STATE OF MICHIGAN

IN MICHIGAN SUPREME COURT

On Appeal from the Court of Appeals
Murray, P.J., Hoekstra, and Stephens, JJ.

STATE OF MICHIGAN,

Plaintiff/Appellee,

V

Supreme Court Case No. 143824

Court of Appeals Docket No. 301951
Isabella CC No. 2010-008488-CZ

BRANDON MCQUEEN and MATTHER TAYLOR, *d/b/a* COMPASSIONATE APOTHECARY, LLC,

Defendants/Appellants.

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BRIEF *AMICUS CURIAE* OF MICHIGAN MUNICIPAL LEAGUE, MICHIGAN TOWNSHIPS ASSOCIATION, AND STATE BAR PUBLIC CORPORATION LAW SECTION IN SUPPORT OF PLAINTIFF-APPELLEE STATE OF MICHIGAN

Dated: July 26, 2012

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Amici accept the statements presented by Plaintiff-Appellee in its brief.

STATEMENTS OF AMICUS CURIAE

State Bar Public Corporation Law Section

The State Bar Public Corporation Law Section is a standing section of the State Bar of Michigan consisting primarily of attorneys that represent clients that are public corporations, including those who have a direct interest in the significant matters at issue in this case. There are several sections and committees of the State Bar, and statements made in this Brief on behalf of the Public Corporation Law Section are not represented as necessarily reflecting the views of other sections and committees or of the State Bar of Michigan as a whole.

Michigan Municipal League

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative efforts, and whose membership is comprised of some 521 Michigan cities and villages. Among its members are more than 450 cities and villages, who are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a Board of Directors. The purpose of the Legal Defense Fund is to represent the member local governments in litigation of statewide significance. The accompanying brief amicus curiae is authorized by the Legal Defense fund's Board of Directors whose membership includes: the president and executive director of the Michigan Municipal League, and the officers and directors of the Michigan Association of Municipal Attorneys: Randall L. Brown, city attorney,

Portage; Lori Grigg Bluhm, city attorney, Troy; Stephen K. Postema, city attorney, Ann Arbor; Eric D. Williams, city attorney, Big Rapids; Clyde J. Robinson, city attorney, Kalamazoo;; James O. Branson, III, city attorney, Midland; James J. Murray, city attorney, City of Boyne City and Petoskey; Robert J. Jamo, City of Menomenee; John C. Shrier, City of Muskegon; Thomas M. Schultz, City Attorney for Farmington and Novi; and William C. Mathewson, General Counsel, Michigan Municipal League.

Michigan Townships Association

The Michigan Townships Association was incorporated in 1953 for the purpose of assisting and education Michigan township officials in the performance of their statutory obligations, to improve their knowledge of statutes and case law pertinent to township government, and to provide amicus curiae support in pending litigation which the Board of Directors of the Michigan Townships Association believes are of statewide importance to both the operation of township government and the interests of the citizens represented by township boards of trustees. The membership of the Michigan Townships Association consists of in excess of 1,235 Michigan townships out of a potential of 1,245 townships within the State of Michigan. As provided in MCL 7.306, the Michigan Townships Association is "an association representing a political subdivision," and is accordingly authorized to file the accompanying amicus curiae brief.

STATEMENT OF QUESTIONS PRESENTED

I

WHETHER THE OVERALL STRUCTURE AND SPECIFIC TERMS WITHIN THE §4 PROVISIONS ARE MATERIALLY AND SERIOUSLY AMBIGUOUS, AND THUS INTERPRETATION REQUIRES MORE THAN EXAMINING THE PLAIN MEANING OF THE LANGUAGE USED IN THE ACT, AND WHETHER IT IS NECESSARY TO *INTERPRET* THE §4 PROVISIONS IN ORDER TO ASCERTAIN THEIR INTENT, AND ACHIEVE HARMONY AND INTERNAL CONSISTENCY OF THE ACT AS A WHOLE.

Appellee State of Michigan says "Yes."
Appellants McQueen, et al would say "No."
The Court of Appeals did not answer this precise question
Amici say "yes"
This Court should say "Yes."

II

WHETHER THERE IS A WELL-SUPPORTED INTERPRETATION OF THE §4 PROVISIONS CONSISTENT WITH LONG-STANDING RULES OF STATUTORY CONSTRUCTION, AND CONSISTENT WITH COMMON USAGE WITHIN THE CONTEXT OF THE §4 PROVISIONS, PARTICULARLY IN RELATION TO THE DEFINITION OF "MEDICAL USE," AND WHETHER SUCH INTERPRETATION ACHIEVES HARMONY AND INTERNAL CONSISTENCY WITHIN THE ACT AS A WHOLE, WHILE CARRYING OUT ITS INTENT AND PURPOSE.

Appellee State of Michigan says "Yes."
Appellants McQueen, et al would say "No."
The Court of Appeals did not answer this precise question
Amici say "yes"
This Court should say "Yes."

STATEMENT OF FACTS

Amici adopt the Statement of Facts presented by Appellee, State of Michigan.

INTRODUCTION

This amicus curiae brief seeks to assist the Court in clarifying the meaning of the Michigan Medical Marihuana Act MCL 333.26421, et seq. (MMMA). The ultimate objective is to provide all interested parties with much needed guidance for the governance of their behavior, including actions involving the private medical use of marihuana, steps taken in regulation and law enforcement, and assistance to the Bench and Bar in the interpretation of this new law.

The purpose of the MMMA is to allow a limited class of individuals the "medical use" of marijuana, and the act declares this purpose to be an "effort for the health and welfare of Michigan citizens."[1] In this case, the Court is presented with the opportunity to interpret the MMMA to determine whether a patient is authorized to sell marihuana to other patients. In the process of undertaking such interpretation, the Court is also presented with the opportunity to construe and clarify the defined phrase "medical use" which appears many times in the statute.

Among the more than 1,800 cities, villages, townships, and counties in this state, a significant number of communities are spending an inordinate amount of time attempting to understand the MMMA, and to regulate medical marihuana issues for the promotion of stability. However, these communities urgently require guidance in the interpretation of this law with regard to the nature and extent of lawful regulation, including the right of patients to sell and

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[1] *People v Kolanek,* 491 Mich. 382, Slip Op, pp 9-10, WL 1957900 (May 31, 2012).

engage in other activities relating to marihuana. Similarly, there is little certainty for law enforcement in the effort to determine the line between activities that are permitted under the authorization of the MMMA and those prohibited as criminal acts under the more generally applicable Public Health Code. Clarifying the meaning and predictability of the statute is also needed to minimize impermissible intrusion into the rights of the limited class of individuals who wish to conduct themselves in a manner protected by the MMMA. Finally, clarification in the interpretation of this new law will reduce the number of cases that reach the civil and criminal courts involving the distribution of marihuana, zoning and land use regulation, and the like, and thus promote judicial economy.

The Court addressed discrete portions of the MMMA in *People v Kolanek, supra*, in which the particular issues presented in that case were addressed, and in that process the Court provided significant insights relating to the intent of the law and its bifurcated structure. The present case places before Court a separate part of the statute for interpretation. Here, the issues presented, and thus the focus of this brief, will be on the regulations found in §4 of the statute,[2] and the provisions associated with that section – primarily §§3 and 6 (§§3, 4, and 6 together being referred to as the "**§4 Provisions**"). In particular, this brief will examine the definition of "medical use" specified in §3 of the act, and the manner in which this definition relates to the issue directed to be briefed by the Court in its grant of application for leave: patient to patient transactions.

The §4 Provisions will be addressed as follows, particularly in relation to the definition of "medical use:"

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[2] MCL 333.26424.

First, it will be demonstrated that the §4 Provisions are ambiguous and unclear. Not slightly ambiguous, but materially and seriously ambiguous in their basic structure, in the manner in which specific provisions are phrased, and in a number of individual terms. Such ambiguity gives rise to the need for interpretation of the §4 Provisions in order to understand the intent and purpose of the phrase "medical use," and in turn, the intent of the law with regard to patient to patient transactions.

Second, an analysis will be made with regard to the interpretation of the §4 Provisions consistent with long-standing rules of statutory construction, leading to Amici's proposal of an interpretation of the phrase "medical use" that achieves harmony and internal consistency within the act as a whole, while carrying out its intent and purpose. This interpretation, in turn, will shed significant light on the issue of patient to patient transactions.

It is the position of Amici that the interpretation of "medical use" advanced in this brief would represent a further step, building on *Kolanek,* in the direction of stabilizing regulation and law enforcement, reducing intrusions into private rights intended to be protected by the MMMA, and enhancing judicial economy by limiting the quantity of litigation relating to the interpretation of this law.

ARGUMENT

I

THE OVERALL STRUCTURE AND SPECIFIC TERMS WITHIN THE §4 PROVISIONS ARE MATERIALLY AND SERIOUSLY AMBIGUOUS, AND THUS INTERPRETATION REQUIRES MORE THAN EXAMINING THE PLAIN MEANING OF THE LANGUAGE USED IN THE ACT. IT IS NECESSARY TO *INTERPRET* THE §4 PROVISIONS IN ORDER TO ASCERTAIN THEIR INTENT, AND ACHIEVE HARMONY AND INTERNAL CONSISTENCY OF THE ACT AS A WHOLE.

Standard of Review

The arguments presented in connection with this issue relate exclusively to statutory construction, which is a question of law reviewed de novo on appeal.[3]

* * *

This case presents the opportunity for the Court to continue the important work begun in *Kolanek* to provide guidance on the interpretation of the MMMA. In that case, the Court clarified that the "MMMA does *not* create a general right for individuals to use and possess marijuana in Michigan,"[4] and that it "was not intended to legitimize illegal marijuana use."[5]

The *Kolanek* Court also identified the bifurcated nature of the MMMA, pointing out that it must be considered in two distinguishable parts based on whether a person is claiming relief as a "qualifying patient" under §4,[6] or claiming a defense under §8.[7] A qualified patient who holds

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[3] *Veenstra v. Washtenaw Country Club,* 466 Mich. 155, 159, 645 N.W.2d 643 (2002).
[4] *People v Kolanek,* ___ Mich ___ Slip Op, p 10, WL 1957900 (May 31, 2012).
[5] Id, at pp 25-26.
[6] MCL 333.26424.
[7] MCL 333.26428.

a registry identification card may claim relief under the §4 Provisions, and has "broad immunity from criminal prosecutions, civil penalties, and disciplinary actions . . ."[8] On the other hand, a person who claims relief under §8 may assert an entitlement to narrower relief, in the form of an affirmative defense to criminal charges involving marihuana for its medical use.

In the present case, the subject matter involves the authorization granted in the act to qualified patients who hold registry identification cards, and thus the review must be conducted under §4, and the provisions associated with that section (together, the **§4 Provisions**).[9]

It is fair to say that the §4 Provisions represent a major component of the act. Yet, due to the ambiguity of these provisions, discussed in greater detail below, private individuals have found it difficult to know whether they are acting under the protective exception of this statute or committing serious crimes under the generally applicable Public Health Code (PHC),[10] that forbids all manufacture, delivery, or possession of marihuana. Of equal significance, cities, villages, and townships have been very limited in their ability to predict with reasonable confidence whether a particular form of ordinance will be upheld, and whether particular law enforcement methods are permissible. Given the existence of material ambiguity in the statute, all public and private interests relating to medical marihuana issues would be well-served by the Court providing the type guidance for the §4 Provisions so carefully fashioned for §8 in its *Kolanek* opinion.

The appropriate review of §4 Provisions is aided, in part, by the authority summarized in a recent case in which the Court discussed marihuana regulation in Michigan. The Court called

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[8] *Kolanek, supra,* Slip Op, pp 10-11.
[9] Primarily, §§3, 4 and 6.
[10] MCL 333.7401(2)(d).

upon relevant case precedent to be applied in interpreting particular language of a statute, with the view of seeking to accomplish the purpose of the law:

> The primary goal is to give effect to the intent of the Legislature. Frankenmuth Mut. Ins. Co. v. Marlette Homes, Inc., 456 Mich. 511, 515, 573 N.W.2d 611 (1998). When a statute is ambiguous, judicial construction is appropriate to determine the statute's meaning. See id. When determining the Legislature's intent, the "'statutory language is given the reasonable construction that best accomplishes the purpose of the statute.' " Id. (citation omitted). Indeed, "[i]t is a well-established rule of statutory construction that provisions of a statute must be construed in light of the other provisions of the statute to carry out the apparent purpose of the Legislature." Farrington v. Total Petroleum, Inc., 442 Mich. 201, 209, 501 N.W.2d 76 (1993). As a result, "the entire act must be read, and the interpretation to be given to a particular word in one section arrived at after due consideration of every other section so as to produce, if possible, a harmonious and consistent enactment as a whole." Grand Rapids v. Crocker, 219 Mich. 178, 182-183, 189 N.W. 221 (1922).[11]

A dissent filed in the same case confirms with regard to the MMMA that it "is clear that the act operates in harmony with existing controlled substances laws . . ."[12] The challenge presented in this case is to provide the interpretive basis for harmonizing the §4 Provisions, internally and in operation with the PHC, to achieve intended purposes.

In the following section of this brief, the ambiguity of the statute is demonstrated, with the corresponding requirement of giving the §4 Provisions, and particularly the phrase "medical use," a reasonable construction that best accomplishes the purpose of the statute.

1. Internal Structural Inconsistency of §4 Provisions

A reading of the various parts of the §4 Provisions in relation to the phrase "medical use" reveals a broad and serious internal inconsistency and ambiguity that requires harmonization in order to achieve the intent of the overall statutory scheme.

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[11] *People v Feezel,* 486 Mich. 184, 205, 783 N.W.2d 67 (2010).
[12] Id, at 224 (Dissent by Justice Young, now Chief Justice)

While the Court is certainly not authorized to rewrite the statute, there is a need to apply traditional rules of construction to *interpret* this new law in a manner that achieves internal consistency and harmony, while allowing the intended purpose of the MMMA to be met. The focus here is upon the basic structure, or core, of the §4 Provisions, which is formed based on the establishment of two major parties, the "qualifying patient" and the "primary caregiver," with each assigned a particular role.[13] These assignments, and the limitations on their activities, are primarily addressed in three sections of the act, embracing numerous subsections.[14]

The very carefully designed organization and delineation of fundamental roles establishes the "patient" as the individual for whose ultimate benefit the MMMA grants exceptions from criminal treatment specified in the more general PHC. The justification for such exceptional treatment is founded on the statutory requirement that a "qualifying patient" must be suffering from a debilitating medical condition. This corresponds with the fundamental purpose of the MMMA which is to provide patients with access to medical marihuana to receive the "therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.[15] Patient access to marihuana is facilitated by the further authorization of a "caregiver" who may be selected by any patient, with the selected caregiver being authorized to assist the patient to ensure access to medical marihuana. A patient may select only one caregiver, and each caregiver may so assist up to five patients. Thus, the thrust of the act sets up

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[13] A "person" is also identified as a party who is provided a shield under MCL 333.26424(i) from the general application of the PHC, but only in connection with "assisting a registered qualifying patient with using or administering marihuana."

[14] MCL 333.26423(a), (g), (h), (i), (l), MCL 33326424(a), (b), (d), (e), (f), (k), MCL 333.26426(a), (b), (d), (e), (f), (h), (i).

[15] MCL 333.26423(l).

the "**patient**" as the party who ***uses*** marihuana to secure its stated medical benefits, and the "**caregiver**" as the ***provider of assistance*** to patients to facilitate their use of marihuana.

A focus on the extensive regulations and restrictions written for the "caregiver" is very relevant, and directly related to interpreting the authority intended in the §4 Provisions to be applicable to patients based on the definition of "medical use."

The *primary caregiver* receives broad statutory attention in the §4 Provisions.

- The caregiver is carefully defined, with provisions to promote the safety and security of patients, such as those concerning a caregiver's minimum age and the lack of a felony conviction record involving illegal drugs. MCL 333.26423(g).
- Provision is made for confidential registration with the state. MCL 333.26423(i), MCL 333.26424(b).
- Provision is made for the protection of the caregiver from penalty or prosecution. MCL 333.26424(b).
- The specific amount of marihuana that may be possessed, and the number of marihuana plants that may be cultivated are carefully restricted. MCL 333.26423(b)(1) & (2).
- There is a specification (albeit ambiguous) that a primary caregiver registered with the State may receive compensation for costs associated with assisting a registered qualifying patient. MCL 333.26424(e).
- There are detailed provisions for state issuance of a registry card to the caregiver, and for the contents of such card. MCL 333.26426(a)(5) & (6) and (e).

- There is a careful restriction of one caregiver per patient and five patients per caregiver, provisions obviously designed to promote availability, responsibility and accountability in the implementation of caregiver functions. MCL 333.26426(d).
- There are detailed specifications to ensure the caregiver's confidentiality. MCL 333.26426(h).

Such extensive attention in the §4 Provisions to caregivers does not represent the product of an afterthought. Rather, such attention represents a very careful effort to make provision for a workable scheme for the provision of confidential assistance to patients, and clarifies that the primary caregiver is an important element in the §4 Provisions. Indeed, an indispensable element to achieve the purposes of the act in a safe, responsible, and accountable manner. The caregiver provides assistance to the patient, the person who has a debilitation medical condition, in gaining access and making use of marihuana to achieve the stated beneficial medical effects.

Although the caregiver's indispensable role of providing assistance to the debilitated patient is so meticulously described and regulated in the §4 Provisions, the issue before the Court in this case, based on the definition of "medical use," is whether a patient, who is not carefully restricted in qualification and activity, is also authorized to perform essentially the same functions as the caregiver, i.e., applying the full definition of "medical use" to the authorization of patients would mean that patients would be excepted from PHC responsibility in connection with all of the following: "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating

medical condition or symptoms associated with the debilitating medical condition." In other words, whereas the §4 Provisions go to extensive length to spell out public interest restrictions on the caregiver's role in assisting patients, e.g., the age and criminal record of the caregiver, the number of plants that may be cultivated per patient, the precise number of ounces of marihuana that may be possessed per patient, and the limitation on the number of patients that may be served, *this detailed protection is not provided with regard to a patient playing this role of assisting other patients*. This absence of regulation and limitation would be dramatic in the overarching picture if patients were deemed to have such authority.

Indeed, in light of the all-encompassing statutory resources allocated to addressing and restricting the various aspects of the caregiver, if one were to accept the theory that *a patient* may assist other patients with "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition,"[16] there is one resounding realization that presents itself: such a conclusion would have the effect of *rendering the entire caregiver scheme a nugatory shadow on the pages of the statute.*

Looking at the same structural issue from the standpoint of the November 2008 approval of the initiated law, given all of the protective provisions so meticulously spelled out for the caregiver, there would certainly be a serious question whether the electorate called upon the vote on the statute could have possibly understood that a patient would be permitted to perform the same functions as the caregiver, but with none of the safeguards.

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[16] This is the language of the "medical use" definition. MCL 333.26423(e).

2. *Ambiguity of specific terms of the §4 Provisions*

In addition to examining the overall structure of the §4 Provisions, reviewing examples of specific terms of the §4 Provisions also provides helpful insight regarding the meaning of "medical use," and in turn the scope of a patient's authorization to engage in transactions with other patients.

In §2(c) of the statute, it is expressed that,

> The laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and Washington do not penalize the *medical use and cultivation* of marihuana.[17]

Inasmuch as "medical use" is defined to include "cultivation," a literal reading of the "medical use" definition applied in the context of §2(c) would result in the phrase "and cultivation" being total surplusage. So why was "and cultivation" included? Very simply, the *common meaning* and understanding of the term "*use*," as employed in "medical use" was intended within this context, not the full definition of "medical use." That is, within the context of §2(c), "medical use" was not intended to include the *entire* array of activities, "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." The obviously intended common meaning of *use* in this context would not include "cultivation."

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[17] MCL 333.26422(c). [Emphasis supplied].

This interpretation is confirmed and paralleled in the §3(l) definition of "written certification," which is the written statement a physician must provide as a basis for patient registration with the State. The definition of "written certification" is:

> "Written certification" means a document signed by a physician, stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the *medical use* of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.[18]

Likewise, in §4(f) it is specified that:

> A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, *a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, . . .*[19]

Certainly, it could not be seriously maintained that the intent of the act, and understanding of the electors, would be that a physician is to provide a professional opinion on whether a patient is to receive therapeutic or palliative benefit from the "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating

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[18] MCL 333.26423(l). [Emphasis supplied].
[19] MCL 333.26424(f) [Emphais supplied]; and see also MCL 333.26428(a)(1).

medical condition would provide a therapeutic or palliative benefit to the patient." The intent is sufficiently clear in §3(l) and §4(f) for the meaning of "medical use" to have the *common meaning of the word "use*." Applying the full array of activities within the statutory definition within these contexts would be absurd and confusing.

In §6(b), it is provided that,

> The department shall not issue a registry identification card to a qualifying patient who is under the age of 18 unless:
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> (1) The qualifying patient's physician has *explained the potential risks and benefits of the medical use of marihuana* to the qualifying patient and to his or her parent or legal guardian; . . .
>
> * * *
>
> (3) The qualifying patient's parent or legal guardian consents in writing to:
>
> * * *
>
> (C) Control the acquisition of the marihuana, *the dosage, and the frequency of the medical use of marihuana by the qualifying patient.* [20]

It requires no speculation in reading this §6(b) language in order to conclude that the intended meaning of "medical use" again includes only the *common meaning* of "*use*," and that there is no intent for "medical use" to mean that the physician would be explaining risks and benefits, or that consent for dosage and frequency, would be associated with "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a

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[20] MCL 333.26426(b). [Emphasis supplied].

registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition would provide a therapeutic or palliative benefit to the patient."

The fundamental point is that, in the definition of "medical use" there is expansive language, but all of the activities within this definition may not be deemed to have universal application within all contexts throughout the statute. Common meaning within the structure of the statute as a whole must be considered for each context.

3. Ambiguous Terms Further Exacerbate the Problem

The discussion above focused on how the definition of "medical use," read in the context of the §4 Provisions, leads to ambiguity that requires interpretation in order to ascertain intent. This conclusion is supported by the recognition that there are other ambiguous terms and phrases in the MMMA which demonstrate the broad ambiguity with the act as a whole. Such ambiguity exacerbates the lack of harmony caused by the problematic "medical use" definition. For example, the phrase, "enclosed, locked facility," and related regulations, have been the subject of earlier cases in the Court of Appeals, e.g., there have been disputes concerning the nature and minimum requirements for such a facility,[21] and concerning the question of who may have access to such a facility. [22]

Likewise, the meaning of "bona fide physician-patient relationship," mentioned in *Kolanek,*[23] and discussed in *People v Redden,*[24] has been unclear, and will undoubtedly require further judicial reivew. There is also a question concerning the meaning of "compensation for

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[21] *People v Kolanek,* 291 Mich App 503; 804 NW2d 911 App (2011). (issue not reached by the Court in *Kolanek, supra*).
[22] *People v Bylsma*, 294 Mich App 219; ___ NW2d ___ (2011).
[23] Slip Op, p 12, fn 30.
[24] 290 Mich.App 65; 799 NW2d 184 (2010).

costs" (does this include a "profit" and who may be charged?) ("The statute does not authorize compensation for the labor involved in cultivating marijuana or for otherwise assisting the qualifying patient in its use, nor does it indicate that the primary caregiver may profit financially from this role.").[25] What statute governs the proofs required in order to convict when a person has been driving while drugged with medical marihuana, §7 of the MMMA, MCL 333.26427(b)(4) (under the influence) or MCL 257.625 ("zero tolerance" with proof of under the influence not required)?[26] An issue that has not yet been presented for consideration is whether there is a minimum threshold for establishing that a prospective patient has a "debilitating medical condition." There is a carefully prepared list of specific serious diseases and symptoms expressly stated in the definition of this condition.[27] The State is also grants state administrative authority to add additional medical conditions to the list.[28] However, reports are widespread that "written certifications" have been provided for conditions far less severe than the stated diseases. The ambiguity, then, is whether the express statement of medical conditions and symptoms implicitly establishes the minimum level of severity to justify the classification of "debilitating medical condition" in order to be excepted from PHC responsibility, or will this term merely be defined by the subjective opinion of each physician on a case-by-case basis?

The conclusion from the analysis provided above is that the overall structure *and* specific terms within the §4 Provisions are materially and seriously ambiguous, as exacerbated by the several other ambiguities in the act. The rules of construction applicable in determining statutory intent in cases of ambiguous laws are discussed in the next section of the brief. These rules

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[25] *People v Redden, Concurrence,* 290 Mich App at 108, fn 15, 112 (2010)
[26] *People v Koon,* ___ Mich App ___, No 301433, WL 1319472 (April 17, 2012).
[27] MCL 333.26423(a).
[28] Id.

dictate that interpretation of "medical use" requires more than examining the plain meaning of the words in that definition, and compels consideration of the context in which the phrase is used. It is necessary to *interpret* the §4 Provisions in order to ascertain intent, and achieve harmony and internal consistency of the act as a whole

II

THERE IS A WELL-SUPPORTED INTERPRETATION OF THE §4 PROVISIONS CONSISTENT WITH LONG-STANDING RULES OF STATUTORY CONSTRUCTION, AND CONSISTENT WITH COMMON USAGE WITHIN THE CONTEXT OF THE §4 PROVISIONS, PARTICULARLY IN RELATION TO THE DEFINITION OF "MEDICAL USE." SUCH INTERPRETATION ACHIEVES HARMONY AND INTERNAL CONSISTENCY WITHIN THE ACT AS A WHOLE, WHILE CARRYING OUT ITS INTENT AND PURPOSE.

Standard of Review

The arguments presented in connection with this issue relate exclusively to statutory construction, which is a question of law reviewed de novo on appeal.[29]

* * *

The question presented is whether the definition of "medical use" as applied within the §4 Provisions is intended to permit a registered qualified patient to cultivate and make "use" of marihuana in the commonly understood sense – consistent with the usage which is clear in the definition of "written certification" and other contexts noted above – or whether this definition intends – within each and every context throughout the MMMA – to authorize registered

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[29] *Veenstra v. Washtenaw Country Club,* 466 Mich. 155, 159, 645 N.W.2d 643 (2002).

qualified patients to provide assistance to other registered qualified patients with regard to the "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition would provide a therapeutic or palliative benefit to the patient."

Seeking an understanding of the meaning of "medical use" within the several contexts of the §4 Provisions in which it appears cannot be achieved by applying the "plain meaning" of language of all of the words in the definition within each and every context. As illustrated above by examining the structure and specific terms of the §4 Provisions, such an attempt at universal application of the plain meaning of the full definition leads to obvious absurdity, confusion and contradiction.

The Court is certainly not in the business of speculating on meaning and rewriting statutory language. However, the serious ambiguity associated with the phrase "medical use" within the §4 Provisions justifies and requires interpretation in order to ascertain and give effect to the intent of a cohesive statute. As clarified above, it appears quite clear that the meaning of "medical use" in particular instances requires consideration of context and common usage in order to provide a reasonable interpretation with internal consistency and harmony within the act as a whole, while carrying out its intent and purpose. *People v Feezel, supra.*

1. Standard of Review for Interpretation – Strict Construction

In reviewing the meaning of "medical use" within particular contexts of the MMMA, the correct standard of review is to *strictly construe* meaning against the party seeking the *excepton* of the act from the general rule of the PHC.

Under the Public Health Code (PHC) [30] marihuana is defined as a Schedule 1 controlled substance (which means high potential for abuse with no accepted medical use in treatment or a lack of accepted safety for use in treatment under medical supervision) and provides that the cultivation, use, and delivery of marihuana all constitute serious criminal acts. The MMMA provides an ***exception*** to the general rule of law stated in the PHC, and thus, rather than being interpreted as an entirely independent statute, must be recognized as an exception to a general rule under established rules of construction. The "MMMA does *not* create a general right for individuals to use and possess marijuana in Michigan."[31]

As the Court recognized in *Feezel, supra* [32] with regard to the regulation of marihuana, "our Legislature has declared that the provisions of the Public Health Code are 'intended to be consistent with applicable federal and state law and shall be construed, when necessary, to achieve that consistency.' MCL 333.1111(1)." Thus, the prevailing general rule with regard to the regulation of marihuana, as provided in both state and federal law,[33] can be fairly characterized as a broad prohibition on the manufacture, delivery, or possession of marihuana. The MMMA provides an *exception* to this general rule in the §4 Provisions, specifying that, "A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or

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[30] MCL 333.7211, 333.7212(1)(c).
[31] *People v Kolanek,* ___ Mich ___ Slip Op, p 10, WL 1957900 (May 31, 2012).
[32] 486 Mich at 209.
[33] Relevant fed drug law

professional licensing board or bureau, for the medical use of marihuana in accordance with this act. . . ."[34]

Under the long-established rules of construction pronounced by the Court, a statute must be interpreted in a manner that will best give effect to the intent of the act as a whole.[35] Interpretation requires the application of rules governing construction of ambiguous statutes, with the objective of implementing and reconciling the terms and provisions which are inconsistent with the implementation of the intent and purpose of the statute.[36]

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[34] MCL 333.26424(a); and, see MCL 333.26424(b) for parallel language applicable to caregivers.

[35] In *2000 Baum Family Trust v. Babel*, 488 Mich. 136, 175, 793 N.W.2d 633 (2010), the Court confirmed the basic rules of statutory construction: "The lower courts were also correct that our goal when interpreting a statute is "to ascertain and give effect to the intent of the Legislature" as reflected in the language of the statute, and if such language is "clear and unambiguous," we need go no further. *People v. Davis,* 468 Mich. 77, 79, 658 N.W.2d 800 (2003). However, our duty in construing a statute requires us to consider the "meaning of the critical word or phrase *as well as* 'its placement and purpose in the statutory scheme.' " *Sun Valley Foods Co. v. Ward,* 460 Mich. 230, 237, 596 N.W.2d 119 (1999) (emphasis added), quoting *Bailey v. United States,* 516 U.S. 137, 145, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995). That is, all words and phrases must be considered in statutory *context.*" In both the majority and dissenting opinions in *Krohn v. Home-Owners Ins. Co.*, 490 Mich. 145, 156-157, 182-183, 802 N.W.2d 281 (2011), there was agreement that intent must be reasonably inferred from the statutory language taking into account the context of the legislative scheme in which the language is used. The Court further clarified the following in its unanimous opinion in *Herman v. Berrien County*, 481 Mich. 352, 366, 750 N.W.2d 570 (2008): "We also note that, in statutory interpretation, if the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. *Turner v. Auto Club Ins. Ass'n,* 448 Mich. 22, 27, 528 N.W.2d 681 (1995). Also, "[a]s far as possible, effect should be given to every phrase, clause, and word in the statute. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended." *Sun Valley Foods Co. v. Ward,* 460 Mich. 230, 237, 596 N.W.2d 119 (1999) (internal citations omitted). Finally, in defining particular words in statutes, we must "consider both the plain meaning of the critical word or phrase as well as 'its placement and purpose in the statutory scheme.' " *Id.,* quoting *Bailey v. United States,* 516 U.S. 137, 145, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995)."

[36] *People v Feezel, supra.*

The MMMA provides a state law exception to the Public Health Code, with an authorization for a limited class of individuals who are suffering from a debilitating medical condition to use medical marihuana. By complying with the terms of the MMMA, registrants may avoid criminal prosecution prescribed under the generally applicable State Public Health Code.

This juxtaposition of statutory general rule and statutory exception has extremely important consequences in terms of interpretation and burden of proof, beginning with the pivotal rule that *statutory exceptions operate to restrict the general applicability of legislative language and are* ***strictly construed.*** [37] Moreover, the general rule of statutory construction is that the burden of proving justification or exemption under a special exception to the prohibitions of a statute generally rests on the one who claims its benefits.[38] These rules of statutory construction apply with significant force and effect to the present case.

Such obligation to strictly construe, and for the establishment of burden of proof, may be distinguished from the rebuttable presumption in the MMMA concerning the medical use of marihuana:

> There shall be a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with this act if the qualifying patient or primary caregiver:

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[37] *People v. Brooks,* 184 Mich.App. 793, 797, 459 N.W.2d 313 (1990), citing *Grand Rapids Motor Coach Co. v. Public Service Comm.,* 323 Mich. 624, 36 N.W.2d 299 (1949), and more recently, *Huggett v. Department of Natural Resources*, 232 Mich.App. 188, 194, 590 N.W.2d 747 (1998).

[38] *Michigan Tool Co. v. Michigan Employment Sec. Commission*, 346 Mich. 673, 680, 78 .W.2d 571 (1956), citing *Federal Trade Commission v. Morton Salt Co.*, 334 U.S. 37, 44, 68 S.Ct. 822, 827, 92 L.Ed. 1196. See also, *Michigan Tool Company v. Michigan Employment Security Commission*, 346 Mich. 673, 680, 78 N.W.2d 571 (1956), *Salenius v. Michigan Employment Sec. Commission*, 33 Mich.App. 228, 237, 189 N.W.2d 764 (1971), *Fresta v. Miller*, 7 Mich.App. 58, 64, 151 N.W.2d 181 (1967).

> (1) is in possession of a registry identification card; and
>
> (2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.[39]

This presumption begs the question with regard to the *meaning* of the phrase "medical use." In other words, it would appear quite clear from the analysis of the §4 Provisions above, the phrase "medical use" does not have a uniform meaning throughout the statute. Therefore, it becomes necessary to engage in the task of construing the §4 Provisions, which would be ambiguous and absurd if the entire array of words in the definition of "medical use" were applied within all contexts. The statutory rebuttable presumption applies in determining whether "medical use" has been undertaken in accordance with the MMMA. The question that must be confronted first is: what does "medical use" mean within the various contexts of the §4 Provisions.

In summary, for purposes the present analysis, because a special privilege is being carved out for certain people from the general rule of law applicable to marihuana, the phrase "medical use" must be *strictly construed* in respective contexts of regulation in order to determine whether a meaning is in conformance with the intent and purpose of the statute.

2. Applicable Interpretation Based on the Structure of the §4 Provisions.

Based on the analysis undertaken above with regard to the structure of the §4 Provisions, it is quite clear that a reading of the definition of "medical use" to permit patients to engage in the wide range of actions included in the definition for providing assistance to other patients

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[39] MCL 333.26424(d).

would mean that the extensive regulations and protective limitations applicable to *caregivers* would be rendered virtually meaningless. Patients would effectively be permitted to perform the function of caregivers, although the establishment and regulation of caregivers is so meticulously and extensively provided for in the §4 Provisions. Such an interpretation would egregiously violate a very basic rule of statutory construction in that it would effectively render meaningless a critical part of the §4 Provisions.

It is "well established that '[i]n interpreting a statute, we [must] avoid a construction that would render part of the statute surplusage or nugatory.'" [40] Likewise, the Court has pointed out that, "On numerous occasions, this Court has discussed the rule of construction to be employed when interpreting statutory language in order to determine legislative intent. In construing legislative intent it is mandatory, if possible, to construe an act as a whole, thus avoiding the construction of one provision in such a manner as to negate another."[41]

Additionally, applying a uniformly broad meaning of "medical use" within all contexts of the statute would wholly contradict the purported *safeguards* established for caregiver assistance, including the carefully protected confidential relationship, the limitation imposed on the number of patients a caregiver may assist, the age of the caregiver, and the absence of a felony conviction record involving illegal drugs. Indeed, there would be no need whatsoever for a formal or informal relationship between patient and patient, and no basis for responsible and accountable behavior in providing marihuana or other assistance by patients to patients – simply

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[40] *Robinson v City of Lansing*, 486 Mich. 1, 21, 782 N.W.2d 171 (2010), citing *People v. McGraw*, 484 Mich. 120, 126, 771 N.W.2d 655 (2009).
[41] *Franges v. General Motors Corp.*, 404 Mich. 590, 611, 274 N.W.2d 392 (1979), citing *Joslin v. Campbell, Wyant & Cannon Foundry Co.*, 359 Mich. 420, 102 N.W.2d 584 (1960).

a group of patients with no qualifications, no connection to other patients on the records of the State, and no limitation as to number, freely acquiring, cultivating, manufacturing, delivering, transferring, and transporting marihuana and paraphernalia relating to the administration of marihuana for patients. Not unimportant is the point that the common usage reading of the act by electors who voted on the initiated law in 2008 would have been given a false sense of safety based on the protective limitations applicable to caregivers – not applicable to patients. It is a well-established rule of statutory construction that provisions of a statute may not be construed to cause absurd results and harm the public interest.[42] Moreover, provisions of a statute must be construed in light of the other provisions of the statute to carry out the apparent purpose of the act.[43] Allowing unrestrained patient "assistance" for other patients without the safeguards provided in the act for caregivers would place those patients receiving such "assistance" in a position of obvious vulnerability and danger.

Statutes must be construed in light of the other provisions of the statute to carry out the legislative purpose. The entire act must be read, and the interpretation to be given to a particular word in one section arrived at after due consideration of every other section so as to produce, if possible, a harmonious and consistent enactment as a whole. [44] Applying the definition of "medical use" must take into consideration the context of the legislative scheme in which the language is used,[45] as well as placement and purpose of the language in the statutory scheme.[46]

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[42] *Id.,* at 612.
[43] *People v Feezel, supra.*
[44] *People v Feezel,* 486 Mich. 184, 205, 783 N.W.2d 67 (2010), citing *Farrington v. Total Petroleum, Inc.*, 442 Mich. 201, 209, 501 N.W.2d 76 (1993), *Grand Rapids v. Crocker*, 219 Mich. 178, 182-183, 189 N.W. 221 (1922).
[45] *Krohn v. Home-Owners Ins. Co.*, 490 Mich. 145, 156-157, 182-183, 802 N.W.2d 281 (2011).

"Where the language of a statute makes its meaning obscure, it is the duty of the courts to construe, giving it a reasonable and sensible interpretation; . . ." [47]

Thus, ascertaining the intended meaning of "medical use" within the §4 Provisions requires a consideration of both (1) the statutory structure – in which the intent for meaningful and separate roles for both patients and caregivers must be recognized consistent with the meticulously fashioned statements within the §4 Provisions, and (2) the specific terms of the §4 Provisions which dictate that the meaning of "medical use" requires consideration of context and common usage consistent with the manner in which "medical use" is expressly employed in several of the §4 Provisions. With these fundamental points in mind, a reasonable interpretation of the §4 Provisions dictates the following intent with regard to the meaning of "medical use."

- **For Primary Caregivers**: Considering specific context, the parts of the definition of "medical use" that relate to ***assisting patients*** should be deemed to apply to ***caregivers***. For example, this would include "*possession, cultivation, manufacture, . . . delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition*".

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[46] *Sun Valley Foods Co. v. Ward,* 460 Mich. 230, 237, 596 N.W.2d 119 (1999), citing *Bailey v. United States,* 516 U.S. 137, 145, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995).

[47] *Gardner-White Co. v. State Board of Tax Administration*, 296 Mich. 225, 230, 295 N.W. 624 (1941), quoting *Boyer-Campbell Co. v. Fry*, 271 Mich. 282, 297, 260 N.W. 165, 171, 98 A.L.R. 827.

- **For Registered Qualified Patients**: Considering specific context, the parts of the definition of "medical use" that relate to the **receipt of care through the access to marihuana** by a patient for her or his own use to achieve the stated beneficial effects assisting patients, should be deemed to apply to ***patients***. For example, this would include, "*possession, cultivation, . . . use, internal possession.*"

The product of such a construction would be an internally consistent and harmonious statute, with all words within the definition of "medical use" having due meaning in accord with the intent and purpose of the MMMA.

3. Interpretation Confirmed Based on Intent Gleaned from Specific Language within the §4 Provisions

Examining specific §4 Provisions confirms that the usage in the initiated law, and the manner in which the electorate would have understood the law when voting on it, would simply not permit an interpretation that uniformly applies all components of the "medical use" definition to all contexts throughout the statute.

The detailed analysis of specific §4 Provisions, such as the definition in §3(l) of the physician's "written certification" of the therapeutic benefits of medical use, the provision in §4(f) prohibiting punishment of the physician for stating that a patient is likely to receive therapeutic or palliative benefit from medical use, and the provision in §6(b) relating to registry for minors on the condition, in part, that a physician has explained the potential risks and benefits of medical use, all clarify without doubt the absence of intent for all words of the "medical use" definition to apply in each and every context of the §4 Provisions. To conclude otherwise would lead to sheer absurdity and prejudice to the public interest, and would fully contradict "[a]nother

frequently applied rule of statutory construction [that directs] that statutes should be construed to prevent absurdity, hardship, injustice or prejudice to the public interest."[48]

Common understanding and usage within the statute itself support the reading that the meaning of "medical use" for **patients** consists of the **receipt of care through the access to marihuana** including the "*possession, cultivation, . . . use, internal possession*" of marihuana, activities consistent with the purpose and intent of the MMMA to provide a patient with direct access to marihuana for her or his own use to achieve the stated benefits in relation to a debilitating disease.

The adoption of this interpretation would provide great assistance in deciding the particular issues before the Court. Of equal importance, applying this interpretation in the future would be of material assistance in construing the many other issues wrought by this law that are in need of clarification.

CONCLUSION AND RELIEF SOUGHT

The MMMA provides to a registered qualified patient a shield from penalty and prosecution for the "medical use" of marihuana in accordance with the act. A narrow question presented in this case is whether a patient is permitted to sell marihuana to another patient. Amici have attempted to answer this question by presenting a broader question, namely: whether the definition of "medical use" as applied within the §4 Provisions is intended to permit a

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[48] *Franges v. General Motors Corp.*, 404 Mich. 590, 612, 274 N.W.2d 392 (1979). See also, *Gardner-White Co. v. State Board of Tax Administration*, 296 Mich. 225, 230, 295 N.W. 624 (1941) ("Statutes will be construed in the most beneficial way which their language will permit to prevent absurdity, hardship or injustice; to favor public convenience and to oppose all prejudice to public interests.' 2 Lewis' Sutherland Statutory Const. (2d Ed.) § 490.')

registered qualified patient to cultivate and make "use" of marihuana in the commonly understood sense – consistent with the usage which is clear in the definition of "written certification" and other contexts noted above – or whether this definition intends – within each and every context throughout the MMMA – to authorize registered qualified patients to provide assistance to other registered qualified patients with regard to the "acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition would provide a therapeutic or palliative benefit to the patient."

The §4 Provisions are seriously ambiguous and unclear, particularly in relation to the definition of "medical use." The §4 Provisions meticulously establish a scheme in which the registered qualifying patient may access marihuana for its stated beneficial effects, and the primary caregiver may provide assistance to the patient in gaining such access. As part of this scheme, the §4 Provisions establish significant restrictions and limitations upon caregivers for the protection of patients, including the limitation imposed on the number of patients a caregiver may assist, the age of the caregiver, and the absence of a felony conviction record involving illegal drugs. If the phrase "medical use" is interpreted to apply all words in the definition to each and every context in which the phrase appears, the effect would be that the existence of the meticulously created caregiver would be rendered a nullity because the patient could perform

substantially all of the functions of the caregiver, and do so without the safeguards imposed on the caregiver – a result which would be absurd and contrary to the public interest.[49]

The ambiguity of the §4 Provisions in relation to the phrase "medical use" gives rise to the need to interpret the statute in order to ascertain the intent of the act with regard to the intended meaning of "medical use."[50]

Studying the specific §4 Provisions confirms an internal consistency problem, as well as an ambiguity created by applying the broad definition of "medical use." In order to avoid an absurd result,[51] the §4 Provisions themselves must be read to reflect an intent for a more limited meaning of "medical use" within respective contexts. These provisions point inexorably to the conclusion that it is mandatory to consider the common meaning and usage of the term "use" within each particular context in which "medical use" appears.

It is necessary to remain mindful that the fundamental purpose of the MMMA is to provide patients with access to medical marihuana in order to provide the "therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.[52] Assuming the validity of the statute, this purpose must be respected. However, in the interpretation of the

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[49] *Franges v. General Motors Corp.*, 404 Mich. 590, 611, 274 N.W.2d 392 (1979) (Another frequently applied rule of statutory construction is that statutes should be construed to prevent absurdity, hardship, injustice or prejudice to the public interest. *Gardner-White Co. v. State Board of Tax Administration*, 296 Mich. 225, 295 N.W. 624 (1941); *Zawacki v. Detroit Harvester Co.*, 310 Mich. 415, 17 N.W.2d 234 (1945); General Motors Corp. v. Unemployment Compensation Commission, 321 Mich. 604, 33 N.W.2d 90 (1948)).

[50] *People v Feezel, supra.*
[51] Id.
[52] MCL 333.26423(l).

§4 Provisions, the intent of the act in terms of the definition of "medical use" must be in harmony with such purpose.

As it applies to the various contexts in which "medical use" appears in the §4 Provisions in relation to **patients** and **caregivers**, Amici proposes to the Court an interpretation of this phrase which is in harmony with the purpose of the MMMA, provides consistency with the structure of the §4 Provisions, and establishes internal consistency among the various provisions of the act:

- **For Primary Caregivers**: Considering specific context, the parts of the definition of "medical use" that relate to ***assisting patients*** should be deemed to apply to ***caregivers***. For example, this would include "*possession, cultivation, manufacture, . . . delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition*".
- **For Registered Qualified Patients**: Considering specific context, the parts of the definition of "medical use" that relate to the **receipt of care through the access to marihuana** by a patient for her or his own use to achieve the stated beneficial effects assisting patients, should be deemed to apply to ***patients***. For example, this would include, "*possession, cultivation, . . . use, internal possession.*"

This construction of the intent of the act would result in an internally consistent and harmonious statute, with all words within the definition of "medical use" having due meaning in accord with the intent and purpose of the MMMA. In addition, such a construction would

greatly facilitate the provision of sound and reliable legal advice to public and private entities and persons. In turn, such an interpretation would lead to stability in regulation and law enforcement, reduction of intrusions into private rights intended to be protected by the MMMA, and enhancement in judicial economy.

Amici respectfully requests the Court to formulate its opinion and decision consistent with this proposed interpretation.

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July 26, 2012

STATE OF MICHIGAN

IN MICHIGAN SUPREME COURT

On Appeal from the Court of Appeals
Murray, P.J., Hoekstra, and Stephens, JJ.

STATE OF MICHIGAN,

Plaintiff/Appellee,

v

Supreme Court Case No. 143824

Court of Appeals Docket No. 301951
Isabella CC No. 2010-008488-CZ

BRANDON MCQUEEN and MATTHER TAYLOR, *d/b/a* COMPASSIONATE APOTHECARY, LLC,

Defendants/Appellants.

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PROOF OF SERVICE

Gerald A. Fisher, attorney for Amicus Curiae Michigan Municipal League, Michigan Townships Association, State Bar Public Corporation Section and Michigan Municipal League, states that on July 26, 2012, a copy of the Brief in Support of Plaintiff-Appellee was mailed to all parties of record, **Larry J. Burdick** and **Mary Chartier**, at their addresses as set forth above, with postage fully prepaid thereon.

I declare that the statement set for above is true to the best of my information, knowledge, and belief

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