

COA Opinion: Michigan Medical Marihuana Act requires an individual to obtain a qualified physician's statement before committing the purportedly illegal conduct in order to assert an affirmative defense under the Act.

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In *People v Reed*, No. 296686, the Court of Appeals considered whether an individual could assert an affirmative defense under the Michigan Medical Marihuana Act (MMMA) when the individual manufactured marijuana prior to obtaining physician authorization, but was arrested for this conduct several weeks later, after he obtained physician authorization and received a registry identification card from the Michigan Department of Community Health. The defendant argued that the trial court was obligated to dismiss the charge against him because, at the time he was arrested, he satisfied all the elements of the affirmative defense under the MMMA. One of these elements is that an individual must obtain a qualified physician's statement that the medical use of marijuana is likely to alleviate the individual's debilitating medical condition. The Court of Appeals recently held in *People v Kolanek* that the relevant deadline for obtaining the physician's statement under the MMMA was the time of arrest. Through Judge Meter's opinion in *Reed*, the court extended the *Kolanek* holding and determined that an individual must obtain a physician's statement prior to commission of the offense in order to be eligible for an affirmative defense under the MMMA. The court reasoned that it was inappropriate to focus on the court's use of the word "arrest" in *Kolanek* because in that case the purported offense and the arrest occurred simultaneously. The court also concluded that the law would provide less of an incentive to obtain a physician's authorization under the defendant's interpretation of the statute. Accordingly, the court concluded that the defendant was barred from asserting the affirmative defense under the MMMA, and similarly was not entitled to immunity from arrest under the MMMA.