

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**NO. 283 MD 2023**

**DAMON MONYER AND THE PENNSYLVANI CANNABIS COALITION,**  
*Petitioners,*

**v.**

**23<sup>rd</sup> JUDICIAL DISTRICT, BERKS COUNTY,**  
*Respondent.*

---

**BRIEF OF *AMICUS CURIAE***  
**BALANCED VETERANS NETWORK**

---

Judith D. Cassel I.D. No. 209393  
Micah R. Bucy, I.D. No. 320196  
Hawke McKeon & Sniscak, LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
Telephone: 717-236-1300  
Facsimile: 717-236-4841

Dated: April 8, 2024

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	ii
INTEREST OF <i>AMICUS CURIAE</i> .....	1
INTRODUCTION AND SUMMARY .....	2
ARGUMENT .....	3
I. Veterans Treatment Courts And Medical Marijuana Are Vital Lifelines For Pennsylvania’s Veterans .....	3
A. The need for Veterans Treatment Courts.....	3
B. The benefits of medical marijuana.....	7
II. Pennsylvania Supreme Court Precedent And The MMA Prohibit The District’s Policy.....	10
III. Medical Marijuana Use By Veterans Does Not Disqualify Veterans From Services Offered By The Veterans Health Administration And It Should Not Disqualify Veterans From The District’s Problem Solving Courts .....	14
CONCLUSION .....	18

## TABLE OF AUTHORITIES

### Cases

<i>Cease v. Housing Autho. of Indiana Cnty.</i> , 247 A.3d 57 (Pa. Cmwlth. 2021) .....	17
<i>Com. v. McCabe</i> , 265 A.3d 1279 (Pa. 2021) .....	11
<i>Gass v. 52nd Judicial District, Lebanon County</i> , 232 A.3d 706 (Pa. 2020) .....	12, 16, 17

### Statutes

21 U.S.C. §811 .....	16
35 P.S. §10231.101.....	8, 10
35 P.S. §10231.1309.....	12
35 P.S. §10231.2103.....	10
35 P.S. §10231.303.....	10
42 Pa.C.S. §916.....	6, 11

### **Other Authorities**

88 FR 90083 (Dec. 22, 2023).....	15
Admin. Office of Pa. Courts, <i>Problem-Solving Courts As of June 30, 2023</i> available at <a href="https://www.pacourts.us/Storage/media/pdfs/20211025/210629-problemsolvingcourtslist-asof10.25.21.pdf">https://www.pacourts.us/Storage/media/pdfs/20211025/210629- problemsolvingcourtslist-asof10.25.21.pdf</a> .....	7

Berks Cnty. C.C.P., Berks County Treatment Court: Policy and Procedure Manual (March 2023) available at <https://www.berkspa.gov/getattachment/f037524a-ce44-4722-a7c5-2889b5fa5d2a/Policy-and-Procedure-Manual-1.pdf> ..... 11, 13

Brent D. Mast, *Veteran and Nonveteran Homelessness Rates: New Estimates*, Cityscape: A Journal of Policy Development and Research, Vol. 25 Issue 2 available at <https://www.huduser.gov/portal/periodicals/cityscape/vol25num2/ch15.pdf>.....5

Centers for Disease Control and Prevention, *Opioid Overdose: Prescription Opioids* available at <https://www.cdc.gov/drugoverdose/deaths/opioid-overdose.html#:~:text=The%20number%20of%20drug%20overdose,times%20the%20number%20in%201999.&text=In%202021%2C%2045%20people%20died,overdose%2C%20totaling%20nearly%2017%2C000%20deaths.&text=Prescription%20opioids%20were%20involved%20in,opioid%20overdose%20deaths%20in%202021> (last updated Aug. 23, 2023).....8

Dep’t of Health, Office of Medical Marijuana, *Two-Year Report*, (May 15, 2020), available at <https://www.health.pa.gov/topics/Documents/Programs/Medical%20Marijuana/DOH%20MM%20Official%20Two%20Year%20Report%20-%20May%2015%202020.pdf>.....8

Dep’t of Veterans Affairs, *Serious Mental Illness: General Background*, available at [https://www.va.gov/PREVENTS/docs/PRE013\\_FactSheets\\_SeriousMentalIllness\\_508.pdf](https://www.va.gov/PREVENTS/docs/PRE013_FactSheets_SeriousMentalIllness_508.pdf).....5

Dep't of Health and Human Services, *Basis for the Recommendation to Reschedule Marijuana Into Schedule III of the Controlled Substances Act*, (Aug. 29, 2023) available at <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnhxhnszyyzcwdcvvt&dl=0>. .... 16

Drug Enforcement Administration, *DEA Drug Fact Sheet: Marijuana/Cannabis* (Apr. 2020) available at [https://www.dea.gov/sites/default/files/2020-06/Marijuana-Cannabis-2020\\_0.pdf](https://www.dea.gov/sites/default/files/2020-06/Marijuana-Cannabis-2020_0.pdf). ....8

Jennifer Bronson & Marcus Berzofsky, U.S. Dep’t of Justice, Office of Justice Programs, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12*, at p. 1 (Jun. 2017) available at <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf>. .....6

Kim Parker, et al., *The American Veteran Experience and the Post-9/11 Generation: 2. Readjusting to Civilian Life*, PEW RESEARCH CENTER, (Sep. 10, 2019) available at <https://www.pewresearch.org/social-trends/2019/09/10/readjusting-to-civilian-life/>.....4

Marion McNabb, et al., *Self-reported Medicinal Cannabis Use as an Alternative to Prescription and Over-the-counter Medication Use Among US Military Veterans*, 45 J. of Clinical Therapies 6, p. 562 (Jun. 2023) available at <https://www.clinicaltherapeutics.com/action/showPdf?pii=S0149-2918%2823%2900133-9>.....9

Michelle Rippy, *Navigating Homelessness: The Effect of Housing Navigation Centers on Recidivism*, FED’N OF AM. SCIENTISTS (Jun. 12, 2023) available at <https://fas.org/publication/navigating-homelessness-the-effect-of-housing-navigation-centers-on-recidivism/>. .....6

Nat’l. Inst. of Mental Health, *Substance Use and Co-Occurring Mental Disorders: What Does It Mean To Have Substance Use And Co-Occurring Mental Disorders*, available at [https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health#:~:text=Substance%20use%20disorder%20\(SUD\)%20is,most%20severe%20form%20of%20SUD](https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health#:~:text=Substance%20use%20disorder%20(SUD)%20is,most%20severe%20form%20of%20SUD). .....4

Pa. Dep’t Human Servs., *PA Veterans Population Facts*, available at <https://www.dhs.pa.gov/Services/Mental-Health-In-PA/Pages/VeteransMilitary-Families.aspx#:~:text=Pennsylvania%20has%20nearly%20800%2C000%20veterans,veterans'%20population%20in%20the%20country> (last visited Apr. 5, 2024). .....3

Substance Abuse and Mental Health Servs. Admin., *About Criminal and Juvenile Justice* available at <https://www.samhsa.gov/criminal-juvenile-justice/about> (last updated Mar. 2, 2022).....6

Tanya de Sousa, et al., U.S. Dep’t of Housing and Urban Development, Office of Cmty. Planning and Dev., *The 2023 Annual Homelessness Assessment Report to Congress*, (Dec. 2023), available at <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>.....5

The Unified Judicial Sys. of Pa., *Problem-Solving Courts*, available at <https://www.pacourts.us/judicial-administration/court-programs/problem-solving-courts>.....6

The Unified Judicial Sys. of Pa., *Veterans Treatment Courts*, available at <https://www.pacourts.us/judicial-administration/court-programs/veterans-courts>.....7

U.S. Dep’t of Veterans Affairs, Office of Suicide Prevention, *2022 National Veteran Suicide Prevention Annual Report*, (September 2022) available at <https://www.mentalhealth.va.gov/docs/data-sheets/2022/2022-National-Veteran-Suicide-Prevention-Annual-Report-FINAL-508.pdf>.....5

U.S. Dep't of Veterans Affairs, *VA and Marijuana – What Veterans need to know* (last updated Aug. 1, 2023) available at <https://www.publichealth.va.gov/marijuana.asp>.....16

Veterans Health Administration, *Access to VHA Clinical Programs for Veterans Participating in State-Approved Marijuana Programs*, (Jul. 28, 2023) available at <https://www.publichealth.va.gov/marijuana.asp>. ....15

## **INTEREST OF *AMICUS CURIAE***

*Amicus Curiae* Balanced Veterans Network (BVN) submits this brief pursuant to Pennsylvania Rule of Appellate Procedure 531 in support of Petitioners' application for summary relief to permanently enjoin the policy imposed by the 23<sup>rd</sup> Judicial District, Berks County that denies admission of Veterans to the District's Veterans Treatment Court and other treatment courts because they lawfully use medical marijuana.

BVN is a Pennsylvania nonprofit organization founded by Veterans for Veterans. It is designed to assist our nation's Veterans and their families in their transition to civilian life. It does this by cultivating a community of Veterans that works together to provide the tools to equip them to live a balanced civilian life. This includes providing support groups, introductory wellness classes, wellness events, education series, and Veterans events and outreach. Specifically, BVN has carved out a niche in Veterans organizations by providing Veterans with education and access to alternative medical and health therapies, including medical marijuana, to combat the issues common to Veterans, such as suicidal ideations brought on by post-traumatic stress disorder and depression, addiction, and homelessness.

## **INTRODUCTION AND SUMMARY**

As the result of a callous policy imposed by the 23<sup>rd</sup> Judicial District (District), Veterans who would qualify for the District's Veterans Treatment Court (VTC) but for their lawful use of medical marijuana are faced with a Hobson's choice: continue to utilize their life-saving medications or lose their freedom.

Pennsylvania is home to the fourth largest population of Veterans in the U.S. Through the course of their service to our country, many Veterans are inflicted with serious and debilitating medical and mental health conditions such as post-traumatic stress disorder, anxiety, chronic pain, and opioid use disorder. These afflictions result in an increased likelihood of substance abuse issues, homelessness, suicides, and contact with the criminal justice system. However, burgeoning research efforts have demonstrated that medical marijuana is a low-harm alternative to other "traditional" therapies. The General Assembly has recognized the potential benefits of medical marijuana. In fact, in 2016, the legislature enacted the Medical Marijuana Act, which enables Pennsylvania residents suffering from "serious medical conditions" such as PTSD, chronic pain, anxiety, or opioid use disorder to utilize medical marijuana. The General Assembly specifically included in the statute an immunity protection that prevented benefits and privileges from being withheld from medical marijuana patients.

Despite the legislature’s actions, and the Pennsylvania Supreme Court’s decision in *Gass v. 52<sup>nd</sup> Judicial District, Lebanon County*, which invalidated a policy that prohibited probationers from having access to medical marijuana unless they could demonstrate such use was a medical necessity, the District has implemented a near identical policy that prohibits Veterans from participating in the District’s VTC solely because these Veterans use medical marijuana (Policy). The District’s Policy flies in the face of the Medical Marijuana Act and binding legal precedent. Accordingly, the Petitioners’ application for summary relief should be granted and the District’s Policy should be permanently enjoined.

## **ARGUMENT**

### **I. Veterans Treatment Courts And Medical Marijuana Are Vital Lifelines For Pennsylvania’s Veterans**

#### **A. The need for Veterans Treatment Courts**

Nearly 800,000 Veterans call Pennsylvania home, which includes nearly 300,000 wartime Veterans.<sup>1</sup> Since September 11, 2001, a troubling nationwide trend has emerged among our armed services Veterans: transitioning from serving to

---

<sup>1</sup> Pa. Dep’t Human Servs., *PA Veterans Population Facts*, available at <https://www.dhs.pa.gov/Services/Mental-Health-In-PA/Pages/VeteransMilitary-Families.aspx#:~:text=Pennsylvania%20has%20nearly%20800%2C000%20veterans,veterans%20population%20in%20the%20country> (last visited Apr. 5, 2024).

civilian life has become increasingly more difficult.<sup>2</sup> Four times as many Veterans have reported that transitioning to civilian life from active duty is “very difficult” and nearly double the number of Veterans say the transition was “somewhat difficult” compared to veterans that served prior to 9/11.<sup>3</sup> The reason for this is no mystery, service members have experienced emotional and physical trauma while waging war on behalf of our nation.

Expectedly, these traumas often manifest as physical and emotional illnesses and conditions like chronic pain, anxiety, post-traumatic stress disorder, and depression, among others, that lead to alarmingly high rates of suicide and homelessness. Veterans, like any person, are typically treated with prescription medications, and may self-medicate to supplement prescribed medication or, in some cases, in lieu of professional medical treatment and medications. Self-medication in Veterans can lead to substance abuse disorder.<sup>4</sup> In 2018, it was found

---

<sup>2</sup> Kim Parker, et al., *The American Veteran Experience and the Post-9/11 Generation: 2. Readjusting to Civilian Life*, PEW RESEARCH CENTER, (Sep. 10, 2019) available at <https://www.pewresearch.org/social-trends/2019/09/10/readjusting-to-civilian-life/>.

<sup>3</sup> *Id.*

<sup>4</sup> The National Institute of Mental Health defines “substance abuse disorder” as a “treatable mental disorder that affects a person’s brain and behavior, leading to their inability to control their use of substances like legal or illegal drugs, alcohol, or medications. Symptoms can be moderate to severe, with addiction being the most severe form of [substance abuse disorder].” Nat’l. Inst. of Mental Health, *Substance Use and Co-Occurring Mental Disorders: What Does It Mean To Have Substance Use And Co-Occurring Mental Disorders*, available at [https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health#:~:text=Substance%20use%20disorder%20\(SUD\)%20is,most%20severe%20form%20of%20SUD](https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health#:~:text=Substance%20use%20disorder%20(SUD)%20is,most%20severe%20form%20of%20SUD) (last visited Apr. 6, 2024).

that 3.4 million veterans suffered from substance abuse disorder or a serious mental illness.<sup>5</sup> These factors contributed to the finding of the Department of Veterans Affairs that in 2020 there was an average of 16 suicides of veterans per day.<sup>6</sup> Additionally, the rate of substance abuse and mental disorders almost certainly contribute to the higher incidence rate of homelessness among Veterans than experienced by non-Veterans.<sup>7</sup> As part of the January 2023 annual report on veteran homelessness, the U.S. Department of Housing and Urban Development found, that on a given single night there were 35,774 Veterans who were homeless, which marked an increase of seven percent from the prior year.<sup>8</sup> It should be no surprise that the incarcerated population is overrepresented by individuals suffering from

---

<sup>5</sup> The United States Department of Veterans Affairs defines “serious mental illness” as “one or more mental, behavioral, or emotional disorder(s) resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.” It includes “major depression, schizophrenia, bipolar disorder, obsessive compulsive disorder, panic disorder, post traumatic stress disorder, and borderline personality disorder.” Dep’t of Veterans Affairs, *Serious Mental Illness: General Background*, available at [https://www.va.gov/PREVENTS/docs/PRE013\\_FactSheets\\_SeriousMentalIllness\\_508.pdf](https://www.va.gov/PREVENTS/docs/PRE013_FactSheets_SeriousMentalIllness_508.pdf) (last visited Apr. 6, 2024).

<sup>6</sup> U.S. Dep’t of Veterans Affairs, Office of Suicide Prevention, *2022 National Veteran Suicide Prevention Annual Report*, at p. 9, (September 2022) available at <https://www.mentalhealth.va.gov/docs/data-sheets/2022/2022-National-Veteran-Suicide-Prevention-Annual-Report-FINAL-508.pdf>.

<sup>7</sup> See, Brent D. Mast, *Veteran and Nonveteran Homelessness Rates: New Estimates*, *Cityscape: A Journal of Policy Development and Research*, Vol. 25 Issue 2 available at <https://www.huduser.gov/portal/periodicals/cityscape/vol25num2/ch15.pdf> (last visited Apr. 8, 2024).

<sup>8</sup> Tanya de Sousa, et al., U.S. Dep’t of Housing and Urban Development, Office of Cmty. Planning and Dev., *The 2023 Annual Homelessness Assessment Report to Congress*, at p. 3, (Dec. 2023), available at <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>.

substance abuse disorder<sup>9</sup>, serious mental issues,<sup>10</sup> and homelessness. Individuals who experience homelessness are 514 times more likely to be charged with a crime than the non-homeless population with a recidivism rate of 68 percent.<sup>11</sup>

The Veterans' population is no exception to these crime statistics. In recognition of the challenges our national heroes face, in 2020 the General Assembly amended the problem-solving courts statute, 42 Pa.C.S. §916, to expressly add “veterans courts” to the non-exhaustive list of problem-solving courts. 42 Pa.C.S. §916, *as amended*. The Administrative Office of Pennsylvania Courts (AOPC) describe a problem-solving court as a court that “focus[es] on specific types of behaviors or conditions, often linked to crime and social problems”.<sup>12</sup> The AOPC states that the goal of these courts is to “supervise the treatment and rehabilitation of carefully screened and selected defendants to try to change their behavior” and successful completion of a supervised treatment plan may result in having criminal

---

<sup>9</sup> Substance Abuse and Mental Health Servs. Admin., *About Criminal and Juvenile Justice* available at <https://www.samhsa.gov/criminal-juvenile-justice/about> (last updated Mar. 2, 2022).

<sup>10</sup> Jennifer Bronson & Marcus Berzofsky, U.S. Dep’t of Justice, Office of Justice Programs, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12*, at p. 1 (Jun. 2017) available at <https://bjs.ojp.gov/content/pub/pdf/imhprpji1112.pdf>.

<sup>11</sup> Michelle Rippy, *Navigating Homelessness: The Effect of Housing Navigation Centers on Recidivism*, FED’N OF AM. SCIENTISTS (Jun. 12, 2023) available at <https://fas.org/publication/navigating-homelessness-the-effect-of-housing-navigation-centers-on-recidivism/>.

<sup>12</sup> The Unified Judicial Sys. of Pa., *Problem-Solving Courts*, Available at <https://www.pacourts.us/judicial-administration/court-programs/problem-solving-courts> (last visited Apr. 6, 2024).

charges dismissed, term of supervision reduced, and/or expungement. *Id.* The AOPC describes VTC as a court intended to “assist veterans charged with crimes who are struggling with addiction, mental illness or co-occurring disorders and come in contact with the criminal justice system.”<sup>13</sup> It further explains that “participants come before judges on a regular basis, receive support and guidance from veteran mentors, are supervised by specialized probation officers, and receive treatment and support from the Veterans Administration to address underlying problems”. *Id.* Because of the issues Veterans face, they have a higher chance of having contact with the criminal justice system. VTCs, like the one offered by the District and twenty-four other Pennsylvania counties,<sup>14</sup> are an essential lifeline to Veterans struggling with medical and mental conditions that have devolved to the point of criminality. VTCs stand as perhaps society’s final stand to redirect a struggling Veterans onto a more constructive and (hopefully) fulfilling civilian life.

B. The benefits of medical marijuana

In 2016, the General Assembly enacted the Medical Marijuana Act (MMA), 35 P.S. §10231.101, *et seq.*, specifically because “[s]cientific evidence suggests that

---

<sup>13</sup> The Unified Judicial Sys. of Pa., *Veterans Treatment Courts*, available at <https://www.pacourts.us/judicial-administration/court-programs/veterans-courts> (last visited Apr. 6, 2024).

<sup>14</sup> Admin. Office of Pa. Courts, *Problem-Solving Courts As of June 30, 2023* available at <https://www.pacourts.us/Storage/media/pdfs/20211025/210629-problemsolvingcourtslist-asof10.25.21.pdf> (last visited Apr. 6, 2024).

medical marijuana is one potential therapy that may mitigate suffering in some patients and also enhance quality of life.” 35 P.S. §10231.101(1). At the MMA’s inception, the legislature found that individuals suffering from PTSD and chronic pain were two of the conditions for which medical marijuana would mitigate suffering and enhance the quality of life for those suffering from these afflictions. 35 P.S. §10231.101. Subsequently, opioid use disorders<sup>15</sup> and anxiety disorders have been added to the list of conditions that are eligible to be treated with medical marijuana.<sup>16</sup>

These serious medical conditions included under the Act are conditions that Veterans frequently experience, like Mr. Monyer. Pet. for Rev., ¶19. The MMA places no restrictions on Veterans having access to this therapy. For good reason. A 2023 medical study involving Veterans that suffer from chronic pain, PTSD, anxiety,

---

<sup>15</sup> In 2021 alone, the Center for Disease Control and Prevention estimated that 17,000 people died from prescription opioid overdoses, while in 2020 the U.S. Drug Enforcement Agency has acknowledged that marijuana has resulted in no reported deaths. See Centers for Disease Control and Prevention, *Opioid Overdose: Prescription Opioids* available at <https://www.cdc.gov/drugoverdose/deaths/opioid-overdose.html#:~:text=The%20number%20of%20drug%20overdose,times%20the%20number%20in%201999.&text=In%202021%2C%2045%20people%20died,overdose%2C%20totaling%20nearly%2017%2C000%20deaths.&text=Prescription%20opioids%20were%20involved%20in,opiod%20overdose%20deaths%20in%202021> (last updated Aug. 23, 2023); Drug Enforcement Administration, *DEA Drug Fact Sheet: Marijuana/Cannabis* (Apr. 2020) available at [https://www.dea.gov/sites/default/files/2020-06/Marijuana-Cannabis-2020\\_0.pdf](https://www.dea.gov/sites/default/files/2020-06/Marijuana-Cannabis-2020_0.pdf).

<sup>16</sup> Dep’t of Health, Office of Medical Marijuana, *Two-Year Report*, at p. 3 (May 15, 2020), Available at <https://www.health.pa.gov/topics/Documents/Programs/Medical%20Marijuana/DOH%20MM%20Official%20Two%20Year%20Report%20-%20May%2015%202020.pdf>.

and depression found that 91% percent of the Veterans studied used marijuana for medicinal purposes and did so specifically because it helped them to “experience a greater quality of life”.<sup>17</sup> Additionally, 21% of the study’s participating Veterans reported that medical marijuana enabled them to decrease their usage of opioids or to even eliminate the need to start opioids altogether.<sup>18</sup> This study also noted that Veterans who use medical marijuana have been found to be 2.5 times more likely to shed the clinical diagnosis of PTSD than Veterans who did not use medical marijuana.<sup>19</sup> Based on these findings, the study concludes that “medicinal cannabis can potentially play a harm-reduction role, helping veterans to use fewer pharmaceutical medications and other substances.”<sup>20</sup>

If, as studies suggest, medical marijuana can mitigate the medical conditions and health of Veterans, then Veterans suffering from “serious medical conditions” should be, and are actually expressly authorized by the MMA, to use medical marijuana. As detailed in the 2023 study, medical marijuana use among Veterans has truly been life changing, and, anecdotally, Veterans have attributed medical

---

<sup>17</sup> Marion McNabb, et al., *Self-reported Medicinal Cannabis Use as an Alternative to Prescription and Over-the-counter Medication Use Among US Military Veterans*, 45 J. of Clinical Therapies 6, p. 562 (Jun. 2023) available at <https://www.clinicaltherapeutics.com/action/showPdf?pii=S0149-2918%2823%2900133-9>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 565.

<sup>20</sup> *Id.* at 562.

marijuana as saving their lives by lessening or eliminating suicidal thoughts. With these scientific and medical facts, it is not an exaggeration to assert that, for some Veterans, medical marijuana is a literal lifeline.

Upon recognition of the challenges experienced by Veterans and the benefits of medical marijuana to treat some of those unique challenges, the District's Policy is indefensible. On a public policy basis, the District's Policy should be permanently enjoined.

## **II. Pennsylvania Supreme Court Precedent And The MMA Prohibit The District's Policy**

Legally, the District's Policy runs afoul of the MMA and Pennsylvania Supreme Court precedent, and, therefore, it must be enjoined.

The legislature clearly intended that Pennsylvania "residents", necessarily including Veterans, *see*, 35 P.S. §10231.101 (defining "patient"), suffering from PTSD, chronic pain, and anxiety disorders, like Petitioner Monyer, are eligible to treat these conditions with medical marijuana. 35 P.S. §10231.101 (defining "serious medical condition"); 35 P.S. §10231.303. But the General Assembly went even further by including protections for patients. Specifically, the MMA provides that a medical marijuana patient "shall [not] be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege ... solely for lawful use of medical marijuana". 35 P.S. §10231.2103(a)(1). Because the legislature created a statute that

expressly authorizes a VTC as part of a myriad of problem-solving courts, 42 Pa.C.S. §916; and the Pennsylvania Supreme Court has found that participation in a VTC is “itself a benefit and the chief impetus in enacting Section 916.” *Com. v. McCabe*, 265 A.3d 1279, 1291 (Pa. 2021), the immunity provision of Section 2103(a) of the MMA applies to Veterans who want to participate in a VTC. Here, the District Policy is in direct conflict with Section 2103(a). The District Policy provides that medical marijuana is a prohibited medication and that, if a Veteran’s physician recommends that the Veteran “must be continuously maintained on prohibited prescriptions in order to sustain a certain quality of life, the [Veteran] may no longer participate in Treatment Court.” *See*, District Policy at 14.<sup>21</sup> The District Policy provides for one limited exception for medical marijuana: a treating physician must indicate in writing that there is a “medical necessity” for the Veteran’s continued use of medical marijuana. The District Policy expressly disqualifies Veterans that use medical marijuana, absent a medical necessity. On its face, the District Policy violates the MMA.

In *Gass v. 52<sup>nd</sup> Judicial District, Lebanon County*, the Pennsylvania Supreme Court confirmed that Section 2103(a) of the MMA provided protection to a particular

---

<sup>21</sup> The District’s Policy is provided in the Petitioners’ Petition for Review at Exh. A; *See also*, Berks Cnty. C.C.P., Berks County Treatment Court: Policy and Procedure Manual (March 2023) available at <https://www.berkspa.gov/getattachment/f037524a-ce44-4722-a7c5-2889b5fa5d2a/Policy-and-Procedure-Manual-1.pdf>.

class of individuals engaged with the criminal justice system, probationers. 232 A.3d 706 (Pa. 2020). The 52<sup>nd</sup> Judicial District’s probation policy prohibited probationers from using medical marijuana unless medical marijuana is determined by a physician to be “medically necessary”. *Id.* at 709—710. The *Gass* Court rejected 52<sup>nd</sup> Judicial District’s policy because the MMA, while prohibiting medical marijuana use in correctional facilities, is silent as to a criminal defendant’s use of medical marijuana while not physically in a correctional facility but nevertheless under court supervision. *Id.* at 713. The *Gass* Court also found that if the General Assembly had wanted to restrict medical marijuana usage by probationers, “it would have been a straightforward matter for it to have said this.” *Id.* Because the MMA provides no such carve-out for probationers, the *Gass* Court concluded that Section 2103(a) enables probationers to use medical marijuana in accordance with the MMA. *Id.* at 715.

Here, the precedent in *Gass* applies equally to the District’s Policy. First, like the *Gass* Court’s finding pertaining to probation, Section 1309 is silent as to problem-solving courts. The only restriction imposed on Section 2103(a) immunity is for individuals physically “in a State or county correctional facility”. 35 P.S. §10231.1309(2); *Gass*, 232 A.3d at 713 (“the Legislature ... chose to impose constrains only upon ... those physically present in a correctional institution.”) (cleaned up). If the General Assembly had wanted to prohibit individuals

participating in problem-solving courts, like VTCs, from having access to medical marijuana, it could and would have said so.

Second, for all practical purposes, participating in the District's VTC is akin to being on probation; and, because *Gass* prohibits restricting medical marijuana usage on probation, this Court should prohibit District's Policy that prohibit Veterans from using life-saving medical marijuana treatments while participating in its VTC. Here, at the outset, the AOPC's description of a VTC specifically states that participants are "supervised by specialized probation officers". Moreover, the District's VTC Policy and Procedures Manual (Manual) makes clear that the District's VTC is "a judicially supervised regimen of individualized treatment and intensive probation/parole supervision". Berks Cnty. C.C.P., Berks County Treatment Court: Policy and Procedure Manual (March 2023) at p. 1.<sup>22</sup>For example, the District's VTC Manual provides (i) "[t]hrough a team approach Probation Officers work in collaboration with clinicians for the benefit of participants", *id.* at 3; (ii) "Supervision: Supervision contacts with Probation Officers are made frequently in the beginning of the program ... [as] the participant moves through the program behavior becomes the chief indicator of the appropriate frequency of supervision", *id.* at 4; (iii) a participant may be subject to "electronic monitoring"

---

<sup>22</sup> Available at <https://www.berkspa.gov/getattachment/f037524a-ce44-4722-a7c5-2889b5fa5d2a/Policy-and-Procedure-Manual-1.pdf> (last visited Apr. 8, 2024).

and the “assigned probation officer will ... monitor the participant’s whereabouts.” *Id.* at 9. Given the express rules and requirements of the District’s VTC, participants are effectively on probation; thus, *Gass* is directly on point as binding legal precedent that unequivocally prohibits the District’s Policy. Accordingly, the District’s Policy should be struck down.

### **III. Medical Marijuana Use By Veterans Does Not Disqualify Veterans From Services Offered By The Veterans Health Administration And It Should Not Disqualify Veterans From The District’s Problem Solving Courts**

To the extent the District’s Policy required Mr. Monyer’s admission to Veterans Treatment Court be denied because marijuana is illegal under federal law and he is required to abide by the Veterans Health Administration’s (VHA) – a federal agency – rules to participate in the VTC, the District’s Policy is wrong. One reason Mr. Monyer’s admission to the VTC was denied appears to have been based on the misunderstanding that Veterans being treated by the VHA are prohibited from using medical marijuana because marijuana is illegal under federal law, i.e. medical marijuana users cannot comply with VHA rules. *See*, Pet. for Rev., Exh. H. This is not true. In 2017, the VHA published and re-published in July 2023, VHA Directive 1315, which provides that “Veterans must not be denied VHA services solely because they are participating in a State-approved marijuana program or because

they acknowledge use of marijuana.” VHA Directive 1315 at p. 1.<sup>23</sup> The VHA’s Directive further states that VHA health care providers should “discuss relevant clinical information regarding marijuana use with Veterans who request information about marijuana or report marijuana use and document this information in the Veteran’s electronic health record.” *Id.* The VHA’s policy focuses on providing the best possible care to its patients by encouraging open discussions about medical marijuana use, it explicitly rejects the notion that marijuana use disqualifies patients from receiving VHA treatment. In a December 2023 Presidential Proclamation that pardoned individuals convicted of marijuana possession, President Biden double-downed on the notion that marijuana use should not be disqualifying by acknowledging the “unnecessary collateral consequences” of marijuana use. 88 FR 90083 (Dec. 22, 2023). Currently, the only prohibition is imposed on VHA health care providers, and it prohibits VHA health care providers from recommending marijuana because VHA health care providers are federal employees and federal employees may not prescribe/recommend medications that have not been approved by the FDA for medical use.<sup>24</sup> VHA Directive 1315 at p. 1. However, this federal

---

<sup>23</sup> Veterans Health Administration, *Access to VHA Clinical Programs for Veterans Participating in State-Approved Marijuana Programs*, (Jul. 28, 2023) available at <https://www.publichealth.va.gov/marijuana.asp> Available at <https://www.publichealth.va.gov/marijuana.asp> (last visited Apr. 6, 2024).

<sup>24</sup> This basic premise underpinning VA health care providers’ inability to recommend or prescribe medical marijuana seems destined to fall away. On August 29, 2023, the U.S. Department of Health and Human Services issued a 252-page report that recommended that the Attorney

prohibition against recommending medical marijuana is significant in the context of the District Policy. The exception for medical marijuana in the District’s Policy requires a “treating physician” to make the case that continuing medical marijuana use is a “medical necessity”. It is unlikely that a Veteran will be able to meet this exception because veterans are normally treated by physicians within the VHA and VHA policy forbids such a recommendation. *See*, VA and Marijuana – What Veterans need to know (last updated Aug. 1, 2023) (“VA clinicians may not complete paperwork/forms required for Veteran patients to participate in state-approved marijuana programs.”).<sup>25</sup>

In *Gass*, the 52<sup>nd</sup> Judicial District presented an argument similar to the District’s apparent and mistaken understanding. There, the argument was that the general conditions of probation required compliance with federal laws. *Gass*, 232 A.3d at 714. The *Gass* Court rejected this argument on federalism grounds and held that 52nd Judicial District could not “require state-level adherence to the federal prohibition” when the General Assembly has legalized medical marijuana. *Id.*; *see*

---

General re-schedule marijuana and its components to a Schedule III substance under the federal Controlled Substances Act. If Attorney General Garland adopts DHHS’ recommendation, which seems inevitable, marijuana will have recognized medical benefits, therefore, permitting medical practitioners to prescribe – not just recommend – marijuana. *See*, 21 U.S.C. §811. This would likely result in VA health care providers being able to prescribe marijuana as well. *See*, Department of Health and Human Services, *Basis for the Recommendation to Reschedule Marijuana Into Schedule III of the Controlled Substances Act*, (Aug. 29, 2023) available at <https://www.dropbox.com/scl/fi/pw3rfs9gm6lg80ij9tja6/2023-01171-Supplemental-Release-1.pdf?rlkey=v5atj0tcnhxhnszyzycwdcvvt&dl=0> (last visited Apr. 6, 2024).

<sup>25</sup> Available at <https://www.publichealth.va.gov/marijuana.asp>.

*also, Cease v. Housing Auth. of Indiana Cnty.*, 247 A.3d 57 (Pa. Cmwlth. 2021) (holding that under the concept of federalism, federal law did not necessarily require a low-income housing applicant that used medical marijuana from being denied admission into a federal housing assistance program based solely on her medical marijuana use). The rationales that underpinned the *Gass* and *Cease* decisions apply here too. Even if the VHA disqualified Veterans that used medical marijuana from receiving medical services (it does not), the District cannot predicate its policy for admission into the VTC on enforcing federal law. For this reason, to the extent the District's Policy disqualifies Veterans that use medical marijuana because marijuana is illegal under federal law, the Policy should be invalidated and permanently enjoined.

## CONCLUSION

For aforesated reasons, amicus curiae Balanced Veterans Network respectfully requests that this Court grant Petitioners' application for summary relief and permanently enjoin the District's Policy that prohibits Veterans who lawfully use medical marijuana from being admitted into the District's Veterans Treatment Court.

Respectfully submitted,

/s/ Judith D. Cassel

Judith D. Cassel, I.D. No. 209393

Micah R. Bucy, I.D. No. 320196

Hawke McKeon & Sniscak LLP

100 North Tenth Street

Harrisburg, PA 17101

P: (717) 236-1300

E: [jdcassel@hmslegal.com](mailto:jdcassel@hmslegal.com)

[mrbcy@hmslegal.com](mailto:mrbcy@hmslegal.com)

*Counsel for Balanced Veterans Network*

Dated: April 8, 2024

**Certificate of Compliance With Pa. R.A.P. 531(b)(3)**

I certify that that this *Amicus Curiae* brief in support of Petitioners' merit briefing of their application for summary relief complies with the word count limit set forth in Pa. R.A.P. 531(b)(3). Excluding matters exempted by Pa. R.A.P. 2135(b), this brief contains 3,055 words. I have relied on Microsoft's word count function to determine the length of this brief.

/s / Judith D. Cassel  
Judith D. Cassel

Dated: April 8, 2024

**Certificate of Compliance with Public Access Policy**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s / Judith D. Cassel  
Judith D. Cassel

Dated: April 8, 2024