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Preliminary injunction bars Venice-area dispensary from selling medical marijuana

The judge again sides with prosecutors' arguments that California law does not permit the sale of pot. His ruling says the Organica store was not operating as a true, nonprofit collective.

By John Hoeffel

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In a second ruling against a medical marijuana dispensary, a Los Angeles County Superior Court judge issued a preliminary injunction Tuesday that bars a popular Venice-area outlet from selling or distributing the drug at its sprawling store on Washington Boulevard.

The decision by Judge James C. Chalfant could embolden city prosecutors to seek more court orders to close dispensaries as they try to find the most efficient way to reduce the number in Los Angeles. As he did in a previous case, Chalfant concluded that the state's medical marijuana laws do not allow collectives to sell cannabis.

Chalfant's decisions are preliminary orders and both cases are slated to go to trial. But his rulings against Hemp Factory V in Eagle Rock and Organica, which straddles the Los Angeles-Culver City line, could eventually force the courts to settle the issue, which has become increasingly contentious as prosecutors in Southern California step up efforts to halt such sales.

Most, if not all, collectives sell marijuana to their members for set prices.

In the hearing, Chalfant strongly reiterated his view that the state's laws were intended to allow medical marijuana patients and caregivers to form collectives to grow pot together and share the harvest, but not to sell it like a product in a retail store. "Maybe I am too old, but those of us who grew up in the 1960s know what a collective is," he said.

Asha Greenberg, the assistant Los Angeles city attorney who is handling the case, said Chalfant's decision should make it clear to the city's dispensaries that selling marijuana is illegal.

Los Angeles County Dist. Atty. Steve Cooley and Los Angeles City Atty. Carmen Trutanich have pressed that view. Dispensary operators and their advocates, including Americans for Safe Access, the nation's main advocacy group for medical marijuana, have insisted that the two prosecutors are misinterpreting the law and recent court decisions.

Trutanich has sued four dispensaries: Hemp Factory V, Organica and two Holistic Caregivers

stores in South Los Angeles.

David Welch, the lawyer for Organica and its operator, Jeff Joseph, argued that cash contributions for marijuana are just one way that collective members contribute. Both said that members cultivated marijuana on site and in Topanga and Malibu. The judge "has no idea of how we were operating," Joseph said. "We weren't getting any from outside sources."

Welch dismissed Chalfant's conclusion as merely an opinion. "I think we will take this through the process that, in the end, we will be successful," he said.

Organica, which registered with the city in 2007, was targeted by federal and local narcotics agents and has been raided three times. In two searches, about 290 pounds of marijuana were seized. Records show the dispensary had \$5.3 million in sales in a 13-month period.

The judge compared it to a Costco, which requires membership but no collective labor. He also dismissed Joseph's claim that he lives a modest lifestyle as "weak," noting that the California Highway Patrol found more than \$92,000 in his car.

And he said Joseph provided no evidence that Organica was nonprofit, as state law requires.

"If I was making money, I wouldn't be broke now," said Joseph, who also faces a criminal trial on two dozen felony drug charges.

Chalfant appeared offended by some aspects of the case, concluding in his written decision that Joseph was "simply a drug dealer."

He noted that the collective members were accused of handing out fliers to high school students. "I personally think that is outrageous," Chalfant said. Joseph has repeatedly denied the charge, saying that the successful dispensary didn't need to recruit members.

Chalfant pointed out that the collective's records showed 257 of its 1,772 members were 21 or younger.

"How many of the children who are members of Organica are seriously ill?" he asked Joseph's lawyer.

Welch replied: "Your Honor, I know 16-year-olds who have died of cancer."

Chalfant's written decision closely resembles the one he issued for Hemp Factory V (see story below) on Jan. 29. At one point in Tuesday's hearing, the judge said, "As you can tell, I did some cutting and pasting."

But Chalfant denied Greenberg's request to require Organica to comply with the state drug-labeling law. In the Hemp Factory V case, he granted that request because evidence showed the dispensary sold pesticide-tainted pot.

Joseph said Organica has not been open since the last raid, in February. "Of course not," he said.

"I'm law-abiding as much as possible."

He said he is considering whether to open a different business at the location on Washington Boulevard. "I want to make something else there nonprofit to show that it is about the community," he said. "If we move out, it will fall into disrepair."

Judge orders Eagle Rock dispensary to stop selling Medical Marijuana

January 29, 2010 | 1:14 pm

A Los Angeles County Superior Court judge issued a preliminary injunction today ordering an Eagle Rock dispensary to stop selling medical marijuana, a decision that city prosecutors believe is the first to find that state law does not give collectives the right to sell the drug.

Judge James C. Chalfant's decision applies only to Hemp Factory V, a small outlet on Colorado Boulevard near the Glendale border, but could have enormous ramifications.

Hundreds of collectives in Los Angeles and throughout the state operate in the same way, selling marijuana to anyone who shows up with a doctor's recommendation and signs a form to become a member. Although the state's courts have ruled repeatedly on medical marijuana issues, they have never directly addressed whether this widespread practice is legal.

Chalfant concluded that state law does not authorize collectives to sell marijuana, but only to grow it and recoup reasonable costs. "A retail store that sells marijuana to its members simply does not satisfy the requirement of a collective to cultivate marijuana," he wrote in his decision.

Anthony Malecki, the attorney for Hemp Factory and its operator, Gevork Berberyan, did not challenge Chalfant's conclusions in the courtroom. He said he would consult with Berberyan before deciding whether to appeal the injunction. Chalfant's decision came in the preliminary phase of the city's lawsuit against the dispensary. The case is likely to go to trial.

The city's attorney, Asha Greenberg, noted that the decision was only a trial court ruling, but said it should be a warning to other medical marijuana collectives. "I think the analysis and the reasoning are very important, and they should pay attention to it," she said.

Chalfant's decision endorses the opinion of Los Angeles City Atty. Carmen Trutanich, who has become one of the most outspoken opponents of medical marijuana sales in the state. He sued Hemp Factory V in his first attempt to use the courts to close a dispensary in Los Angeles, which has seen hundreds open while city officials failed to enforce a moratorium on dispensaries.

California's 1996 medical marijuana initiative and a state law in 2003 allow patients and their caregivers to form collectives to cultivate marijuana. They do not explicitly allow marijuana to be sold, although the practice is now commonplace. Prosecutors and law enforcement officials

have increasingly argued that the law allows patients to work together to cultivate marijuana, but not to sell it over the counter to anyone who signs a form.

Dispensary operators, including Berberyan, argue that they do not sell marijuana, but ask for voluntary donations that are intended to repay the costs for growing marijuana. Many, including Berberyan, also say they give the drug free to poor patients.

The debate, rooted in the law's murky language, was one of the main reasons Los Angeles took many months to draft an ordinance. City Council members struggled with whether to explicitly outlaw sales, as Trutanich and Los Angeles County Dist. Atty. Steve Cooley insisted. In the end, the council finessed the issue, adopting language saying dispensaries must follow state law.

Chalfant's injunction could embolden Trutanich and prosecutors who have threatened to pursue dispensaries for selling marijuana. Officials with the city attorney's office have suggested that they are prepared to bring additional cases, but decline to discuss their plans.

In addition to maintaining that sales are illegal, Trutanich has also pressed the novel argument that the Sherman Law, the state's food and drug safety law, applies to sales of medical marijuana. He reached the conclusion after he had samples of marijuana from dispensaries, including Hemp Factory V, tested and found they contained pesticides, including some banned ones.

Chalfant agreed today that sales of marijuana would trigger the Sherman Law's requirements to properly label drugs and ensure they do not contain poisonous substances.

"No one who advocates in favor of medical marijuana dispensaries could reasonably contend that marijuana that contains banned pesticides should be sold in a retail store or handed out to members of a collective," he wrote in his 16-page decision.

He noted, however, that the law would not apply to collectives that did not sell marijuana. In his order, Chalfant also barred Hemp Factory V from selling marijuana with pesticides.

-- John Hoeffel at Los Angeles County Superior Court