

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY FLORIDA

Case Number: 17-2660 CF  
Judge Joseph Marx/Division X

STATE OF FLORIDA,

Plaintiff,

vs.

ROBERT JEAN SIMEONE,

Defendant.

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**ORDER ON STATE'S MOTION IN LIMINE #1**

**THIS CAUSE** is before the Court upon the STATE'S MOTION IN LIMINE #1, seeking a ruling that the Florida Patient Brokering Act ("PBA"), Fla. Stat § 817.505, is a general intent crime that does not have "any guilty knowledge element," referred to herein as "mens rea." State Motion in Limine at 1-2 (quotations omitted). After reviewing said motion, as well as DEFENDANT'S OPPOSITION TO STATE'S MOTION IN LIMINE #1, the STATE'S MEMORANDUM OF LAW ON PATIENT BROKERING, and hearing oral argument from both parties, the Court finds as follows:

1. The PBA does not have an explicit mens rea requirement. The Court finds that, in the absence of an explicit mens rea requirement, an offense has no mens rea.
2. The Court makes no finding as to the intent of the Legislature, beyond noting the absence of an explicit mens rea requirement.
3. The Court finds that whether the PBA contains a mens rea requirement is an issue of first impression in Florida. Oral Argument at 10:53, Hearing on State's Motion in Limine, July 9, 2018.

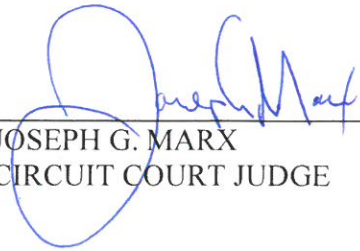
4. The Court finds that the question of whether the PBA contains a mens rea requirement is an essential element of the law. *See Belair v. Drew*, 770 So.2d 1164, 1166 (Fla. 2000) (holding that an appellate court can review a nonfinal order by petition for certiorari where an essential requirement of the law is at issue).
5. The Court also finds that it is a clearly established principle of law that the State must prove mens rea where required. Oral Argument at 10:53, Hearing on State's Motion in Limine, July 9, 2018. *See also State v. Pettis*, 520 So. 2d 250, 254 (Fla. 1988) (finding that pretrial evidentiary rulings may qualify for certiorari to address clearly established legal principles)
6. The Court further finds that failing to correctly apply the law as it pertains to mens rea would result in material injury for the remainder of the case. *See also Williams v. Oken*, 62 So. 3d 1129 (Fla. 2011) (requiring material injury for the remainder of the case before granting appellate review of a nonfinal order).
7. The Court finds that the question of whether the PBA requires mens rea is critical for this case, as well as numerous other pending investigations and prosecutions under the PBA in the State of Florida. The Court is aware of the State charging more than 40 Florida residents under the PBA since its formation of the Sober Home Task Force. *See* Christine Stapleton, *UPDATE: Sober home task force arrests six; total now tops 40*, Palm Beach Post, Oct. 19, 2017, available at <https://www.palmbeachpost.com/news/local/sober-home-task-force-arrests-six-arrest-total-now-tops/dEsc5p8QxlqRivVDna4rkN/> (“The Palm Beach County Sober Home Task Force has made 41 arrests on charges of patient brokering and insurance fraud since Oct. 25, 2016.”).
8. The Court also notes that the State has indicated that more prosecutions under the PBA are forthcoming. *See* Julie Miller, *Be aware of the latest fraud schemes*, Behavioral Healthcare

Executive, Apr. 27, 2018, available at <https://www.behavioral.net/blogs/julie-miller/ethics/be-aware-latest-fraud-schemes> (“[State Attorney for the 15<sup>th</sup> Judicial Circuit David Aronberg’s] office has seen 47 arrests and 16 convictions, but ‘*there’s more to come*[.]’”) (emphasis added). As such, the issue of whether the PBA requires a mens rea is critical to a *substantial* number of current and future defendants.

9. The Court finds that conducting trial—in this case and other prosecutions brought under the PBA—without applying the correct law as it pertains to mens rea would cause irreparable injury which cannot be adequately remedied on appeal following final judgment. For example, the Court notes that many defendants may not have adequate resources following trial to present an appeal addressing the issue of whether mens rea is required, let alone to present a defense on retrial following appeal. Additionally, the individuals that the State intends to charge with violations of the PBA are entitled to have their cases assessed under the correct legal standard, and would be irreparably harmed by needless arrests. *See Belair*, 770 So.2d at 1166.
10. The Court also finds that the waste of judicial, State, and defense resources required to relitigate dozens of PBA cases tried under an incorrect application of the law pertaining to mens rea would produce a miscarriage of justice. *See Pettis*, 520 So. 2d at 254.
11. As such, the Court finds that appellate guidance on whether the absence of an explicit mens rea in the PBA dispenses with a mens rea requirement is crucial to avoid irreparable harm and a miscarriage of justice. Oral Argument at 10:53, Hearing on State’s Motion in Limine, July 9, 2018.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this the

19 day of July, 2018.

  
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JOSEPH G. MARX  
CIRCUIT COURT JUDGE

Copies furnished to:

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