

Pennsylvania Courts May Not Deny Those Under Court Supervision Access to Medical Marijuana

In September 2019, the Lebanon County Court of Common Pleas adopted a Medical Marijuana Policy for those persons under court supervision. This policy prohibited “the active use of marijuana, regardless of whether the defendant has a medical marijuana card, while the defendant is under supervision by the Lebanon County Probation Services Department.” The policy was at odds with the Pennsylvania Medical Marijuana Act, enacted in 2016, which legalized medicinal use of marijuana for qualifying patients and provided no individual “shall be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege ... solely for lawful use of medical marijuana.” 35 P.S. § 10231.2103(a).

The Lebanon County policy was challenged in the Commonwealth Court by several medical marijuana patients with serious qualifying medical conditions in a preliminary injunction proceeding. The petitioners Melissa Gass, Ashley Bennett, and Andrew Koch used medically prescribed marijuana to treat a range of ailments, including epileptic seizures, post-traumatic stress disorder, and chronic pain. The Pennsylvania Supreme Court determined to exercise its extraordinary King’s Bench jurisdiction over the proceeding due to its statewide importance and stayed implementation of the Lebanon County policy. Following briefing and oral argument held in May 2020, the Pennsylvania Supreme Court unanimously ruled on June 18 that the Lebanon County policy prohibiting registered medical marijuana users on probation from using medical marijuana for debilitating medical conditions is “contrary to the immunity accorded by Pennsylvania’s Medical Marijuana Act.”

Cozen O’Connor attorneys Tom Wilkinson and Ryan Kelly, with helpful assistance from Abby Sacunas, Mike Broadbent, and Tom O’Rourke, filed an extensive *amicus* brief in support of the petitioners’ challenge. The ACLU served as counsel to the three petitioners who were harmed by the Lebanon County policy and requested the firm’s pro bono assistance litigating the case in the Commonwealth Court. When the case was accepted by the Supreme Court, the Cozen O’Connor team also undertook the representation of four medical nonprofits — the Society of Cannabis Clinicians, the Association of Cannabis Specialists, the Drug Policy Alliance, and Americans for Safe Access Foundation. The team’s brief reviewed the pertinent history of the Medical Marijuana Act, the medical benefits of medical marijuana for the qualifying serious conditions under the Act, and the results of an array of pertinent research studies.

The court’s 16-page opinion was authored by Chief Justice Saylor. The court granted declaratory and injunctive relief, and directed that the Lebanon County policy shall not be enforced. The opinion effectively also requires several other counties with similar probation policies to amend their practices to conform with the Medical Marijuana Act. The vast majority of common pleas courts in the state’s 67 counties do not penalize those medical marijuana patients on probation who comply with the Act.



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