



LIABILITY FROM SEIZING MEDICAL MARIJUANA

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INTRODUCTION

Proposition 215, the Compassionate Use Act of 1996, created Health and Safety Code section 11362.5 which provides that statutes prohibiting possession and cultivation of marijuana “shall not apply to a patient or to a patient’s primary care giver who processes or cultivates marijuana for the personal medical purpose of the patient upon the written or oral recommendation or approval of a physician.” The Act also states as one of its purposes “to insure that patients and their primary care givers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.”

The Health and Safety Code section 11362.77 provides an individual may possess no more than eight ounces of dried marijuana and maintain no more than six mature or twelve immature marijuana plants per qualified patient. Health and Safety Code section 11362.775 provides that qualified patients who associate within the state to cultivate marijuana for medical purposes will not be subject to state criminal sanctions. Section 11362.775 exempts qualified persons “from criminal sanctions or possession for sale, transportation or furnishing marijuana, maintaining a location for unlawfully selling, giving away or using controlled substances, managing location for the storage or distribution of any controlled substance for sale and the law declaring the use of property for these purposes a nuisance.” *People v. Urziceanu* (2005) 132 Cal. App. 4th 747, 785.

City of Garden Grove v. Superior Court (2007) 157 Cal.App.4th 355

The court in Garden Grove stated that a qualified medical marijuana patient is entitled to the return of their medical marijuana. The court recognized medical marijuana was property and thus due process principles applied. In *City of Garden Grove v. Superior Court* the Appellate Court considered whether a police department was required to return lawfully possessed marijuana its officers had seized. In this case, the person was a qualified patient under the Act. The City argued that nothing expressly provided for the return of lawfully possessed marijuana. However, the court recognized

County of Butte v. The Superior Court of Butte County holds that a qualified marijuana patient may bring civil suit against a deputy who without warrant forced him to destroy marijuana plants.

The court

recognized that the medical marijuana was considered the person's property and that the police could not retain personal property without running "afoul of basic constitutional considerations."

that the medical marijuana was considered the person's property and that the police could not retain personal property without running "afoul of basic constitutional considerations." The court in *City of Garden Grove* stated "Even though state law is silent as to whether a qualified patient like Kha is entitled to the return of his marijuana once criminal charges against him have been dismissed, due process principles seem to compel that result. Continued official retention of a qualified patient's marijuana simply cannot be squared with notions of fundamental fairness. . . . Withholding small amounts of marijuana from people like Kha who are qualified patients under the Act would frustrate the will of the people to insure such patients have the right to obtain and use marijuana without fear of criminal prosecution or sanctions."

County of Butte v. Superior Court of Butte County (2009) 175 Cal.App.4th 729

In *County of Butte* solidified the principle that medical marijuana is property and is entitled to the same due process rights as other property and should not be considered contraband. David Williams was a qualified medical marijuana patient. Williams belonged to a collective of medical marijuana patients who agreed to contribute comparable amounts of money, property and labor to the collective cultivation of marijuana. The marijuana was grown at Williams' home. In September, 2005 a Butte County Sheriff's Deputy went to Williams' home without a warrant. Williams produced copies of medical marijuana recommendations for himself and the other members of the collective. The deputy ordered Williams, under threat of arrest and prosecution, to destroy all but twelve of the forty-one medical marijuana plants. Williams complied.

Williams brought suit alleging various constitutional violations by Butte County, the Butte County Sheriff's Office and the deputy. The County demurred on all causes of action based on failure to state a cause of action. The trial court overruled the demurrer and rejected the County's argument. The County brought a petition for writ of mandate. In its petition for writ of mandate, the County argued the trial court's ruling provides that individuals have a legal right to medical marijuana which can form the basis for a civil lawsuit against law enforcement officers for money damages. The Appellate Court held that Williams was entitled to relief but that the relief arose out of his right to due process. Williams was entitled to due process the same as any other individual regardless of his status as a qualified medical marijuana patient. The court viewed medical marijuana in the possession of a qualified patient as property, thus attaching the right to be free from search and seizure to medical marijuana.

Consequences of County of Butte and City of Gardena

These cases have recognized that medical marijuana patients have an inherent right of property in the possession of medical marijuana. As a result, if medical marijuana is seized, it is required to be returned to the qualified patient when the criminal investigation is no longer ongoing.

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