

Office of the Prosecuting Attorney
Washtenaw County

PRESS RELEASE-FOR IMMEDIATE RELEASE

Last week a unanimous panel of the Michigan Court of Appeals released an opinion¹ interpreting the Michigan Medical Marihuana Act (MMMA). The court interpreted the plain meaning of the MMMA in conjunction with the Public Health Code (PHC) provisions regarding the possession, use and distribution of marihuana.²

In the *McQueen* decision the Court of Appeals, citing earlier court rulings, stated:

The MMMA did not legalize the possession, use, or delivery of marihuana...Rather, the MMMA sets forth very limited circumstances in which persons involved with the use of marihuana, and who are thereby violating the PHC, may avoid criminal liability.³

Specifically...the MMMA does not authorize marihuana dispensaries. In addition, the MMMA does not expressly state that patients may sell their marihuana to other patients.

[T]he "medical use" of marihuana does not include patient-to-patient "sales" of marihuana, and neither § 4(e) nor 4(k) [of the MMMA] permits the sale of marihuana.

The court also ordered that the *McQueen* opinion was to have immediate effect.

In addition, a recent formal opinion by the Michigan Attorney General addressed the question of whether the MMMA allowed for

¹ *State of Michigan v Brandon McQueen, et al.*, _____ Mich. App. _____ (2011), Docket Number 301951.

² The portion of the Public Health Code specifically dealing with controlled substances is found in the Michigan Compiled Laws section 333.7101, *et seq.*

³ Case citations contained in the original are omitted here.

the joint cooperative cultivation or sharing of marihuana plants.⁴
The opinion stated that the MMMA:

prohibits the joint cooperative cultivation or sharing of marihuana plants because each patient's plants must be grown and maintained in a separate enclosed, locked facility that is only accessible to the registered patient or the patient's registered primary caregiver.

The protections afforded by the MMMA to “qualified patients” and “caregivers” are limited and subject to the conditions set forth in the MMMA. Adherence to those conditions must be strict in order for the protections to apply.

People acting in violation of the Public Health Code risk being subjected to injunctions for maintaining a public nuisance, criminal prosecution for violations of the public health code and possible forfeiture of assets acquired through illegal business practices.

As illustrated by the many phone calls to our office in recent days, it is clear that some people are upset by the McQueen decision. The Court of Appeals did not write the law, but interpreted it, as it is obligated to do. Those who believe that the law should be broadened can petition the legislature for changes they seek. The Washtenaw County Prosecutor’s Office will continue to follow the law, and will make determinations on criminal violations on a case-by-case basis, as is done with all potential crimes.

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⁴ Michigan Attorney General’s Formal Opinion Number 7259, June 28, 2011. A formal opinion of the Attorney General has the force of law, unless it is overturned through later judicial or legislative action.