

## MICHIGAN COURT OF APPEALS DECISIONS - PUBLISHED CASES

### **People v. Brian Bebout Reed, 294 Mich App 78; 819 NW2d 3 (2011)**

**Issue:** For a Section 8 affirmative defense to apply, does the physician statement have to occur before the purportedly illegal conduct?

**Holding:** The Court held as follows: “We stated in *People v Kolanek*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_; 2011 WL 92996 (2011), lv granted 489 Mich 956; 798 NW2d 509 (2011), slip op at 7, that the relevant deadline for obtaining the physician’s statement required to establish the affirmative defense in MCL 333.26428 was the time of a defendant’s arrest.

**We now extend that ruling and hold that, for the affirmative defense to apply, the physician’s statement must occur before the commission of the purported offense.**

**We further hold that defendant has no immunity under MCL 333.26424 because defendant did not possess a registry identification card at the time of the purported offense.”**

**In essence, “In light of the above-considerations, we hold that, for a Section 8 affirmative defense to apply, the physician’s statement must occur before the purportedly illegal conduct.”**

In this case, the Defendant’s marihuana plants were discovered before any physician authorization, but defendant was not arrested until after he had obtained physician authorization, as well as a registry identification card from the Michigan Department of Community Health (MDCH). See MCL 333.26424.

Because the Defendant’s Motion to Dismiss was denied, the Court stated that “No reasonable jury could find that defendant is entitled to the Section 8 defense, and thus defendant is barred from asserting it at trial.”