NAMSDL Case Law Update

June 2016

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This issue of *NAMSDL Case Law Update* presents a brief update on the *Oregon PMP vs. DEA* case that has been pending before the Ninth Circuit Court of Appeals since January 2015. It also includes a case involving dependency of children whose parents are medical marijuana users, challenges to the Massachusetts ballot initiative to legalize marijuana in that state, as well as a tribal challenge to a federal law prohibiting cultivation of industrial hemp unless allowed by state law. Additionally, NAMSDL continues to follow cases mentioned in previous issues of *NAMSDL Case Law Update*.

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Cases Related to Prescription Monitoring Programs

Alwin Lewis vs. Superior Court for the State of California and the Medical Board of California, California Supreme Court, No. S219811. A full summary of this case can be found in previous issues of *NAMSDL Case Law Update*. Since the last update, Electronic Frontier Foundation, amicus curiae, filed new authorities in support of their amicus brief. This case otherwise remains pending before the California Supreme Court.

Daniel Maddox vs. City of Brandon, Mississippi, et al, U.S. District Court for the Southern District of Mississippi, Jackson Division, Case No. 3:15-cv-00866. A detailed summary of the facts of this case can be found in the January/February issue of *NAMSDL Case Law Update*. Since the last update, discovery has been ongoing in this case, including the service of interrogatories (questions served upon the opposing party in order to narrow down the issues in the case or designed to get the opposing party to admit certain alleged facts on the record), requests for production of documents, and notices to take the depositions of the Plaintiff and certain Defendants in the case. The party depositions are scheduled for July 13 and July 14, 2016.

Eve Davis vs. Wal-Mart Stores East, L.P., et al, U.S. District Court for the Eastern District of Virginia, Case No. 3:15-cv-00387. A full summary of this case can be found in the January/February 2016 issue of *NAMSDL Case Law Update*. Since the last update in this case, the Court heard argument and ruled on the parties' various Motions, including the Defendants' Motions for Summary Judgment. On April 13, 2016, the Court granted summary judgment in favor of Defendants Brenda Greer and Wal-Mart Stores East and dismissed all claims against those parties. On May 16, 2016, the Court granted summary judgment in favor of Defendant James V. Harney, Jr., the police officer who arrested the Plaintiff for prescription fraud based on the information contained in and provided to him by Wal-Mart pharmacist Brenda Greer. All claims against Defendant Harney were dismissed with prejudice. The Plaintiff filed a Notice of Appeal to the U.S. Court of Appeals on June 14, 2016 under case number 16-1677.

Oregon Prescription Drug Monitoring Program, et al vs. United States Drug Enforcement Administration, 9th Circuit Court of Appeals, Case No. 14-35402. A full summary of this case can be found in previous issues of NAMSDL Case Law Update. On April 26, 2016, the Department of Justice ("DOJ") filed a citation of supplemental authorities on behalf of the Drug Enforcement Administration citing the Fifth Circuit Court of Appeals case of *United States vs. Zadeh*, case number 15-10195, which Defendant claims supports its argument that the use of an administrative subpoena by DEA agents to acquire certain records does not infringe on the Fourth Amendment rights of patients. The *Zadeh* case involved the use of an administrative subpoena by the DEA issued to Zadeh, a physician, for the complete medical records of 67 of his patients. Dr. Zadeh refused to comply, and the DEA sought enforcement, which was granted by the district court. The Fifth Circuit affirmed that decision, holding that the controlled substances act, under which the DEA is granted its subpoena powers, preempts any inconsistent laws or regulations and, further, that the Fourth Amendment was satisfied by the "reasonable relevance test." Intervening Plaintiff ACLU filed a response to the citation arguing that this case differs from that of the *Zadeh* case in that the issue in this case is whether there is a reasonable expectation of privacy in prescription records and not whether the subpoena satisfies the reasonable relevance standard.

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Marijuana and Medical Marijuana Related Cases

Cristina Barbuto vs. Advantage Sales and Marketing, et al., Suffolk County, Massachusetts Superior Court, No. CV2015-02677. A more detailed summary of this case can be found in previous issues of *NAMSDL Case Law Update*. In September 2015, a woman ("Plaintiff") filed suit against her former employer for discriminatory employment practices when she was terminated for failing a pre-employment drug test, which she alleges was caused by the off-premises use of marijuana for medicinal purposes allowed by Massachusetts law. On May 31, 2016, the trial court granted the employer's motion to dismiss five of the six alleged counts. As a result, Plaintiff's only remaining cause of action is that the employer interfered with her right to privacy by requiring drug testing through urinalysis. According to the court's docket, the final pre-trial conference in the case is scheduled for December 2016.

Feinberg, et al vs. C.I.R, U.S. Tax Court (Denver, CO), Case No. 010083-13. A more detailed summary of this case can be found in previous issues of *NAMSDL Case Law Update* In December 2015, the U.S. Court of Appeals for the Tenth Circuit denied taxpayers' request to block the turnover of financial documentation to the IRS about their marijuana business and returned the dispute to the U.S. Tax Court. On April 28, 2016, the Tax Court ordered: (1) that the parties provide a joint update regarding settlement discussions on or before June 13, 2016; and (2) that the IRS move for summary judgment (should it choose to do so) on or before July 8, 2016.

Fourth Corner Credit Union vs. Federal Reserve Bank of Kansas City, U.S. District Court for the District of Colorado, Case No. 1:15-cv-01633, Tenth Circuit Court of Appeals Case No. 16-1016. A full summary of this case can be found in previous issues of *NAMSDL Case Law Update*. On May 17, 2016, the Clerk of the Court filed an order granting in part the Defendant's Motion to extend the time to file appellee's brief until July 5, 2016.

Gerald M. vs. Department of Child Safety, Court of Appeals of Arizona, Div. 2, 2016 WL 2585919, Case No. 2CA-JV2015-0130. This appeal arises from a dependency petition filed by the Department of Child Safety against Appellant Gerald M. for his use of medical marijuana. Appellant is a registered medical marijuana cardholder under the Arizona Medical Marijuana Act ("AMMA") and uses marijuana to manage musculoskeletal pain resulting from an automobile accident seven years prior to this action. Appellant's two children were removed from the home following a complaint that Appellant was growing marijuana in his home. There was no dispute during the trial of this case that the children were well-cared for, that the parents "were solid caregivers," and that the children were "developmentally doing very well [and are] happy and healthy." Despite that, the juvenile court judge found that the children were dependent based on various concerns about Appellant's ability to parent the children due to his being "under the influence" of marijuana. Under the AMMA, a parent may not "be denied custody of … a minor, and there is no presumption of neglect or child endangerment for conduct allowed under [the AMMA], unless the person's behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence." The appeals court found that the juvenile court did not properly consider the AMMA in making its decision and, further, stated that, "… we are aware of no Arizona authority suggesting evidence of a parent's legal use of a substance, standing alone, is sufficient to support a determination that his child is dependent." The appeals court remanded the case to the juvenile court for a determination of whether, at the time of the dependency determination, Gerald was using marijuana in compliance with the AMMA and, if so, the court must give due consideration to the provisions of the AMMA regarding custody of minors.

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Gerlich, et al. vs. Leath, et al., U.S. Court of Appeals for the Eighth Circuit, Case No. 16-1518. A complete description of the underlying district court case can be found in prior issues of *NAMSDL Case Law Update*. The defendants, certain high-level university employees, appealed the district court's decision allowing a student organization to produce marijuana-related apparel using university logos. During the past two months, appellate briefs were filed by both parties as well as two *amicus* briefs in support of the plaintiffs-appellees. The court also designated the case for oral argument, but did not set a date. It appears at this time that the oral argument will occur sometime between September 2016 and June 2017.

Green Earth Wellness Center vs. Atain Specialty Insurance Co., U.S. District Court for the District of Colorado, Case No. 13-CV-03452. A complete summary of the case can be found in the March/April 2016 issue of *NAMSDL Case Law Update*. The case involves the question of insurance coverage under a general property and liability policy for certain losses suffered by a marijuana business/growing facility. A three-day jury trial has been set for August 22-24, 2016.

Josephine Hensley, et al. v. Attorney General & Secretary of the Commonwealth, Massachusetts Supreme Judicial Court, Case No. SJC-12106. This case involves a challenge to Massachusetts Initiative Petition No. 15-27, "The Regulation and Taxation of Marijuana Act" (the "Initiative"), which is on track to be included on the November 2016 ballot in Massachusetts. Josephine Henley and 58 other state voters ("Plaintiffs") seek to decertify the Initiative on the basis of two alleged constitutional deficiencies: (1) a misleading summary prepared by the Massachusetts Attorney General; and (2) the inclusion of unrelated subjects within one petition. With respect to the first issue, the Plaintiffs contend that the Attorney General's 500-word summary to be provided to voters "fails to tell voters about the type of drugs to be legalized, and provides inaccurate and inadequate information about who will be licensed to sell these drugs for profit." Regarding the second contention, the Plaintiffs assert that the Initiative does not contain the required "unified statement of public policy" because "it places citizens in the untenable position of voting to both legalize marijuana and impose a preferential licensing system that turns non-profit, medical marijuana treatment centers into profit making businesses." Oral argument in the case was held on June 8, 2016. A ruling is expected by the court on or before July 6, 2016.

Justin L. Smith, et al vs. John W. Hickenlooper, Governor of the State of Colorado, Tenth Circuit Court of Appeals, Case No. 16-1095. A full summary of this case can be found in previous issues of *NAMSDL Case Law Update*. As mentioned in the last issue of *NAMSDL Case Law Update*, on April 1, 2016, this case was consolidated with the case of *Safe Streets Alliance, Phillis Windy Hope Reilly, and Michael P. Reilly vs. John W. Hickenlooper, Jr., Barbara J. Brohl, W. Lewis Koski, and Pueblo County Liquor & Marijuana Licensing Board, et al*. On April 14, 2016, following the United States Supreme Court's declination to exercise jurisdiction in the case of *Nebraska and Oklahoma vs. Colorado*, case number 22O144, the States of Nebraska and Oklahoma filed a Motion to Intervene in the *Safe Streets* case on the basis that, before the States of Nebraska and Oklahoma can conclude a civil case in the district court, the Tenth Circuit will have decided matters of critical importance to these states without their involvement in the action. The Plaintiffs in both cases and the Colorado Defendants do not oppose the Motion; however, Defendant Pueblo County is opposed. The Motion was referred to the panel of judges that will be deciding the case on the merits. No date is set for an order from the Court at this time. In the interim, briefs from appellees are due July 8, 2016.

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Matthew John Allen, et al. v. Attorney General & Secretary of the Commonwealth, Massachusetts Supreme Judicial Court, Case No. SJC-12117. This case also involves a concern with Massachusetts Initiative Petition No. 15-27, "The Regulation and Taxation of Marijuana Act" (the "Initiative"), which is on track to be included on the November 2016 ballot in Massachusetts. Matthew Allen and 62 other voters ("Plaintiffs") are supporters of the Initiative. However, they believe that both the short title and one-sentence summary of the Initiative drafted by the Attorney General, which will be provided to state voters in advance of the election, are misleading and crafted to encourage votes against it. In particular, the Plaintiffs assert that: (1) the short title "Marijuana Legalization" is "false and misleading" as it fails to relate the regulated nature of the proposal; and (2) the use of the more complicated and less understood term "tetrahydrocannabinol" in addition to "marijuana" in the one-sentence summary is an exercise of "advocacy by officials opposed to the measure." Oral argument in the case was held on June 8, 2016. A ruling is expected by the court on or before July 6, 2016.

Menominee Indian Tribe of Wisconsin vs. D.E.A. and U.S. Department of Justice, U.S. District Court for the Eastern District of Wisconsin, May 23, 2016, 2016 WL 2997499. The Federal Agricultural Act of 2014 provides, among other things, for an exception to the Controlled Substances Act that an "institution of higher education" may cultivate industrial hemp if it is done for research purposes and it is allowed by the state in which the institution sits. In 2015, the Menominee Indian Tribe of Wisconsin ("Plaintiff") passed an ordinance legalizing the cultivation of industrial hemp on Plaintiff's reservation by certain licensees. The Plaintiff then granted a license to the College of Menominee Nation to research industrial hemp. In October 2015, federal agents raided the reservation and destroyed the crop. Plaintiff brought suit seeking a declaration by the court that the hemp cultivation was allowed under the Agricultural Act, reasoning that the applicable underlying "state" law was Plaintiff's ordinance, rather than Wisconsin law, which does not allow hemp cultivation. In an opinion issued May 23, 2016, the court disagreed, and granted the defendants motion to dismiss the case. In reaching the conclusion, the court held that "while Wisconsin law is not enforceable on the Menominee Reservation, that does not change the fact that the growing or cultivating of industrial hemp is not allowed under the laws of the State of Wisconsin. Because the Tribe is located in the State of Wisconsin, the hemp exception to the Controlled Substances Act does not apply to the Tribe."

Olsen vs. Iowa Board of Pharmacy, Court of Appeals of Iowa, May 11, 2016, 2016 WL 2745845. In Iowa, controlled substances are scheduled by the General Assembly ("Assembly"), with recommendations from the state Board of Pharmacy. In 2010, the Board recommended that marijuana be rescheduled, but the Assembly took no action. The Assembly also failed to enact two bills during the 2013 legislative session that would reschedule marijuana. In July 2013, an Iowa man ("Plaintiff") petitioned the Board to again recommend rescheduling to the Assembly. The Board reviewed the petition, but voted to deny it, concluding in November 2013 that it "was not advisable or appropriate" to recommend in 2014. Plaintiff then brought this suit for judicial review of the Board's decision, contending that the Board had no discretion to deny the petition because it had previously recommended rescheduling. The state trial court disagreed. On appeal, the appellate court affirmed the Board's decision, concluding that it did not find "the Board's interpretation that it has discretion to recommend or to choose not to continually recommend reclassification . . . to be irrational, illogical, or wholly unjustifiable. Although the Board must make annual recommendations . . . [Iowa law] does not require a running list of its past recommendations on an annual basis."

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State of Arizona vs. Gear, Supreme Court of Arizona, May 6, 2016, --- P.3d ---, 2016 WL 2610791. An Arizona physician ("Defendant") was indicted for forgery and fraudulent schemes for falsely stating he had reviewed a patient's medical records for the preceding 12 months—as is required by Arizona law— prior to certifying the patient for access to medical marijuana. The trial court dismissed the charges on grounds that the Arizona Medical Marijuana Act's ("AMMA") provision immunizing physicians from prosecution for providing written certifications applied in this case. After an intermediate appellate court affirmed the dismissal, the matter was appealed to the Arizona Supreme Court. In an opinion issued May 6, 2016, the Supreme Court reversed the decision and remanded the case back for trial. According to the court, the use of the term "solely" in the AMMA immunization provision means that Arizona law "immunizes physicians from prosecution or penalties based solely on their providing the statutorily authorized certifications" for marijuana use but "does not immunize other conduct, such as making a false statement in a written certification."

State of Colorado vs. Richard Kirk, Denver County District Court, Case No. 14CR1853. More detailed summaries of this case can be found in the previous issues of *NAMSDL Case Law Update*. Richard Kirk ("Defendant") was charged with killing his wife in 2014 while she was calling 911 worried about his state of mind. The next court hearing in the criminal case is scheduled for July 7, 2016, at which time his court-ordered psychological evaluation is due to be completed. On a related note, in May 2016, the Defendant's three minor children filed a wrongful death lawsuit against the manufacturer (Gaia's Garden LLC) and seller ((Nutritional Elements, Inc.) of the marijuana edible eaten by the Defendant prior to the alleged psychotic episode. The children's lawsuit alleges that these parties failed to include warnings about "known side effects" of the edibles and "concealed vital dosage and labeling information."

Cases Related to Prescribing and Dispensing of Controlled Substances

Adams vs. Bute, et al., Supreme Court, Appellate Division, Second Dept., New York, March 9, 2016, --- N.Y.S.3d ---, 2016 WL 886465. A full summary of the appellate court's dismissal of the pharmacy defendants from the case can be found in the March/April 2016 issue of *NAMSDL Case Law Update*. Meanwhile, Plaintiff's medical malpractice action against the physician for the death of her husband caused by an allegedly improper opioid prescription remains ongoing. A court appearance in the matter was scheduled for June 13, 2016.

People of the State of California v. Purdue Pharma L.P., et al., Superior Court of California, County of Orange, Case No. 30-2014-00725287. In May 2014, the state of California sued five pharmaceutical companies in a complaint alleging a fraudulent opioid marketing scheme. The California judge put a complete hold on the case in August 2015 to allow the U.S. Food and Drug Administration to complete current research into the effectiveness and safety of opioids. In early June 2016, the state filed two motions, one to allow an amended complaint, and the other to have the stay lifted. A hearing on both motions is scheduled for July 27, 2016.

Sorenson vs. Professional Compounding Pharmacists of Western Pennsylvania, Inc., et al, District Court of Appeal of Florida, 2nd District, 2016 WL 2726274. Plaintiff, Jeanne M. Sorenson, filed suit in her capacity as Executor of the Estate of Darryl Ray Sorenson against the Defendant, Professional Compounding Pharmacists of Western Pennsylvania, Inc. ("Defendant Pharmacist") and others, alleging that Defendant Pharmacist negligently prepared and dispensed a prescription for hydromorphone for the patient that resulted in his death and, further, that the Defendant

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Pharmacist was negligent per se by filling the prescription without being licensed or registered in Florida as required by law. The trial court dismissed the claims against the Defendant Pharmacist "for failing to allege a cognizable duty that the [Defendant] owed Mr. Sorenson."

Mr. Sorenson was a resident of Ohio who was vacationing in Florida in 2012. During his vacation, he visited Charlotte Pain Management Center based on a referral from his Ohio physician. His Ohio physician was treating his back pain by administration of hydromorphone through a pain pump inserted into Mr. Sorenson's spinal canal at a dose of 10 mg/mL. A physician at Charlotte Pain increased the dose from 10 mg/mL to 30 mg/mL, submitted the prescription directly to Defendant Pharmacist, who compounded the medication and released it to Charlotte Pain who then administered the medication through the pain pump. Mr. Sorenson died that same day.

The Plaintiff alleged that Defendant Pharmacist's failure to confirm previous dosages and concentrations of the medication, failure to determine patient history, and failure to verify pump type resulted in Defendant Pharmacist negligently and inappropriately filling the prescription. Plaintiff further alleged that Defendant Pharmacist knew or should have known that the prescription was unreasonable on its face and was likely to result in serious injury or the death of Mr. Sorenson. The appeals court found that these allegations amounted to a cognizable duty that the Defendant Pharmacist owed to Mr. Sorenson and reversed the trial court's dismissal of that claim. The appeals court affirmed the claim of negligence against Defendant Pharmacist related to Defendant's lack of a Florida license or registration and remanded the case to the trial court for further proceedings.

United States vs. Jeffrey Green and Karen Hebble, U.S. Court of Appeals for the Eleventh Circuit, Case No. 15-10270. A complete summary of the facts of this case can be found in the March/April 2016 issue of *NAMSDL Case Law Update.* In an opinion issued April 7, 2016, the U.S. Court of Appeals for the Eleventh Circuit affirmed convictions against the owner and store manager of a Florida-based pharmacy for conspiracy to distribute controlled substances and conspiracy to commit money laundering. On June 3, 2016, the Eleventh Circuit denied the defendants' request for a rehearing in front of all Circuit judges. The defendants could ask the U.S. Supreme Court to review the decision, but the likelihood of the Supreme Court accepting such a request is low.

United States vs. Mirilishvili, U.S. District Court for the Southern District of New York, Case No. 14-CR-00810. A complete summary of the facts of this case can be found in the March/April 2016 issue of *NAMSDL Case Law Update.* In 2014, Dr. Moshe Mirilishvili ("Defendant") and ten alleged co-conspirators were charged with the illegal distribution of oxycodone from his pain management clinic. Prior to trial, the ten co-conspirators plead guilty. A jury trial for Defendant was held in March 2016. On March 17, 2016, the jury found him guilty of three counts: two counts of unlawful distribution of oxycodone and one count of conspiracy to distribute oxycodone. After the verdict, the Defendant renewed a prior motion for acquittal on grounds that the government failed to meet its evidentiary burden. The motion was denied. Defendant's sentencing hearing is scheduled for July 20, 2016.

United States vs. Stephen J. Schneider and *United States vs. Linda K. Schneider*, Tenth Circuit Court of Appeals, Case Nos. 15-3248 and 15-3247. Summaries of these cases can be found in the prior issues of *NAMSDL Case Law Update*. The United States/Appellee filed its Reply Brief on May 9, 2016, citing six distinct arguments in opposition

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to the Appellants' assertions that they are entitled to have their convictions on certain counts against them vacated. Appellants filed a Reply Brief on May 26, 2016. Argument on this case has not yet been scheduled.

Novel Psychoactive Substances Cases

United States vs. McFadden, U.S. Court of Appeals for the Fourth Circuit, May 19, 2016, --- F.3d ---, 2016 WL 2909177. Stephen McFadden ("Defendant"), a New York man, was arrested in 2012 for being the supplier of synthetic stimulants to a Virginia store. He was indicted in federal district court on nine counts of distributing MDPV, methylone, and 4–MEC in violation of the Federal Analogue Act ("Act"). During the trial, the defendant objected to the jury instructions, arguing that the government should be required to prove that he knew the substances were controlled substance analogues under the Act. The district court disagreed and the Defendant was convicted by a jury on all nine counts. Defendant appealed the conviction and the matter ultimately reached the U.S. Supreme Court. In an opinion issued in June 2015, the Supreme Court held that a conviction under the Act "requires proof of knowledge of either the substance's legal status as a controlled substance or of its specific features that make the substance a controlled substance analogue." The Supreme Court returned the matter to the Fourth Circuit to determine if the erroneous jury instructions for each count, which did not contain the knowledge element, constituted "harmless error" or required a new trial.

In a decision issued on May 19, 2016, the Fourth Circuit first noted that an omitted jury instruction may be considered "harmless error" if "the omitted element is supported by overwhelming evidence admitted at trial." Reviewing the trial court evidence regarding Defendant's knowledge about the chemical makeup and effects of the substances, the court concluded that the instructions were harmless error with respect to six of the nine counts, and affirmed those convictions. The convictions on the other three counts, however, were vacated and remanded to the district court for further proceedings.

United States vs. Sharp, U.S. District Court for the Northern District of Iowa, May 4, 2016, 2016 WL 2350138. In 2015, the owner of a head shop in Iowa ("Defendant") pled guilty to three counts of violating federal controlled substance laws for the sale of the synthetic substance AB-FUBINACA (sprayed on leafy substances), which he thought was a supposedly legal substance called THJ-011. After a court hearing before a magistrate judge on the guilty pleas, the Defendant filed a motion to withdraw them. In the motion, Defendant alleged that his then-attorney was hired, in part, for advice on whether or not certain substances he wanted to sell were scheduled as controlled substances. According to the Defendant, the guilty pleas were pushed on him by the lawyer, who failed to inform him of the so-called "advice-of-counsel" defense and thus the lawyer had a conflict of interest. (The attorney disagreed with this characterization and testified that he told the Defendant he should stop selling synthetic drugs.) In addition, Defendant argued that a factual basis was not established for the pleas. The magistrate judge recommended that Defendant's motion be denied. Upon review, the federal district court judge agreed. With respect to the conflict of interest issue, the court placed more weight on the attorney's characterization of events and found that the Defendant did not actually heed the advice given. As for the facts admitted to by the Defendant as part of the plea, the court found that they satisfied the requirements of the Supreme Court's decision in *McFadden*, namely that the Defendant "knew (or was willfully blind to the fact) that he was in possession of some controlled substance or some controlled substance analogue." Defendant's sentencing hearing has not been scheduled.

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United States vs. Pickard, Schweder, et al., U.S. District Court for the Eastern District of California, Case No. 11-CR-00449. In 2011, federal search warrants were executed on two properties in California owned by defendant Bryan Schweder. As a result of the searches, Schweder and 15 others were indicted for being part of a marijuana growing operation, with Schweder serving as the manager. The case subsequently gained notoriety when, in response to a Motion to Dismiss filed by several defendants, the court held a week-long hearing in October 2014 concerning the constitutionality of the federal classification of marijuana as a Schedule I controlled substance. After the hearing, the court found the classification constitutional and stated that it was for Congress, and not a court, to change the classification. All 16 defendants pled guilty to one or more of their charges prior to a scheduled February 2016 trial. As of mid-June 2016, 15 defendants have been sentenced, with Schweder receiving the longest prison sentence of 13.5 years. (The other sentences are between one year and ten years). The sentencing hearing for the final defendant is scheduled for July 20, 2016.

United States vs. Real Property Located at 2106 Ringwood Avenue, San Jose, California, U.S. District Court for the Northern District of California, Case No. 3:12-cv-03566; *United States vs. Real Property and Improvements Located at 1840 Embarcadero, Oakland, California*, U.S. District Court for the Northern District of California, Case 3:12-cv-03567. A complete summary of the facts of these cases can be found in prior issues of *NAMSDL Case Law Update*. In 2012, the U.S. Department of Justice ("DOJ") initiated forfeiture actions in federal court to close two locations where the largest marijuana dispensary in the United States operates. Later in 2012, the City of Oakland, the site of one location, filed suit against the DOJ seeking an injunction preventing the forfeiture. In early 2016, the Oakland action was resolved in favor of the DOJ. Nevertheless, in May 2016, the DOJ dismissed both forfeiture actions with prejudice, meaning DOJ may not refile the suits. Although the DOJ has not provided an official explanation for dismissing the cases, it has been speculated that it may be because the action was unpopular in California and the U.S. Attorney who originally filed the case stepped down from her position in September 2015.

Headquarters Office: 100½ E. Main Street, Suite C, Manchester, IA 52057.

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