



Medical Marijuana Litigation Update

Pack, et al. v. Long Beach

December 13, 2011

Long Beach City Attorney's Office

Pack, et al. v. City of Long Beach

- In 2010, the City enacted LBMC Chapter 5.87 to regulate medical marijuana collectives by creating a permit scheme to both allow the cultivation and use of medical marijuana and protect public health and safety.
- 5.87 required each collective to obtain a permit and comply with specific regulations such as operational requirements and location restrictions.

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- In an effort to enjoin enforcement of the City's ordinance and permit process, patients of medical marijuana collectives filed Pack et al. v. City of Long Beach.
- The lawsuit alleged 5.87 permitted or compelled conduct prohibited by the federal Controlled Substances Act (CSA) and was thereby preempted by the federal law.

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- The Court of Appeal reviewed the *Pack* case to determine “whether the City’s ordinance, which permits and regulates medical marijuana collectives rather than merely decriminalizing specific acts, is preempted by federal law.”

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- On October 4, 2011, the Court of Appeal issued its decision in the *Pack* case.
- The Court determined that the City's permitting scheme to regulate medical marijuana was preempted by federal law.
- This decision struck down the core of the City's ordinance, and bars any permit scheme for medical marijuana.

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- The Court stated:
 - “Federal law prohibits the possession and distribution of marijuana...there is no exception for medical marijuana.”
 - “The conclusion is inescapable...the permits instead authorize the operation of collectives by those which hold them. As such, the permit provisions, including the substantial application fees and renewal fees...are federally preempted.”

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- The *Pack* decision effectively forbids the City from enacting any affirmative measure regulating medical marijuana to protect public health and safety.

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- Therefore, the City cannot do anything that would affirmatively promote the sale, possession, or distribution of marijuana, including:
 - Require a permit as a condition of operating in the City;
 - Adopt regulations related to the implementation of a lottery system in order to create buffers between sensitive land uses such as schools or parks and a dispensary;

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- Adopt regulations that would lead to the issuance of a permit to allow a medical marijuana cultivation site;
- Issue building, construction, or health permits that would facilitate the operation of a collective or cultivation site;
- Adopt regulations establishing fees in order to recoup the cost of staff time or expense related to the permitting or monitoring of a collective or cultivation site;

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- Conduct inspections of any medical marijuana site that would in any way suggest the City was permitting or acknowledging the legitimacy of the site;
- Require the testing of medical marijuana product to ensure the product is safe for consumption; or
- Limit the number of collectives in any given area or council district.

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- In reaching this decision, the Court gave “great weight” to the position of the U.S. Attorney General, to support its conclusion that a permitting scheme is preempted by federal law.

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- In November 2011, the 4 California U.S. Attorneys jointly reiterated that under state and federal law, for-profit dispensaries are illegal.

(*Cal Health & Safety Code* § 11362.765(a): "Nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.")

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- Moreover, the Court suggested that individual members of the City Council and City employees involved in the permit process may be subject to federal criminal prosecution for aiding and abetting a criminal offense by stating:

“There may be an issue of whether the ordinance ‘requires’ certain City officials to violate federal law by aiding and abetting (or facilitating) a violation of the federal CSA.”

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- On November 10, 2011, the City filed a Petition for Review with the State Supreme Court.
- In the interim, based on *Pack*, the City may not affirmatively regulate medical marijuana, but can declare dispensaries unlawful to protect the health, safety, and welfare of the community.

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- In response to the Court of Appeal decision in the *Pack* case, the City Council requested the following action by the City Attorney's Office:
 - 1. File a Petition for Review by the California Supreme Court (filed November 10, 2011).
 - 2. Draft an ordinance repealing Chapter 5.87.
 - 3. Draft an ordinance banning dispensaries in the City.