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CASE REPORT

MEDICAL MARIJUANA - DESIGNATED PROVIDERS. Medical marijuana dispensary owner was considered a designated provider to only one patient at any one time, though his records indicated that he was the provider for 1,280 people. *State v. Shupe*, No. 29885-0-III, Division III Court of Appeals (Dec. 11, 2012).

I. Facts. Mr. Shupe, along with others, owned and operated a medical marijuana dispensary called "Change" in Spokane, Washington. After several detectives learned from the media that Change was selling medical marijuana, the police conducted video surveillance of Change for several months and noted that over 25 people visited Change every day. The Portland Police Department also contacted the Spokane police and reported that Shupe was found with four pounds of marijuana in his car, which he stated was medical marijuana that would be sold at Change, and almost $19,000 in cash. The police applied for a search warrant in the summer of 2009 to search Change and two of Shupe's residences. Shupe was arrested and convicted of delivery of a controlled substance, possession of a controlled substance with intent to deliver, and manufacture of a controlled substance. Records from Change demonstrated that Change provided medical marijuana to 1,280 people.

II. Applicable Law and Analysis. The Court of Appeals reversed Shupe's convictions upon several grounds. Most noteworthy, the Court determined that Shupe had established a prima facie case to support a medical marijuana defense to the charges and that the State had failed to rebut that defense. Specifically, Shupe alleged that he was a designated provider of medical marijuana under RCW 69.51A.010(1)(d), defined as a person who is eighteen years of age or older; has been designated in writing by a patient to serve as a designated provider; is prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and is the designated provider "*to only one patient at any one time*." Shupe argued the phrase "only one patient at any one time" meant that he could not physically give marijuana to more than one person at a time, *i.e.*, only one transaction could take place at one time. Shupe kept receipts showing the time to the minute as to when each patient was served and kept each patient's medical marijuana documentation. The State argued that Shupe could be a marijuana provider to only one person at a time, rather than the 1,280 people that Change provided to at the time of the search.

The Court agreed with Shupe, concluding that while the term "designated provider" implied an ongoing relationship, the word "at" lent the phrase a sense of immediacy, suggesting it was more likely the phrase referred to a transaction rather than a relationship. Furthermore, the Court looked to the intent of the medical cannabis law to make medical marijuana available so that qualifying patients may "fully" participate in the medical use of marijuana and to allow designated providers to assist patients without fear of conviction. Shupe's interpretation of "only

one patient at one time" allowed the greatest number of qualified patients to receive medical marijuana treatment.[1]

III. Conclusion. Although this case holds that a medical marijuana dispensary owner may benefit from a designated-provider affirmative defense if only one transaction takes place at any one time, despite serving numerous patients, dispensary owners arrested following the 2011 amendments to the Washington State Medical Use of Cannabis Act will likely not be able to similarly benefit. In 2011, the Legislature amended the Act to include RCW 69.51A.100(2), which provides that a person may stop serving as a designated provider to a given qualifying patient at any time, but that person may not begin serving as a designated provider to a different qualifying patient until fifteen days have elapsed from the date the last qualifying patient designated him or her to serve as a provider. This section of the Act clarifying the Legislature's intent regarding designated providers did not apply to the convictions in this case because they occurred in 2009, prior to the amendment.

Nevertheless, this case may affect a court's interpretation of RCW 69.51A.085, authorizing collective gardens. RCW 69.51A.085 provides that qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use, subject to the condition that no more than ten qualifying patients may participate in a single collective garden *at any time*. The courts may similarly interpret this phrase broadly such that collective gardens could serve many patients so long as documentation is kept proving only ten members participate at any one time. However, as a practical matter, collective gardens will still be limited to 15 plants per patient up to a total of 45 plants and no more than 24 ounces of useable cannabis per patient up to a total of 72 ounces of useable cannabis, if they have not been banned in their entirety by a respective city or town.

Finally, as previously stated by this Office, it should be noted that any business selling, processing, or growing marijuana (other than collective gardens) is illegal and may be prohibited under local zoning and police powers until properly licensed by the State under Initiative 502, which will not be implemented until at least December 1, 2013. Please do not hesitate to contact your city attorney with further questions regarding medical marijuana or Initiative 502.

[1] It should be noted that the dissenting opinion concluded Shupe would have been unable to benefit from the affirmative defense because he possessed far more medical marijuana than permitted for designated providers. The majority opinion did not address this issue, but simply stated that the State failed to rebut that Shupe was entitled to the affirmative defense.