

SUPREME COURT OF FLORIDA

State v. Harden

938 So. 2d 480 (Fla. 2006) · No. SC04-613 · Decided May 18, 2006

SUMMARY

The Supreme Court of Florida reviewed a decision declaring Florida's Medicaid anti-kickback statute unconstitutional. The court held that the statute was impliedly conflict-preempted by the federal Medicaid anti-kickback law because Florida law lacked the federal employee-payment safe harbor and imposed a lower mens rea requirement. The court concluded that Florida's statute criminalized conduct that federal law intended to protect from prosecution.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Quince, J.; Pariente, C.J.; Wells, J.; Anstead, J.; Bell, J.; Lewis, J.
JURISDICTION	Florida
DECIDED	May 18, 2006
DOCKET	SC04-613
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State appealed the Third District Court of Appeal's decision declaring Florida's Medicaid anti-kickback statute unconstitutional as preempted by federal law. The Supreme Court of Florida exercised mandatory jurisdiction over the declaration of invalidity of a state statute.
STANDARD OF REVIEW	De novo review of a district court decision declaring a statute unconstitutional.
PRECEDENTIAL VALUE	Published Florida Supreme Court decision; precedential.
PARTIES	State of Florida v. Gabriel Harden, Edward Polsky, Maria Rodriguez, Bruce Eric Smith, Herbert Lee Goss, Flora Johnson, Elsa Cortorreal, Victor Rivera, Billy Madison, Von Shella Carter

TOPICS

- preemption
- supremacy clause
- medicare medicaid
- health law
- statutory interpretation

PRACTICE AREAS

health law

Medicaid fraud and abuse

constitutional law

federal preemption

QUESTIONS PRESENTED

1. Whether section 409.920(2)(e), Florida Statutes (2000), is impliedly preempted by the federal Medicaid anti-kickback statute and related safe-harbor regulations.
2. Whether the employee safe harbor under federal law protects commission-based or per-head payments made by an employer to bona fide employees for soliciting and transporting Medicaid patients for covered services.
3. Whether the Florida anti-kickback statute violates the First Amendment or is unconstitutionally vague as applied.

HOLDINGS

1. Section 409.920(2)(e), Florida Statutes (2000), is impliedly conflict-preempted because it criminalizes conduct that federal law specifically intended to protect and thereby presents an obstacle to accomplishment of the purposes and objectives of the federal Medicaid anti-kickback statute.
2. The alleged per-head payment arrangement involved protected employer-employee payments for the provision of covered items or services and was shielded from criminal prosecution under the federal anti-kickback statute, assuming the recipients were bona fide employees.
3. The court did not reach the appellees' First Amendment and vagueness challenges because its conclusion that the statute was preempted was dispositive.

KEY QUOTATIONS

“Accordingly, we agree with the Third District that the Florida anti-kickback statute is preempted because it presents an obstacle to the accomplishments of the purposes of the federal law.”

“For the reasons stated above, we agree with the Third District that section 409.920(2)(e), Florida Statutes (2000), is preempted by federal law and thus unconstitutional under the Supremacy Clause.”

FACTUAL BACKGROUND

The appellees were associated with Dental Express, entities providing dental services to Medicaid-eligible children. The State alleged that they participated in a pay-for-patients scheme under which individuals received per-head payments for soliciting and transporting Medicaid-eligible children to Dental Express for treatment. The payments were made by a Medicaid provider to persons alleged to be employees, and the court treated the arrangement as employer-employee payments for the provision of covered services.

PROCEDURAL HISTORY

The State charged the appellees with conspiracy, racketeering, and Medicaid fraud based on a pay-for-patients scheme involving per-head payments to individuals associated with Dental Express. The circuit court dismissed the information, concluding that the Florida anti-kickback provision and its mens rea requirement were

preempted by federal law and also finding First Amendment and vagueness defects. The Third District affirmed on implied conflict-preemption grounds, and the Supreme Court of Florida affirmed the Third District.

DISPOSITION

affirmed

CASES CITED

- State v. Harden, 873 So. 2d 352 (Fla. 3d DCA 2004)
- Fla. Dep't of Children & Families v. F.L., 880 So. 2d 602, 607 (Fla. 2004)
- Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311 (1981)
- Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992)
- Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 51 (1987)
- Hines v. Davidowitz, 312 U.S. 52, 70 (1941)
- Pharm. Research & Mfrs. of America v. Concannon, 249 F.3d 66, 75 (1st Cir. 2001), aff'd, 538 U.S. 644 (2003)
- Grant's Dairy-Me., LLC v. Comm'r of Me. Dep't of Agric., Food & Rural Res., 232 F.3d 8, 14-15, 18 (1st Cir. 2000)
- Wash. Dep't of Soc. & Health Servs. v. Bowen, 815 F.2d 549, 557 (9th Cir. 1987)
- Pharm. Research & Mfrs. of America v. Walsh, 538 U.S. 644, 666 (2003)
- United States v. Porter, 591 F.2d 1048 (5th Cir. 1979)
- United States v. Hancock, 604 F.2d 999 (7th Cir. 1979)
- United States v. Starks, 157 F.3d 833, 838-39 (11th Cir. 1998)
- Bryan v. United States, 524 U.S. 184, 193 (1998)
- United States v. Jain, 93 F.3d 436, 440-41 (8th Cir. 1996)
- Massachusetts v. Mylan Labs., 357 F. Supp. 2d 314, 325 (D. Mass. 2005)
- United States ex rel. Obert-Hong v. Advocate Health Care, 211 F. Supp. 2d 1045, 1050 (N.D. Ill. 2002)
- New Boston Gen. Hosp., Inc. v. Texas Workforce Comm'n, 47 S.W.3d 34, 36 (Tex. App. 2001)
- United States v. Polin, 194 F.3d 863, 864, 867 (7th Cir. 1999)
- Hanlester Network v. Shalala, 51 F.3d 1390, 1400 (9th Cir. 1995)
- United States v. Davis, 132 F.3d 1092, 1094 (5th Cir. 1998)
- United States v. Neufeld, 908 F. Supp. 491, 496-97 (S.D. Ohio 1995)
- United States v. McClatchey, 217 F.3d 823 (10th Cir. 2000)
- People v. Palma, 48 Cal. Rptr. 2d 334, 338 (Cal. Ct. App. 1995)
- Boman v. S.E. Med. Services Group, No. 9501957, 1998 WL 1182063, at *10 (Mass. Super. Ct. Jan. 7, 1998)

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