

Introduction

In November 2008, an overwhelming number of citizens voted for medical marihuana to be legalized in the State of Michigan. Since that time, the Michigan Medical Marihuana Act (MMA), MCL 333.26421 *et seq.*, has generated criticism, scrutiny, and a visceral reaction from opponents that has resulted in an all-out legal assault in our courts. One of the most recent opinions from the Court of Appeals has the practical effect of denying qualifying patients – patients who have been explicitly approved to use medical marihuana by the State of Michigan – safe access to their medicine.

The Court of Appeals held patient-to-patient transfers of medical marihuana are not lawful if money is exchanged along with the transfer, but declined to determine the legality of a patient-to-patient transfer without money. The court reasoned that the exchange of money changes a transfer into a sale, and a sale is prohibited by the MMA and the Public Health Code (PHC), MCL 333.1101 *et seq.* Yet the court's position is not grounded in plain language of either the MMA or the PHC. Such a drastic departure from the well-established principles of statutory interpretation evidences the court's desire to legislate from the bench. Under the guise of legal reasoning, the Court of Appeals engaged in judicial activism and issued an opinion invalidating protections embodied in a law passed by 63% of Michigan voters. The Court of Appeals personal opinions are so pervasive that not one medical marihuana case decided by that court has returned a decision in favor of the defendant. This is not accidental.

Because of this activism, thousands of qualifying patients are left without adequate access to medicine legal for them to consume in Michigan. Also as a result of this activism, businesses such as CA have shuttered their doors in fear of being criminally prosecuted for engaging in conduct – patient-to-patient transfers – that comports with the statutory language, but that the Court of Appeals

has now deemed illegal without statutory language to base its opinion. Instead, the Court of Appeals has used a broad brush to paint all “dispensaries” illegal. The unsurprising upheaval that occurred as a result of this blatant judicial activism cannot be countenanced by this Court, and the unprecedented maneuver of denying medication to qualifying patients and closing businesses with the stroke of a pen cries out for review.

Statement of Facts¹

Brandon McQueen and Matthew Taylor are co-owners of a business called CA, which once stood for Compassionate Apothecaries. (Tr II, 5.) Mr. Taylor described the mission of CA as bringing voter-enacted “Proposal One from a state of theory into a state of practice in such a way that it helps not only patients and caregivers but the entire state of Michigan. And what we do is assist in the administration of [a] member patient’s medical use.” *Id.* Mr. Taylor stated that CA’s mission statement indicated that it would comply with all applicable laws and administrative rules, and Mr. McQueen and Mr. Taylor have been open and cooperative with law enforcement at every turn. *Id.* at 6, 38.

CA operates as a private club model. *Id.* at 85. Only registered qualifying patients and registered caregivers are allowed to be members of CA, and a registered caregiver can only become a member if he has a qualifying patient who is also a member and authorizes the transfer of the qualifying patient’s medical marijuana. *Id.* at 84-85. Prospective members must complete an application form, and they must show a current and unexpired State of Michigan medical marijuana card. *Id.* at 17-18. The information is then cross-checked with another piece of the qualifying patient’s identification before assigning the qualifying patient or caregiver a number. *Id.* A locker is

¹ For ease of reference, transcripts will be delineated as follows:
Motion for Temporary Restraining Order, Show-Cause Order and Preliminary Injunction, 8/18/10 – Tr I
Motion for Temporary Restraining Order, Show-Cause Order and Preliminary Injunction, 8/19/10 – Tr II

then rented, and the qualifying patient-member's medical marihuana is stored in individual lockers. *Id.* at 21.

When a member comes in, CA again checks the qualifying patient's identification, including the registry identification card issued by the state, to ensure that it is only assisting qualifying patients who are members. *Id.* at 18. CA charges a fee for the medical marihuana to be stored, and charges 20% of the amount that the medical marihuana was transferred for to compensate for costs. *Id.* at 22. Mr. Taylor explained in detail that all the medical marihuana in CA belongs to a qualifying patient. *Id.* at 19. The qualifying patient rents a locker or authorizes his caregiver to rent a locker to store and transfer the qualifying patient's medication, and this transfer of the qualifying patient's medical marihuana is facilitated by CA. *Id.* CA keeps track of each member's visit and has taken the extra step of restricting qualifying patients from acquiring more than 2.5 ounces in a fourteen-day time period. *Id.* at 27.

Despite Mr. McQueen and Mr. Taylor's efforts to comply with the law and despite no complaints apparently having been lodged against CA, the Isabella County Prosecutor's Office filed a complaint against Mr. McQueen and Mr. Taylor seeking injunctive relief that would result in shutting CA down. (Complaint for a Temporary Restraining Order, Order to Show Cause, Preliminary Injunction and Permanent Injunction, 8/13/10.) The prosecutor claimed that the operation of CA was not in accord with the MMA and, therefore, was a public nuisance. *Id.* The circuit court held a two-day hearing and held that CA was operated in accord with the law; thus, it denied the prosecutor's request for injunctive relief. (Exh. B.)

During the hearing, not only did Mr. McQueen and Mr. Taylor testify about the operation of CA, but they also testified about the need for CA. (Tr II, 12.) Mr. Taylor explained that caregivers can fail in their attempts to cultivate medical marihuana for a variety of reasons. *Id.* Just like with

any other crop being grown, a caregiver's crops may have parasites or he may have trouble with a particular harvest and need assistance in providing medication to his qualifying patients. *Id.* at 13.

The circuit court did not just hear Mr. McQueen and Mr. Taylor make these statements, but also heard from qualifying patients who are members of CA. Darcy Norris testified that she suffers from antiphospholipid lupus, which causes her blood to coagulate too quickly, and from neuropathy in her legs so she is losing the ability to use her legs. *Id.* at 42. She has a history of nausea and vomiting and severe pain, and medical marijuana has benefited her nausea. *Id.* at 43-44. Ms. Norris had tried working with a caregiver, but the caregiver had trouble growing marijuana. *Id.* at 44. The caregiver never had any success, and Ms. Norris was left to suffer in the meantime. *Id.* She said that when she learned of CA, "honestly I thought it was like an answer from God. I really did because I really didn't know what else to do." *Id.*

Ms. Norris succinctly explained the reason why the caregiver-patient model can fail a patient. *Id.* at 44-45. After her caregiver failed in his attempts to grow medical marijuana, she did not know who else to turn to for assistance. *Id.* at 44. She could not find anyone else to assist her, and she was unable to grow medical marijuana herself. *Id.* at 44-45. By being a member of CA, Ms. Norris was able to find a strain of medical marijuana that assisted her to meet her medical needs. *Id.* at 45.

Likewise, Sonia Welk suffers from 96% rheumatoid arthritis throughout her body that causes chronic pain. *Id.* at 106. Even sitting in the courtroom caused tremendous pain that caused Ms. Welk to start shaking. *Id.* at 108. Ms. Welk stated that she struggled with growing her own plants, and CA has greatly assisted her. *Id.* at 107, 109. Through CA, she "can go to a nice safe place and not worry about being robbed or being taken advantage of regarding prices. The quality of the medical marijuana is superb and I know that it's good quality marijuana and I don't have to worry about that." *Id.* at 109.

Fifty-year-old Gerald VanDeusen also testified. *Id.* at 112. He is in remission from bone, head, brain, and neck cancer, and he has had nothing to eat by mouth in eight years because of his cancers. *Id.* at 114. Undoubtedly, he has chronic pain and insomnia, and he attested that CA has helped him maintain an uninterrupted supply of his medication. *Id.* Like Ms. Norris and Ms. Welk, he described the problems with finding a quality caregiver and the concerns with being preyed on by someone seeing a person with such debilitating conditions as an easy target. *Id.* CA greatly positively affected his quality of life. *Id.* at 115. He eloquently explained that CA “helps me to sleep at night when I’m in between crops. It helps me with my chronic pain throughout the day and it keeps me off of some of the nastiest pain medications that I’ve ever had, that I no longer have to do today.” *Id.*

In reaching its decision, the circuit court explained in detail its reasoning. (Exh. B.) With CA’s model, the “registered qualifying patients and registered primary caregivers possess marihuana within such lockers and only in amounts permissible under the MMMA. While defendants own the premises, defendants do not own, purchase, or sell the marihuana. Therefore, this court finds that defendants do not possess amounts of marihuana prohibited by the MMMA.” *Id.* at 5. The court continued, “Further, the registered qualifying patients and registered caregivers perform medical use of the marihuana by transferring the marihuana within the lockers to other registered qualifying patients and registered primary caregivers.” *Id.*

The court held that all transfers of medical marihuana are done under the authorization of the qualifying patient who owns the medical marihuana. *Id.* at 7. The court held “that the patient-to-patient transfers and deliveries of marihuana between registered qualifying patients fall soundly within medical use of marihuana as defined by the MMMA.” *Id.* The court further found that these patient-to-patient transfers alleviate qualifying patients’ debilitating medical conditions and their

respective symptoms. *Id.* Mr. McQueen and Mr. Taylor assisted with the administration and usage of medical marihuana as permitted by the MMA. *Id.*

The prosecutor appealed and the Court of Appeals reversed the circuit court's well-reasoned decision. (Exh. A, 1.) The Court of Appeals held that the operation of CA violated the PHC, which prohibits the possession and delivery of marihuana. *Id.* The court held that the MMA does not allow patient-to-patient sales of medical marihuana. *Id.* Thus, the Court of Appeals reversed the circuit court's order denying the prosecutor's request for a preliminary injunction and remanded for entry of judgment in favor of the prosecutor. *Id.* Mr. McQueen and Mr. Taylor now file this application for leave to appeal.

Grounds for Granting CA's Application for Leave to Appeal under MCR 7.302(B)

The errors in the Court of Appeals opinion are so significant that this Court must intercede because the jurisprudence of the state has been affected in an unprecedented manner that is seriously detrimental to the citizens of Michigan. With the stroke of a pen, the Court of Appeals has closed off a lawful and viable option for qualifying patients in the State of Michigan to receive a safe supply of their legal medicine.

The most critical point about this case is that the Court of Appeals now prevents qualifying patients – patients who have been authorized by the State of Michigan to use medical marihuana for a valid medical purpose – from engaging in the medical use of marihuana in direct contravention of the statute's stated purpose. Instead of declaring what the statute already provides, that patients can transfer and acquire medical marihuana amongst each other, the Court of Appeals has opted to ignore the statutory language and imposed its own value judgment on qualifying patients who are protected by the MMA. Because the substance being transferred between qualifying patients is

medical marihuana, the Court of Appeals has declared the “sale” of it unlawful without providing a single statute or case to support its bald assertion.

The Court of Appeals held that the MMA “has no provision governing the dispensing of marihuana.” (Exh. A, 10.) But the MMA does indeed allow for the dispensing of marihuana through its medical use provision. MCL 333.26423(e). The fact that the MMA allows for dispensing is actually a fact acknowledged by the Attorney General in his amicus brief submitted to the Court of Appeals.² Qualifying patients are allowed to acquire, deliver, and transfer marihuana, but the Court of Appeals has ignored this provision in favor of a blanket ban on “dispensing” marihuana.

The Court of Appeals erred in finding that this case was about “dispensaries.” This case is about patients and caregivers facilitating the transfer of medical marihuana from a qualifying patient to another qualifying patient in accord with the law. Before any medical marihuana was transferred, CA ensured that the State of Michigan had already authorized the individuals seeking membership to engage in the “medical use” of marihuana. Before any transfer between qualifying patients or registered caregivers took place, CA had the explicit approval and authorization from the qualifying patient possessing the marihuana to transfer his medication to another qualifying patient. Now these qualifying patients have been denied safe access to medication because the Court of Appeals has ignored the clear statutory language of the MMA.

The voters of Michigan have spoken and medical marihuana is legal in the State of Michigan. However, the Court of Appeals has violated the most basic and fundamental tenet of the law and

² On page 12 of his brief, when discussing the term “administering” which also appears in the medical use definition, the Attorney General writes “[t]urning to the word ‘administering,’ its definitions include ‘[t]o dispense’, or ‘[t]o concoct or prepare.’” He continues “[i]n other words, for purposes of subsection 4(i) ‘administering’ means to prepare, *dispense*, give, or apply marihuana.” *Id.* at 12-13 (emphasis added).

inserted its own bias into its opinion. Despite the clear will of the people, prosecutors and courts are imposing their own viewpoints on what should be occurring in our state. These efforts are in direct contravention of the law and affect the jurisprudence of our state in a manner that is unprecedented. Without redress from this Court, qualifying patients are left with a law that allows them to transfer and acquire medical marihuana, but a court that tells them they are criminals if they do so.

Standard of Review

This Court reviews issues of statutory interpretation de novo. *People v Nyx*, 479 Mich 112, 116; 734 NW2d 548 (2007). A trial court’s factual findings are reviewed for clear error. *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008). Clear error exists if the reviewing court is left with a definite and firm conviction that a mistake has been made by the trial court. *Id.*

Argument and Authorities

I. The people of the State of Michigan intended to provide open access and availability of medical marihuana to treat debilitating medical conditions through the MMA.

In November 2008, citizens throughout the State of Michigan overwhelming voted to enact the MMA for the health and welfare of our citizens. MCL 333.26422(c). The law was designed to help “the vast majority of seriously ill people who have a medical need to use marihuana.” *Id.* at (b). Memorialized in the statute, the people of the State of Michigan declared, “Modern medical research, including as found by the National Academy of Sciences’ Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.” *Id.* at (a). Michigan joined the efforts of other states to no longer “penalize the medical use and cultivation of marihuana.” *Id.* at (c). Despite the will of the people and despite clear language allowing for the “medical use” of marihuana by qualifying patients, courts throughout the state have sought to impose their own will on our citizens. This usurpation of our laws has resulted in massive confusion

throughout the state and widespread hardship on qualifying patients who have been unlawfully deprived of their legal medicine. These patients now look to this Court for relief.

A. Brief Background of Applicable Law

It is a long-standing tenet that courts must not concern themselves with the motives of those who write the law, and a court must not let its own viewpoint about what is good or bad law influence a case's outcome. *Kuhn v Dep't of Treasury*, 384 Mich 378, 383-384; 183 NW2d 796 (1971). A court must not insert bias into its opinion, yet that is exactly what was done in this case by the Court of Appeals.

The MMA was enacted after a citizens' initiative placed the legislation on the ballot, and an overwhelming number of Michigan voters supported the MMA. The wisdom of the MMA was not properly before the Court of Appeals, yet the instant decision belies the notion that the Court of Appeals objectively reviewed the statutory language and the actions of CA. Instead, the Court of Appeals imposed its viewpoint on what should and should not be allowed, unlawfully restricting the rights afforded to qualifying patients by the MMA, namely the right to engage in the "medical use" of marihuana.

There is no doubt that the voters approved the "medical use" of marihuana by registered and unregistered patients. This language was on the ballot, and written in clear language using words that have common everyday meanings that apprised the voters of the issue before them. MCL 168.643a. "[U]nder a system of government based on grants of power from the people, constitutional provisions by which the people reserve to themselves a direct legislative voice ought to be liberally construed." *Kuhn*, 384 Mich at 385. This Court has long recognized that our system of governance derives from the powers given by the people, and the people have reserved the right to

pass laws. Courts must not supersede the power explicitly reserved to Michigan citizens by the Constitution and impose their own viewpoint on our citizens.

To guard against this sort of judicial activism, the rules of statutory construction must be strictly followed. In analyzing the MMA, a court must focus on the language used in the legislation. See *People v Gilbert*, 414 Mich 191, 199; 324 NW2d 834 (1982). To construe the terms of a statute, a court must use the plain and ordinary meaning of the terms. *People v Yamat*, 475 Mich 49, 53; 714 NW2d 335 (2006). The court must give effect to every word, phrase, and clause in the statute. *People v Stone*, 463 Mich 558, 565; 621 NW2d 702 (2001). Only if a statute is ambiguous is judicial construction appropriate; however, any ambiguity in a statute must be resolved in favor of lenity, which simply means that the ambiguity is resolved in favor of the defendant. *Gilbert*, 414 Mich at 210. A review of the language of the MMA – as well as the PHC – indicates that CA was operating well within the parameters that the statutory language of the MMA delineates.

B. Patient-to-patient transfers of medical marihuana fall squarely within the protections of the MMA.

Qualifying patients are expressly allowed to engage in the “medical use” of marihuana, yet the Court of Appeals has rewritten the statute to limit this protection. Contrary to the Court of Appeals reasoning, the patient-caregiver framework of the MMA does not restrict qualifying patients from transferring marihuana to another qualifying patient. Instead, qualifying patients, as well as caregivers, are protected when they engage in the “medical use” of marihuana, including transfers and deliveries. MCL 333.26424(a)-(b). Regarding qualifying patients, the MMA states the following:

A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, *for the medical use of marihuana* in accordance with this act, provided that the qualifying patient

possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if 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. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount. [*Id.*, emphasis added.]

Section 4(a) of the MMA protects qualifying patients who are engaged in the “medical use” of marihuana. Within the definition of “medical use,” acquisition, delivery, and transfer of medical marihuana are included. MCL 333.26423(e). The MMA defines the term “medical use” as “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.” *Id.*, emphasis added. When registered qualifying patients acquire, deliver, or transfer marihuana – as they did at CA – they are engaging in the “medical use” of marihuana and receive the protections embodied in the MMA. This protection means that the qualifying patients cannot be arrested, prosecuted, or otherwise penalized. MCL 333.26424(a). Despite the clear statutory language authorizing the transfer and acquisition of marihuana between registered qualifying patients and having that issue squarely before the Court of Appeals, the court failed to comment on its legality and instead found the “sale” illegal. A finding not grounded in law.

The legal transfer of medical marihuana from qualifying patient to qualifying patient is exactly the model that CA practices. The CA model comports with the laws of the State of Michigan. While there may be some business models that do not, CA’s operation is not one of them. All the medical marihuana at CA is owned by a qualifying patient and is then transferred to another qualifying patient. (Tr II, 19.) The medical marihuana is only transferred with the approval of the qualifying patient who owns and possesses the medical marihuana. *Id.* at 20. As Mr. Taylor explained, CA depends on qualifying patients to share their marihuana for the transfers to occur. *Id.*

at 21. Without the authorization of a qualifying patient, CA does nothing.

CA has never purchased medical marihuana from anyone, and at no point has CA ever sold any medical marihuana owned by CA. *Id.* at 25. CA merely provided a common location to facilitate the transfer of one qualifying patient’s medical marihuana – with the express and explicit consent and authorization of this qualifying patient – to another qualifying patient. *Id.* CA even takes the extra step of restricting a qualifying patient’s acquisition of medical marihuana to 2.5 ounces or less within a fourteen day time period. *Id.* at 27. The transfer of medical marihuana from qualifying patient to qualifying patient is expressly protected by the MMA. A qualifying patient may acquire medical marihuana and a qualifying patient may transfer medical marihuana. Both qualifying patients are protected under the law, and the Court of Appeals improperly stripped this protection from thousands of Michigan citizens.

B. Adding a price to the transfer of medical marihuana does not convert a legal activity into an illegal one.

The PHC, MCL 333.1101 *et seq.*, does not prohibit the act of attaching a price to the transfer or delivery of a controlled substance. The Court of Appeals found that CA did not just deliver or transfer marihuana, it transferred or delivered marihuana “for a price.” (Exh. A, 13.) Thus, the court reasoned that the transfer became illegal because a price was attached and *not* because patients were transferring to other patients. *Id.* The court held that attaching “a price” to a transfer or delivery changed that action into a “sale” that is illegal under the PHC. *Id.* The flaw in this reasoning is glaring because the PHC does not prohibit the *sale* of marihuana.

The PHC proscribes the manufacture, creation, or delivery of marihuana, but there is no prohibition against the “sale” of marihuana. MCL 333.7401. This is because selling marihuana is encompassed in the broader act of delivering marihuana; thus, whether marihuana is sold or not is immaterial because it cannot be delivered under the PHC. The delivery of controlled substances is

prohibited under the PHC regardless of whether the deliverer is receiving compensation or not.

The MMA, however, states that a person engaged in the “medical use” of marihuana may indeed engage in the manufacture, cultivation, or delivery of marihuana. MCL 333.26423(e). Thus, the MMA has taken acts illegal under the PHC and made them legal for qualifying patients and registered primary caregivers engaged in the “medical use” of marihuana. There is no mention of “sale” in the MMA because “sale” is again encompassed in the term “delivery” just as it is in the PHC. Conversely, if “sale” is not encompassed in the term “delivery” the act of selling marihuana was never prohibited by the PHC eliminating the need to address it in the MMA. In fact, the MMA only prohibits the sale of marihuana to someone who is not authorized to use marihuana for medicinal purposes. MCL 333.26424(k).

Notably, the PHC does preclude the sale of drug paraphernalia. MCL 333.7453. This shows that the legislature knows how to prohibit the sale of an item if it chooses to do so. A court must presume that the legislature knew about the PHC when the MMA was enacted. See *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 713; 664 NW2d 193 (2003). A court cannot assume that the legislature inadvertently omitted language that it included in another statute. *People v Monaco*, 474 Mich 48, 57-58; 710 NW2d 46 (2006). Thus, the legislature was well aware that it did not need to specifically authorize the sale of medical marihuana because there is nothing in the PHC that precludes the sale of it. The sale of marihuana is encompassed in the broader term of “delivery” and the MMA expressly allows qualifying patients and caregivers to deliver – and thus sell – medical marihuana.

Mr. McQueen and Mr. Taylor – or any qualifying patient or registered primary caregiver – cannot commit an offense by “selling” medical marihuana when neither the PHC nor the MMA criminalize this offense. The only criminal offense in Michigan that statutorily penalizes the “sale”

of marihuana and lists sale as an element of the offense is embodied in MCL 333.26424(k) of the MMA. Section 4(k) prohibits a registered qualifying patient or registered caregiver from selling “marihuana to someone who is not allowed to use marihuana for medical purposes under this act” The language related to using marihuana for a medical purpose relates to a person who does not meet the elements for use in Section 8. Section 4(k) does not implicate the transfer or delivery, including the sale, of medical marihuana to a person who is a registered qualifying patient.

The MMA was drafted to protect qualifying patients and registered caregivers from being charged and penalized for engaging in actions that are illegal under the PHC, but legal under the MMA. Specifically, the PHC criminalizes the possession, use, manufacture, and delivery of marihuana. MCL 333.7401. But the MMA’s definition of medical use expressly allows the use, possession, manufacture, and delivery of marihuana. MCL 333.26423(e). Because the PHC expressly prohibits those actions, the legislature included those terms in the MMA. The legislature did not include the term “sale” because this term is not found in the PHC as it relates to marihuana. Thus, there was no need for the MMA to protect a qualifying patient from engaging in conduct that is not illegal under the PHC.

Mr. McQueen and Mr. Taylor – along with qualifying patients who are members of CA – did not violate the law. It is uncontroverted that patients and caregivers at CA only transferred medical marihuana with the authorization of the qualifying patient who owned the medical marihuana to another qualifying patient. These actions fall squarely within the plain language of the MMA. Because no criminal statute penalizes the *sale* of marihuana, the activity is not illegal merely because the transfer came with a price attached. Thus, a patient-to-patient “sale” of marihuana is allowed under the law because a qualifying patient can transfer and deliver to another qualifying patient who can acquire medical marihuana under the law.

C. CA is not unlawfully in possession of marihuana in violation of the Public Health Code.

CA is not in possession of any of the medical marihuana at CA. (Tr II, 32.) The medical marihuana always belongs to a qualifying patient, as attested by Mr. Taylor. *Id.* “They rent a locker from us. That locker is theirs. The space inside it is theirs. The medicine that is their patient’s inside it is theirs. It is not ours.” *Id.* Qualifying patients and registered caregivers at CA only have access to the locker with the consent of the qualifying patient, and the consent is to transfer medical marihuana from qualifying patient to qualifying patient. *Id.* The fact that a qualifying patient may have designated a caregiver to act on the qualifying patient’s behalf does nothing to change that the caregiver – and CA – is only acting at the direction of the qualifying patient. In fact, the qualifying patient or registered caregiver acting at the direction of the patient can come, at any time, and retrieve the patient’s medicine.

i. The agency relationship arises when a qualifying patient completes his application with the State of Michigan and selects a caregiver.

A caregiver is the agent of a qualifying patient, and the agency relationship begins when the qualifying patient selects his caregiver and memorializes this relationship by completing an application with the State of Michigan. It has been long held that an agency relationship arises when there is a manifestation by the principal that the agent may act on the principal’s account. *Tuttle v Embury-Martin Lumber Co*, 192 Mich 385, 399; 158 NW 875 (1916). This means that the principal has the right to control the agent; actual control is not necessary. *Id.*

The qualifying patient-caregiver relationship is one of a principal and agent. A qualifying patient documents the agency relationship with a caregiver by selecting a caregiver through the state required application process. Once the caregiver is approved by the State of Michigan, the caregiver only acts at the direction of the qualifying patient. If a qualifying patient desires to change his

caregiver, he notifies the state of this change, and the caregiver then has no authority to cultivate medical marihuana for the qualifying patient or take any action on behalf of the qualifying patient.

The qualifying patient is at all times the owner of the medical marihuana. The registry identification card indicates the control that the qualifying patient exercises. The MMA provides that registry identification cards must contain “[a] clear designation showing whether the primary caregiver or the qualifying patient will be allowed under state law to possess the marihuana plants for the qualifying patient’s medical use, which shall be *determined based solely on the qualifying patient’s preference.*” MCL 333.26426(e)(6), emphasis added. This language is clear. The decision to allow a caregiver to cultivate a qualifying patient’s plants rests solely with the qualifying patient. Equally clear is regardless of the qualifying patient’s decision to delegate his ability to cultivate marihuana to his caregiver, the caregiver, by definition, is still required to assist in that qualifying patient’s “medical use” of marihuana at the patient’s direction. MCL 333.26423(g). This, of course, means acquiring, transferring, and delivering medical marihuana.

The caregiver acts as the agent of the qualifying patient, and CA always acted at the direction of the qualifying patient. Thus, CA never had “possession” of the medical marihuana because CA had no dominion or control over the medicine. The Court of Appeals likened CA to a neighborhood pharmacy. (Exh. A, 12, n 13.) “The operation of CA is indistinguishable from the operation of a neighborhood pharmacy. The purpose of CA and that of a neighborhood pharmacy is to provide medications to alleviate the medical needs of their customers.” *Id.* Of course, there is a significant difference in the way the two operate and that is the consent requirement for one qualifying patient’s medical marihuana to transfer to another that is required by CA. But stepping away from the operational differences, the purpose of both entities is the same – to provide medicine to alleviate a person’s suffering. CA transfers medication only to a qualifying patient who the State of Michigan

has certified is in need of medicine and only transfers with the consent of the qualifying patient who owns the medicine. CA is no more in possession of the medical marihuana than the clerk or cashier who works at the pharmacy. The cashier who may handle the prescription as the customer goes through the checkout line has no *lawful* dominion or control of the item. The clerk only acts at the direction of those who do – the pharmacist and the customer. The cashier is not violating the law by being in “possession” of a controlled substance without a prescription. Likewise, CA only acts at the direction of those who have lawful authority to transfer the medical marihuana – the qualifying patient who owns the medical marihuana and the qualifying patient who acquires it. CA is not unlawfully in “possession” of the medical marihuana in the lockers at its facility. Any transfer is only with the consent of the qualifying patient who owns the medical marihuana. At any time, the qualifying patient could revoke that consent. CA has no rights to the medical marihuana and no authority to act in any manner other than as directed by the qualifying patient who owns the medical marihuana.

Conclusion

The proper issue before the Court of Appeals was about what individual conduct is allowed under the MMA, yet the Court of Appeals improperly used this case to issue a blanket ruling that all “dispensaries” are illegal in the State of Michigan. This ruling fails to take into account that the individual conduct at issue in this case – patient-to-patient transfers – is allowed under the MMA. Because of the Court of Appeals ruling, qualifying patients like Ms. Norris are left with no avenue to ensure that they receive an uninterrupted supply of the medicine that they are legally entitled to receive. If the medicine at issue was an anti-nausea pharmaceutical no one would ever expect a cancer patient to suffer, but because the medicine at issue is medical marihuana, those who rely on it are deemed to be somehow less worthy of the legal protections enacted by our citizens. This

inequity defies logic and is in direct contravention of the law. Accordingly, CA respectfully requests that this Court grant its application for leave to appeal or, in the alternative, peremptorily reverse the opinion of the Court of Appeals.

Dated: _____

/s/ _____
Mary Chartier

Dated: _____

/s/ _____
Matt Newburg