

## **MICHIGAN SUPREME COURT DECISIONS**

**People v. Kolanek & King, 491 Mich 382; 817 NW2d 528 (2012):**

**Issue:** Whether the plain language of the MMMA requires that a defendant asserting the affirmative defense under § 8 also meet the requirements under § 4?

**Holding:** The court held, in pertinent part:

- 1. The plain language of the MMMA does not require that a defendant asserting the affirmative defense under § 8 also meet the requirements of § 4.**
- 2. Additionally, to meet the requirements of § 8(a)(1), a defendant must establish that the physician's statement occurred after the enactment of the MMMA and before the commission of the offense.**
- 3. If a circuit court denies a defendant's motion to dismiss under § 8 and there are no material questions of fact, then the defendant may not reassert the defense at trial; rather, the appropriate remedy is to apply for interlocutory leave to appeal.**

The Michigan Court Supreme Court stated as follows:

“The stricter requirements of § 4 are intended to encourage patients to register with the state and comply with the act in order to avoid arrest and the initiation of charges and obtain protection for other rights and privileges. If registered patients choose not to abide by the stricter requirements of § 4, they will not be able to claim this broad immunity, but will be forced to assert the affirmative defense under § 8, just like unregistered patients.

In that instance, registered patients will be entitled to the same lower level of protection provided to unregistered patients under § 8. This result is not absurd, but is the consequence of the incentives created by the wider protections of § 4.”

The Court further stated as follows:

“In *Kolanek*, neither the post-arrest physician's statements nor the physician's statements made before the enactment of the MMMA satisfy, as a matter of law, the requirement under § 8(a)(1). Thus, Kolanek, although entitled to raise the § 8 defense in a motion for an evidentiary hearing, failed to establish at that hearing the requirements of the § 8 affirmative defense and he cannot now, for reasons we will explain, present the defense to the jury.