

3. The referenced Policy is a thing which speaks for itself. Consequently, no responsive pleading is required. Petitioners' characterization of the Policy is denied.

4. The averments of this paragraph are conclusions of law. Consequently, no responsive pleading is required.

5. The averments of this paragraph are conclusions of law. Consequently, no responsive pleading is required.

6. Respondent is unaware of the circumstances of Monyer's current use of medical marijuana. It is denied that he has not been admitted to a treatment court or suffered damages due to a policy that violates the Supreme Court's holding in *Gass*.

7. Admitted that the Pennsylvania Cannabis Coalition ("PCC") represents the referenced dispensaries. Denied that the PCC has produced competent evidence of its members' loss of revenue solely due to the Policy of the Judicial District. Further, the issue of whether businesses that lose money because of individual judicial decisions creates legal standing is ultimately a matter of law for this Court.

8. It is denied that Respondent agrees with Petitioners' statement of material facts in all respects. The parties' positions with respect to material facts are set forth in the pleadings.

9. The averments of this paragraph are conclusions of law. Consequently, no responsive pleading is required.

10. The MMA is a thing which speaks for itself. Consequently, no responsive pleading is required.

11. The MMA is a thing which speaks for itself. Consequently, no responsive pleading is required.

12. The MMA is a thing which speaks for itself. Consequently, no responsive pleading is required.

13. The MMA is a thing which speaks for itself. Consequently, no responsive pleading is required.

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19. The MMA is a thing which speaks for itself. Consequently, no responsive pleading is required.

20. The MMA is a thing which speaks for itself. Consequently, no responsive pleading is required.

21. The MMA is a thing which speaks for itself. Consequently, no responsive pleading is required.

22. The MMA is a thing which speaks for itself. Consequently, no responsive pleading is required.

23. Neither admitted nor denied, as Respondent is without knowledge as to the specific background of petitioner Monyer. Further, the averments of this paragraph are ultimately irrelevant to the legal matters to be decided at summary relief.

24. Neither admitted nor denied, as Respondent is without knowledge as to the specific background of petitioner Monyer. By way of further response, Petitioner's Exhibit 3 states, "Service connection for unspecified schizophrenia spectrum and other with polysubstance use disorder also claimed as post traumatic stress disorder"

25. Admitted, though these facts are ultimately irrelevant to the legal matters to be decided at summary relief.

26. Neither admitted nor denied, as Respondent is without knowledge as to the specific background of petitioner Monyer.

27. Admitted that the referenced exhibit is a thing which speaks for itself. Consequently, no response is required. By way of further answer, it is expressly denied that Monyer received any diagnosis of PTSD from his treatment provider, the United States Department of Veterans Affairs. (**Petitioners' Exhibit 37**, 108:11-13, 114: 13-24) As far as Respondent is aware, Monyer is diagnosed with schizophrenia and psychosis. (**Petitioners' Exhibit 37**, 80:14-19, 86:4-8, 153:1-4)

28. The MMA is a thing which speaks for itself. Consequently, no responsive pleading is required. By way of further response, schizophrenia and psychosis are not among the serious medical conditions for which the MMA authorizes a person to use medical marijuana.

29. Neither admitted nor denied, as Respondent is without knowledge as to the specific background of petitioner Monyer. Further, the averments of this paragraph are ultimately irrelevant to the legal matters to be decided at summary relief.

30. Neither admitted nor denied, as Respondent is without knowledge as to the specific background of petitioner Monyer. Further, the averments of this paragraph are ultimately irrelevant to the legal matters to be decided at summary relief.

31. Neither admitted nor denied, as Respondent is without knowledge as to the specific background of petitioner Monyer. Further, the averments of this paragraph are ultimately irrelevant to the legal matters to be decided at summary relief.

32. Admitted.

33. Admitted.

34. Respondent is without knowledge as to whether PCC's members provide care and treatment such that benefits the quality of life of patients or whether PCC's members provide medical treatment. The averments of this paragraph are therefore denied. Further, they are ultimately irrelevant to the legal matters to be decided at summary relief.

35. Admitted.

36. Admitted.

37. Admitted.

38. The referenced Manual is a thing which speaks for itself. Consequently, no responsive pleading is required.

39. The referenced Manual is a thing which speaks for itself. Consequently, no responsive pleading is required.

40. The referenced Agreement is a thing which speaks for itself. Consequently, no responsive pleading is required.

41. Admitted.

42. The averments of this paragraph are denied. Expungement is not automatic. Participants still must follow an expungement process under the law and Petitioners have failed to present any undisputed facts on this averment. The referenced criminal rule of procedure is a thing which speaks for itself and consequently no responsive pleading is required.

43. Admitted.

44. Admitted.

45. Admitted.

46. Admitted.

47. Admitted.

48. Admitted.

49. Denied. The Policy is a thing which speaks for itself and Respondent denies Petitioners' characterization of the Policy. The Policy actually states, "Medical marijuana use will be addressed on a case-by-case basis. Consideration for use should be accompanied by a letter addressed to the Court from a treating physician that details diagnosis, and medical necessity for use." (**Petitioners' Exhibit 1**, p. 11) By way of further answer, it is undisputed that the final "case-by-case" decisions are made by the treatment court judges. (**Petitioners' Exhibit 8**, 120:8-12)

50. Admitted that prior to February 2022, medical marijuana was prohibited by treatment court participants.

51. Denied as stated. The policy is a thing which speaks for itself and does not ban medical marijuana. (**Petitioners' Exhibit 1**, p. 11) Treatment court participants do not request an exemption from a ban. They are asked to submit a doctor's letter explaining "diagnosis, and medical necessity for use." (**Petitioner's Exhibit 1**, p. 11) If they want to use medical marijuana without submitting a doctor's note, this is a decision for a treatment court judge. *See, e.g.*, January-February 2024 emails between Jessica Bodor and Monyer's criminal defense attorney, attached as **Exhibit O**, wherein Ms. Bodor advises him that he can file his arguments with the Court. Further, treatment court participants have used medical marijuana while in treatment court without a Court-approved doctor's letter and without sanctions. (*See, e.g.,* **Petitioners' Exhibit 36**, ¶¶ 15-25.)

52. Admitted.

53. Denied as stated. It is admitted that prior to filing this lawsuit, Petitioners obtained outdated policies from a cached version of a website maintained by Berks County. Berks County is a separate political subdivision that maintains the Court's website and the Court has no control over how Berks County administers webpages. Rather than verify whether the outdated policies were still in effect or how treatment courts worked, Petitioners filed suit.

54. It is admitted only that the Judicial District contacted Berks County after receiving this lawsuit to determine where Petitioners obtained outdated policies. The Judicial District discovered that Berks County had left accessible an older version of its website that contained outdated policies.

55. It is admitted that the Manual is a thing which speaks for itself. By way of further answer, the Manual is applicable to all treatment courts, including Drug Court, and includes a special directive to participants and individuals who are in recovery. Additionally, medical marijuana is treated differently, as indicated by an asterisk and the corresponding paragraph. (**Petitioners' Exhibit 1**, pp. 10-11)

56. It is admitted that the Manual is a thing which speaks for itself. Further, the characterization of the Policy and how it applies on a case-by-case basis are denied for the reasons already set forth in this Response.

57. It is denied that the Policy bans medical marijuana. Further, the characterization of the Policy and how it applies on a case-by-case basis are denied for the reasons already set forth in this Response.

58. Admitted.

59. Denied as stated. It is admitted that a treatment court judge can make a judicial decision to remove a person from participating in treatment court. However, this is case-by-case determination that is made by the treatment court judge because an individual may be permitted to stay on treatment court and use medical marijuana

without submitting a letter. (*See, e.g., Petitioners' Exhibit 36, ¶¶ 15-25*, wherein Petitioners' witness admits to using medical marijuana without express permission and without being sanctioned.)

60. Admitted.

61. Admitted.

62. Admitted.

63. Denied as stated. It is admitted that Jessica Bodor testified in her deposition as cited. However, it is also undisputed fact that the Policy states that a request for use "should be" accompanied by a letter (**Petitioners' Exhibit 1**, p. 11) and the treatment court judge makes the ultimate ruling on the admission to treatment court (**Respondent's Exhibit B**, 180:13-20, **Respondent's Exhibit C**, 99:1-23, **Respondent's Exhibit E**, 20:16-21:22, 25:12-22, 128, **Respondent's Exhibit F**, 37-38, 172:15-20, **Respondent's Exhibit G**, 13:12-18). Notably, individuals have provided doctor's notes and been permitted by treatment court judges to use medical marijuana. (Petitioners' Application, ¶ 73) Moreover, Petitioners' witness admitted to using medical marijuana without the Court's approval of his submitted letter and he did not receive sanctions for use. (**Petitioners' Exhibit 36, ¶¶ 15-25**)

64. Denied as stated for the reasons set forth in Paragraph 63. Whether the letter is sufficient for the treatment court judge is ultimately the final decision of the treatment court judge. (**Petitioners' Exhibit 8**, 120:8-12)

65. Denied as stated for the reasons set forth in Paragraph 63. Whether the letter is sufficient for the treatment court judge is ultimately the final decision of the treatment court judge. (**Petitioners' Exhibit 8**, 120:8-12)

66. Denied as stated for the reasons set forth in Paragraph 63. Whether the letter is sufficient for the treatment court judge is ultimately the final decision of the treatment court judge. (**Petitioners' Exhibit 8**, 120:8-12)

67. Denied as stated. The Policy actually states, "Medical marijuana use will be addressed on a case-by-case basis. Consideration for use should be accompanied by a letter addressed to the Court from a treating physician that details diagnosis, and medical necessity for use." (**Petitioners' Exhibit 1**, p. 11) Because treatment court judges make individual determinations on a case-by-case basis, it is possible that the treatment court judge may ask for more information in particular cases as shown in *Commonwealth v. G.S.*

68. Denied as stated. It is undisputed fact that the treatment court judges make final rulings on the use of medical marijuana while in treatment court. (**Petitioners' Exhibit 8**, 120:8-12) Further, the Policy actually states, "Medical marijuana use will be addressed on a case-by-case basis. Consideration for use should be accompanied by a letter addressed to the Court from a treating physician that details diagnosis, and medical necessity for use." (**Petitioners' Exhibit 1**, p. 11)

69. Admitted.

70. Admitted.

71. Denied. (*See, e.g., Petitioners' Exhibit 36, ¶¶ 15-25*, wherein Petitioners' witness admits to using medical marijuana without express permission and without being sanctioned.)

72. Denied that any medical marijuana patients have been denied admission to treatment court for using medical marijuana or requesting to use it. (**Petitioners' Exhibit 8**, 129:7-11) By way of further answer, it is undisputed fact that the final decisions in such situations are made by the treatment court judges. (**Petitioners' Exhibit 8**, 120:8-12)

73. Admitted. By way of further response, a decision was not made for J.S.C. because she was administratively terminated from treatment court for unrelated reasons; her sentence remains the same, she continues to receive treatment from the Court's treatment provider, and she can use medical marijuana in general probation. A decision was not made for A.S. because she submitted a doctor's letter that was forged and fraudulent. *See* March 26-27, 2024 emails between counsel, attached as **Exhibit P**.

74. Admitted, though relevance is denied.

75. Admitted, though relevance is denied.

76. Admitted, though relevance is denied.

77. Admitted, while denying relevance, that J.S.'s probation officer received an email stating in part, "[J.S.] is asking about use of medical cannabis as an option for her anxiety. This would be an option as she has no cannabis abuse history to my knowledge."

78. Respondent is without information as to the underlying circumstances of J.S. and her actual use of medical marijuana. The averments of this paragraph are therefore denied.

79. Admitted, though relevance is denied.

80. Denied as stated for the reasons set forth in Paragraph 63. Further denied as Ms. Bodor was testifying about the document placed in front of her, which was redacted. (*See* deposition Exhibit 14, attached as **Exhibit Q**.) By way of further answer, J.S.'s probation officer testified as to her belief that the DUI Treatment Court judge wanted the opinion of the court's treatment provider. (*See* relevant excerpts of the deposition of Nicole Brown, attached as **Exhibit G-1**, at 44:1-46:4.)

81. Respondent is without information as to the underlying circumstances of J.S. and her actual use of medical marijuana since entering DUI Treatment Court. Consequently the factual averments of this paragraph are denied.

82. Respondent is without information as to the underlying circumstances of J.S. and her actual use of medical marijuana since entering DUI Treatment Court. Consequently, the factual averments of this paragraph are denied.

83. Admitted.

84. Respondent is without knowledge as to the validity of G.S.'s medical marijuana card. Consequently, the factual averments of this paragraph are denied.

85. Admitted.

86. Admitted. By way of further answer, Judge Geishauser made the ruling in her capacity as a treatment court judge.

87. Denied as stated. While it is admitted that participants have been sanctioned at least in part for medical marijuana use, the circumstances of those sanctions were not explored in discovery as they were and remain irrelevant to Petitioners' claims. First, an injunction cannot remedy past harms, even if proven. Second, how other participants were sanctioned has no bearing on Monyer's treatment court applications, especially when he was denied for reasons unrelated to his medical marijuana use. (Respondent and its counsel respect the sensitivity of issues addressed in treatment court and did not subject non-parties to an irrelevant inquisition about their drug abuse and recoveries.)

88. Denied, as Petitioners have provided no citation to the record. By way of further answer, no medical marijuana patients have been denied admission to treatment court for using medical marijuana or requesting to use it. (**Petitioners' Exhibit 8**, 129:7-11)

89. Denied. The cited transcripts reflect that the judge was and remains open to W.P.'s medical marijuana request but wanted to see a letter from his doctor who diagnosed his condition (not an orthopedic surgeon recommending medical marijuana for anxiety). (*See also* Petitioners' Application at ¶ 73.a.) By way of further response, if W.P. is dissatisfied with a judicial ruling, his attorney can file a motion for reconsideration or an appeal.

90. Admitted.

91. Admitted.

92. Admitted.

93. Admitted.

94. Admitted.

95. Admitted.

96. Admitted.

97. Admitted.

98. Admitted.

99. Admitted.

100. Admitted.

101. Admitted.

102. It is admitted that the treatment court team discussed these concepts and those discussions are reflected in notes. It is denied that Monyer was ultimately

denied admission to treatment court on this basis because the actual denial came from Judge Lieberman acting in his judicial capacity. The basis for that denial was set forth in an order: “due to failure to comply with pretrial services.” **(Respondent’s Exhibit I)** The Order does not reflect any of the topics in the cited treatment court notes.

103. Admitted. By way of further answer, ADA Kelecic is a separate county row officer who represents the interests of the District Attorney’s office.

104. Admitted.

105. Respondent is without knowledge as to whether Monyer took these actions. It is denied that they are relevant to this matter.

106. Respondent is without knowledge as to whether Monyer took these actions. It is denied that they are relevant to this matter.

107. Admitted.

108. Denied. The order sets forth the decision of the Judicial District in this matter. Petitioners’ attempt to characterize discussions among, or opinions of, treatment court team members as the basis for the actual order is denied. By way of further response, Respondent’s Application sets forth other treatment court members’ understanding of the denial, which were unrelated to Monyer’s medical marijuana documentation.

109. Denied. The order sets forth the decision of the Judicial District in this matter. Petitioners' attempt to characterize the notes of treatment court team members as the actual basis for the order is denied.

110. Admitted.

111. Admitted.

112. Admitted. By way of further response, the VA's treatment notes indicate that Monyer despised medications, he was "very adamant that he [did] not want to take psychiatric medications on a regular basis," and he wanted to take psychotropics on an as-needed basis. (*See* relevant excerpts of Monyer's VA Progress Notes, attached as **Exhibit R**, VA 033, VA 038.)

113. Admitted.

114. Admitted.

115. Admitted.

116. Admitted.

117. Admitted.

118. Admitted.

119. Admitted.

120. Admitted.

121. Admitted.

122. Denied. It is undisputed fact that the actual decision as to how a treatment court plan is relevant to a particular admission case is made by a judge sitting in a judicial capacity. (**Respondent's Exhibit B**, 180:13-20, **Respondent's Exhibit C**, 99:1-23, **Respondent's Exhibit E**, 20:16-21:22, 25:12-22, 128, **Respondent's Exhibit F**, 37-38, 172:15-20, **Respondent's Exhibit G**, 13:12-18) Petitioners mischaracterize the testimony of Gelu Negrea and are attempting to substitute his opinion for that of the actual decisions of judges. It is undisputed that Mr. Negrea does not make the final admission decision. By way of further answer, Mr. Negrea also testified that when he assesses veterans for treatment court, he offers treatment immediately, before a decision is made about admission to Veterans Court. (**Respondent's Exhibit B**, 47:10-23) He gives veterans an idea of what their treatment plan would look like, like whether they would be expected to participate in, for example, group therapy, individual therapy, or psychiatry. (**Respondent's Exhibit B**, 135:4-136:14)

123. Admitted.

124. Admitted.

125. Admitted.

126. Denied. Petitioners mischaracterize Mr. Negrea's testimony and are attempting to substitute his opinion for that of the actual decisions of judges. Mr. Negrea's opinions about how he thought a trial judge might rule are irrelevant to this

matter. By way of further answer, it is undisputed that Monyer was not appropriate for Veterans Court due to his diagnoses.

127. Admitted.

128. Respondent is unaware of the actual circumstances of Monyer's circumstances as to why he cannot submit a letter. Jessica Bodor testified only that, from her perspective, the letter should come from a treatment provider who has a history with the patient and can state the best treatment for that person, as opposed to a provider who authorized the medical marijuana card after seeing the patient only briefly. (**Petitioners' Exhibit 8**, 123:7-124:4) At no time have Monyer or his legal counsel presented any such reasons to the presiding judge of treatment court despite being given the opportunity to file something with the trial judge. *See* **Petitioners' Exhibit 46**, wherein ADA Kelecic wrote on May 25, 2023: "I spoke with his attorney a few weeks ago . . . and they would like an opportunity to come in and plead the [Monyer's] case as to why he should be allowed in veteran's court and to clear up and [*sic*] confusion. I don't think it is a bad idea to do so and to make a record of it based upon their belief that Monyer's medical marijuana use is why he is not being permitted in." *See also* **Exhibit O**, wherein Ms. Bodor advises Monyer's criminal defense attorney that he can file his arguments with the Court but he did not. Importantly, Petitioners have not asked the presiding treatment court judge for

a ruling on whether Monyer can be admitted without such a letter or whether a letter must be required in his case.

129. Admitted that the federal law is a thing which speaks for itself.

130. Admitted that the federal law is a thing which speaks for itself.

131. Admitted.

132. Admitted. By way of further answer, no veterans applying to, or participating in Veterans Court, have been denied admission or participation with the Court due solely to their use of medical marijuana. (**Petitioners' Exhibit 8**, 129:7-11, **Petitioner's Exhibit 7**, 60:4-8)

133. Respondents are unable to respond to this averment. First, Monyer concedes he has no pending application for treatment court. Second, it is undisputed that he was most recently denied admission due to his underlying gun charges. (By way of further answer, Judge Geishauser has denied at least two other applicants while specifically citing to their firearms charges and neither requested to use medical marijuana. (*See* Orders relating to G.B. and N.W., attached as **Exhibit S**.) This makes the entire case moot given that there is no injunctive relief for this Court to grant. Monyer was already denied admission by different judges and for different reasons to different treatment courts. (**Respondent's Exhibit I, Respondent's Exhibit K, Respondent's Exhibit M**) The idea that Monyer is somehow promising this Court to submit yet another application is both irrelevant and not an averment

that is possible for Respondent to respond to. In sum, the averment is proof that this Court cannot grant injunctive relief in this case.

134. The MMA is a law which speaks for itself.

135. Presuming the PCC members follow the MMA, Respondent admits the averments of this paragraph.

136. Admitted that the referenced exhibit is a thing which speaks for itself.

137. Admitted that the referenced exhibit is a thing which speaks for itself.

138. Admitted that the referenced exhibit is a thing which speaks for itself.

139. Denied as a conclusion of law to which no responsive pleading is required.

140. Admitted that the referenced exhibits are things which speak for themselves. It is denied that anything in the Judicial District's policy prevents treatment court applicants or participants from purchasing medical marijuana. By way of further answer, allegedly forfeited purchases can be quantified and compensated with money damages, rendering inappropriate injunctive relief.

141. The averments of this paragraph constitute conclusions of law to which no responsive pleading is required.

142. Denied as speculative and argument without any underlying factual foundation. Further, reduced revenue can be compensated with money damages,

rendering inappropriate injunctive relief, and the issue as to whether PCC has standing is a matter of law.

143. Denied as speculative and argument without any underlying factual foundation. By way of further answer, undersigned counsel's statement in argument is irrelevant because undersigned counsel has no way to know one way or the other as to whether the PCC makes money or loses money in any given situation. Further, lost money can be compensated with money damages, rendering inappropriate injunctive relief, and the issue as to whether PCC has standing is a matter of law.

144. Denied as speculative and argument without any underlying factual foundation. Further, the issue as to whether PCC has standing is a matter of law.

145. Denied as speculative and argument without any underlying factual foundation. Further, the issue as to whether PCC has standing is a matter of law.

146. The MMA is a thing which speaks for itself. Consequently, no responsive pleading is required.

147. The Supreme Court's ruling in *Gass* is a thing which speaks for itself. Consequently, no responsive pleading is required.

148. The averments of this paragraph comprise conclusions of law to which no responsive pleading is required.

149. The averments of this paragraph comprise conclusions of law to which no responsive pleading is required.

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165. The averments of this paragraph comprise conclusions of law to which no responsive pleading is required.

166. The averments of this paragraph comprise conclusions of law to which no responsive pleading is required.

WHEREFORE, for the foregoing reasons Respondent, 23rd Judicial District, Berks County Court of Common Pleas respectfully requests that the Petitioners' Application be denied in all respects.

Respectfully submitted,

/s/ Jennifer M. Herrmann

JENNIFER M. HERRMANN

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EXHIBIT G-1

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

DAMON MONYER and the : No. 283 M.D. 2023
PENNSYLVANIA CANNABIS :
COALITION, :
 :
 :
 Petitioners :
 :
 :
 vs. :
 :
 :
 23RD JUDICIAL DISTRICT, :
 BERKS COUNTY, :
 :
 :
 Respondent. :

- - -

Wednesday, April 3, 2024

- - -

Zoom deposition of NICOLE BROWN was
taken before Julie Kavanaugh, a Court
Reporter and Notary Public of the
Commonwealth of Pennsylvania, on the above
date, commencing at 12:58 p.m.

- - -

LEXITAS LEGAL/PHILADELPHIA
54 FRIENDS LANE, SUITE 116
NEWTOWN, PENNSYLVANIA 18940
(215) 504-4622

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1 earlier, down, you can see that it's
2 discussing an email from a Jerome Weber.
3 Subject, J.S., dated May 8, 2023.
4 Do you see where I'm looking?
5 A Yes.
6 Q Take your time to review what
7 Mr. Weber wrote and tell me if I have this
8 wrong, but it looks like a note about Ms.
9 J.S.'s proposed use of certain control
10 substances, including medical cannabis. Do I
11 have that right?
12 A Yes.
13 Q Do you know or do you remember
14 whether there was further discussion among
15 the probation office or the treatment court
16 team about Ms. J.S.'s use of medical
17 marijuana after this note came in?
18 A I don't know the date.
19 Q Do you remember having received a
20 note from a treating medical provider about
21 Ms. J.S.'s request to use medical marijuana
22 as part of the DUI treatment court?
23 A Yes.
24 Q But she ultimately was not approved

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1 to use medical marijuana while participating
2 in DUI treatment court, right?
3 A She was not.
4 MR. LONEY: I'm going to turn to
5 the next document, which is PDF labeled
6 T-5 and ask that it be marked as Exhibit
7 Brown-5.
8 (At this time, a document was
9 marked as Brown-5 for identification.)
10 BY MR. LONEY:
11 Q I have a document in front of you
12 labeled Adult Probation Scheduled Activities.
13 A Yes.
14 Q Is this a more familiar format for
15 the things we have been discussing from the
16 Connectrex system?
17 A No. I have never seen any of the
18 notes printed out the way that they are
19 there.
20 Q Have you ever seen notes printed
21 out from the Connectrex system at all or do
22 you always consult them on the computer?
23 A Yes, I have never printed notes
24 out.

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1 Q Again, this is a redacted document.
2 The client name is redacted, so only initials
3 are showing. I'll represent to you that
4 these are notes for J.S.
5 Do you have any reason to think
6 these are not notes for J.S.?
7 A No.
8 Q I'm going to jump to a page with a
9 Bates label in the lower right corner, AOPC
10 0657.
11 A Okay.
12 Q There is an appointment note here
13 with your name listed as the author from
14 May 10, 2023.
15 Do you see where I'm looking?
16 A Yes.
17 Q This was just after the note came
18 in from Ms. J.S.'s treatment provider that we
19 just looked at for May 8th. Again, please
20 review the un-redacted portion of the note
21 and let me know if I have this wrong, but it
22 looks like you are steering Ms. J.S. away
23 from receiving medical marijuana after
24 receiving that note from the treatment

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1 provider.
2 Can you tell us why that is?
3 A Because that's what was asked by
4 the judge.
5 Q So the judge indicated that Ms.
6 J.S. should be exploring other options, other
7 than medical marijuana; is that right?
8 A Correct.
9 Q Was the note received from the
10 treatment provider passed along to the judge
11 or was the judge aware of that note?
12 A I don't remember, but I believe so.
13 Q But that note wasn't sufficient in
14 the judge's eyes to justify use of medical
15 marijuana while Ms. J.S. was in treatment
16 court?
17 A No.
18 Q Do you know why that is?
19 A She wanted Ms. J.S. to be
20 affiliated with one of our providers for
21 treatment.
22 Q One of our providers. Can you
23 explain what that means? Is it a provider
24 from the county?

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1 A Treatment court uses specific
2 providers for treatment while in treatment
3 court, while the participant is in treatment
4 court.
5 Q Are those folks employed by the
6 county or the court program or are they
7 private people who receive a referral from
8 the court program?
9 A Private.
10 Q Do those folks ever submit letters
11 in support of participants using medical
12 marijuana to treat their conditions while
13 participating in the treatment court?
14 A I don't know.
15 Q Do you remember any of the
16 court-affiliated providers endorsing a
17 request to use medical marijuana?
18 A No.
19 Q Do you remember -- did Ms. J.S.
20 actually consult one of the court's preferred
21 providers?
22 A Yes.
23 Q Did that person ever submit a
24 letter approving or endorsing Ms. J.S.'s use

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1 of medical marijuana while in the program?
2 A No, not to my knowledge.
3 Q I just jumped to a page in the same
4 document, exhibit Brown-5, Bates labeled AOPC
5 0649. The top entry is dated October 12,
6 2023 and lists you as the organizer.
7 Do you see where I'm looking?
8 A Yes.
9 Q It indicates, Ms. J.S. asked if
10 she'll be able to go back to her prescribed
11 medication that treatment court bans and I
12 said she could.
13 Do you see where I'm reading from?
14 A Yes.
15 Q Do you know what medication is
16 being referred to here, the medication that
17 treatment court bans?
18 A No.
19 Q Do you know whether that includes
20 medical marijuana?
21 A No.
22 MR. LONEY: I'm going to move on to
23 the next document, which is the PDF
24 labeled T-6, and ask that it be marked

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1 as Exhibit Brown-6.
2 (At this time, a document was
3 marked as Brown-6 for identification.)
4 BY MR. LONEY:
5 Q It's a screen shot of a text
6 exchange. I'll ask, before looking at the
7 substance of the text, did you exchange text
8 messages with Ms. J.S.?
9 A Yes.
10 Q Did you produce those to counsel in
11 this case?
12 A Yes.
13 Q Is this one of the text exchanges
14 that you had with Ms. J.S. on May 24th?
15 A Yes.
16 MR. LONEY: I'm going to pull up
17 another document here, an image labeled
18 T-7, and ask that it be marked as
19 Exhibit Brown-7.
20 (At this time, a document was
21 marked as Brown-7 for identification.)
22 BY MR. LONEY:
23 Q This is an earlier piece of the
24 same text chain. It has your name at the


Page 49

1 top?
2 A Yes.
3 Q This is May 24th, 2023. Do you
4 know whether Ms. J.S. had been using medical
5 marijuana during this time?
6 A No, I don't remember at this time.
7 Q You wrote, on May 24th to Ms. J.S.,
8 that you didn't think the judge was going to
9 approve Ms. J.S.'s medical marijuana use
10 based on the last conversation you had.
11 Do you remember what that last
12 conversation was referring to, what the judge
13 said that made you think she wasn't going to
14 approve medical marijuana use in this case?
15 A I think it was on the last slide
16 that you showed me. I mean, it said this is
17 after then.
18 Q You mean the case notes?
19 A No, the text message.
20 Q I'm putting back on the screen,
21 Brown-6.
22 A Right there.
23 Q So are you referring to the part
24 where it says, I just don't think she will go

EXHIBIT O

From: [Bodor, Jessica](#)
To: [Robert J. Krandel](#); [Jennifer M. Herrmann](#)
Subject: FW: DM
Date: Tuesday, February 6, 2024 9:56:49 AM
Attachments: [image001.gif](#)

CAUTION: This is an external email. Please think before you click on an attachment or link!


Jessica L. Bodor, MPA, CAAP
Assistant Chief / Treatment Court Coordinator
Adult Probation and Parole Office
633 Court St. 7th Fl.
Reading, PA 19601
610-478-3400
Fax: 610-478-3451
NEW EMAIL: jlbodor@berkspa.gov

From: Alex Lassoﬀ <alassoﬀ@lassoﬀdefense.com>
Sent: Tuesday, February 6, 2024 9:53 AM
To: Bodor, Jessica <JLBodor@berkspa.gov>
Subject: Re: DM

County of Berks Warning: This is an external email. Please exercise caution.

Ms. Bodor,

I was out all of last week and catching up on emails. I can't make it today; could you let me know when the next consideration meeting is? I wanted to confirm what date his application would be considered and wanted to be there to answer any questions the review board may have.

Can you call me when his application is to be considered and reviewed?

--

Alexander D. Lassoﬀ, Esq.
Lassoﬀ Defense LLC
1717 Arch Street, Suite 320
Philadelphia, PA 19103
267-719-8714 (p) 267-719-8715 (f)

On Tue, Feb 6, 2024 at 9:19 AM Bodor, Jessica <JLBodor@berkspa.gov> wrote:

Good Morning Mr. Lassoff,

Private defense counsel is permitted to attend treatment court meetings. You'll have to wait until your client is considered and we'll call you in. The team meets today at 9:30am to discuss applicants. I don't know when we'll get to Mr. Monyer.

You were advised on Wednesday January 31 to submit something in writing with the Clerk of Courts.

Thank you,

Jessica L. Bodor, MPA, CAAP

Assistant Chief / Treatment Court Coordinator

Adult Probation and Parole Office

633 Court St. 7th Fl.

Reading, PA 19601

610-478-3400

Fax: 610-478-3451

NEW EMAIL: jlbodor@berkspa.gov

From: Alex Lassoff <alassoff@lassoffdefense.com>

Sent: Monday, February 5, 2024 10:31 PM

To: Bodor, Jessica <JLBodor@berkspa.gov>

Subject: Re: DM

County of Berks Warning: This is an external email. Please exercise caution.

Hi Ms. Bodor,

Thank you for getting back to me. I just want to clarify. My understanding is that defense counsel is permitted to attend the treatment court meetings involving our clients when the treatment court team is deciding whether to admit them. Is that right? Can you let me know when Mr. Monyer's application is scheduled to be discussed by the Mental Health Court so I can be sure to

attend?

I am happy to put something about his application in writing and file it in advance; if so, when should I have that filed by? I want to make sure there is enough time for the Court to review it before his application is considered.

If you have any questions, please feel free to call or email me

--

Alexander D. Lassoff, Esq.

Lassoff Defense LLC

1717 Arch Street, Suite 320

Philadelphia, PA 19103

267-719-8714 (p) 267-719-8715 (f)

On Wed, Jan 31, 2024 at 10:39 AM Bodor, Jessica <JLBodor@berkspa.gov> wrote:



Good Morning,

APO Heather Winslow forwarded your voicemail message where you were asking to come in and plead Mr. Monyer's case for his Mental Health Court application. In these situations we ask that you file something in writing with the Clerk of Courts regarding your argument and then the court would schedule a time for you to come in and plead his case. Please let me know if you have any questions.

Thank you,

Jessica L. Bodor, MPA, CAAP

Assistant Chief / Treatment Court Coordinator

Adult Probation and Parole Office

633 Court St. 7th Fl.

Reading, PA 19601

610-478-3400

Fax: 610-478-3451

NEW EMAIL: jlbodor@berkspa.gov

The County of Berks has changed email addresses of county staff and departments to “[@berkspa.gov](mailto:berkspa.gov)” . All email addresses from Berks County staff and departments use the new “[@berkspa.gov](mailto:berkspa.gov)” domain. Email can be sent to the “[@countyofberks.com](mailto:countyofberks.com)” addresses through 2024. Please edit your email addresses and lists to include the county’s new email addresses.

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Thank you.

The County of Berks has changed email addresses of county staff and departments to “[@berkspa.gov](mailto:berkspa.gov)” . All email addresses from Berks County staff and departments use the new “[@berkspa.gov](mailto:berkspa.gov)” domain. Email can be sent to the “[@countyofberks.com](mailto:countyofberks.com)” addresses through 2024. Please edit your email addresses and lists to include the county’s new email addresses.

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Thank you.

The County of Berks has changed email addresses of county staff and departments to “@berkspa.gov”. All email addresses from Berks County staff and departments use the new “@berkspa.gov” domain. Email can be sent to the “@countyofberks.com” addresses through 2024. Please edit your email addresses and lists to include the county’s new email addresses.

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Thank you.

EXHIBIT P

From: [Stephen Loney](#)
To: [Jennifer M. Herrmann](#); [Sara Rose](#); [Andrew Christy](#); [William Roark](#); [Emily Hoecker](#)
Cc: [Robert J. Krandel](#)
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations
Date: Thursday, March 28, 2024 10:59:45 AM
Attachments: [Notice of Deposition - H. Winslow.pdf](#)

CAUTION: This is an external email. Please think before you click on an attachment or link!

Here is an updated notice for Winslow. We already had Brown noticed for 1pm, so the last notice we sent for her remains in effect. Please let us know which witness will be ready first.

From: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>
Sent: Wednesday, March 27, 2024 4:51 PM
To: Stephen Loney <sloney@aclupa.org>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

Understood about the deps.
Stip looks good.

From: Stephen Loney <sloney@aclupa.org>
Sent: Wednesday, March 27, 2024 1:45 PM
To: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

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Jen,

Not ideal, but we can re-notice both depositions for a 1pm start time and take the witnesses in the order they are ready, as long as you are aware that this might cause the second deposition to run into the early evening hours. I'll do my best to avoid that and finish up as quickly as possible, but I just can't guarantee I'll be able to complete 2 depositions inside a 4-hour window. Please confirm that this works from your perspective before we send another notice.

Meanwhile, we'd like to wrap up the stipulation about treatment court participants/applicants. Attached is a slightly revised version based on your responses on this chain. Please let us know if this is acceptable as a proposed final.

Thanks,

Steve

From: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>
Sent: Wednesday, March 27, 2024 12:53 PM
To: Stephen Loney <sloney@aclupa.org>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

Steve,

We don't think we could agree on enough to make this exercise worth it this late in the game. It's best for you to just take your discovery next week. To that end, unfortunately there was a miscommunication with the dates so the previously proposed schedule no longer works. One witness (your choice) will be available on Wednesday at 1 PM and the other can be on standby to proceed when you're ready immediately thereafter. Should we plan for that?

Thanks,
Jen

From: Stephen Loney <sloney@aclupa.org>
Sent: Tuesday, March 26, 2024 5:17 PM
To: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

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Jen,

Both sides told the judge that we thought the material facts are undisputed so the case can proceed to summary judgment. While you said you would not agree to the legal conclusion that PCC has standing, you also stated that the district would not dispute the fact that PCC loses money when people cannot use medical marijuana while in treatment court. Based on that, the judge said the court could resolve the disputed legal question on summary judgment based on the underlying facts.

I understand the district may not want to enter in a stipulation with all of the detail we tried fleshing out in our proposal, and it seems we won't be able to agree on enough facts to avoid these depositions in any event. But if you are willing to stipulate at least to the basic fact(s) you described to the court, a counter to our proposed stip might be helpful to streamline things for all involved. I have some time on Thursday to discuss.

Thanks,

Steve

From: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>
Sent: Tuesday, March 26, 2024 4:58 PM
To: Stephen Loney <sloney@aclupa.org>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

Steve,

During the conference, I stated our position that PCC does not have standing, so I don't know what I would have said regarding possibly stipulating to facts. I won't refuse a conversation, but there is enough in the proposed stip with which we cannot agree that it's probably best to just take your discovery before we run out of time. Ms. Winslow can be deposed next Wednesday at 10 AM and Ms. Brown at 1 PM.

Yes, there is a difference between "pending" and "undecided." P [REDACTED] and N [REDACTED] are pending because no decision has been made about the request but there will be one. C [REDACTED] and S [REDACTED] are undecided because their requests were not decided and they will not be. C [REDACTED] was recently administratively discharged from Treatment Court and is under general supervision. S [REDACTED]'s letter was a forgery so it was not considered. Does the distinction make sense? Is there another way you want to word it?

Yes, P [REDACTED] is new. His letter is attached, as well as a cleaner copy of J [REDACTED] N [REDACTED]'s.

I think that's everything from today.

Jen

From: Stephen Loney <sloney@aclupa.org>
Sent: Tuesday, March 26, 2024 12:02 PM
To: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

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Hi Jen,

It might be helpful to have a call on this to avoid going in circles. We heard you on the conference with the court indicate that the District would be willing to stipulate to some facts relevant to PCC's standing, which I why we sent some proposed facts to get the ball rolling. If our proposal doesn't work for the District, it would be helpful to know what it *would* agree to. Or are you saying now that the District won't stipulate to any facts re PCC?

Thanks,
Steve

From: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>
Sent: Tuesday, March 26, 2024 10:24 AM
To: Stephen Loney <sloney@aclupa.org>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

Good morning Steve,
Re: the stipulations, I'm sorry that it was unclear that we were able to work with the doctor's letter stip but not the PCC one. We are working on getting the witnesses lined up.
More later...

Jen

From: Stephen Loney <sloney@aclupa.org>
Sent: Tuesday, March 26, 2024 10:12 AM
To: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

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Hi Jen,

Thanks for the revisions. As we reviewed this and looked back through the discovery materials, we have a couple of clarifications on the chart, which are redlined in the attached. A few highlights and follow-up questions as we finalize:

- We re-organized the chart to be in alphabetical order, just to make it easier to read and use in briefing materials (sorry for not doing that initially).
- [REDACTED] S [REDACTED] C [REDACTED]: you had her status listed as "pending." Did you intend a difference between "pending" and "undecided"? If her request to use medical marijuana is not yet decided, should it be "undecided"? If there is a meaningful difference between "pending" and

“undecided,” we can reject the redline in this entry but would have more questions about the nature of the difference.

- G [REDACTED] (L [REDACTED]) S [REDACTED]: it looks like S [REDACTED] had two letters, the other being October 27, 2022. We updated the chart with the other date.
- W [REDACTED] P [REDACTED]: we realized he was not on the chart. We understand that he submitted a letter earlier in March. Do you know if a decision has been made? If not, then presumably his application should be listed as "Undecided."

Finally, can you update us on the status of the other proposed stipulation about PCC so that we know whether we need to keep the additional depositions on calendar?

Best,
Steve

From: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>
Sent: Monday, March 25, 2024 3:33 PM
To: Stephen Loney <sloney@aclupa.org>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

We're available on Wednesday 4/3 and waiting on the witnesses' availability.
Here is the stipulation with our input.

From: Stephen Loney <sloney@aclupa.org>
Sent: Monday, March 25, 2024 1:32 PM
To: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

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I'll be OOO Monday. I can make Tuesday or Wednesday work.

From: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>
Sent: Monday, March 25, 2024 11:50 AM
To: Stephen Loney <sloney@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>

Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

We have Monday. I can check with the witnesses if that works for you.

From: Stephen Loney <sloney@aclupa.org>

Sent: Monday, March 25, 2024 11:14 AM

To: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>

Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>

Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

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Can we pencil in for next Tuesday (4/2) if needed after we work through the proposed stipulated facts?

From: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>

Sent: Monday, March 25, 2024 9:48 AM

To: Stephen Loney <sloney@aclupa.org>

Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>

Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

Good morning Steve,

We're not available at the end of this week. If the witnesses are available next week, we can accommodate that. Would you like me to ask?

I hope to have a stipulation with mark-up to you later today.

Thanks,

Jen

From: Stephen Loney <sloney@aclupa.org>

Sent: Sunday, March 24, 2024 2:54 PM

To: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>; Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>

Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>

Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

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Hi Jen,

I'm likely taking these depositions if the stipulation does not obviate the need, and I'm not able to accommodate Monday and Tuesday afternoons this week. I understand the witnesses are unavailable Thursday – is Wednesday and/or Friday available for them?

Thanks,
Steve

From: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>
Sent: Friday, March 22, 2024 3:21 PM
To: Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; Stephen Loney <sloney@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

Ms. Brown is available on March 25th at 1 PM and Ms. Winslow is available on March 26th at 1 PM.

From: Jennifer M. Herrmann
Sent: Friday, March 22, 2024 2:31 PM
To: Sara Rose <srose@aclupa.org>; Andrew Christy <achristy@aclupa.org>; Stephen Loney <sloney@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>
Cc: Robert J. Krandel <Robert.Krandel@pacourts.us>
Subject: RE: Monyer v. 23rd Judicial District -- PCC stipulations

Sara,

Thanks for the follow-up. We are unavailable on March 28th, but I am working on the stipulation as well as witness availability. Ms. Bodor has been out sick but we are catching up.
Enjoy your vacation!

Jen

Jennifer M. Herrmann

Administrative Office of Pennsylvania Courts
1515 Market Street, Suite 1414
Philadelphia, PA 19102
Office: 215-560-6326 | Cell: 215-588-1519
Jennifer.Herrmann@pacourts.us

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From: Sara Rose <srose@aclupa.org>

Sent: Friday, March 22, 2024 2:02 PM

To: Jennifer M. Herrmann <Jennifer.Herrmann@pacourts.us>; Robert J. Krandel <Robert.Krandel@pacourts.us>; Andrew Christy <achristy@aclupa.org>; Stephen Loney <sloney@aclupa.org>; William Roark <wroark@hrmml.com>; Emily Hoecker <ehoecker@aclupa.org>

Subject: Re: Monyer v. 23rd Judicial District -- PCC stipulations

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Since we have not heard back from you regarding the proposed stipulation as to the harm to PCC, attached are deposition notices for Nicole Brown and Heather Winslow.

I am also following up on my email earlier this week regarding the need for updated irog responses or a stipulation as to the individuals who submitted letters in support of their requests to use medical marijuana in treatment court and the judicial district's decisions.

If you respond to this email, please reply all since I will be out of the office on vacation until April 3.

Sara

Sara J. Rose | Deputy Legal Director

Pronouns: she, her, hers

ACLU of Pennsylvania

P.O. Box 23058

Pittsburgh, PA 15222

412-681-7736 x328 | srose@aclupa.org

aclupa.org

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On Tue, Mar 19, 2024 at 10:46 AM Sara Rose <srose@aclupa.org> wrote:

Jen and Bob,

Attached is a proposed factual stipulation regarding the harm to the PA Cannabis Coalition from the Judicial District's medical marijuana policy. We are certainly willing to discuss proposed changes to the stipulation if you have any. If the parties are unable to reach agreement on a stipulation, then we will need to notice the depositions of POs **Heather Winslow and Nicole**

Brown for the week of March 25 for the purpose of establishing that individuals applying to or admitted to treatment courts have stopped using medical marijuana to avoid sanctions. Accordingly, we would appreciate it if you would respond by Thursday, March 21.

Sara

Sara J. Rose | Deputy Legal Director

Pronouns: she, her, hers

ACLU of Pennsylvania

P.O. Box 23058

Pittsburgh, PA 15222

412-681-7736 x328 | srose@aclupa.org

aclupa.org

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EXHIBIT Q

Bodor, Jessica

From: Bodor, Jessica
Sent: Tuesday, May 9, 2023 9:45 AM
To: Brown, Nicole
Subject: RE: J [REDACTED] S [REDACTED]

[REDACTED]

Jessica L. Bodor, MPA, CAAP
Assistant Chief / Treatment Court Coordinator
Adult Probation and Parole Office
633 Court St. 7th Fl.
Reading, PA 19601
610-478-3400
Fax: 610-478-3451

From: Brown, Nicole <NBrown@countyofberks.com>
Sent: Tuesday, May 9, 2023 9:44 AM
To: Bodor, Jessica <JLBodor@countyofberks.com>
Subject: FW: J [REDACTED] S [REDACTED]

Morning!

[REDACTED]

From: Jerome Weber <JWeber@havenllc.com>
Sent: Monday, May 8, 2023 5:29 PM
To: Brown, Nicole <NBrown@countyofberks.com>
Subject: J [REDACTED] S [REDACTED]

County of Berks Warning: This is an external email. Please exercise caution.

Hello Ms. Brown,

J [REDACTED]
[REDACTED]
[REDACTED] She is asking about use of medical cannabis as an option for her anxiety. This would be an option as she has no cannabis abuse history to my knowledge. [REDACTED]
[REDACTED]

EXHIBIT 14
Witness: Jessica Bodor
Date: 11/29/2023
Stenographer: Sara J. Vanchure

EXHIBIT R

Progress Notes

Printed On Jan 20, 2024

STANDARD TITLE: CONSULT

DATE OF NOTE: APR 28, 2023@13:42

ENTRY DATE: APR 28, 2023@13:42:39

AUTHOR: MADRIGAL, KAREN

EXP COSIGNER:

URGENCY:

STATUS: COMPLETED

Mr. Monyer was seen at 11am for a 75 minute initial evaluation session in reference to consult received. Interventions used included clinical interview, record review and supportive techniques.

Limits of confidentiality (harm to self or others, child/elder abuse) were discussed. Veteran consented to his appointment. He was offered an opportunity for family collateral contact, but declined at the time of this encounter; he did not complete any releases of information.

The Veteran was identified by full name, social security number, and date of birth. Damon

The Veteran is a 39y/o, divorced Veteran who is presenting for intake because he wants to be accepted into Veterans Treatment Court. At this time, he wants his treatment to be thorazine only through Psychiatry at which point he intends to stop taking medical marijuana. He wants to see me in therapy once a month to chat about what is going on in his life. Reviewed with him that if Veterans Court accepts him, he will be required to participate in treatment for substance abuse; he relates this is not his preference, but he is willing to do so.

Veteran is diagnosed with schizophrenia and endorses hearing voices, etc. but disagrees with his diagnosis as he believes it is PTSD. He is pleasant and cooperative during interview but is verbose and difficult to redirect. He complains that he is not able elaborate on some assessment questions and it took

a full 75 minutes just to ask him the questions. He does admit that it is a hobby to travel and find interesting people to talk to and that he likes debating and philosophizing with others.

PERSONAL, FAMILY AND SOCIAL HISTORY:

[REDACTED]

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MONYER, DAMON BRUCE

DOB:

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Progress Notes

Printed On Jan 20, 2024

[REDACTED]

[REDACTED]

[REDACTED]

SPIRITUAL, CULTURAL:

[REDACTED]

[REDACTED]

[REDACTED]

EMPLOYMENT/MILITARY HISTORY:

Mr. Monyer is 100%SC for schizophrenia though he believes he should be diagnosed as having PTSD and not schizophrenia. He reports exposure to trauma in the military but denies MST. Reports honorable discharge. Denies Hx of disciplinary action.

MENTAL HEALTH/SUBSTANCE USE/LEGAL HISTORY:

He denies Hx of psychiatric hospitalizations. He has been on medications in the past and despises them. He recently accepted thorazine, and thorazine only, during his last Psychiatry appointment as he knows he must get off the the medical marijuana to be in Veteran's Court. He is anticipating that when he ceases medical marijuana that he will have more difficulty with voices and with being disorganized. Today he is very disorganized and verbally overproductive; he admits he is on medical marijuana during our appointment and it is hard to determine how much of his behavior is caused by being 'high'.

Veteran denies having a problem with alcohol or drugs, stating that he has always been in control of his use and 'I can stop at any time'. He reports that he has a Hx of drinking alcohol heavily. He also reports Hx of cocaine, meth use, and marijuana use.

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MONYER, DAMON BRUCE

[REDACTED]

DOB:

[REDACTED]

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Progress Notes

Printed On Jan 20, 2024

The Veteran is currently in Veterans Court related to a gun charge and substance use.

MEDICAL HISTORY:

[REDACTED]

[REDACTED]

DAILY ACTIVITIES AND FUNCTIONING:

[REDACTED]

[REDACTED] He is advised he will not be allowed to have firearms if in Veterans Court.

OBJECTIVE:

Mental Status:

Vet presented in clean clothes with disshelved appearance; uncombed hair and beard.

Psychomotor activity was normal.

Mood was described as 'on medical marijuana'.

Affect was congruent with being 'high'.

Expressive vocabulary was polite and cooperative. Verbally overproductive and difficult to redirect. Speech was normal rate/rhythm/volume.

Speech/thoughts processes were tangential.

Sleep is not understood; Veteran was difficult to understand in this regard.

Will assess further in future sessions. He engages in a story about how he was sleep deprived in the military and this is why he hears voices.

Vet showed no signs of disturbances of thought processes or thought content and no signs of perceptual disturbances and did not describe any history of same. Grooming and hygiene were WNL and indicated appropriate ADL functioning. Interpersonal behavior was appropriate and did not show any signs of impulsivity. Denied experiencing AH/VH during our session.

Orientation was x3.

Concentration and memory functioning were average.

Intellectual functioning is considered to be high average.

Insight is poor.

Judgment is considered to be intact.

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MONYER, DAMON BRUCE

[REDACTED]

DOB:

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Treatment recommendations and associated risks/benefits of psychotherapy and alternative treatments as well as forgoing treatment were discussed with the Veteran. The Veteran voiced reasonable understanding and verbal agreement with the treatment recommendations or plan.

This intake is not a documented case where the Veteran has intellectual disabilities.

/es/ KAREN MADRIGAL, LCSW
SOCIAL WORKER
Signed: 05/01/2023 11:09

LOCAL TITLE: SUICIDE SCREEN (C-SSRS) (595-DT-649)
STANDARD TITLE: SUICIDE PREVENTION NOTE
DATE OF NOTE: APR 28, 2023@13:43 ENTRY DATE: APR 28, 2023@13:43:16
AUTHOR: MADRIGAL, KAREN EXP COSIGNER:
URGENCY: STATUS: COMPLETED

C-SSRS Screening

[REDACTED]

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MONYER, DAMON BRUCE

[REDACTED]

DOB:

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Progress Notes

Printed On Jan 20, 2024

7. In your lifetime, have you ever done anything, started to do anything,

[REDACTED]

/es/ KAREN MADRIGAL, LCSW
SOCIAL WORKER
Signed: 04/28/2023 13:43

LOCAL TITLE: CONSULTATION REPORT
STANDARD TITLE: CONSULT
DATE OF NOTE: APR 26, 2023@14:12 ENTRY DATE: APR 26, 2023@14:12:27
AUTHOR: YASMEEN, NIKHAT EXP COSIGNER:
URGENCY: STATUS: COMPLETED

*** CONSULTATION REPORT Has ADDENDA ***

ID: This is a 39-year-old separated Caucasian male. The patient lives with a friend. The patient is currently unemployed. The patient is United States Air Force veteran. He is service-connected for schizophrenia.

CHIEF COMPLAINT: "I was asked by the veterans treatment court to see you for medication".

HISTORY OF PRESENT ILLNESS: This patient was referred by his PCP Ms. Brenda Stanislaw, PA-C for psychiatric evaluation.

Veteran seen for BER vvc bh-home using VA Video Connect.

VA Video Connect Disclosure and Verbal Informed Consent: Visit conducted via VA Video Connect (VVC). Camera was operated by Nikhat Yasmeen MD.

Verbal informed consent was obtained at time of the VVC visit, after providing the patient with a full explanation of VVC, alternatives for obtaining care through an in-person visit at the nearest VA medical center or community clinic offering the requested service, and the patient's right of refusal, at any time, for use of VVC/telehealth technology.

- Veteran verbalized consent to the appointment being conducted via VVC.

Emergency contact information was obtained as follows:
As per the information on the cover sheet in CPRS

Phone number in case of emergency or technology disruption:
As per the information on the cover sheet in CPRS

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)
MONYER, DAMON BRUCE

[REDACTED]
DOB: [REDACTED]

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Progress Notes

Printed On Jan 20, 2024

Others in the home or local area that may be contacted in emergency:
As per the information on the cover sheet in CPRS

The patient was seeing Dr. Richane in the past. He was last seen in 2018. Please refer to Dr. Richane's notes for details. The patient is diagnosed with schizophrenia and polysubstance dependence and was prescribed Seroquel, benztropine and Vistaril. The patient stated that he stopped taking his psychiatric medications in 2018 and decided to take medical marijuana. The patient stated that he had been taking medical marijuana with positive and beneficial effects since 2018.

The patient recently has been involved with the legal system. He is reportedly charged last year with public drunkenness and carrying a loaded gun without a permit. The patient stated that he is expected to start the veterans treatment court program and was recommended to stop using medical marijuana and restart his psychiatric medications. Hence he was referred to this writer.

The patient reported that in anticipation of starting the veterans treatment court he stopped using medical marijuana in December 2022 and experienced worsening of his psychotic symptoms in the form of hearing voices and feeling paranoid. Hence he restarted the medical marijuana again.

The patient reported that he was married to his wife for 12 years. They had marital problems. They decided to separate about a year ago. The patient stated that he drank alcohol heavily and "daily erratic things" such as carrying a loaded gun in his backpack. The patient did not have a permit for the gun.

The patient continues to drink alcohol on a regular basis. The patient was very guarded about his alcohol intake. He denied current use of street drugs. Last use was in August 2022. The patient has history of abusing cocaine, stimulants.

Currently his mood is "stressed". Sleep fluctuates. Appetite is fair. Energy and concentration level is fair. He denied feeling hopeless or helpless. He denied any active suicidal or homicidal ideas or plans.

The patient does not report any symptoms suggestive of mania or hypomania.

The patient served in United States Air Force for 5 years. He was deployed to Iraq in 2007/2008. He was involved in combat. The patient endorses PTSD symptoms in the form of intrusive thoughts, problems with his sleep and bad dreams.

The patient is very adamant that he does not want to take psychiatric medications on a regular basis. He wants to take psychotropics on an as-needed basis. The patient stated that "he did research on Thorazine and would like to try this medication".

PAST PSYCHIATRIC HISTORY: The patient denied any inpatient psychiatric

PATIENT NAME AND ADDRESS (Mechanical Imprinting, if available)

MONYER, DAMON BRUCE

[REDACTED]

DOB: [REDACTED]

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VA 038 Page 37 of 160

Opt-Out: Not Defined

EXHIBIT S

COMMONWEALTH OF PENNSYLVANIA

vs

██████████ Be ██████████

Interpreter

In the Court of Common Pleas of Berks
County, Pennsylvania Criminal Division

DOCKET NO: CP-06- CR- 3554-23

Attorney: PD/

Judge: James M. Lillis

ORDER

AND NOW, this day 7th of February, 2024, it is hereby ORDERED and DECREED,
the Defendant's **DUI Treatment Court** application is hereby DENIED.
The above Defendant and Counsel shall appear in Courtroom **4D**, Berks County **Services Center**
on **February 13, 2023** at **10:30** a.m. before **Judge James M. Lillis**, the originating Judge.

Other:

**The defendant's DUI Treatment Court application is denied due to this being a 4th offense
DUI as well as there being a firearms charge.**

BY THE COURT:



Eleni Dimitriou Geishauser, Judge

BERKS COUNTY, PA
2024 FEB - 8 PM 4: 24
CLERK OF COURTS

COMMONWEALTH OF PENNSYLVANIA

vs.

N [REDACTED] W [REDACTED]

In the Court of Common Pleas of Berks County, Pennsylvania Criminal Division

DOCKET NO: CP-06-CR-11-22

Kellis/

Interpreter

Judge: James M. Lillis

ORDER

AND NOW, this day 1st of **MARCH**, 2023, it is hereby **ORDERED** and **DECREED**, the Defendant's **DUI Treatment Court** application is hereby **DENIED**. The above Defendant and Counsel shall appear in Courtroom **4D**, Berks County **SERVICES CENTER** on **March 29, 2023** at **9:00 AM** before Judge **James M Lillis**, the originating Judge,

Other: **DEFENDANT IS INELIGIBLE FOR TREATMENT COURT DUE TO NOT PROVIDING THE COURT PROOF OF A PENDING FIREARMS CHARGE BEING DISMISSED**

BY THE COURT



Eleni Dimitriou Geishauser, J.

BERKS COUNTY PA
2023 MAR -2 AM 10:02
CLERK OF COURTS

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I. RESPONSE TO PETITIONERS' "STATEMENT OF UNCONTESTED FACTS"

Respondent submits its complete response to Petitioners' Statement of Uncontested Facts in the response to Petitioners' Application. A brief response on some of the more salient points is set forth here.

To the extent that Petitioners' presentation of the facts is uncontested, such facts demonstrate that Monyer was not denied a privilege in violation of the Medical Marijuana Act ("the MMA"). Otherwise, material facts are disputed and, as such, Petitioners' motion for summary relief must be denied.

In their Statement of Uncontested Facts, Petitioners assert that the treatment court denied Monyer's application to treatment court because he failed to comply with the Judicial District's medical marijuana policy. (Petitioners' Brief at 5) A claim that this is the sole reason for his denial is belied by the evidence cited by Petitioners. First, the email quoted by Petitioners includes, "[Monyer] also appears unwilling to try other forms of medication to deal with his health/mental health and instead rely solely on medical marijuana." To that end, the competent evidence of record shows that the VA's treatment provider diagnosed Monyer with schizophrenia and psychosis, the provider prescribed Thorazine, and Monyer refused to take it as prescribed. (**Respondent's Exhibit B**, 108:7-13, 102:14-23; **Respondent's Exhibit F**, 108:21-109:4) Second, the case notes cited by Petitioners include: "Per Gelu Negra, VJO, Damon advised his psychiatrist that he only wants

to take medications PRN and does not want to do the groups.” (Petitioners’ Application, ¶ 109) On April 28, 2023, the VA reported that Monyer despised medications, he was “very adamant that he [did] not want to take psychiatric medications on a regular basis,” and he wanted to take psychotropics on an as-needed basis. (*See* relevant excerpts of Monyer’s VA Progress Notes, attached as **Exhibit R**, VA 033, VA 038.) More importantly, Judge Lieberman’s judicial order denying Monyer’s admission to Veteran’s Court does not cite medical marijuana as the reason for Monyer’s denial. The same holds true with respect to any judicial order that ultimately denied Monyer’s two other admission requests to a treatment court: medical marijuana is not listed as the reason for his denials. It is undisputed that Monyer has never contested those orders to challenge whether his medical marijuana use was considered in some impermissible manner.

Petitioners claim that it is impossible for Monyer or any veteran to comply with the Judicial District’s Policy, as the Policy was described by one witness, because Veterans Court participants must be treated by the VA and the VA does not recommend medical marijuana. (Petitioners’ Brief at 5, 13)¹ This alleged

¹ Petitioners cite to their Application at ¶ 118 for the proposition that Veterans Court participants must obtain all of their medical care from the VA, but neither ¶ 118 nor any of the immediately surrounding paragraphs supports that assertion. Moreover, when Probation Officer Paige MacBain was asked whether there was a policy about where a veteran must obtain their medical treatment when participating in Veterans Court, she responded, “Not that I am aware of. I think it was just they were eligible for VA services and that’s where they went.” (**Petitioners’ Exhibit 13**, 53:20-54:4)

impossibility is a fiction. While there is no competent evidence to prove what, if anything, any particular judge might consider relevant, Jessica Bodor testified only that, from her perspective, the letter should come from a treatment provider who has a history with the patient and can state the best treatment for that person, as opposed to a provider who authorized the medical marijuana card after seeing the patient only briefly. (**Petitioners’ Exhibit 8**, 123:7-124:4) Notably, Ms. Bodor is not the final decisionmaker on admission; only the treatment court judge can rule on what is permitted. Additionally, while veterans in Veterans Court receive treatment from the VA, nothing prevents them from seeking input from another provider with whom they have a history. The facts of this case demonstrate the wisdom of the Judicial District’s approach to treatment court: the provider who recommended medical marijuana for Monyer diagnosed him with PTSD, while the VA treatment providers – with whom he has been treating for years – diagnosed him with schizophrenia and psychosis. (**Petitioners’ Exhibit 2**, ¶¶ 5-6; **Respondent’s Exhibit B**, 108:7-13)²

² See also **Exhibit P**, wherein Monyer’s treatment provider notes:
[Plaintiff] is 100%SC for schizophrenia though he believes he should be diagnosed as having PTSD and not schizophrenia. . . .
Today he is very disorganized and verbally overproductive; he admits he is on medical marijuana during our appointment and it is hard to determine how much of his behavior is caused by being ‘high’. . . .
Veteran is diagnosed with:
schizophrenia . . .
cannabis use disorder, severe
(VA 033, VA 035)

Schizophrenia and psychosis are not serious medical conditions as defined by the MMA, nor is there any evidence that medical marijuana effectively and safely treats those conditions.

More importantly, there is no evidence that Monyer raised his inability to obtain a letter with a judge and asked to be relieved of the so-called letter requirement (as Petitioners mischaracterize the Policy). He has a private criminal defense attorney who has been representing him through each of his treatment court applications. His attorney has been given the opportunity to advocate for Monyer as an appropriate candidate for treatment court notwithstanding his alleged inability to supply a letter, and he has not done so. *See* January-February 2024 emails between Jessica Bodor and Monyer's criminal defense attorney, attached as **Exhibit O**, wherein Ms. Bodor advises him that he can file his arguments with the Court but he did not.

The PCC claims that its members lose money when treatment court participants are not allowed to use medical marijuana. It has sought neither money damages nor evidence to prove them.

II. RESPONSE TO PETITIONERS' ARGUMENT

The party seeking a permanent injunction “must establish that his right to relief is clear, that an injunction is necessary to avoid an injury that cannot be compensated by damages, and that greater injury will result from refusing rather than granting the relief requested.” *Kuznik v. Westmoreland Cnty. Bd. of Comm’rs*, 588 Pa. 95, 117 (2006) (citation and internal quotations omitted). Petitioners, despite their burden, have made no attempt to offer facts or argument to establish these requirements. Instead, their brief is almost entirely academic, as it provides a treatise on the *Gass* decision and an analysis of the Judicial District’s policy without any real attempt to apply the discussion to an immediate injury to or an effective remedy for Petitioners. For the following reasons and those in Respondent’s brief in support of its own application for summary relief, Petitioners’ application must be denied.

A. Even if the Judicial District had a “medical necessity” requirement, the MMA’s immunity provision does not protect Monyer, who was not denied a privilege solely for his lawful use of medical marijuana.

Noticeably absent from Petitioners’ five-page argument at subsection A. is any significant discussion about Monyer.³ Petitioners repeatedly state that the sole reason for Monyer’s denial to treatment court was his lawful medical marijuana use,

³ Petitioners assert that it is undisputed that each of the petitioners is a patient within the meaning of the MMA. (Petitioner’s Brief at n. 2) To the contrary, there can be no serious contention that petitioner Pennsylvania Cannabis Coalition is a patient.

but the record simply does not support that conclusion. The undisputed record evidence is that (1) Monyer was most recently denied admission due to his underlying firearms offense; and (2) he does not have a pending application for admission to any treatment court.

The relevant statute provides that a patient shall not be “denied any right or privilege . . . solely for lawful use of medical marijuana” 35 P.S. § 10231.2103(a)(1). Based on the plain language of the MMA, it prohibits adverse action that is taken exclusively, or solely, on the basis of protected activity under the MMA. *See Reynolds v. Willert Mfg. Co., LLC*, 567 F.Supp.3d 553, 559 (E.D. Pa. 2021). Even if Monyer’s medical marijuana use were a consideration by the Court – which is not supported by the language of the Court’s Orders – the undisputable facts are that it was not the sole reason. Per the language of the three Orders denying his admission – which constitute the court’s reasons notwithstanding the opinions of Treatment Court team members – Monyer was “[d]enied due to failure to comply with pretrial services,” denied “due to [Monyer] not meeting appropriate requirements needed to enter Treatment Court,” and denied because he was “ineligible to participate in Mental Health Treatment Court due to the firearms offense.” (**Respondent’s Exhibit I, Exhibit K, Exhibit M**) Gelu Negrea from the VA testified that, due to Monyer’s schizophrenia and psychosis diagnoses, he was not appropriate for Veterans Court. (**Respondent’s Exhibit B**, 85:18-20, 86:4-8)

Mr. Negrea believed that admitting Monyer to Veterans Court would be setting him up for failure because Monyer would be unable to abide by the strict rules. (**Respondent's Exhibit B**, 87:12-21) Attorney Kenneth Kelecic from the District Attorney's office testified that Monyer was reluctant to attend groups and there was concern that Monyer's prescribed medications would not be effective if he were also using medical marijuana. (**Respondent's Exhibit E**, 67:9-17, 68:1-18) Probation Officer Paige MacBain testified that Monyer was reluctant to attend groups, she was concerned about how medical marijuana would react with schizophrenia medication, and Monyer was unwilling to take medication as prescribed. (**Respondent's Exhibit F**, 108:21-109:4, 157:2-6) However, none of these perspectives from the various treatment court team members appears in the last court order denying Monyer's admission: his underlying offenses include a firearms charge, which precluded his admission to Mental Health Court.⁴

If Monyer had petitioned or appealed these trial court orders to the Superior Court, or perhaps filed basic motions to reconsider the applicable orders, then a reviewing court might have more insight into the reasons behind the judges' one-line orders.⁵ Instead Petitioners force this Court to review the perspectives of the

⁴ Judge Geishauser has denied at least two other applicants from admission based on their firearms offenses, and neither requested to use medical marijuana. (*See* Orders relating to G.B. and N.W., attached as **Exhibit S**.)

⁵ *See* Pa.R.A.P. 1925(a) and *Commonwealth v. McCabe*, 265 A.3d 1279, 1283 (Pa. 2021) (appeal from treatment court order). *See also In re Interest of Tyler T.*, 279

different treatment court team members who, it is undisputed, did not make the final admission decision. This precludes summary judgment in Petitioners' favor.

B. Even if the MMA protects access to treatment courts, Monyer cannot demonstrate that he was denied a privilege.

At subsection B. of their brief, Petitioners argue that the MMA protects access to treatment courts.⁶ Even if participation in the Judicial District's voluntary⁷ treatment court programs is a privilege under the MMA, as set forth above, Monyer has not demonstrated that he was denied that privilege solely for his lawful use of medical marijuana.

Proper plaintiffs in a declaratory judgment action, such as this one, must have a substantial, direct, and immediate interest. *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 482 (Pa. 2021). Similarly, to establish requisite standing, a party must have a substantial, direct, and immediate interest in the outcome of the lawsuit. *Id.* at 481. In this case, Monyer cannot show that the declaratory and injunctive relief requested by Petitioners would benefit him. As stated by Mr. Negrea and undisputed, Monyer was not an appropriate candidate for Veterans Court due to

Neb. 806, 811 (2010) (on appeal from a treatment court order, the Supreme Court of Nebraska remanded for further proceedings to establish a record sufficient for meaningful appellate review) and **Exhibit O**.

⁶ Treatment courts are authorized by state law but not required. *See* 42 Pa.C.S.A. § 916(a) (“The court of common pleas of a judicial district . . . may establish . . . one or more problem-solving courts.”)

⁷ “All Berks County Treatment Courts are a voluntary program.” (**Petitioners' Exhibit 1**, p. 10)

his mental health diagnoses. (**Respondent's Exhibit B**, 85:18-20, 86:4-8) Per his schizophrenia and psychosis diagnoses, he was a better fit for Mental Health Court. He is not eligible for Mental Health Court due to his firearms offense; this will not change even if the Judicial District's medical marijuana policy is invalidated.

Further, Monyer cannot show that he has been damaged by his denied admission to treatment court. He is not yet under court supervision through probation or participation in a treatment court. His criminal case is on hold and he continues to receive treatment from the VA. (**Petitioners' Exhibit 2**, ¶¶ 43, 7) No policy of the Judicial District is preventing him from using medical marijuana. The conclusion of his criminal matter could be an adjudication that he is not guilty, in which case he would have no criminal record without the need to seek expungement. This outcome has no impact on his use of medical marijuana. He can continue to use medical marijuana at his pleasure. He can also continue to receive the same VA treatment as he would have in treatment court. Being denied admission to treatment court does not deny access to treatment.

Petitioners' Application alleges Judicial District-imposed sanctions for medical marijuana use, and their brief advocates for patients who allegedly are denied admission to treatment court or face sanctions for their lawful medical marijuana use. The declarations supplied in support of their claims are by individuals who do not have claims before this Court. These witnesses' experiences, even if

accurately portrayed, are irrelevant to Petitioners' claims. Further, each declaration details past incidents. Each declarant had their own personal problems that led them to apply to treatment court. It is impossible for this Court to fashion some generic remedy that would be applicable evenly based on those unique application experiences. It is undisputed that admission decisions are made based on the specific circumstances of each applicant. (*See e.g. Petitioners' Exhibit 8*, 19:18-20:14, 53:1-58:15, 63:1-13, 86:13-88:9, 89:13-92:24, 99:1-100:5, describing the application process and the information gathered and provided before the judge makes a decision.) Consequently, because this Court would have to explore the specific factual circumstances of all treatment court admissions decisions, the declarations are of no value to this case.

Monyer was not denied a privilege solely for his lawful medical marijuana use. He has no direct interest in the relief sought, as it will not afford him access to treatment court.

C. The MMA's immunity provision's protections for treatment court participants are irrelevant in this case.

Subsection C. of Petitioners' brief provides arguments on behalf of treatment court participants. Monyer does not represent a class of treatment court participants and has made no attempt to demonstrate that a class of similarly situated participants exists. To the extent that the PCC is purporting to represent the rights of treatment court participants, such a claim fails on its face. The PCC represents medical

marijuana dispensaries, not patients. Additionally, as set forth more fully in Respondent's moving brief, the PCC is not protected by the MMA for a patient's alleged denial of a privilege and the PCC does not have third-party standing to challenge decisions in criminal court. *See generally In re Hickson*, 2000 PA Super 402 (Pa. Super. Ct. 2000), *aff'd*, 573 Pa. 127 (2003). Even if it did have standing, it is not entitled to injunctive relief because its members' loss by its own admission and argument is money – which can be compensated with money damages.⁸

Petitioners have not been harmed by alleged violations of the MMA and they do not and cannot represent a class that allegedly has.

⁸ The burden of proof for an injunction is on Petitioners. *See Kuznik*, 588 Pa. at 117.

III. CONCLUSION

Based on the foregoing arguments and those set forth in Respondent's Application for Summary Relief and supporting brief, respondent the 23rd Judicial District respectfully requests this Honorable Court deny Petitioner's Application for Summary Relief and dismiss the Petition.

Respectfully submitted,

/s/ Jennifer M. Herrmann

JENNIFER M. HERRMANN

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E-mail: legaldepartment@pacourts.us

*Attorneys for the 23rd Judicial District,
Berks County Court of Common Pleas*

CERTIFICATE OF COMPLIANCE

Pursuant to the requirements of Pa.R.A.P. 2135(a)(1) undersigned counsel certifies that this Brief contains 2651 words and is therefore in compliance with the word count restrictions of the Rules of Appellate Procedure. 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/ Jennifer M. Herrmann
JENNIFER M. HERRMANN

CERTIFICATE OF SERVICE

The undersigned certifies that on April 22, 2024, she personally caused to be served the foregoing *Response to Petitioners' Application for Summary Relief* and *Brief* via PACFile to all counsel of record.

/s/ Jennifer M. Herrmann
JENNIFER M. HERRMANN