court were inclined to conclude that defendants' may transfer and deliver marihuana to unconnected patients and primary caregivers, their activities constitute the unprotected—and thus unlawful—sale of marihuana.

The MMMA does not permit or otherwise exempt from criminal prosecution the sale of marihuana. The MMMA requires that qualified patients and registered primary caregivers strictly adhere to the MMMA's requirements for the "medical use" of marihuana,[55] which is defined as:

> [T]he acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.[56]

According to the statute's plain language, only the above-listed activities constitute "medical use" of marihuana for purposes of the MMMA. Conspicuously absent from this long list of activities is the "sale" of marihuana.

[55] MCL 333.26427(a).
[56] MCL 333.26423(e).

It is a well-settled rule of statutory construction that the "express mention in a statute of one thing implies the exclusion of other similar things."[57] This rule of construction "expresses the learning of common experience that when people say one thing they do not mean something else."[58]

Here, this rule applies and precludes the addition of "sale" to the MMMA's exhaustive list of activities permitted as "medical use" of marihuana. The MMMA expressly provides qualified patients and registered caregivers with a complete list of permissible activities that constitute "medical use" of marihuana and include, among other things, the acquisition, possession, transfer, and ingestion of marihuana. The statute's express listing of these permissible activities implies the exclusion of any other activity that is not listed, including the "sale" of marihuana. Until the statute is amended to permit the sale of marihuana, sales are not authorized by the MMMA and are in direct violation of state and federal law.[59]

Defendants assert they are not *selling* marihuana, but rather facilitating patient-to-patient transfers or deliveries of marihuana. Even assuming for purposes of this argument that defendants may facilitate such transfers, their assertion is unpersuasive. Defendants admit that they and their member marihuana growers earn profits on the marihuana transactions.[60] Not only do defendants profit from the transactions completed at their business, but they also pay sales tax to the State of Michigan on those transactions.[61] Similarly, they issue 1099 tax forms to

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[57] *Stowers v Wolodzko*, 386 Mich 119, 133; 191 NW2d 355 (1971); see also *Feld v Robert & Charles Beauty Salon*, 435 Mich 352, 362; 459 NW2d 279 (1990) ("[T]he principle of *expressio unius est exclusio alterius* is well recognized throughout Michigan jurisprudence.").
[58] *Feld*, 435 Mich at 362.
[59] See *Redden*, 2010 Mich App LEXIS 1671, *77-78 (O'Connell, J., concurring).
[60] See Transcript Vol I, Witness Brandon McQueen, pp 30-31.
[61] Transcript Vol I, Witness Brandon McQueen, pp 30-31. See also Transcript Vol II, Witness Matthew Taylor, p 83.

the growers of the sold marihuana, thus subjecting those persons' profits to taxation.[62] All of these actions are triggered or required only after a "sale." If defendants were merely facilitating patient-to-patient transfers, then the payment of sales tax and issuance of 1099 tax forms reflecting income paid to the growers would not be necessary.

Moreover, it is plain that defendants' transactions are "sales." A "sale" is a transfer of property for a fixed price in money or its equivalent.[63] In Michigan, the sale of goods is governed by the Uniform Commercial Code, MCL 440.1101 *et seq.*[64] "Goods" are all things that are movable at the time of the contract for sale other than the money in which the price is to be paid, investment securities, and things in action.[65] A "seller" is "a person who sells or contracts to sell goods."[66] Under these definitions, and based on the facts established at the evidentiary hearing, defendants undoubtedly qualify as "sellers;" marihuana is undoubtedly a "good;" and the exchange of marihuana for valuable consideration (i.e., money) is a "sale." Thus, through their business, defendants sell marihuana in direct violation of the MMMA.

In any event, the transactions at defendants' business are not patient-to-patient transfers. In fact, there are no direct transfers at the business between member patients. Moreover, the actual producers of the marihuana have no information regarding the identity or status of the persons purchasing their product. Likewise, buyers receive no information regarding who grew or furnished the product.[67] Producers and buyers do not meet to discuss the terms of the sale,

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[62] Transcript Vol I, Witness Brandon McQueen, pp 30-31. See also Transcript Vol II, Witness Matthew Taylor, p 83.
[63] *Grinnell Corp v US*, 390 F2d 932, 947 (1968), quoting *Iowa v McFarland*, 110 US 471, 478 (1884).
[64] MCL 440.2102.
[65] MCL 440.2105(1).
[66] MCL 440.2103(d).
[67] Transcript Vol I, Witness Jacob DeGrand, pp 86-88.

nor do they meet for the actual exchange of goods for money.[68] Defendants complete all activities associated with the transactions.[69] They retrieve, weigh, package, and seal all marihuana purchased at their business.[70] Defendants collect the purchase price from the buyer and then take their 20% commission out of the sale price before forwarding the remaining purchase amount to the appropriate marihuana producer.[71] Clearly, defendants—like the producers and buyers they deal with—are exchanging marihuana for money.

Even if this Court determines that the transactions completed at defendants' business are not "sales" of marihuana, the transactions remain unauthorized by the MMMA because defendants' are collecting money from unconnected patients and are producing profits. In MCL 333.26424(e), the MMMA limits an assigned primary caregiver to the recovery of *costs* associated with assisting his or her "connected" patients in the medical use of marihuana. The MMMA states, in pertinent part:

> A registered primary caregiver may receive compensation for *costs* associated with *assisting* a registered qualifying patient in the medical use of marihuana.[72]

Defendants interpret this section as allowing them to recover "costs" from any registered qualifying patient, not just their own, since the section does not expressly include the "connection" language used elsewhere in the Act. But there was no need to include this specific language. It is plain from other sections of the MMMA that a registered primary caregiver may only "agree" to "assist" in the "medical use" of marihuana his or her five (or fewer) "qualifying

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[68] Transcript Vol I, Witness Jacob DeGrand, pp 86-88.
[69] Transcript Vol I, Witness Brandon McQueen, pp 16-17.
[70] Transcript Vol I, Witness Brandon McQueen, pp 16-17. See also Transcript Vol II, Witness Matthew Taylor, p 87.
[71] Transcript Vol I, Witness Brandon McQueen, pp 19-21. See also Transcript Vol II, Witness Matthew Taylor, p 88.
[72] MCL 333.26424(e).

patients to whom he or she is connected through the department's registration process."[73] To allow the recovery of costs from patients that a primary caregiver is not specifically authorized to assist makes no sense, and is inconsistent with other sections of the Act. Thus, this section must be construed as allowing a registered primary caregiver to recover costs only from his or her qualified patients.

With respect to the recovery of such "costs", subsection 4(e) does not define the term. In the absence of a specific definition, the term should be accorded its plain and ordinary meaning.[74] The dictionary defines the term "cost" to mean "[t]he total spent for goods or services including money and time and labor."[75] On the other hand, the term "profit" means "[a]cquisition beyond expenditure; excess of value received for producing, keeping, or selling, over cost; hence, pecuniary gain in any transaction or occupation; emolument; as, a profit on the sale of goods."[76] The proponents of the MMMA chose to use the word "costs," and made no provision for the receipt of profits by a caregiver. Thus, the word "costs" for purposes of the MMMA is properly interpreted as allowing a primary caregiver to be compensated only for the total spent for goods and services, including money, time, and labor, in assisting his or her "connected" patients with their "medical use" of marihuana.[77] A caregiver may not otherwise profit from the transfer or delivery of marihuana to his or her qualifying patients.

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[73] See MCL 333.26423(g), 333.26424(b), and 333.26426(d).
[74] *Welch Foods*, 213 Mich App at 463; MCL 8.3a.
[75] See www.websters-online-dictionary.org/definitions/costs?
[76] See www.websters-online-dictionary.org/definitions/profit?
[77] Because a primary caregiver's relationship is limited to his or her five, connected registered patients, MCL 333.26426(d), a caregiver is not authorized to receive reimbursement from any other individual.

In this case, defendants openly admit that their business profits from the "transfers" or "deliveries" of marihuana that they facilitate and complete.[78] Defendants further admit that their marihuana growers also "made" approximately $76,000 during the first three months of business.[79] To the extent that defendants and their marihuana-producing members earned profits on these "transfers," they are, by definition, recouping amounts in excess of the actual costs associated with assisting "connected" patients with the medical use of marihuana. This activity is clearly outside the permissible scope of activities contemplated by the MMMA.

3. Because defendants' business activities are not protected by the MMMA, but rather are unlawful, the operation of Compassionate Apothecary, LLC constitutes a public nuisance.

The trial court concluded that because all of defendants' business activities were authorized or protected by the MMMA, they did not constitute a public nuisance. This was error because, as explained above, the bulk of defendants' activities are not protected by the MMMA and are illegal. Since the activities are illegal they constitute a public nuisance.[80]

In Michigan, public nuisance is governed by common law as well as by statute, MCL 600.3801 *et seq*. This Court reaffirmed that a public nuisance is:

> [A]n "unreasonable interference with a common right enjoyed by the general public." The term "unreasonable interference" includes conduct that (1) significantly interferes with the public's health, safety, peace, comfort, or convenience, (2) *is proscribed by law*, or (3) is known or should have been known by the actor to be of a continuing nature that produces a permanent or long-lasting, significant effect on these rights.[81]

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[78] Transcript Vol I, Witness Brandon McQueen, p 31.
[79] Transcript Vol I, Witness Brandon McQueen, p 31.
[80] The people also alleged that defendants' activities constituted a nuisance per se, which is "an act, occupation, or structure which is a nuisance at all times and under any circumstances, regardless of location and surroundings." *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 269 n 4; 761 NW2d 761 (2008). Because the activities are a clearly a public nuisance, the Attorney General will not address nuisance per se.
[81] *Capitol Props Group, LLC v 1247 Ctr St, LLC*, 283 Mich App 422, 428; 770 NW2d 105 (2009), quoting *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 190; 540 NW2d 297 (1995) (emphasis added).

"At common law, acts in violation of law constitute a public nuisance. Harm to the public is presumed to flow from the violation of a valid statute enacted to preserve public health, safety and welfare."[82]

Under the public nuisance act, a nuisance is defined, in pertinent part, as:

> *Any building . . . used . . . for the unlawful manufacture, transporting, sale, keeping for sale, bartering, or furnishing of any controlled substance* as defined in section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws . . . *is declared a nuisance, and the furniture, fixtures, and contents of the building . . . therein are also declared a nuisance, and all controlled substances and nuisances shall be enjoined and abated as provided in this act and as provided in the court rules*. Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any building . . . used for any of the purposes or acts set forth in this section is guilty of a nuisance.[83]

Prosecuting attorneys are empowered to bring equitable actions in the name of the State to abate, through injunction, the activities defined as public nuisances under the act:

> [T]he prosecuting attorney . . . may maintain an action for equitable relief in the name of the state of Michigan, upon the relation of such . . . prosecuting attorney . . . to abate said nuisance and to perpetually enjoin any person, his servant, agent, or employee, who shall own, lease, conduct or maintain such building . . . from permitting or suffering such building . . . to be used for any of the purposes or by any of the persons set forth in section 3801, or for any of the acts enumerated in said section. When the injunction has been granted, it shall be binding on the defendant throughout the judicial circuit in which it was issued.[84]

Here, defendants' activities constitute both a common law public nuisance and a statutory public nuisance. With respect to the former, the general public has a common right in seeing the laws of this State followed by fellow citizens, including the MMMA and existing drug laws. Defendants' activities comply with neither as set forth above.

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[82] *Attorney General v Peterson*, 381 Mich 445, 465; 164 NW2d 43 (1969).
[83] MCL 600.3801. See also MCR 3.601, concerning public nuisance actions.
[84] MCL 600.3805.

The facts in this case were established at the evidentiary hearing, and are not in dispute.[85] "In general, a factual dispute exists when there is conflicting evidence concerning *what* happened, *when* something happened, *where* something happened, *how* something happened, *who* was involved, or some other similar factual inquiry."[86] That is not the case here. Indeed, the only question is "the legal meaning of the undisputed facts," which is purely a legal question.[87] As demonstrated at the hearing, defendants' "business" is serving an unauthorized number of "patients" because defendants are admittedly "assisting" unconnected patients or other primary caregivers in receiving marihuana. Defendants are also in possession of, or at least in constructive possession of, an unauthorized amount of marihuana because they are admittedly possessing marihuana that is for patients and caregivers to whom defendants bear no connection through the registration process. Finally, although defendants profess to the contrary, they are selling marihuana. Again, the evidence shows that defendants have constructive possession of the marihuana stored at their business; defendants or their employees effectuate the sales by transferring or delivering marihuana for the payment of money; defendants pay taxes; and defendants are making a profit from these sales, as opposed to simply recovering costs for assisting their own registered five or fewer qualifying patients.

MCL 333.7401(1) provides that "[e]xcept as authorized by this article, a person shall not *manufacture, create, deliver, or possess with intent to manufacture, create, or deliver a controlled substance* . . . ." Similarly, MCL 333.7403(1) provides, in part, that "[a] person shall not knowingly or intentionally *possess a controlled substance*." Marihuana is a Schedule 1

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[85] See *Attorney General v PowerPick Player's Club of Michigan, LLC*, 287 Mich App 13, 44-45; 783 NW2d 515 (2010) (Court held that Attorney General was entitled to judgment as a matter of law on his public nuisance claim.).
[86] *PowerPick Player's Club*, 287 Mich App at 27 (emphasis in original).
[87] *PowerPick Player's Club*, 287 Mich App at 28.

controlled substance under MCL 333.7212(1)(c). These are validly enacted statutes that protect the health, safety, and welfare of the public, and to the extent that defendants' activities are not protected by the MMMA, they violate these existing drug laws.[88] Because defendants' activities are proscribed by law, they constitute a public nuisance that must be abated.[89]

Similarly, turning to the public nuisance act, the testimony at the evidentiary hearing clearly demonstrates that the "building" in which Compassionate Apothecary, LLC is transacting business is being "used . . . for the unlawful . . . sale, keeping for sale, bartering, or furnishing of" a "controlled substance."[90] At the very least, defendants are unlawfully "bartering" or "furnishing" marihuana, a controlled substance, to persons outside of the MMMA protected patient/primary caregiver relationship from their "building," in violation of the drugs laws. Accordingly, the building is a nuisance that should be abated through issuance of a perpetual or permanent injunction enjoining its use and operation in violation of the law.

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[88] The MMMA provides that "[a]ll other acts and parts of acts inconsistent with this act do not apply to the medical use of marihuana as provided for by this act." MCL 333.26427(e). The existing drug laws are certainly inconsistent with the MMMA, but the MMMA plainly only trumps those laws when the questioned activity constitutes the "medical use of marihuana as provided for" in the MMMA. As explained in detail, defendants' activities do not constitute the "medical use" of marihuana under the Act.

[89] The Attorney General notes that while courts in equity generally cannot enjoin the commission of a crime, where criminal acts "independently rise to the level of nuisances, 'the jurisdiction of a court of equity arises,' and the acts may be enjoined." *PowerPick Player's Club*, 287 Mich App at 48 n 6, quoting *United-Detroit Theaters Corp v Colonial Theatrical Enterprise, Inc*, 280 Mich 425, 430; 273 NW 756 (1937), and citing *State ex rel Reading Western Union Telephone Co*, 336 Mich 84, 90; 57 NW2d 537 (1953).

[90] MCL 600.3801.

RELIEF SOUGHT

Amicus Curiae Attorney General Bill Schuette respectfully requests that this Honorable Court reverse the trial court's opinion and order denying the people's complaint for abatement of a public nuisance; remand for entry of an order of abatement, or any other necessary proceedings; and order such other general and equitable relief as the Court deems fit and proper.

Respectfully submitted,

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