

In the
Supreme Court of the United States

FADI GEORGES GHANEM,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Thirteenth District of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Should state laws that criminalize the practice of medicine by imposing felony penalties on physicians—based on an unworkable legal framework that makes lawful compliance impossible—be considered unconstitutional under the Due Process Clause of the Fourteenth Amendment, particularly when state courts are divided on the constitutionality of such laws?

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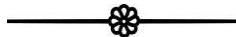
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Fadi Georges Ghanem respectfully requests the issuance of a writ of certiorari to review the judgment of Criminal Court of Appeals of Texas.



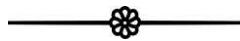
OPINIONS BELOW

The opinion of the Court of Criminal Appeals of Texas denying Dr. Ghanem's Petition for Discretionary Review is unpublished. A copy of the order accompanies this petition at App.26a. The opinion of the 13th Court of Appeals of Texas affirming the conviction is reported at *Ghanem v. State*, 689 S.W.3d 354 (Tex. App. 2024) (App.1a).



JURISDICTION

The Court of Criminal Appeals of Texas denied discretionary review on July 31, 2024. (App.43a). The Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).



STATUTORY PROVISIONS

Texas Occupations Code. 168.001

Definitions. In this chapter:

- (1) “Pain management clinic” means a publicly or privately owned facility for which a majority of patients are issued on a monthly basis a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone.
- (2) “Operator” means an owner, medical director, or physician affiliated or associated with the pain management clinic in any capacity. Each of these individuals is considered to be operating at the pain management clinic.

Texas Occupations Code - OCC § 165.152

Practicing Medicine in Violation of Subtitle

- (a) A person commits an offense if the person practices medicine in this state in violation of this subtitle.
- (b) Each day a violation continues constitutes a separate offense.
- (c) An offense under Subsection (a) is a felony of the third degree.
- (d) On final conviction of an offense under this section, a person forfeits all rights and privileges conferred by virtue of a license issued under this subtitle.



STATEMENT OF THE CASE

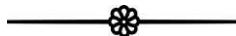
Dr. Fadi Ghanem, a board-certified family medicine physician in Conroe, Texas, was convicted under Texas Occupations Code §§ 168.001 and 165.152. These statutes mandate that a physician must register their practice as a “pain management clinic” if more than 50% of the prescriptions they write in any given month are for controlled substances. If the physician fails to register, they face felony charges.

Dr. Ghanem’s family practice included treating a variety of medical conditions, including chronic pain, diabetes, hypertension, and cardiovascular disease. While controlled substances were part of his comprehensive treatment plans, the primary focus of his practice was not pain management. Nonetheless, over the course of one month, more than 50% of the prescriptions he issued were for controlled substances, triggering the statutory threshold.

Dr. Ghanem did not intentionally or knowingly violate the law. The prescription threshold fluctuated based on patient needs, emergencies, and unforeseen circumstances. Moreover, because pain management patients often suffer from chronic conditions requiring ongoing treatment, they must be seen regularly, month after month, while patients with more transitory conditions recover and move on. This dynamic leads to an accumulation of chronic pain patients over time, increasing the likelihood that physicians like Dr. Ghanem will exceed the 50% threshold.

The statutory scheme, as interpreted by the Texas Medical Board (“TMB”), requires immediate

registration as a pain management clinic once a physician crosses this threshold. However, the registration process takes months to complete, and physicians are prohibited from registering preemptively. This makes compliance impossible once the threshold is crossed, as the law leaves no room for lawful adjustment. As a result, well-intentioned physicians are subjected to felony liability for circumstances beyond their control. This structural flaw in the statute leaves no feasible path for compliance, violating due process protections under the U.S. Constitution.



REASONS FOR GRANTING THE PETITION

1. The Statute Imposes Impossible Standards on Physicians, Making Lawful Compliance Unachievable.

Texas's statute creates an unconstitutional burden on physicians by requiring immediate registration as a pain management clinic once a physician crosses the 50% prescription threshold. However, the registration process itself takes months, and physicians are prohibited from pre-registering. This renders compliance impossible because, by the time the physician realizes they have exceeded the threshold, it is too late to avoid felony liability.

This impossibility is further compounded by the nature of chronic pain management. Chronic pain patients require long-term, month-to-month care, causing a natural accumulation of such patients and a corresponding increase in the number of controlled prescriptions written over time. Physicians, responding

to their patients' legitimate medical needs, face fluctuating prescription rates, making it impossible to predict when they might exceed the statutory threshold. The statute does not account for these realities, leaving physicians exposed to criminal liability despite their good faith efforts to comply.

This is not simply a matter of legislative oversight; the statute, as applied, creates an unconstitutional trap. By failing to provide any workable standard for compliance, the law violates the due process clause of the Fourteenth Amendment. The law's strict liability framework ensures that physicians who exceed the threshold are penalized, even though compliance was never attainable. This creates a legal defect, not just a bad policy, and thus requires this Court's intervention to protect the constitutional rights of medical professionals.

2. The Statute is Unconstitutionally Vague, Violating the Due Process Clause of the Fourteenth Amendment and Failing to Include a Scienter Requirement

Texas Occupations Code § 168.001 exposes physicians to felony liability under Texas Occupations Code § 165.152 based solely on a numerical threshold of controlled substance prescriptions, without regard to intent, knowledge, or good faith. This failure to include a scienter requirement directly conflicts with this Court's rulings in *Xiulu Ruan v. United States*, 142 S.Ct. 2370 (2022), and *Elonis v. United States*, 575 U.S. 723 (2015), which reaffirm the principle that criminal statutes generally require proof of intent. As the Court stated in *Elonis*, "wrongdoing must be conscious to be criminal" (quoting *Morissette v. United States*, 342 U.S. 246, 252 (1952)).

The Texas statute does not distinguish between physicians who knowingly engage in illegal conduct and those who are lawfully treating patients with legitimate medical needs. This lack of scienter leads to arbitrary and unjust criminal liability, violating the due process requirement that laws provide clear standards and fair notice of what conduct is prohibited. By failing to require that physicians act knowingly or intentionally in exceeding the prescription threshold, the statute invites arbitrary enforcement and undermines fundamental protections against unjust criminalization.

Moreover, the vague language of the exemptions under § 168.002(7) compounds this constitutional violation. Physicians are left uncertain as to whether they qualify for exemptions or are subject to felony penalties, further violating their due process rights.

3. There is Discord Among State Courts Regarding the Constitutionality of Similar Laws, Requiring Uniform Guidance from this Court.

State courts are divided on how to apply statutes that regulate physicians' prescribing practices. For instance, a Florida trial court dismissed criminal charges against two physicians for operating a pain clinic without a license, finding that the state's definition of a pain clinic was unconstitutionally vague and "fails to give a person of ordinary intelligence fair notice of what constitutes forbidden conduct." On consolidated appeal, the Florida District Court of Appeals reversed the trial court's order and remanded the case for further proceedings, but did not rule on the merits of the constitutional question. *State v. Crumbley*, 247 So.3d 666 (Fla. Dist. Ct. App. 2018).

In addition to Texas and Florida, eight other states have statutes regulating pain clinics, yet these statutes differ significantly in their definitions and regulatory frameworks. According to a comprehensive review published in *Substance Abuse Treatment, Prevention, and Policy*¹, the definitions of pain clinics in state laws often focus narrowly on the use of narcotics or single-modality treatment. This regulatory focus is starkly different from definitions in medical literature, where pain clinics are characterized by multidisciplinary, outcome-focused care.

This disconnect between state laws and peer-reviewed medical standards not only leads to varying legal interpretations but also makes compliance unworkable for physicians. Physicians in states like Texas, where the law imposes strict liability based on the volume of narcotic prescriptions, are caught in a trap where legitimate medical practice is criminalized. The lack of consistent statutory language between states, and the divergence from medical literature, creates profound uncertainty for physicians nationwide, undermining the fundamental fairness of these criminal statutes.

4. The Case Involves Nationally Important Issues that Affect Medical Professionals Across the United States

This case presents critical constitutional questions with far-reaching implications for medical professionals

¹ Andraka-Christou, B., Rager, J.B., Brown-Podgorski, B. et al., *Pain Clinic Definitions in the Medical Literature and U.S. State Laws: an Integrative Systematic Review and Comparison*, SUBST ABUSE TREAT PREV POLICY 13, 17 (2018). <https://doi.org/10.1186/s13011-018-0153-6>

nationwide. Physicians across the country face the risk of criminal prosecution under statutes like Texas Occupations Code §§ 168.001 and 168.002, which regulate controlled substance prescriptions without providing reasonable mechanisms for compliance or requiring proof of intent.

The chilling effect of these laws is profound. Physicians are deterred from prescribing necessary medications for fear of crossing arbitrary thresholds and facing felony charges. Patients with very real chronic pain, who depend on controlled medications to enable the activities of daily living, are made to feel like criminals. This has serious public health consequences, as patients with legitimate medical needs may not receive the care they require.

The Court's intervention is necessary to protect the due process rights of medical professionals and to ensure that state laws regulating medical practice are clear, reasonable, and consistent with constitutional standards. The broader implications of this case make it a matter of national importance, warranting this Court's review.



CONCLUSION

For the reasons stated above, this Court should issue a writ of certiorari.

Respectfully submitted,

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