

## COA Opinion: For-Profit administration of patient-to-patient sales of marihuana may be enjoined as a public nuisance

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On August 23, 2011, the Court of Appeals published its decision in [Michigan v. McQueen, No. 301951](#), overturning the trial court's determination that an operation which administered the sale of marihuana between qualifying patients/caregivers (while taking a percentage of the sale) was protected under the terms of the Michigan Medical Marihuana Act (MMMA), and could not be enjoined as a public nuisance under the Public Health Code. The case involved defendants that ran a facility that rented lockers for MMMA-qualifying patients/caregivers to store their excess marihuana that they wanted to sell to other MMMA-approved users. Defendants then allowed other qualifying patients/caregivers to inspect the marihuana that was up for sale, and then consummated the sale on behalf of the selling patient/caregiver - keeping a 20 percent service fee. The Isabella County Prosecuting Attorney sought an injunction against this operation. In an unanimous opinion, authored by Judge Hoekstra, the Court of Appeals concluded that because the operation provided facilities for marihuana sales in exchange for a fee, supervised the selection of marihuana, collected the sales price and took a 20 percent cut of the sale, that operation was not a mere facilitator, but was engaged in the sale of marihuana, which was clearly criminal and contrary to the Public Health Code. The remaining question was whether the provisions of the MMMA protected this type of operation. Defendants argued that because the MMMA permits the delivery and transfer of marihuana for medical use, it authorizes this type of patient-to-patient transaction. The Court of Appeals disagreed. It concluded that Defendants were engaged in the sale of marihuana, which is separate and distinct from the concepts of "delivery" or "transfer", and because the terms of the MMMA do not specifically protect the sale of marihuana, this operation is not protected by the terms of the Act. Thus, the Court of Appeals remanded the matter for entry of the injunction.