



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. ROBERT GEAR, JR.,
CR-14-0408-PR**

PARTIES:

Petitioner: State of Arizona

Respondent: Dr. Robert Gear, Jr.

Amicus Curiae: Arizona Attorney General

FACTS:

A confidential informant for a Navajo County drug task force visited Dr. Gear in September 2012 for the purpose of obtaining a written certification to use medical marijuana. Her visit was part of an undercover investigation of an alleged illicit medical marijuana co-op.

The informant completed a medical questionnaire and a records statement provided by Dr. Gear's staff. On the medical records statement, the informant stated she had seen other medical professionals within the past 12 months, but she did not have a complete set of medical records with her. She agreed to either have the records sent to Dr. Gear's office, or to bring them with her to her next appointment.

Dr. Gear examined the informant and reviewed a central pharmacy data base for information about prior attempts to manage her pain with prescription drugs. He certified her for medical marijuana use based on his examination and the information she provided.

He completed a required DHS form in which he stated he had reviewed the patient's medical records, including those from other physicians she had seen from the previous 12 months, as required by an administrative regulation, A.A.C. R9-17-202(F)(5)(i). He also attested that the information he provided on the form was "true and correct," as required by A.A.C. R9-17-202(F)(5)(m). But, at the time he completed and submitted the forms to DHS, he had not received or reviewed any medical records from other doctors.

A grand jury indicted Dr. Gear on one count of forgery and one count of fraudulent schemes and artifices.

The trial court granted Dr. Gear's motion to dismiss the indictment. The court ruled that the Arizona Medical Marijuana Act's physician immunity provision, A.R.S. § 36-2811(C), immunized him from criminal prosecution.

The State of Arizona appealed, and the court of appeals affirmed. The State filed a petition for review.

ISSUE:

Did the court of appeals err by rejecting the State’s argument that [the] A.R.S. § 36-2811(C) immunity provision only provides a physician with criminal immunity when he provides a “physician’s professional opinion”?

STATUTES AND DEFINITIONS:

A.R.S. § 36-2811(C) provides in relevant part:

A physician shall not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege . . . based solely on providing written certifications or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition, but [the statute does not immunize a doctor from professional, administrative discipline].

A.R.S. § 13-2002 provides generally that one commits forgery if, with intent to defraud, the person falsely completes a written instrument, or offers or presents a forged instrument, or one that that contains false information.

A.R.S. § 13-2310 provides that a person commits fraudulent schemes and artifices if he or she knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises, or material omissions.

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