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# 10

## Criminal Activities

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### **§10.67 4. Dispensaries**

In recent years, particularly in more populated urban areas, the medical marijuana “dispensary” has taken hold in California. Generally, this terminology is used to describe a storefront where persons who are qualified medical marijuana patients may obtain their medicine, *i.e.*, cannabis and other consumables containing marijuana or a derivative. A mobile dispensary in the form of a delivery service may also be covered by the medical marijuana laws depending on local regulations and how the delivery service is conducted. Dispensaries, generally, are the distribution medium for a patient collective that cultivates marijuana either on those premises, offsite, or both. The California Attorney General issued Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use in 2008 (under the Medical Marijuana Program Act (MMPA) (Health & S C §§11362.7–11362.83)) that state that storefront dispensaries may be legal presuming they meet certain operational criteria. In recent years, several court of appeal opinions have upheld the legality of such storefront dispensary operations, provided they followed certain operational guidelines imposed either by local ordinance or, lacking other guidance, by the Attorney General Guidelines. Indeed, Health & S C §11362.768, in limiting where a “collective” and “dispensary” can operate relative to a “school,” recognizes the legitimacy of such operations. Many of the recent opinions were issued in the context of criminal appeals, in which the court reversed a conviction on the grounds that the operation of the underlying dispensary was legal and thus did not implicate criminal liability. See, *e.g.*, *People v Colvin* (2012) 203 CA4th 1029. Furthermore, a number of decisions rejecting the application of a particular defense under the medical marijuana laws did so because of the way the defendant operated the dispensary, and not because dispensaries are per se illegal under state law.

In the civil cases addressed by the courts of appeal, the preeminent issue has been whether a local municipality could ban dispensaries outright and whether such a ban was preempted by state law, particularly the MMPA (Health & S C §§11362.7–11362.83), which gave legal status to the operation of storefront dispensaries.

In 2013, the supreme court finally resolved these issues in *City of Riverside v Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 C4th 729, which held that municipalities are not preempted from enacting zoning laws declaring medical marijuana to be a prohibited use. This decision validates the bans on dispensaries passed by California cities and counties. It also led to vacatur of at least one court of appeal decision that, before *Inland Empire*, rejected the right of a municipality to completely ban dispensaries. See *County of Los Angeles v Alternative Medicinal Cannabis Collective* (July 31, 2013, S204663) 2013 Cal Lexis 6562 (transferring case back to court of appeal with directions to vacate decision and to reconsider in light of *City of Riverside v Inland Empire Patients Health & Wellness Ctr., Inc.*).

Notably, however, now that the power of municipalities to ban dispensaries is settled, some cities are revisiting whether to allow a limited number of dispensaries to operate subject to certain stated regulations. Moreover, the *Inland Empire* holding that cities were not preempted from banning dispensaries was premised on the fact that neither the Compassionate Use Act nor the Medical Marijuana Program Act established an affirmative right to operate dispensaries, and instead immunized the operators of such dispensaries from certain criminal liability.

*Inland Empire* also resolved another issue, holding that storefront dispensaries are not per se illegal or per se nuisances. They may, however, be deemed a per se nuisance to the extent they are operating in violation of a local ban, or even outside the local regulation of dispensaries (if one exists), to the same degree as any business that was operating in violation of a local municipal ordinance. 56 C4th at 762.



For further discussion, see [Neighbor Disputes: Law and Litigation](#): Criminal Activities, chapter 10 (Cal CEB). Available in print and through [OnLaw](#).

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