

## Federal Judge to Rule on “Fundamental Clash” Between PA’s Medical Marijuana Act and Federal Law

Judge Gene E.K. Pratter of the Eastern District of Pennsylvania issued an important memorandum opinion regarding the conflict between federal criminal law and the operation of medical marijuana businesses under Pennsylvania law. *PharmaCann Penn, LLC v. BV Development Superstition RR, LLC et al.*, No. 4625 (E.D. Pa. Mar. 14, 2018). [Click here](#) to read the opinion.

PharmaCann purchased property in a shopping center in Philadelphia. Plaintiff wanted to open a medical marijuana dispensary at the shopping center and was awarded a dispensary license under the Pennsylvania Medical Marijuana Act, 35 P.S. § 10231.101 and a zoning permit from the City of Philadelphia. However, the deed for the property contained multiple restrictions on its use, including that it shall not be used for “unlawful” purposes. The managers of the property objected to plaintiff’s plan as inconsistent with the deed.<sup>1</sup> The unlawful purpose restriction was the focus of the court’s analysis.

PharmaCann filed a complaint seeking a declaratory judgment in Pennsylvania state court, asking the court to interpret the deed and hold that plaintiff was entitled to open a medical marijuana dispensary on the property because the restriction on unlawful use was inapplicable. Defendants removed the case to the Eastern District of Pennsylvania. PharmaCann moved to remand the case to state court on the ground that there was no federal question jurisdiction. Judge Pratter rejected plaintiff’s argument and held that the case presented a “substantial” federal question regarding “whether a medical marijuana dispensary is ‘unlawful’ under the Controlled Substances Act” (CSA). (Opinion, at 3-6.) Judge Pratter stated that the case “tee[d] up a fundamental clash” between Pennsylvania law and the CSA, which “flatly prohibits the distribution of marijuana, 21 U.S.C. § 841(a)(1), and recognized no ‘accepted medical use for the drug,’ *id.* § 812(b)(1).” (*Id.* at 3.)

Plaintiff argued that any decision on the legality of state medical marijuana statutes should be left to the states, pointing to: (1) the shifting political view of marijuana across the country, as reflected in state legalization; (2) marijuana’s medicinal value; and (3) the lack of federal enforcement of marijuana laws against state-regulated medical marijuana businesses. (Opinion, at 7 & n.3.) Judge Pratter rejected plaintiff’s position, stating that such arguments were for Congress, not the courts, and were irrelevant to the question of whether federal jurisdiction exists. (*Id.*) Although noting that her opinion “should not be taken as a pronouncement on the merits of this dispute,” she stated:

Even on the merits, however, a word of caution is in order. It is not this Court’s role to second-guess the political wisdom of the federal legislation on marijuana.

(*Id.*)

The outcome of this case could have far-reaching consequences. As Judge Pratter recognized, “If I were to rule that [plaintiff’s] dispensary violated federal law, the Supremacy Clause could cast doubt on the validity of dozens of state marijuana schemes.” (*Id.* at 6.)

This opinion underscores the significant, unresolved questions concerning the legality of Pennsylvania’s Medical Marijuana Act, as well as similar statutory schemes in other states. While the CSA has long been recognized as a cloud over the state-regulated marijuana industry, a definitive federal ruling on the legality of medical marijuana businesses could seriously undermine the ability of medical marijuana businesses to operate, and would raise additional red flags for landlords, title companies, investors, and banks, all of whom have been slow to embrace the medical marijuana industry due to concerns over the overlapping federal law.



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<sup>1</sup> The previous owners of the property were also named as defendants, but Judge Pratter determined that they did not challenge plaintiff's use of the property as a medical marijuana dispensary.

Marijuana is still classified as a Schedule I controlled substance by the U.S. Drug Enforcement Agency, and as such it remains a federal crime to grow, sell and/or use marijuana. Any content contained herein is not intended to provide legal advice to assist with violation of any state or federal law.