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TOP 25 MUNICIPAL LAWYERS OF 2011



Robert Levins / Daily Journal

A. Patrick Munoz

Munoz has spent the past two years on the front lines in the city of Dana Point's battle against medical marijuana dispensaries. And through an innovative legal strategy, he managed to rid the city of the stores.

When dispensaries began popping up in the city in 2009, Dana Point and other municipalities tried to crack down on them by adopting zoning regulations that effectively banned the shops. But the dispensaries pushed back, arguing the state's medical marijuana law prohibited such bans.

"In every single case where an injunction was obtained to shut these places down," Munoz said, "the local court of appeal stayed the injunctions so the dispensaries were able to continue to operate."

Concerned the courts might strike down an all-out ban, Munoz led Dana Point on a different tack. He went after the dispensaries under the state's medical marijuana law, arguing that the groups

were operating as for-profit businesses rather than as collectives or cooperatives as the law requires.

"The people who are growing the marijuana have to be part of the group and can only be reimbursed for their actual expenses," he said. "What we did is we just took the position that people are out there making money."

In a deposition, the owner of one dispensary claimed he didn't know how much it cost growers to cultivate the marijuana. Owners of two others were unable to demonstrate compliance with the law. The city won judgments against all three.

"The judgments included not only \$7 million, give or take, in civil penalties," Munoz said, "but also permanent injunctions ordering that they stay shut down."

As the city went after dispensaries, Malinda Traudt, a medical marijuana patient, sued over the apparent ban, claiming the city's actions impinged on her right to access cannabis. Munoz led the city to vic-

MUNICIPAL LAW

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Practice Type: Municipal law

Specialty: Local government, solid waste, land use, special education

Big Matter: As city attorney for Dana Point, Munoz used an unusual legal strategy to shut down the medical marijuana dispensaries in the city and fought off a legal challenge from a patient who sued over the closures.

tory in the 4th District Court of Appeal, challenging Traudt's standing.

"You have to be the controlling party of the organization in order to bring a challenge," he said. "It's like in the corporate world — a stockholder cannot bring a lawsuit on behalf of the corporation."

He said the appellate court's decision, handed down in September, will likely limit the amount of litigation municipalities face over their regulation of dispensaries.

Munoz's victories aren't limited to medical marijuana. This year, he also fought off a challenge by the IRS of Dana Point's categorization of recreational instructors as independent contractors. By hiring an independent survey firm, the city demonstrated that the classification was an industry standard in California, allowing the city to qualify for a safe harbor provision, an exception that let the city continue classifying the instructors as contractors.

The victory saved Dana Point an estimated \$60,000 annually in payroll, overhead and workers' compensation costs. It also helped other municipalities fend off similar audits of their recreational programs, Munoz said, saving them money and allowing them to continue offering services to residents.

Munoz also serves as city attorney for Twenty-nine Palms and as assistant city attorney for Adelanto.

— Ben Adlin