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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Patient Can't Force Michigan To Tap New Pot Suppliers

By **Jack Queen**

Law360 (January 16, 2020, 10:52 PM EST) -- A Michigan medical marijuana patient can't force the state to ease a supply shortage by tapping unregulated cannabis growers after a federal court ruled it was barred from meddling with a state agency's decisions.

U.S. District Judge Paul D. Borman tossed cancer patient Sherry Hoover's lawsuit against the Michigan Department of Licensing and Regulatory Affairs Thursday, finding the agency enjoyed 11th Amendment immunity and couldn't be sued in federal court.

Hoover said in her June 2019 complaint that Michigan's medical marijuana market is crippled by an intractable supply shortage, with retailers far outnumbering growers and a testing system mired in bottlenecks.

Hoover asked the court to force the state licensing department, referred to as LARA, to "modify and expand" lapsed emergency rules that sustained the market by allowing retailers to purchase supply from so-called caregivers, who can grow up to 72 plants and aren't required to test their products. The rules expired in March 2019, and Hoover said she hasn't been able to get any medical cannabis since.

"LARA knows of the shortage of medical marijuana supply and is cavalier and derelict in its duties to preserve the health, safety, security and welfare of the public pursuant to its obligations," Hoover said in her complaint.

Despite the shortage, LARA had only granted licenses for 94 provisioning centers and 68 growing licenses, according to Hoover's complaint. She said this was "clearly insufficient" to supply the tens of thousands of pounds of marijuana needed by more than 300,000 patients each month.

LARA issued 28 additional medical marijuana licenses between Hoover's initial lawsuit and Dec. 2019, when the agency briefed the court on the latest developments relevant to the case. Of those licenses, 10 were for growing facilities.

Hoover said she would risk losing her medical card if she tried to purchase cannabis from the unlicensed providers that have sprung up across the state. LARA's decision to block the caregivers from supplying provisioning centers had thus left her unable to safely obtain the products she uses to ease the side effects of chemotherapy for her stage 4 cancer.

"Plaintiff's lack of access to medical marijuana affects her health and wellbeing by failing to alleviate her pain, nausea, insomnia and decreased appetite from chemotherapy treatments, nose bleeds and memory loss," Hoover said.

Hoover's attorney Michelle R.E. Donovan told Law360 that Michigan's medical cannabis market has essentially stalled.

"The product shortage is incomprehensible," Donovan said. "There are so few products on shelves and it creates a huge black market. People are popping up on every street corner selling cannabis."

Michigan began recreational marijuana sales **ahead of schedule in December**, allowing medical providers to sell up to half of their stock to recreational users. Donovan said that has only made the problem worse for patients.

"Until they change the current structure or realize how much the black market is overpowering the regulated market, nothing will change," Donovan said. "So we're kind of stuck right now."

LARA did not immediately respond to a request for comment Thursday.

Hoover is represented by Michelle R.E. Donovan of Butzel Long PC.

LARA is represented by Erika N. Marzorati, Joshua O. Booth and Michelle M. Brya of the Michigan Attorney General's Office.

The case is Hoover v. Michigan Department of Licensing and Regulatory Affairs, case number 2:19-cv-11656, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Jay Jackson Jr.

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