

MICHIGAN COURT OF APPEALS DECISIONS - PUBLISHED CASES

People v Lois Butler-Jackson, Mich App___; ___NW2d___ (2014):

Issue: Whether defendant's was immune from prosecution under MCL 333.26424(f) of the Michigan Medical Marihuana Act (MMMA)?

Holding: NO

Issue: Whether the defendant's conspiracy conviction must be vacated because her conduct was not illegal?

Holding: YES

Defendant appeals as of right her jury convictions for conspiracy to commit a legal act in an illegal manner, MCL 750.157a, and intentionally placing false information in a patient's medical record, MCL 750.492a(1)(a).

As to the first issue, Defendant argued that she was entitled to immunity because she had bona fide relationships with her customers and stated that, in her professional opinion, each of her customers were likely to benefit from the medical use of marijuana. At the time she was charged, the phrase "bona fide relationship" was not defined in the MMMA; however, defendant argues, she did not have to physically meet with patients to have "bona fide physician-patient relationships."

The Court of Appeals disagreed.

The Court held that "There was no evidence that defendant had "bona fide physician-patient relationships" with the undercover police officers, or similar persons, seeking certifications, or that she completed full assessments of their medical histories before signing the written certifications that were filled out and issued by Deloose."

"And there was no evidence that defendant could have formulated any "professional opinion" regarding the likelihood that the undercover police officers, or similar persons—who only saw and paid Deloose for the certifications—would likely benefit from the medical use of marijuana to treat or alleviate serious or debilitating medical conditions or related symptoms."

As to the second issue, the defendant argued that she could not be convicted of conspiracy to commit a legal act in an unlawful manner for failing to comply with MCL 333.26424(f) because such conduct is not illegal. In essence, defendant is arguing on appeal, and argued in the trial court, that the allegations set forth in the information did not constitute the crime of conspiracy to commit a legal act in an illegal manner. The Court of Appeals agreed.

The Court held that “MCL 333.26424(f) does not prohibit physicians from issuing written certifications in the absence of a bona fide physician-patient, without conducting a full assessment of medical history, and when a “professional opinion” cannot be formulated. That is, this statute does not define any prohibited conduct, does not characterize any such conduct as constituting either a misdemeanor or felony, and does not provide for any punishment.”

The conspiracy conviction of the defendant is vacated. In all other respects, the Court affirmed.