LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Case Law Monitor

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Each issue of Case Law Monitor highlights unique cases from around the United States in the areas of public health and safety, substance use disorders, and the criminal justice system. Every other month, LAPPA will update you on cases that you may have missed but are important to the field. We hope you find the Case Law Monitor helpful, and please feel free to provide feedback at info@thelappa.org.

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PENNSYLVANIA SUPREME COURT LIMITS PROVIDER IMMUNITY UNDER THE COMMONWEALTH'S MENTAL HEALTH PROCEDURES ACT

***Melissa Dean v. Bowling Green-Brandywine, et al.*, Supreme Court of Pennsylvania, A.3d, 2020 WL 808938 (decided February 19, 2020).** In 1976, the Pennsylvania Legislature enacted the Mental Health Procedures Act (MHPA; 50 P.S. §§ 7101-7503) to ensure mental health care treatment remains available in the commonwealth by providing limited protection from civil and criminal liability to people and facilities

that treat mentally ill patients. In 2012, Andrew Johnson voluntarily admitted himself to Bowling Green-Brandywine Addiction Treatment Center (Brandywine) for his opioid use disorder and misuse of benzodiazepines. Upon arrival at Brandywine, Johnson self-reported that he had been diagnosed with bipolar disorder and ADHD as a child, but he did not seek, and was not provided, mental health care treatment. After nine days at Brandywine, Johnson died of a heart attack. Johnson's parents filed a lawsuit against Brandywine alleging that Johnson's death was the result of medical negligence. The trial court nonsuited the case, holding that Brandywine is entitled to immunity under the MHPA, and an appeals court affirmed that decision. The Pennsylvania Supreme Court reversed the lower court's decision, ruling that Brandywine did not provide mental health treatment in this case, it is not entitled to dismissal of the lawsuit under MHPA immunity. In order to be entitled to immunity under MHPA, the court continued, mental illness treatment must be provided independently from and in addition to substance use disorder treatment. The court remanded the case for further proceedings.

PRIVATE DISABILITY POLICIES COVER NURSE ANESTHETIST TERMINATED FOR SUBSTANCE MISUSE

***Ronald Bernard v. Kansas City Life Insurance*, U.S. District Court for the Western District of Missouri, 2020 WL 974873 (decided February 28, 2020).** In 2017, Ronald Bernard, a nurse anesthetist, admitted to using fentanyl at work. A drug test confirmed his use, and his employer fired him. At the time, Bernard had short and long-term disability income insurance policies through the defendant, Kansas City Life. Each policy entitled Bernard to benefits if he became disabled while he was a full-time employee. The policy read that an insured is disabled if he or she has an illness, disease, or physical condition that began while covered under the policy and that prevented him or her from performing all of the material and substantial duties of the insured's regular occupation and resulted in a loss of 20 percent or more of his or her weekly earnings. The defendant insurance company denied Bernard's coverage claim, asserting that his termination was the result of a failed drug test and not a disability and that he did not seek treatment until after his employment ended. Bernard appealed the denial of benefits, asserting that he suffered from an addiction to fentanyl. After the insurer rejected the appeal, Bernard filed a lawsuit. The federal court held that the defendant's coverage denial unreasonably divorced Bernard's fentanyl addiction from one particular incident, thus ignoring Bernard's documented medical history of substance use. Additionally, the court noted that the policy does not exclude coverage if the insured is fired nor does it require that treatment begin while the insured is covered under the policy. Accordingly, the court denied the defendant's motion for summary judgment and granted Bernard's motion for summary judgment. Kansas City Life Insurance filed an appeal with the U.S. Court of Appeals for the Eighth Circuit on March 20, 2020.

OHIO SUPREME COURT TO RULE ON THE DIRECT OBSERVATION URINE COLLECTION METHOD

***Donna Lunsford, et al. v. Sterilite of Ohio, LLC, et al.*, Ohio Supreme Court, Case No. 2018-1431 (case filed October 2, 2018).** In January 2020, the Ohio Supreme Court heard an appeal of a case involving the direct observation method for the collection of urine for drug testing. The appellants are Sterilite employees who were asked to submit urine samples for drug analyses via the direct observation method. This method involves each employee being accompanied in the restroom by an individual of the same sex. While in the restroom, the accompanying person is obligated to visually observe the employee's genitals and the production of the urine sample. Sterilite disclosed this procedure to the appellants only immediately prior to conducting the test. Additionally, this procedure was not described in Sterilite's substance abuse policy or in the consent form signed by the appellants prior to the test. The employees filed a complaint alleging invasion of privacy. Sterilite filed a motion to dismiss the complaint, and the trial court granted the motion. An intermediate appellate court reversed the ruling of the trial court. The appellate court stated that while requiring a urine sample from an employee and testing that sample for drugs does not implicate the

employee's right of privacy, the appellants do have a reasonable expectation of privacy with regard to the exposure of their genitals. The court also stated that whether the employer's method of urine collection is reasonable or justified is a fact issue that cannot be decided on a motion to dismiss for failure to state a claim. As of March 27, 2020, the Ohio Supreme Court has not issued a ruling.

MASSACHUSETTS SUES JUUL LABS OVER ALLEGED ADVERTISING TO CHILDREN

***Commonwealth of Massachusetts v. JUUL Labs, Inc.*, Superior Court of Massachusetts, Suffolk County, Case No. 2084CV00402 (filed February 12, 2020).** Massachusetts Attorney General, Maura Healey, sued JUUL Labs for creating a youth vaping epidemic by allegedly marketing and selling its e-cigarettes to young people. The complaint alleges that JUUL's intentional advertising to children and adolescents created a public health crisis and an epidemic of youth nicotine use and addiction which constitutes a public nuisance. Additionally, the complaint claims that JUUL willfully, knowingly, and repeatedly violated the state's Consumer Protection Act by marketing e-cigarette products to underage consumers in the state, making false claims or failing to disclose material facts to consumers, and selling products to consumers under the minimum legal sales age. The commonwealth asks for restitution to consumers injured by JUUL's allegedly unfair and deceptive practices and reimbursement to the commonwealth for expenses incurred abating the nuisance of youth nicotine addiction. JUUL's answer to the complaint was due by March 30, 2020.

FAMILY SUES VIVITROL MANUFACTURER FOR WRONGFUL DEATH

***Stafford, et al. v. Alkermes, Inc., et al.*, Superior Court of California, County of Los Angeles, Case No. 20STCV04266 (filed February 3, 2020).** The family of California resident, Clayton Stafford, filed a wrongful death lawsuit against biopharmaceutical manufacturer Alkermes, Inc. relating to Stafford's prescription use of Vivitrol. The lawsuit alleges that Alkermes misled Stafford into believing that Vivitrol would be an appropriate solution for the treatment of his opioid use disorder. The complaint asserts that the defendants engaged in a highly aggressive marketing campaign to raise awareness about Vivitrol and promote policies to permeate the product into the marketplace, despite a lack of evidence for Vivitrol's efficacy. The complaint also states that defendants intended to mislead the public Vivitrol's superiority to methadone and buprenorphine and to stigmatize those allegedly safer and more effective treatment methods. Moreover, the plaintiffs claim that the defendants knew that Vivitrol's lack of effectiveness could have highly destructive effects on patients but failed to adequately inform the public of these dangers. The lawsuit brings causes of action for wrongful death, design defects, negligence, strict liability, failure to warn, fraud and deceit, and seeks wrongful death damages, survival damages, economic damages, and punitive damages. A conference to set a trial date is scheduled for June 8, 2020.

MASSACHUSETTS POLICE DEPARTMENT SUED AFTER WOMAN DIES IN POLICE CUSTODY

***O'Neill v. Springfield, et al.*, U.S. District Court for the District of Massachusetts, Case No. 3:20-cv-30036-MGM (filed March 5, 2020).** The ACLU of Massachusetts and Prisoners' Legal Services filed a case on behalf of Madelyn Linsenmeir's family against the Springfield Police Department (SPD) and Hampden County Sheriff's Department for failure to provide medical treatment to Linsenmeir while she was in custody. On September 29, 2018, the SPD took Linsenmeir into custody. At that time, SPD knew Linsenmeir suffered from opioid use disorder. While going through the booking process at SPD, Linsenmeir repeatedly asked the officers for water and described ongoing medical issues. The officers did not assist and claimed she was just "dope sick." Several days later, Linsenmeir was observed in her cell to be in severe distress constituting a

medical emergency. After transfer to a hospital, doctors diagnosed her with tricuspid valve endocarditis, innumerable pulmonary emboli and cavitary lesions of the lungs, and acute hypoxemic respiratory failure, among other things. Linsenmeir died at the hospital. In the lawsuit, plaintiffs assert that the defendants' refusal to provide medical treatment to Linsenmeir while she was in custody caused her death. The complaint makes claims against the defendants for the unconstitutional failure to provide medical care in violation of 42 U.S.C. § 1983, violation of Title II of the Americans with Disabilities Act, and wrongful death. The plaintiffs ask the court for compensatory damages and statutory interest. The court is awaiting the defendants' answers to the complaint.

METHADONE USE AND THE AMERICANS WITH DISABILITIES ACT – SETTLEMENT

***Equal Employment Opportunity Commission v. Steel Painters LLC,* U.S. District Court for the Eastern District of Texas, Case No. 1:18-cv-00303-MAC (settled February 24, 2020).** For a summary of the facts of this case, please refer to Volume 2, Issue 1 (February 2020) of the LAPPA Case Law Monitor. The EEOC accused Steel Painters, LLC of firing a newly hired employee after learning that he was recovering from opioid use disorder. The company agreed to pay $25,000 and make policy changes to resolve its Americans with Disabilities Act lawsuit with the EEOC. As part of the settlement, Steel Painters did not admit to any wrongdoing.

INMATES SUE OVER THE DENIAL OF THEIR MAT MEDICATIONS IN PRISON – SETTLEMENT

***Sclafani, et al. v. Mici, et al.*, U.S. District Court for the District of Massachusetts, Case No. 1:19-cv-12550-LTS (settled February 28, 2020).** For a summary of the facts of this case, please refer to Volume 2, Issue 1 (February 2020) of the LAPPA Case Law Monitor. The Massachusetts Department of Corrections (DOC) agreed to provide the plaintiffs with their prescribed medication for the continued treatment of their opioid use disorders throughout their incarceration. As part of the agreement, the DOC will ensure that the dosing of buprenorphine for each plaintiff will be based upon the plaintiffs' individual medical needs and will not be subject to set dosing guidelines. Additionally, the DOC will ensure that the plaintiffs' buprenorphine maintenance treatment in no way limits their access to other prison services, programs, or activities.

SAFE INJECTION SITES

***United States v. Safehouse, et al.*, U.S. District Court for the Eastern District of Pennsylvania, Case No. 19-CV-00519, 2019 WL 4858266 (opinion issued February 25, 2020).** For a summary of the facts of this case, please refer to Volume 1, Issue 1 (December 2019) and Volume 2, Issue 1 (February 2020) of the LAPPA Case Law Monitor. In February 2020, the court issued a final, appealable order that 21 U.S.C. § 856(a)(2) (the "crack house" statute) does not prohibit Safehouse from establishing and operating an overdose prevention facility that provides medically supervised consumption services. The U.S. government then appealed the decision to the U.S. Court of Appeals for the Third Circuit. The government also filed a motion for the District Court to stay its final order during the pendency of the appeal. After the ruling by the District Court, Safehouse announced that it would open its first safe injection site in South Philadelphia in early March 2020. A few days later, after pushback from residents of, and businesses in, the South Philadelphia neighborhood, Safehouse decided to halt its plans. After Safehouse's decision to pause its plans, the building owner of the proposed site pulled out of the lease.

In the interim, city and state legislators proposed legislation to make it difficult or impossible to establish safe injection sites. Pending in the Philadelphia City Council is a bill that would add such sites to a list of

"nuisance health establishments," a term used primarily for pill mills. In order for a supervised injection site not to be labeled as a nuisance health establishment, the operators would have to publicize plans six months in advance to all residences, businesses, and institutions within a one-mile radius of a proposed location. Additionally, a City Council hearing would have to take place three months before the facility opened, and the site would require the approval of 90 percent of the residents, businesses, and institutions within the one-mile radius. In November 2019, state legislators introduced Senate Bill 933, which would criminalize the opening of a supervised injection site in Pennsylvania unless the local government passes an ordinance in a prescribed manner that authorizes it. In order to pass an ordinance, the municipality would have to hold three public hearings before the opening and require organizations to employ trained medical professionals and develop a community safety plan with police. As of this writing, Safehouse does not have any additional plans to attempt to open a safe injection site in Philadelphia.

FIRST CRIMINAL PROSECUTION UNDER THE ELIMINATING KICKBACKS IN RECOVERY ACT

***United States v. Merced*, U.S. District Court for the Eastern District of Kentucky, Case No. 5:20-cr-00006-DCR (guilty plea entered January 10, 2020).** As part of the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act, Congress enacted the Eliminating Kickbacks in Recovery Act (EKRA) in October 2018. The intent of EKRA is to criminalize illegal remunerations for referrals to recovery homes, clinical treatment facilities, and laboratories. This includes prohibiting the solicitation or receipt of kickbacks in exchange for the referral of urine drug testing services. Theresa Merced was an office manager of a substance use disorder clinic in Jackson, Kentucky who admitted that between December 2018 and August 2019, she solicited kickbacks from the CEO of a toxicology lab in exchange for urine drug test referrals. Merced pled guilty to one count of violating EKRA, one count of making false statements, and one count of attempted tampering with records. Merced's EKRA conviction is believed to be the first in the nation. She is scheduled to be sentenced on May 1, 2020 and faces up to 20 years in prison and a maximum fine of $250,000.

OWNER OF FLORIDA SUBSTANCE USE DISORDER TREATMENT CLINICS CONVICTED OF FRAUD SCHEME

***United States v. Ahmed, et al.*, U.S. District Court for the Southern District of Florida, Case No. 0:19-cr-60200-FAM (found guilty March 23, 2020).** Sebastian Ahmed is the CEO, president, and CFO of two substance abuse treatment centers and a medical health clinic in Florida. During a federal criminal trial, the U.S. government asserted that from June 2016 through May 2019 Ahmed: (1) engaged in illegal billing to private insurance companies prior to the clinics being certified by Florida's Department of Children and Families; (2) provided unlawful inducements to patients, including free airline travel, housing, vapes, manicures, and cash, and failed to collect patient co-pays and deductibles; and (3) billed for medically unnecessary therapeutic services. The government calculated that the clinics billed approximately $38 million fraudulently, which resulted in over $6 million in reimbursement payments. After a six-week trial, a jury found Ahmed guilty of one count of conspiracy to commit health care and wire fraud, ten counts of health care fraud, one count of conspiracy to commit money laundering, and eleven counts of money laundering. Additional defendants included the defendant's brother, who was the COO and co-owner of the facilities, and two facility clinical directors. Those three co-defendants pled guilty and were sentenced prior to the trial. The brother was sentenced to ten years' imprisonment and the two clinical directors each received sentences of 32 months' imprisonment. Ahmed is scheduled for sentencing on August 6, 2020. The statutory maximum sentence for all counts combined exceeds 100 years.

NEW JERSEY'S MEDICAL MARIJUANA ACT DOES NOT IMMUNIZE EMPLOYERS FROM OBLIGATIONS UNDER NEW JERSEY'S LAW AGAINST DISCRIMINATION

***Justin Wild v. Carriage Funeral Holdings, Inc., et al.*, Supreme Court of New Jersey, A.3d, 2020 WL 1144882 (decided March 10, 2020).** Justin Wild, a cancer sufferer, uses marijuana pursuant to New Jersey's Compassionate Use Medical Marijuana Act (CUMMA). Wild's employer, a funeral home, learned of his marijuana use after Wild was involved in an on-duty car accident, even though Wild was not under the influence of marijuana at the time of the accident. The employer terminated Wild. Wild filed a lawsuit asserting that his termination violates New Jersey's Law Against Discrimination (LAD) because he has a disability and is legally treating it in accordance with his physician's directions and CUMMA. The trial court rejected Wild's contention, holding that CUMMA does not contain employment-related for licensed users of medical marijuana nor does it require an employer to accommodate marijuana use. A state intermediate appellate court reversed the trial court's ruling, holding that while CUMMA does not require an accommodation, it does not shield employers from requirements imposed by other laws. Thus, CUMMA does not negate rights available to a plaintiff that emanate from LAD. The New Jersey Supreme Court affirmed the appellate court's view that there is no conflict between CUMMA and LAD and that Wild can pursue a claim for discrimination under it. However, the state supreme court did not adopt the appeals court view that CUMMA does not have an impact on existing employment rights. The supreme court added that two CUMMA provisions relating to job accommodations and operation of motor vehicles/heavy equipment may affect a LAD discrimination claim in certain settings.

NEW YORK CITY'S BAN ON PRE-EMPLOYMENT MARIJUANA TESTING TO GO INTO EFFECT IN MAY 2020

New York City's Local Law 91 of 2019 is set to go into effect in May 2020, one year after enactment. The law designates pre-employment testing for THC as a discriminatory practice. There are exceptions in the law, however, for certain industries, including law enforcement, commercial drivers, and anyone who cares for medical patients or children. While this law is specific to New York City, multistate companies with offices in the city may need to revamp their drug testing policies nationwide to avoid having different policies in different offices. This New York City law appears to be the first of its kind.

NOTEWORTHY UPDATES IN THE NATIONAL OPIOID LITIGATION

***In re: National Prescription Opiate Litigation*, U.S. District Court for the Northern District of Ohio, Case No. 17-MD-2804.**

- The Cherokee Nation's opioid lawsuit has been remanded to federal court in Oklahoma. Last year, Judge Polster, who is overseeing the multidistrict litigation in Ohio, selected the Cherokee Nation's lawsuit along with cases filed by San Francisco and Chicago as "bellwether" cases to be remanded for trial in federal court. In February 2020, the U.S. Judicial Panel on Multidistrict Litigation remanded the Cherokee Nation's case to federal court in Oklahoma.
- In February 2020, Oklahoma Attorney General, Mike Hunter, announced that he plans to dismiss the state's lawsuit against three opioid distributors that has been moved to federal court and refile new lawsuits in state court. Hunter wants the cases to be heard in Oklahoma and not consolidated as part of the multidistrict litigation.
- On March 31, 2020, Judge Polster struck down two complaints filed in January by six large pharmacy chains against unnamed doctors in Cuyahoga and Summit Counties in Ohio. The pharmacies argued that the doctors and other health care practitioners who wrote prescriptions bear the ultimate responsibility for the improper distribution of opioids to patients. In striking the complaints, Judge Polster held that the case is not just about

whether the pharmacies filled prescriptions that may have been problematic, but whether these companies had effective systems in place to look for illegitimate and large amounts of pills and whether they did their duty to prevent drugs from ending up in the wrong hands. Additionally, the judge noted that pursuing the pharmacies' complaints would significantly delay the November trial.

PURDUE PHARMA BANKRUPTCY PROCEEDINGS

***In re Purdue Pharma L.P., et al.*, U.S. Bankruptcy Court for the Southern District of New York, Case No. 19-23649 (filed September 15, 2019).**

- On January 24, 2020, the federal judge overseeing the bankruptcy set a June 30, 2020 deadline to file a proof of claim against the company. Entities eligible to file claims include governments, hospitals, and individuals who have personal injury claims. There is no guarantee that those with opioid use disorder or their families will receive any money, and the claims will only be open to people who believe they were harmed by Purdue's products, not opioids generally. However, news reports indicate that plaintiffs' lawyers suggest people should file claims even if they are not sure if Purdue's drugs were involved in their injuries. Purdue plans to spend $23.8 million to advertise the claim-filing deadline. The ad campaign is intended to reach 95 percent of U.S. adults.
- On February 21, 2020, the judge allowed Purdue Pharma to enter into an agreement to develop a new treatment for opioid overdoses.
- On March 18, 2020, the judge agreed to extend a pause on all litigation against Purdue Pharma and its owners, the Sackler family, for 180 days while the parties to the lawsuits continue to try to work out a settlement.

DRUG COMPANIES PROPOSE $1.25 BILLION SETTLEMENT OF WEST VIRGINIA OPIOID LITIGATION

***In Re: Opioid Litigation*, Circuit Court of Kanawha County, West Virginia, Case No. 19-C-9000.** West Virginia would get $1.25 billion from the drug industry in a proposed settlement that would end most of the litigation stemming from the opioid epidemic in the state. Local governments in West Virginia have agreed to the deal that was negotiated by 250 lawyers in the state. The drug companies would have to determine how much each would pay, and West Virginia officials still must determine how to divide the money among the state and local governments, hospitals, and other entities. Lawyers' fees would not come out of the $1.25 billion. Instead, there would be an additional amount set by the West Virginia Mass Litigation Panel. The West Virginia plan does not apply to Purdue Pharma and Mallinckrodt. A trial date has been set for August 31, 2020, which will serve as a deadline for the proposed settlement.

MALLINCKRODT PHARMACEUTICALS AGREES TO PAY $1.6 BILLION IN SETTLEMENT

Mallinckrodt Pharmaceuticals has tentatively agreed to pay $1.6 billion to settle thousands of lawsuits brought by state and local governments over the company's role in the opioid epidemic. The settlement agreement is endorsed by 47 states and some U.S. territories along with a group of lawyers representing cities and counties. The money is to be paid into a cash trust over eight years and will be used to underwrite the costs of opioid use disorder treatments. Under the terms of the settlement agreement, the U.S. division of Mallinckrodt would file for Chapter 11 bankruptcy. After the restructuring plan is approved by a bankruptcy judge, an initial payment of $300 million would be disbursed to the plaintiffs; the remaining $1.3 billion would be paid out over the next eight years. Mallinckrodt is the first opioid company to reach a tentative national settlement agreement with municipal governments and most of the states.

NEW YORK OPIOID TRIAL POSTPONED DUE TO THE COVID-19 OUTBREAK

***In Re: Opioid Litigation*, Supreme Court of the State of New York, Appellate Division, Index No. 40000/2017.** On March 10, 2020, a judge announced that the New York opioid trial, which was originally scheduled to begin on March 20th, will be postponed due to the COVID-19 coronavirus outbreak. The case was brought against companies by New York's Attorney General and the counties of Suffolk and Nassau. The original start of the New York trial was viewed as a deadline for a settlement. With the postponement, it allows the parties more time to attempt to reach an agreement. The judge has set a meeting for April 14 to determine the next steps in the case.

OTHER INFORMATION OF NOTE

Montana Files Lawsuit against Opioid Distributors.

***State of Montana v. McKesson Corporation and Cardinal Health, Inc.*, Montana First Judicial District Court, Lewis and Clark County, Case No. CDV 2020 131 (filed February 3, 2020).** Montana Attorney General, Tim Fox, has filed a lawsuit against opioid distributors, McKesson Corporation and Cardinal Health. The suit claims that the companies should have known Montana was getting a suspiciously large quantity of opioids and that the companies played a key role in Montana's opioid epidemic. The complaint alleges that the companies willfully violated the Montana Unfair Trade Practices and Consumer Protection Act. Damages are to be determined at trial.

Colorado Insurance Companies Cannot Penalize People with Prescriptions for Narcan.

On February 14, 2020, Colorado's Insurance Oversight Agency stated that insurance companies cannot deny coverage or raise prices for people who have a prescription for Narcan. The Colorado Division of Insurance is not aware of any cases where someone has been unfairly treated for a prescription for naloxone, but cases have been reported in other states. A bulletin from the Division of Insurance stated that insurance companies can take a person's prescription history into account when deciding coverage and costs, but naloxone prescriptions should not be considered because it is more commonly used on someone other than the prescribed party. Additionally, the Division of Insurance believes that it would negatively affect Colorado's public health efforts surrounding opioid use disorder if insurers declined applications, rescinded coverage, or charged higher premiums because a person had obtained naloxone.

Texas Grand Jury Examines Evidence in 2019 Overdose Death of Angels Pitcher Tyler Skaggs.

A Texas grand jury began hearing evidence in March that could form the basis for criminal charges related to the death of Angels pitcher Tyler Skaggs. Skaggs died on July 1, 2019 in a Texas hotel room after the team arrived on a flight from California, and an autopsy revealed he had fentanyl, oxycodone, and alcohol in his system. The prosecutors are trying to establish how Skaggs obtained the illegal drugs and create a chain of custody that enables them to pursue distributors and suppliers. Even if the grand jury does not return a criminal indictment, information generated in the investigation could be used in a potential civil suit. In a civil suit, the Skaggs family could seek millions of dollars in a wrongful death lawsuit from any person that might be proven to be even partially responsible for his death.

Pennsylvania Judicial District Claims the Medical Marijuana Act does not Grant Probationers an Absolute Right to Use Medical Marijuana While on Probation.

***Melissa Gass, et al. v. 52nd Judicial District, Lebanon County,* Supreme Court of Pennsylvania, Case No. 118 MM 2019 (suit filed October 8, 2019).** For a summary of the facts of this case, please refer to Volume 1, Issue 1 (December 2019) of the LAPPA Case Law Monitor. On February 28, 2020, the respondent filed its brief with the court, arguing that the Medical Marijuana Act (MMA) does not grant probationers an absolute right to use medical marijuana while on probation without any supervision or oversight by the Judicial District. It argues that although probationers are not specifically referenced in the MMA, it does not prohibit the judiciary from placing conditions on probationers who use medical marijuana. The Judicial District claims that the plaintiffs are ignoring that the MMA is meant to act as a law of restricted access to medical marijuana as opposed to a law of broad permission. Additionally, the brief adds that courts have broad powers to regulate the activity of probationers, to rehabilitate probationers and protect the public, and that this power sometimes includes the ability to regulate otherwise lawful conduct. Finally, the respondent's brief states that the petitioners' argument that no probationer with a medical marijuana card can be subject to judicial scrutiny undermines the entire sentencing process. The Petitioners' reply brief is to be filed on or before March 23, 2020.

ABOUT LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

The Legislative Analysis and Public Policy Association (LAPPA) is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to model laws and policies that can be used by national, state, and local criminal justice and substance use disorder practitioners who want the latest comprehensive information on law and policy. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication-assisted treatment in prisons, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.

For more information about LAPPA, please visit: https://legislativeanalysis.org/.