IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLANIA,	: No. CR-2065-2012 : CR-102-2013 : CR-1393-2013 : CR-1438-2016 : CR-1654-2016
vs.	: CRIMINAL ACTION
GAGE WOOD, Defendant.	: *Defendant's* : *Motion to Modify Terms* : *& Conditions of Probation*

MEMORANDUM OPINION
Submitted: July 11, 2019
Decided: September 12, 2019

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PER CURIAM

BEFORE: LINHARDT, J., BUTTS, P.J., & McCOY, J.[1]

Before this Court is Defendant Gage Wood's ("Defendant") *Motion for Modification of Probation Conditions* (the "Motion").[2] On February 12, 2019, the Honorable Marc F. Lovecchio ordered that an argument *en banc* be convened in this matter and briefing submitted, as a ruling in Defendant's favor would alter Lycoming County Court of Common Pleas' policy and potentially impact others on supervision.[3] The Court requested that the parties, and any *amici curiae*, provide supplemental briefing regarding two questions: (1) "whether Pennsylvania's Medical Marijuana Act permits Defendant to use marijuana regardless of federal law, court policy or signed probation conditions," and (2) "whether Defendant should be permitted to use medical marijuana under the circumstances of this case."

On March 8, 2019, Peter T. Campana, Esquire entered his appearance on behalf of Defendant and filed an uncontested *Motion for Extension of Time*. On March 11, 2019, the Honorable Nancy L. Butts granted Defendant's *Motion for Extension of Time*. The deadline for Defendant's brief, as well as any briefing by *amici curiae*, was rescheduled to April 17, 2019, with the Commonwealth's responsive brief due by May 17, 2019. The *en banc* argument was rescheduled from May 3, 2019 to June 7, 2019. On April 12, 2019, the *en banc* argument was again rescheduled to July 11, 2019. The

[1] The Honorable Marc F. Lovecchio took no part in the consideration of this matter or this decision. *See infra* note 3.
[2] Defendant's Motion to Modify Terms & Conditions of Probation (Jan. 7, 2019) [hereinafter "Defendant's Motion"]. Defendant filed the motion *pro se*.
[3] Ultimately, Judge Lovecchio was forced to recuse himself based on Defendant retaining Peter T. Campana as counsel, who is Judge Lovecchio's brother-in-law.

Commonwealth claimed "no position" on the matter and did not submit a brief.

On July 11, 2019, the Court heard argument from Mr. Campana, Esquire, arguing on behalf of Defendant, and Sara J. Rose, Esquire, arguing on behalf of *amici curiae* the American Civil Liberties Union of Pennsylvania and Pennsylvania Association of Criminal Defense Lawyers (collectively, the "ACLU").[4] This is the Court's final decision on Defendant's Motion. For reasons articulated below, the Court holds that it may require probationers to comply with federal law while on probation supervision as a reasonable condition of probation. This will apply even if the condition acts as a blanket prohibition against a probationer's use of medical marijuana as permitted under Pennsylvania law.

I. BACKGROUND

On March 26, 2015, Defendant was placed on probation under docket number CR-2065-2012 for four and one-half years under the supervision of the Lycoming County Adult Probation Office (the "Office"). On December 21, 2016, Defendant was sentenced to 30 days to 1 year and 1 year of consecutive probation under docket number CR-1438-2016 under the supervision of the Office. Because of Defendant's violation of probation under CR-2065-2012, the four and one-half year period was

[4] "The American Civil Liberties Union [] is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU of Pennsylvania is one of its state affiliates, with more than 39,000 members throughout Pennsylvania." *See* Amicus Curiae Brief of the American Civil Liberties Union of Pennsylvania & the Pennsylvania Association of Criminal Defense Lawyers in Support of Defendant Gage Wood's Motion to Modify Conditions of Supervision 1 (Apr. 17, 2019) [hereinafter "ACLU's Brief"]. "The Pennsylvania Association of Criminal Defense Lawyers [] is a professional association of attorneys admitted to practice before the Supreme Court of Pennsylvania and who are actively engaged in providing criminal defense representation. As amicus curiae, [the association] presents the perspective of experienced criminal defense attorneys who seek to protect and ensure by rule of law those individual rights guaranteed in Pennsylvania, and work to achieve justice and dignity for defendants. [The association] includes

ordered to remain in effect and run consecutively to Defendant's sentences ordered by the Court in its December 21, 2016 Order. Hence, Defendant's probationary period under docket number CR-1438-2016 ended on June 21, 2019 and his probationary period under docket number CR-2065-2012 began on June 21, 2019. Defendant's probationary sentence under CR-2065-2012 involved possession with intent to deliver marijuana, and CR-1438-2016 involved tampering and possession of drug paraphernalia.[5]

On August 11, 2018, Defendant was issued a "Medical Marijuana Identification Card" as a patient under the Pennsylvania Medical Marijuana Program.[6] At the February 12th hearing, Defendant testified to using medical marijuana, and the Office testified that use of medical marijuana under current policy would constitute a violation of probation.[7] Also, at the February 12th hearing, Defendant testified that he suffers from Post-Traumatic Stress Disorder, a qualified condition under the Pennsylvania Medical Marijuana Act, 35 P.S. § 10231.101, *et seq.* ("MMA").[8] Judge Lovecchio found probable cause to believe that Defendant violated the conditions of his probation; however, Judge Lovecchio scheduled argument *en banc* for the previously enumerated questions.

II. QUESTION PRESENTED

The crux of Defendant's dispute concerns two conditions of his probation

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approximately 900 private criminal defense practitioners and public defenders throughout the Commonwealth." *Id.* at 1-2.

[5] At the February 12th hearing, the parties agreed that only CR-2065-2012 and CR-1438-2016 remain active.

[6] Defendant's Motion, Exhibit A.

[7] Official Transcript 9, 17-18 (Jan. 31, 2019) [hereinafter "Tr."].

imposed pursuant to the Pennsylvania Administrative Code by the aforementioned Court Orders. The first condition requires compliance "with municipal, county, state and federal criminal statutes, as well as the Vehicle Code and the Liquor Code (47 P. S. §§ 1-101--9-902)."[9] The Court will refer to this first condition's requirement that Defendant adheres to "Federal criminal statutes" as the "federal condition." The second condition ("use condition") requires Defendant "[a]bstain from the unlawful possession or sale, of narcotics and dangerous drugs and abstain from the use of controlled substances within the meaning of the Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101--780.144) without a valid prescription."[10]

Because the Court finds the federal condition a lawful and reasonable condition, the Court declines to consider whether the use condition—or the equivalent requirement that Defendant adhere to "state law" under the first condition—is unlawful given that the MMA specifically preempts Pennsylvania's Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101, *et seq.*, as it relates to the use of medical marijuana.[11]

III. THE PARTIES' CONTENTIONS

In Defendant's Motion, he argues that his status as a patient under the MMA

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[8] 35 P.S. § 10231; Tr. at 8.
[9] 37 Pa. Code § 65.4(4).
[10] 37 Pa. Code § 65.4(5)(i).
[11] 35 P.S. § 10231.2101 ("The growth, processing, manufacture, acquisition, transportation, sale, dispensing, distribution, possession and consumption of medical marijuana permitted under this act shall not be deemed to be a violation of the act of April 14, 1972 (P.L. 233, No. 64), [35 P.S. § 780-101 et seq.] known as The Controlled Substance, Drug, Device and Cosmetic Act. If a provision of the Controlled Substance, Drug, Device and Cosmetic Act relating to marijuana conflicts with a provision of this act, this act shall take precedence." (footnote omitted)). The ACLU argues that the existence of the MMA places medical marijuana in a different category than alcohol use, which the Court is able to prohibit as a reasonable condition of probation. ACLU's Brief at 6-7 n.3 (citing *State v. Nelson*, 195 P.3d 826, 832

permits him to engage in the use of medical marijuana while on probation.[12] Defendant asserts that the MMA prevents the Court from imposing *any* conditions that curtail his lawful right to use medical marijuana while serving his probation.[13]

On April 17, 2019, Defendant submitted his *Memorandum of Law* in support of his Motion. Defendant argues that based on a plain reading of the judicial procedure statute for sentencing and probation, 42 Pa.C.S. § 9754, and the MMA, the Court is constrained related to both the federal condition and use condition.[14] Defendant does not draw a distinction between the federal condition and the use condition.

Defendant primarily argues that the Court's ability to prevent the use of a "prescription controlled substance" is limited to 42 Pa.C.S. § 9754(c)(13), which requires that "any other conditions" must be "reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience."[15] Defendant argues the prohibition on medical marijuana use is not "reasonably related" to his rehabilitation.[16]

Secondarily, Defendant relies on the MMA's language that patients will not be "subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by the Commonwealth licensing board or commission."[17] Defendant asserts that although the MMA does not directly address individuals on probation, Defendant could be subject to arrest, prosecution, or penalty if

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(Mont. 2008)).
[12] Defendant's Motion at 2.
[13] *Id.* at 7. Defendant reiterated this position at argument. Official Transcript 9 (July 11, 2019).
[14] *See generally* Defendant's Memorandum of Law in Support of *Pro Se* Motion to Modify Conditions of Probation Supervision (Apr. 17, 2019) [hereinafter "Defendant's Brief"].
[15] *Id.* at 3-5.
[16] *Id.* at 5.

the Court finds either the federal condition or use condition reasonable.[18] Further, probation's status as a "privilege" in the Commonwealth also falls within the gambit of the MMA's prohibition.[19]

Defendant further argues that the Arizona Supreme Court's reasoning in *Keenan Reed-Kaliher v. Hoggatt* is persuasive authority that should be considered since the language in Arizona's medical marijuana act mirrors the language in the MMA.[20] Defendant deferred to the ACLU brief regarding the issues underlying the Preemption Doctrine and disability discrimination under Pennsylvania's Human Relations Act, 43 P.S. § 951, *et seq.* ("HRA").[21]

Also on April 17, 2019, the ACLU submitted its *Brief in Support of Defendant Gage Wood's Motion to Modify Conditions of Supervision*.[22] The ACLU's first argument also focuses on a "plain reading" philosophy. The ACLU's claim regarding the plain language of the MMA echoes Defendant's memorandum.[23] However, the ACLU further developed the argument by asserting that the MMA's broad language of applicability and failure to exclude probationers implies an intent for the MMA to apply to all probation conditions, regardless of whether they concern federal law.[24]

The ACLU relies on the fact that the MMA specifically restricts its application to "[p]ossessing or using medical marijuana in a State or county correctional facility"; a

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[17] *Id.* (quoting 35 P.S. § 10231.2103(a)).
[18] *Id.* at 6.
[19] *Id.*
[20] *Id.* at 6-7 (citing *Keenan Reed-Kaliher v. Hoggatt*, 347 P.3d 136 (Ariz. 2015)).
[21] *Id.* at 2-3.
[22] *See generally* ACLU's Brief.
[23] The Court does not intend this as a slight, but desires to avoid repetition. The ACLU's brief is detailed and well-written.
[24] ACLU's Brief at 4-5.

restriction that would not warrant mention if the MMA did not apply to probationers.[25] The ACLU leans on *Keenan Reed-Kaliher* as persuasive authority for this argument.[26] The ACLU does not draw a distinction in its first argument between the federal condition and the use condition.

The ACLU's second argument contends that the federal condition "is not reasonably related to the purposes of probation."[27] This argument focuses on the individuality of probationers' circumstances and the harm that could result if a "blanket prohibition" on medical marijuana use while serving probation was instituted.[28] The ACLU next argues that the HRA requires Lycoming County to accommodate individuals with disabilities.[29] The ACLU avers that because Defendant's Post-Traumatic Stress Disorder is a "disability" under the HRA,[30] the HRA's language prohibiting discrimination against a patron of a "public accommodation" because of his disability is applicable.[31] Likewise, the ACLU argues that the Court cannot deny Defendant the reasonable accommodation of medical marijuana while on probation.[32] The ACLU relies on the interpretation of the American with Disabilities Act by federal courts as persuasive

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[25] *Id.* at 5.
[26] *Id.* at 5-6 (citing *Keenan Reed-Kaliher*, 347 P.3d at 139).
[27] *Id.* at 7.
[28] *Id.* at 8-9.
[29] *Id.* at 9.
[30] 43 P.S. § 954(p.1)(1) ("The term 'handicap or disability,' with respect to a person, means: [. . .] a physical or mental impairment which substantially limits one or more of such person's major life activities [. . .]").
[31] 43 P.S. § 955(i)(1).
[32] ACLU's Brief at 12 (quoting 16 Pa. Code § 44.5(b)); *see also* 16 Pa. Code 44.5(b)("Handicapped or disabled persons may not be denied the opportunity to use, enjoy or benefit from employment and public accommodations subject to the coverage of the act, where the basis for the denial is the need for reasonable accommodations, unless the making of reasonable accommodations would impose an undue hardship.").

authority.[33]

In its fourth argument, the ACLU posits that this Court cannot be commandeered to enforce federal law.[34] The ACLU points to *Printz v. United States* where the United States Supreme Court held that the federal government cannot pressure a state to enforce a "federal regulatory program."[35] The ACLU argues that implementation of the federal condition would result in the implementation of a federal regulatory program.[36] Additionally, the ACLU postulates that the MMA's enactment indicates the legislature's intent that such a condition not be imposed.[37]

In a similar vein, the ACLU's fifth argument concerns the preemption doctrine. The ACLU argues the Supremacy Clause[38] cannot be utilized to force this Court to capitulate to federal law as the United States Controlled Substances Act, 21 U.S. Code § 801 *et seq.* ("USCSA") does not prohibit the states from adopting their own laws regarding drug use.[39] Hence, because Congress has not indicated an intent to "exclusively govern" the conduct of illegal drug use, "express preemption" and "field preemption" are not applicable to this case.[40] Predicating its argument on federalist principles, the ACLU argues that Pennsylvania retains sovereignty in this field and is able to promulgate the MMA.[41] Further, the ACLU claims the final type of preemption, "conflict preemption," is also inapplicable here because the MMA neither renders

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[33] *Id.* at 10.
[34] *Id.* at 14.
[35] *Id.* at 15 (quoting *Printz v. United States*, 521 U.S. 898, 935 (1997)).
[36] *Id.*
[37] *Id.*
[38] U.S. CONST., art. VI, ¶2.
[39] *Id.* at 16.
[40] *Id.* at 17 (quoting *Arizona v. United States*, 567 U.S. 387, 398-99 (2012)) (internal quotation marks omitted).

compliance with the USCSA a "physical impossibility" nor does it "stand[] as an obstacle to [its] accomplishment and execution."[42]

Moreover, the ACLU notes that while patients under the MMA may be subject to federal prosecution according to *Gonzales v. Raich*,[43] the United States Department of Justice ("Department of Justice") disallows the use of federal funds to prosecute a patient's legal use of medical marijuana pursuant to state law.[44] In the ACLU's view "[t]his Court has the authority to determine, consistent with Pennsylvania law, which conditions to impose on individuals under its supervision."[45]

On April 18, 2019, the Honorable Daylin Leach ("Senator Leach"), a democratic state senator representing constituents in Montgomery County and Delaware County, filed his *Brief in Support of Defendant Gage Wood's Motion to Modify Conditions of Supervision*.[46] Senator Leach wrote the Court to "provide the Court with information about the General Assembly's general intent in passing the Act and its specific intent as it relates to people like the defendant—medical marijuana patients serving probation."[47] Echoing arguments maintained by Defendant and the ACLU, Senator Leach asserts that the failure of the legislature to reference probationers was a deliberate action to indicate the inclusion of probationers within the MMA's purview.[48] Senator Leach's argument also relies on a plain language analysis, claiming the MMA "clearly and

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[41] *Id.* at 16-17.
[42] *Id.* at 18 (quoting *Arizona*, 567 U.S. at 399) (internal quotation marks omitted).
[43] *See* 545 U.S. 1, 15 (2005).
[44] *Id.* at 19 (citing Consolidated Appropriations Act, 2018, Pub. L. No. 115-41 § 537).
[45] *Id.* at 20.
[46] Brief for Amicus Curiae State Senator Daylin Leach in Support of Defendant Gage Wood's Motion to Modify Conditions of Supervision 1 (Apr. 18, 2019) [hereinafter "Senator Leach's Brief"].
[47] *Id.*
[48] *Id.* at 2.

unambiguously shows that legislators intended to permit patients serving probation to use medical marijuana."[49]

IV. DISCUSSION[50]

The use of marijuana remains a violation of federal law as a Schedule I substance under the USCSA.[51] Nevertheless, Congress expressed in the USCSA that it was not its intent to prohibit states from implementing their own laws related to drug possession, use, or distribution unless there exists a "positive conflict" between the state and federal statutes.[52]

On April 17, 2016, Pennsylvania enacted the MMA to provide a "program of

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[49] *Id.* at 2-4.

[50] The Court finds that the HRA is not applicable to probationary services. Relevant to the case *sub judice*, the HRA prevents discrimination by "any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any public accommodation [. . .] [to] [r]efuse, withhold from, or deny to any person because of his race, color, sex, religious creed, ancestry, national origin or handicap or disability, [. . .], either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such public accommodation [. . . .]" 43 P.S. § 955(i)(1). The HRA defines a "public accommodation" as "any accommodation, resort or amusement which is *open to, accepts or solicits the patronage of the general public* [. . .] and all Commonwealth facilities and services, including such facilities and services of all political subdivisions thereof, but shall not include any accommodations which are in their nature distinctly private." 43 P.S. § 954(l) (emphasis added). Just as a prison is a Commonwealth facility that does not serve the public, probationary services are Commonwealth services, but are not for the benefit of the public and; therefore, do not fall under the HRA's definition of a "public accommodation." *See Blizzard v. Floyd*, 613 A.2d 619, 621 (Pa. Commw. Ct. 1992) ("Although a state correctional institution is a Commonwealth facility, it does not accept or solicit the patronage of the general public. Moreover, a common theme runs throughout the Act's definition of a public accommodation which is to provide a benefit to the general public allowing individual members of the general public to avail themselves of that benefit if they so desire."). As the ACLU noted, this Court is permitted to allow federal cases addressing the ADA to guide its analysis, *See Kelly v. Drexel Univ.*, 94 F.3d 102, 105 (3d Cir. 1996). However, the Court declines to do so here because the Pennsylvania Commonwealth Court's interpretation is based on dissimilar language in the ADA. *See, e.g.*, *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998) ("State prisons fall squarely within the statutory definition of 'public entity,' which includes 'any department, agency, special purpose district, or other instrumentality of a State or States or local government.' ").

[51] 21 U.S. §§ 812(C)(a)(c)(10), 841(a)(1).

[52] 21 U.S. Code § 903 ("No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.").

access to medical marijuana which balances the need of patients to have access to the latest treatments with the need to promote patient safety."[53] The legislature expressed that this program was necessary as "[s]cientific evidence suggests that medical marijuana is one potential therapy that may mitigate suffering in some patients and also enhance quality of life."[54]

The MMA prohibits a "Patient"[55] from being "subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a Commonwealth licensing board or commission, solely for lawful use of medical marijuana [. . . .]"[56] The MMA does not address probationers, but it does carve out certain exceptions to its applicability. For instance, the MMA does not "require an employer to commit any act that would put the employer or any person acting on its behalf in violation of federal law."[57]

Concomitantly, the MMA allows civil or criminal penalties for: (1) "[u]ndertaking any task under the influence of medical marijuana when doing so would constitute negligence, professional malpractice or professional misconduct," (2) "[p]ossessing or using medical marijuana in a state or county correctional facility, including a facility owned or operated or under contract with the Department of Corrections or the county which houses inmates serving a portion of their sentences on parole or other community correction program" and (3) "[p]ossessing or using medical marijuana in a

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[53] 35 P.S. § 10231.102(3)(i) (2016).
[54] § 10231.102(1).
[55] 35 P.S. § 10231.103 (2016) (defining "patient" as "[a]n individual who: (1) has a serious medical condition; (2) has met the requirements for certification under this act; and (3) is a resident of this Commonwealth"). The definition of a "serious medical condition" includes post-traumatic stress disorder. § 10231.103(12).
[56] 35 P.S. § 10231.2103(a) (2016).

youth detention center or other facility which houses children adjudicated delinquent, including the separate, secure State-owned facility or unit utilized for sexually violent delinquent children [. . .]"[58] Conversely, the MMA does prohibit a patient's use of medical marijuana from being "considered by a court in a custody proceeding."[59]

A. The United States Controlled Substances Act, 21 U.S. Code § 801 *et seq.*, does not preempt the Pennsylvania Medical Marijuana Act, 35 P.S. § 10231.101, *et seq.*

The status of medical marijuana in the United States has been described as "Schrödinger's Cat of legality"—that is, the use of medical marijuana is both lawful and unlawful in the metaphoric experimental box of Pennsylvania.[60] Notwithstanding this amalgamation, the USCSA does not preempt the MMA.

The Preemption Doctrine is grounded in the Supremacy Clause of the United States Constitution:

> Article VI, cl. 2, of the Constitution provides that the laws of the United States "shall be the supreme Law of the Land; ... any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." Consistent with that command, we have long recognized that state laws that conflict with federal law are "without effect."[61]

The Pennsylvania Supreme Court has described the three types of preemption that embody the doctrine:

> In determining the breadth of a federal statute's preemptive effect on state law, we are guided by the tenet that "the purpose of Congress is the ultimate touchstone in every pre-emption case." Congress may

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[57] § 10231.2103(b)(3).
[58] 35 P.S. § 10231.1309(1)-(3).
[59] § 10231.2103(c).
[60] Todd Grabarsky, *Conflicting Federal and State Medical Marijuana Policies: A Threat to Cooperative Federalism*, 116 W. Va. L. Rev. 1, 11 (2013).
[61] *Altria Grp., Inc. v. Good*, 555 U.S. 70, 76 (2008) (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)).

> demonstrate its intention in various ways. It may do so through express language in the statute (express preemption). [. . .]
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> In the absence of express preemptive language, Congress' intent to preempt all state law in a particular area may be inferred. This is the case where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulation. That is to say, Congress intended federal law to occupy the entire legislative field (field preemption), blocking state efforts to regulate within that field.
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> Finally, even where Congress has not completely displaced state regulation in a specific area, state law is nullified if there is a conflict between state and federal law (conflict preemption). Such a conflict may arise in two contexts. First, there may be conflict preemption where compliance with state and federal law is an impossibility. Furthermore, conflict preemption may also be found when state law stands as an obstacle to the accomplishments and execution of the full purposes and objectives of Congress.[62]

As previously noted, the United States Congress included a provision in the USCSA that forecloses an argument based on express or field preemption by requiring a "positive conflict" between the federal and state statutes.[63] Congress's reasoning for drafting § 903 was likely grounded in the fact that states have more expansive enforcement capabilities than the federal government.[64] Regardless, based on the clear language of § 903, only conflict preemption remains potentially applicable.

In the Court's view, if this matter concerned the question of whether a defendant could be federally charged for the use of medical marijuana that is legal under state law, then the doctrine of preemption would prevent reliance on the state's medical

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[62] *Dooner v. DiDonato*, 971 A.2d 1187, 1193–94 (Pa. 2009) (internal citations omitted).
[63] 21 U.S. Code § 903.
[64] *See* Robert A. Mikos, *Preemption Under the Controlled Substances Act*, 16 J. Health Care L. & Pol'y 5, 12 (2013).

marijuana act as a viable defense.[65] Alternatively, if Defendant was sentenced to probation in the federal system, then conflict preemption would be triggered as the MMA would not apply, and the federal district court would be unable to condition probation on a violation of federal law.[66] In the present matter, however, the MMA is applicable to Defendant and does not render compliance with federal law impossible or stand as an obstacle to the congressional objectives underlying the USCSA.

1. Legal Impossibility under Conflict Preemption

Compliance with federal law is not rendered impossible under the MMA. While "tension" certainly exists between a state's sovereignty to address marijuana use and the USCSA, this tension does not create an "impossibility" under the law.[67] If the law did recognize such tension as a legal impossibility, then Congress's power under the Supremacy Clause would be expansive—necessitating that the states govern according to congress's criminal preferences. This is not the current legal landscape.[68] Indeed, the Commandeering Doctrine would be rendered a nullity with such expansive congressional interference.[69]

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[65] *See Gonzales v. Raich*, 545 U.S. 1, 9 (2005) (holding that the USCSA could be used to prosecute an individuals' growth, possession, use, and distribution of marijuana for medical use).
[66] *See, e.g.*, *United States v. Bey*, 341 F. Supp. 3d 528, 531 (E.D. Pa. 2018) (quoting *United States v. Johnson*, 228 F. Supp. 3d 57, 62 (D.D.C. 2017)) ("We therefore join what Judge G. Michael Harvey has described as 'the chorus' of federal courts around the country concluding a federal supervisee's state-authorized possession and use of medical marijuana violates the terms of federal supervised release.").
[67] Erwin Chemerinsky, Jolene Forman, Allen Hopper, Sam Kamin, *Cooperative Federalism and Marijuana Regulation*, 62 UCLA L. Rev. 74, 110–11 (2015).
[68] *See New York v. United States*, 505 U.S. 144, 162 (1992) ("While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress'[s] instructions.").
[69] *See Printz v. United States*, 521 U.S. 898, 935 (1997) ("We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States'

A legal impossibility under conflict preemption is better understood as a "physical impossibility."[70] A physical impossibility exists where state law requires violation of federal law.[71] In the present matter, the MMA does not *require* Defendant to "engage in an action specifically forbidden by the [USCSA]."[72] Such would be the case only if the MMA required Defendant to possess, use, manufacture, or distribute marijuana.[73] Because the MMA is a mere codification of inaction, conflict preemption's "legal impossibility" is not implicated.[74] In other words, the question is whether both statutes can be enforced.[75] As summarized by Justice Walters in *Emerald Steel Fabricators v. Bureau of Labor* –

> One sovereign may make a policy choice to prohibit and punish conduct; the other sovereign may make a different policy choice not to do so and instead to permit, for purposes of state law only, other circumscribed conduct. Absent express preemption, a particular policy choice by the federal government does not alone establish an implied intent to preempt contrary state law. A different choice by a state is just that — different. A state's contrary choice does not indicate a lack of respect; it indicates federalism at work.[76]

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officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty.").

[70] *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000) ("We will find preemption where it is impossible for a private party to comply with both state and federal law [. . . .]").

[71] *Gonzales v. Oregon*, 546 U.S. 243, 276, 289–90 (2006) (Scalia, J., dissenting) ("In any event, the [Interpretive Rule issued by the Attorney General, which determined authorizing the administration of federally controlled substances for suicidal purposes violated the USCA] does not purport to pre-empt state law in any way, not even by conflict pre-emption—unless the Court is under the misimpression that some States *require* assisted suicide. The Directive merely interprets the CSA to prohibit, like countless other federal criminal provisions, conduct that happens not to be forbidden under state law (or at least the law of the State of Oregon).").

[72] *See supra* note 67, at 105-06.

[73] *See supra* note 67, at 106.

[74] *See* Michael A. Cole, Jr., *Functional Preemption: An Explanation of How State Medicinal Marijuana Laws Can Coexist with the Controlled Substances Act*, 16 Mich. St. U. J. Med. & L. 557, 572 (2012).

[75] *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963).

[76] *Emerald Steel Fabricators v. Bureau of Labor*, 230 P.3d 518, 348 Or. 159, 204 (Or. 2010) (Walters, J., dissenting).

2. Legal Obstacle under Conflict Preemption

Explained by the learned Erwin Chemerinsky, currently Dean of U.C. Berkeley School of Law:

> The argument that state laws legalizing marijuana activity prohibited by the [USCSA] pose an obstacle to the purposes and objectives of federal law has an intuitive appeal. After all, these states have removed criminal sanctions for, and thus allow citizens to engage in, conduct that federal law prohibits. How could that not pose an obstacle to the [USCSA's] objectives of "combating drug abuse and controlling the legitimate and illegitimate traffic in controlled substances"? The problem with this argument is that it confuses the common definition of "obstacle" with the distinct legal concept developed in the Supremacy Clause jurisprudence governing federal preemption of state law.[77]

Concerning such an obstacle, the Supreme Court of the United States has stated,

> What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects:
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> > "For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power."[78]

Based on the Supreme Court's rationale, this Court disagrees with the Oregon Supreme Court that the USCSA's classification of marijuana as a schedule one substance alongside the MMA's allowance of medical marijuana creates an insurmountable obstacle to the USCSA's purposes.[79] Conflict preemption is not

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[77] *See supra* note 67, at 110–11.
[78] *Crosby*, 530 U.S. at 373 (quoting *Savage v. Jones*, 225 U.S. 501, 533 (1912)).
[79] *See Emerald Steel Fabricators*, 348 Or. at 178 (Kistler, J., majority).

triggered merely by unharmonious statutes.[80] In the present case, disagreement does not obstruct the federal government's ability to prosecute, which is the central purpose of the USCSA.[81] The historical underpinnings of the USCSA support such a purpose:

> [I]n 1970, after declaration of the national "war on drugs," federal drug policy underwent a significant transformation. A number of noteworthy events precipitated this policy shift. First, in *Leary v. United States,* [. . .] this Court held certain provisions of the Marihuana Tax Act and other narcotics legislation unconstitutional. Second, at the end of his term, President Johnson fundamentally reorganized the federal drug control agencies. The Bureau of Narcotics, then housed in the Department of the Treasury, merged with the Bureau of Drug Abuse Control, then housed in the Department of Health, Education, and Welfare (HEW), to create the Bureau of Narcotics and Dangerous Drugs, currently housed in the Department of Justice. Finally, prompted by a perceived need to consolidate the growing number of piecemeal drug laws and to enhance federal drug enforcement powers, Congress enacted the Comprehensive Drug Abuse Prevention and Control Act.
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> Title II of that Act, the CSA, repealed most of the earlier antidrug laws in favor of a comprehensive regime to combat the international and interstate traffic in illicit drugs. The main objectives of the CSA were to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances. Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels.
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> To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA.[82]

Therefore, by its terms and history, the USCSA is undeniably concerned with the prosecution of illegal substances. The MMA's allowance of limited marijuana use for medical purposes does not obstruct this purpose. Absent a contrary decision by the

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[80] Importantly, the Court notes that the USCSA does not grant new powers or rights. *See Michigan Canners & Freezers Ass'n, Inc. v. Agric. Mktg. & Bargaining Bd.*, 467 U.S. 461, 465–66, 477-78 (1984) (preemption found where Michigan act violated the rights of farmers and producers to join cooperative associations, which was created by the federal Agricultural Fair Practices Act).

[81] 21 U.S.C. § 801.

[82] *See Gonzales v. Raich*, 545 U.S. 1, 11–13 (2005) (internal citations omitted) (internal footnotes omitted).

President, the Department of Justice is free to enforce the terms of the USCSA.[83] In fact, under the Honorable Jefferson B. Sessions, III, the Department of Justice repealed the "Memorandum for All United States Attorneys" by the Honorable James M. Cole ("Cole Memo."), Deputy Attorney General under President Obama's administration.[84] The memorandum by Attorney General Sessions expressly revoked the Cole Memo.'s admonishment that department resources would not be allocated for the prosecution of "small amounts of marijuana for personal use on private property."[85] Thus, no sound argument exists that the MMA stands as an obstacle to the Department of Justice pursuing legal action for violations of the USCSA.

B. The MMA's Preemption Survival Does Not Curtail a State Court's Ability to Impose a Reasonable Condition of State Probation.

Although the USCSA does not preempt the MMA, this Court is not prevented from directing reasonable conditions of probation. The arguments of Defendant and the *amici curiae* engage in the causation fallacy. Specifically, a disconnect exists between their analysis that the MMA is a valid Pennsylvania law and that the USCSA's lack of preemption prevents this Court from imposing the federal condition as a reasonable condition of probation. The federal government certainly cannot

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[83] On February 15, 2019, President Donald J. Trump signed the Consolidated Appropriations Act, funding the federal government through September 30, 2019, which provided in § 537 that the federal funds could not be utilized by the Department of Justice to prevent Pennsylvania "from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana." *See United States v. Jackson*, 2019 WL 3239844, at *3 (E.D. Pa. June 5, 2019); *see also* Consolidated Appropriations Act, 2019 Pub. L. No. 116-6, 133 Stat. 13 (2019), https://www.congress.gov/bill/116th-congress/house-bill/648/text (last visited August 25, 2019). Since 2014, § 537's language has remained in each appropriation bill. *See Jackson*, 2019 WL 3239844, at *3.

[84] Jefferson B. Sessions, III, Memorandum for All United States Attorneys, "Marijuana Enforcement," (Jan. 4, 2018), https://www.justice.gov/opa/press-release/file/1022196/download (last visited Aug. 25, 2019) [hereinafter "Sessions Memo."]; *see also* James M. Cole, Memorandum for All United States Attorneys, "Guidance Regarding Marijuana Enforcement," (Aug. 29, 2013), https://dfi.wa.gov/documents/banks/dept-of-justice-memo.pdf (last visited Aug. 25, 2019) [hereinafter "Cole Memo."].

commandeer this Court to proceed as a federal actor and apply federal law; however, the Court imposes the federal condition not as a federal actor, but of its own volition pursuant to Pennsylvania law. Quite simply, the ability for the Commonwealth to enact the MMA does not speak to this Court's ability to impose reasonable probation conditions. The two legal spheres do not intersect.

Nevertheless, assuming *arguendo* that Defendant and the ACLU are correct that the MMA's survival of preemption dictates this Court's ability to proscribe reasonable probation conditions, the MMA is silent on whether it is applicable to probationers. The Court remains unconvinced by the ACLU's position that silence indicates a legislative intent to allow a probationer's use of medical marijuana.[86] In addition, the MMA's "Declaration of policy" does not provide any insight into the legislature's view regarding the narrow question before this Court.[87] An argument that the legislature's broad goal of providing a "program of access to medical marijuana" evidences its intent as to the confined question before this Court ignores the complicated, intertwining aspects of implementing a medical marijuana program. In the Court's view, such an argument is analogous to arguing from silence.[88]

Given that the MMA contains provisions that specifically exclude certain individuals from the act's grasp, it appears more logical to presume the legislature's intent was to leave the question of probation applicability for the trial courts.[89] To this

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[85] Sessions Memo. at 1; Cole Memo. at 1-2.
[86] *See Mars Emergency Med. Servs., Inc. v. Twp. of Adams*, 740 A.2d 193, 196 (Pa. 1999) (noting that an act's silence requires the analyzing court to delve into the legislation's pronouncement of its own intent).
[87] 35 P.S. § 10231.102(3)(i).
[88] *Contra* Defendant's Brief at 6; ACLU's Brief at 5; Senator Leach's Brief at 2.
[89] *See Cali v. City of Phil.*, 177 A.2d 824, 832 (Pa. 1962) ("This i[s] fortified by the general canon of interpretation that the mention of a specific matter in a general statute implies the exclusion of others not

effect, Senator Leach's admonishment that the legislature intended to protect probationers under the MMA is unpersuasive. First, the Court cannot accept as law the assurances of one senator.[90] The democratic process does not proceed so efficiently. Second, ignoring for a minute that Senator Leach authored and sponsored the MMA bill and is being represented by the same law firm that represents Defendant, his *amicus curiae* brief fails to address the "reasonable condition" argument. As previously expressed, the failure to bifurcate the use condition from the federal condition is fatal to Senator Leach's argument. Candidly, a "clear and unambiguous" showing from the legislature would have been to explicitly address probationers in the MMA.[91]

Moreover, even if the MMA was inclusive of probationers, the Court is empowered with broad discretion in fashioning specific conditions—as long as they are reasonable—of lawful activities.[92] It is unclear how the Court's discretion does not extend to Defendant's use of medical marijuana. Nevertheless, the federal condition does not implicate a lawful activity, as the use of marijuana even for medical purposes under federal law is not permitted.

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mentioned (expressio unius est exclusio alterius) [. . . ."). Defendant indicated at the January 31st hearing that a proposed amendment regarding probationers' rights under the MMA was struck down by the legislature prior to the MMA's enactment; however, the amendment was not submitted into evidence. Tr. at 5-6.

[90] Interestingly, there is a proposed amendment to 42 Pa.C.S. § 9771 that proposes a limitation on sentence of total confinement conditions in revocation proceedings for a probationer who tests positive for marijuana and possesses an identification card under the MMA. *See* 203 Pa. House Bill No. 1555 (2019).

[91] *Contra* Senator Leach's Brief at 4 ("[Senator Leach] believes the plain language of the [MMA] clearly and unambiguously shows that legislators intended to permit patients serving probation to use medical marijuana.").

[92] *See Com. v. Vilsaint*, 893 A.2d 753, 757 n.4 (Pa. Super. Ct. 2006) (noting trial courts may impose a

C. A Probation Condition that Dictates a Probationer Not Violate Federal Law is a Reasonable Condition of Probation.

The purpose of probation has been previously outlined by the Superior Court:

> It is constructed as an alternative to imprisonment and is designed to rehabilitate a criminal defendant while still preserving the rights of law-abiding citizens to be secure in their persons and property. When conditions are placed on probation orders they are formulated to insure or assist a defendant in leading a law-abiding life.[93]

The legislature has delegated wide-latitude to trial courts to attach "reasonable" conditions to probation "necessary to insure or assist the defendant in leading a law-abiding life."[94] Pennsylvania law permits a trial court under § 9754(c)(13) to attach "conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience."[95] Important to the case *sub judice*, an implied condition of probation exists in every probationary period that the probationer not commit a new crime while on probation.[96] Of course, a condition imposed under § 9754 must be lawful.[97]

The federal condition is surely lawful since the Superior Court has recognized the requirement that a probationer not violate the law as an implicit condition of

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condition of probation regarding alcohol under the "catch-all" provision of 42 Pa.C.S. § 9754(c)(13)).

[93] *Com. v. Reichenbach*, 2015 WL 6112246, at *3 (Pa. Super. Ct. Aug. 28, 2015); *accord Com. v. Parker*, 152 A.3d 309, 316–17 (Pa. Super. Ct. 2016) (quoting *Com. v. Smith*, 85 A.3d 530, 536 (Pa. Super. Ct. 2014)) (""The aim of probation and parole is to rehabilitate and reintegrate a lawbreaker into society as a law-abiding citizen.").

[94] 42 Pa.C.S.A. § 9754 (1988); *Com. v. Hall*, 80 A.3d 1204, 1212 (Pa. 2013); *accord id.*; *Vilsaint*, 893 A.2d at 757.

[95] § 9754(c)(13); *accord Vilsaint*, 893 A.2d at 757.

[96] *Com. v. Martin*, 396 A.2d 671, 674 n.7 (Pa. Super. Ct. 1978) (citing *Com. v. Duff*, 192 A.2d 258, 262 (Pa. Super. Ct. 1963), ***rev'd on other grounds***, 200 A.2d 773 (Pa. 1964)); *Vilsaint*, 893 A.2d at 757 n.5.

[97] *See Com. v. Rivera*, 95 A.3d 913, 915 (Pa. Super. Ct. 2014); *accord Com. v. Wilson*, 67 A.3d 736, 745 (Pa. 2013).

probation.[98] Granted, pursuant to this lawful consideration, "[s]upervisory release conditions are subject to the constitutional doctrines of vagueness and overbreadth."[99] The Superior Court summarizes these doctrines as follows:

> Arising from the Fourteenth Amendment's Due Process Clause, the void-for-vagueness doctrine requires that a statute or rule under attack be sufficiently definite so that people of ordinary intelligence can understand what conduct is prohibited, and so as not to create or encourage arbitrary or discriminatory enforcement. When a statute is purportedly vague and arguably involves constitutionally protected conduct, vagueness analysis will necessarily intertwine with overbreadth analysis.
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> A form of First Amendment challenge, the overbreadth doctrine prohibits an enactment, even if clearly and precisely written, from including constitutionally protected conduct within its proscriptive reach. In order to prevail on an overbreadth challenge, "the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep."[100]

This Court does not find that the federal condition is vague since an "ordinary" person can understand what conduct he or she cannot perform (i.e., crime) or broad, as the condition does not envelop constitutional conduct within its prohibitions. Neither is the federal condition illegal since, by its very terms, it requires adherence to the law. Indeed, as the Superior Court has noted, this implied condition seems "obvious in nature."[101]

Other than the ACLU's conclusory statement that the federal condition is not "reasonably related" to Defendant's rehabilitation, Defendant and the ACLU avoid explaining how the federal condition is unlawful or unreasonable. Defendant and the

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[98] *See Martin*, 396 A.2d at 674 n.7.
[99] *Com. v. Perreault*, 930 A.2d 553, 559 (Pa. Super. Ct. 2007).

[100] *Id.* at 559 n.1 (internal citations omitted).
[101] *Vilsaint*, 893 A.2d at 757 n.5.

ACLU argue simply that the legislature has evidenced an intent by enacting the MMA that a probation condition curtailing the lawful use of medical marijuana in Pennsylvania is *per se* unreasonable.[102] Framing the argument in this manner erases the distinction between the use condition and federal condition. As noted above, while the use condition may problematically usurp the MMA, the federal condition's foundation is not so fraught.[103]

In *Reed-Kaliher v. Arizona*, the Arizona Supreme Court fell for the same mistake when it spliced the argument related to a general condition to "obey all laws" and the argument for a specific condition that the probationer "not possess or use marijuana."[104] Germane to the present inquiry, the *Reed-Kaliher* Court found that any condition which demanded the probationer refrain from using medical marijuana compliant with the AMMA was an illegal condition.[105] In so holding, the Arizona Supreme Court similarly commingled the probation conditions. This consolidation becomes apparent when the Arizona Supreme Court states that the trial court is unable to "impose a term that violates Arizona law."[106] Naturally, the *Reed-Kaliher* Court's requirement that the probationer adheres to federal law under the "obey all laws" condition is not a violation of state or federal law, despite the fact that the "not possess or use marijuana" probation condition is illegal under Arizona law.

Referencing the Preemption Doctrine, the *Reed-Kaliher* Court attempted to

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[102] Defendant's Brief at 6; ACLU's Brief at 7.
[103] *See supra* page 5 and note 11.
[104] *See Reed-Kaliher v. Arizona*, CV-14-0226-PR, at 2-3 (Ariz. 2014). The Arizona Supreme Court in *Reed-Kaliher* also focused on the broad language of the Arizona Medical Marijuana Act ("AMMA"). *Id.* at 4.
[105] *Id.* at 5-6.

validate its position by holding that the trial court would not be "sanctioning a violation of federal law" if it allowed the probationer to use medical marijuana because the "court's authority to impose probation conditions is limited by statute."[107] In so arguing, the Arizona Supreme Court again leveraged the violation of state law to undermine the lawful condition that federal law not be violated. The Montana Supreme Court made a similar mistake in *Montana v. Nelson*:

> Therefore, while the District Court may require [the defendant] to obey all federal laws as a condition of his deferred sentenced, it must allow an exception with respect to those federal laws which would criminalize the use of medical marijuana in accordance [with] [Montana's] MMA. We accordingly reverse the imposition of Condition No. 9 ["The Defendant shall comply with all city, county, state, federal laws, ordinances, and conduct himself as a good citizen."], *but only insofar as it relates to enforcing the CSA at the expense of the MMA* [. . . .]
>
> While [the defendant] may be generally required to obey federal law, an exception must be made for lawful use of medical marijuana under the MMA."[108]

The italics in the first paragraph create anticipation that the Montana Supreme Court understood the distinction between the illegal condition that the probationer not violate Montana law when the Montana Medical Marijuana Act ("MMMA") states otherwise, and the legal condition that the probationer not violate federal law. However, the Montana Supreme Court's second paragraph, which is included in the opinion's conclusion, does not evidence such understanding. A condition that prohibits a probationer from using medical marijuana consistent with a state medical marijuana act can only be argued to be illegal to the extent it violates a provision of state law. This is

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[106] *Id.* at 6.
[107] *Id.* at 8.
[108] *Montana v. Nelson*, DA 07-0339, 2008 MT 359, at 8, 19-20 (Mont. 2008) (emphasis added).

because a condition that explicitly or implicitly prevents a violation of federal law is not illegal.[109]

The Court finds support for its position in Colorado and Oregon precedent. In the well-reasoned opinion of *Colorado v. Watkins*, the court recognized the tautology that is produced when a probation condition expressly requires adherence to federal law.[110] In *Watkins*, the court recognized that the tautology is further supported by the fact that probationers possess limited constitutional amenities and Colorado's Medical Use of Marijuana Amendment does not provide probationers *carte blanche* to use marijuana.[111] Notably, akin to Pennsylvania's implied condition not to violate the law, Colorado's statutory construct expressly requires that the defendant not commit another crime while on probation.[112]

This Court's rationale is also supported by the court in *Oregon v. Liechti*, which intuitively held that interpreting Oregon's express probation condition that a defendant "violate no law" as only applying to state law "is not only forced, but also hostile to the policy fundamentals of probation."[113] The court opined that probation "is designed to encourage law-abiding conduct of probationers, and, to that end, probationers subject to that general condition are obliged to follow all laws and report any infractions."[114]

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[109] *See, e.g.*, *Oregon v. Bowden*, 425 P.3d 475, 292 Or. App. 815, 816 (Or. Ct. App. 2018) (finding the Oregon medical marijuana statute prevented probation conditions that generally prevented possession of a medical marijuana card, use of illegal substances, and possession of paraphernalia as violations of state law.); *New York v. Stanton*, 2018 NY Slip Op. 28221 (NY Cnty. Ct. July 16, 2018) (holding that medical marijuana could be used by probationers pending a case-by-case review based on the tenets of the New York medical marijuana statute).
[110] *See generally Colorado v. Watkins*, 2012 COA 15, at 18 (Colo. App. Feb. 2, 2012).
[111] *Id.* at 11-13.
[112] *Id.* at 6 (citing Colo. Rev. Stat. § 18-1.3-204(1)).
[113] *Oregon v. Liechti*, 21-03-03751, at *3 (Or. Ct. App. Nov. 16, 2005).
[114] *Id.*

The federal condition here is similarly lawful and reasonable.

V. CONCLUSION

For the reasons articulated above, the Court finds that the federal condition's language that requires compliance with "Federal criminal statutes," which was imposed pursuant to the Pennsylvania Administrative Code by orders of this Court, is a lawful and reasonable condition of probation. This matter will proceed consistent with this Opinion. Any required scheduling will occur by separate court order.

IT IS SO ORDERED this 12th day of September 2019.

cc: The Honorable Nancy L. Butts
The Honorable Joy Reynolds McCoy
The Honorable Eric R. Linhardt
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