

Judge tears down health director's PTSD rebuttal

Much-needed reforms help revitalize state's cannabis program

By Lauren Rudick



Until this past summer, Illinois' medical cannabis program was among the most restrictive in the nation, and many of its 20 dispensaries were facing insolvency.

While the list of 39 qualifying medical conditions seems long compared to other restrictive states, such as New York and Minnesota, the program originally excluded ailments that affect large portions of the population, including chronic pain and post-traumatic stress disorder (PTSD).

However, the state's Compassionate Use of Medical Cannabis Pilot Program Act allows citizens to petition the Department of Public Health to add debilitating conditions. Multiple sick and disabled citizens filed petitions to add PTSD, migraines, irritable bowel syndrome (IBS), chronic post-operative pain (CPOP), polycystic kidney disease, intractable pain, autism and osteoarthritis to Illinois' list of qualifying conditions. The Department of Public Health summarily rejected those petitions, prompting local litigator Mike Goldberg, who primarily represents doctors and other health care providers before licensing boards, to sue the agency. So far, the courts have sided with the petitioners and patients — with good reason.

In reviewing an administrative agency's decision, courts are required to give deference to the agency's findings of fact, unless such findings are obviously erroneous.

Furthermore, courts have a duty to examine the administrative process to ensure fairness. The Illinois Constitution states that a fair hearing must include the opportunity to be heard, the right to cross-examine witnesses and impartiality in ruling upon the evidence.

To date, four of Goldberg's eight law-

suits have been decided: those pertaining to PTSD, migraines, IBS and CPOP. And in each, the judges found that Dr. Nirav Shah, director of the Department of Public Health, had mistakenly considered and relied upon evidence outside the record in excluding the medical conditions presented.

In addition, and as stated in Judge Neil Cohen's decision with respect to PTSD, Shah engaged in a "private investigation, hidden from public view, (and) the parties, and arrived at his conclusion based thereon" — the antithesis of "fairness." The courts also found that Shah had unilaterally imposed a standard of review that improperly considered the result (or lack) of clinical trials — a standard that runs contrary to the plain language of the Medical Cannabis Pilot Program Act.

Goldberg further adds: "In denying the petitions to add new conditions to the list of those that can be treated by medical cannabis, Dr. Shah has ignored his own Medical Cannabis Advisory Board's recommendations and conducted a secret investigation that was outside of the laws of Illinois."

With respect to migraines, IBS and CPOP, the judges each ruled that the petitioners' deprivation of due process necessitated a remand to allow them an opportunity to challenge the extrinsic evidence improperly considered by Shah, and to require him to apply the appropriate standard of review. With respect to PTSD, the evidence to include it was so overwhelming, Judge Cohen directed that PTSD be added to the list of conditions treatable with cannabis within 30 days.

In that case, petitioner Daniel Paul Jabs submitted his U.S. military records, PTSD diagnosis and five medical journals that supported the use of cannabis to treat PTSD. Jabs is an Army Iraqi war veteran who suffers from panic attacks, nightmare, flashbacks, intrusive mem-

ories and hyper-sensitivity due to combat-related PTSD.

At the hearing, the Department Advisory Board also considered testimony by Air Force veteran Joel Erikson with "service-connected PTSD due to a traumatic brain injury." Erikson had submitted a New Mexico study that found cannabis use by patients with PTSD experience a 75% reduction in several main symptoms, including anxiety, difficulty sleeping due to nightmares and exaggerated startle response. This, among additional evidence regarding the efficacy of medical cannabis to treat PTSD, was seemingly ignored in favor of the purported "evidence" Shah independently considered.

Judge Cohen's 30-day directive was rendered moot when, two days after the decision, Illinois Governor Bruce Rauner signed a modified version of Senate Bill 10, which, among other changes, added PTSD to the list of qualifying conditions for medical cannabis. But the scathing manner by which Judge Cohen admonished Shah's "constitutionally inappropriate" behavior has members of the Illinois Bar betting on productive internal changes.

As of the latest available information, Illinois now has 40 dispensaries open and more than 8,000 patients enrolled in the program. Cannabis sales grew from \$1.24 million in January to \$2.57 million in June and \$2.95 million in July.

In another win for Illinois this summer, the state removed criminal penalties for possession of 10 grams of cannabis or less — a long overdue reform that hopefully other states will follow.

At the time the Jabs case had been decided, Illinois law imposed rigorous criminal penalties on the possession, manufacture and sale of cannabis; possession of just one gram could have resulted in one month in jail, while manufacture/sale could have resulted in a six-month jail sentence.

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