



Jennifer Orr Mitchell

Partner
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Jen has over 25 years of experience in representing health care industry clients and focuses her practice on complex health care litigation and class actions, cybersecurity, data breach incident response, investigations and regulatory compliance. Jen is the firm's privacy officer and leads the firm's health care privacy and cybersecurity practice and initiatives.

She has significant experience leading the defense of health care entities in data breach class actions, False Claims Act (FCA) lawsuits and investigations, ERISA class actions and other litigation and enforcement actions involving claims against health care providers, health plans, and others in the health care and life sciences industries. Her litigation practice involves handling lawsuits in federal and state courts nationwide.

In her cybersecurity practice, she works with clients in all industries to respond to incidents when they occur and minimize the risk of privacy and data security breaches. She guides clients through all aspects of privacy and security compliance, incident response, governance, audits/investigations, enforcement actions, breach analyses, training, and strategic planning. She has a thorough understanding of federal and state privacy and data security laws and has served as a health care privacy law expert witness. Jen is a frequent presenter on cybersecurity and privacy topics.

Within the constantly evolving health care legal landscape, she provides guidance to clients across the health care industry about how to comply with the HIPAA regulations, federal and state anti-kickback laws, the Stark law, Medicare/Medicaid rules and regulations, the Affordable Care Act, FDA and ADA regulations, telemedicine, and other laws, rules and regulations impacting their businesses.

Jen also has an active investigations practice. She conducts health care due diligence, compliance audits and investigations for clients nationwide, and represents them when they are under investigation by federal and state authorities for data breaches, health care fraud and abuse, and other regulatory non-compliance.

Services

- Health Care Industry
- Artificial Intelligence, Cybersecurity & Data Privacy

- Litigation
- Class Action
- Data Breach and Incident Response
- Government Investigations
- False Claims Act
- White Collar Defense
- ERISA Litigation & Administrative Proceedings
- Life Sciences Industry
- Life Sciences Corporate Compliance & Ethics
- Life Sciences FCA Defense
- Life Sciences Internal Investigations
- Life Sciences Litigation
- Life Sciences Privacy & Cybersecurity
- Life Sciences Regulatory Counseling & Compliance
- Tort

Education

- University of Akron School of Law (J.D., *cum laude*, 1998)
- Miami University (B.A., 1995)

Bar Admissions

- Ohio
- Kentucky

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Southern District of Ohio
- U.S. District Court for the Northern District of Ohio
- U.S. District Court for the Eastern District of Kentucky
- U.S. District Court for the Eastern District of Wisconsin

Affiliations/Memberships

- Xavier University, Cincinnati, Ohio

- Adjunct professor of Health Law & Policy
- University of Cincinnati
 - Former adjunct professor in Health Law & Policy in the Graduate Program in Health Services Administration at the College of Allied Health Sciences
- American Bar Association
 - Health Law Section
 - Vice chair, eHealth Privacy & Security
- Association of Defense Trial Attorneys
 - Ohio State chair
 - Membership vice chair
 - Chair of We Prefer to Refer (WPTR) Committee
- Cincinnati Bar Association, Health Law Committee vice chair
- LifeCenter Organ Donor Network, Board of Directors
- American Heart Association, Greater Cincinnati Heart Ball Executive Leadership Team
- YWCA Rising Stars Alumnae Committee
- United Way WINGS and Roebling Society
- American Health Lawyers Association
- Defense Research Institute
- Society of Ohio Healthcare Attorneys
- The University of Akron School of Law, Legal Writing former adjunct professor
- Cincinnati USA Regional Chamber
 - Leadership Cincinnati Class 40 (2016 - 2017)
 - WE Lead Class 9 (2014 - 2015)
- Board of Children, Inc., Board of Directors

Distinctions

- Potter Stewart American Inn of Court, barrister
- Forty Under 40, from the *Cincinnati Business Courier* (2007)
- YWCA Women of Achievement Rising Star (2007)
- YWCA Rising Stars Board Leadership Program (2008)
- *Best Lawyers*®

- "Lawyer of the Year" in Cincinnati for Litigation - Health Care (2022)
- Health Care Law, Litigation - Health Care (2021-2024)
- Go-To Thought Leadership Award from National Law Review (2018)

Experience

Representation in Cyber Incident Response and Remediation

Representation of private and governmental entities in all aspects of cyber incident response, including working with federal and state authorities, conducting forensic investigations, guiding mitigation and remediation efforts, ensuring compliance with federal and state notification and other regulatory obligations and enforcement actions.

Representation of Health Care Clients in OCR/HIPAA Enforcement Actions and Investigations

Representation of numerous health care clients in OCR investigations relating to alleged HIPAA violations. The vast majority of these investigations have resulted in OCR deciding either: 1) no breach or violation occurred or 2) to close its investigation after the client's response and documentation were provided.

Defense of Data Breach Class Actions

Representation of health care and other industry clients in data breach class action litigation in both federal and state courts, drawing upon extensive expertise in litigation, data privacy and security laws and regulations, and data breach incident response and remediation, achieving dismissal of claims, successful narrowing of classes and prevailing on class certification, and favorable resolutions for clients up to and including outright dismissal.

Health Care Services Cleared of False Claims Allegations

We represented a health care services business that provided billing services to physicians groups and emergency rooms after a false claims act (FCA) suit was filed alleging the company had improperly coded and overcharged government health care services, including Medicare and Medicaid, by millions of dollars. We did our own analysis of the company's records while working closely with the U.S. attorney's office as well as the U.S. Department of Health and Human Services and found an explanation for the company's coding and charges. As a result of our investigation no criminal charges were filed and the civil suit was not pursued.

Defense of a Supplier Through a Health Care Fraud Investigation

Defended a DME supplier in an extensive federal criminal/civil health care fraud investigation involving the alleged submission of false claims (FCA) to the federal and state health care programs by upcoding, improperly using billing modifiers, and other allegedly fraudulent billing practices. The matter was resolved with civil payback and client avoided criminal penalties.

Defense of Academic Medical Center in False Claims Act (FCA) Lawsuit

Representation of an academic medical center in a False Claims Act qui tam lawsuit alleging improper billing practices. The client was operating under a CIA at the time of the representation. The matter was resolved favorably for our client after extensive discovery, with no extension of the length of the CIA and no press release issued by the federal government.

False Claims Allegations Against Client Dismissed

Representation of an academic medical center in a False Claims Act (FCA) lawsuit involving allegations that the hospital lacked documentation to support its cost reports for GME expenses. The government declined intervention and the FCA claims were ultimately dismissed with prejudice without any payment.

Defended a Large Academic Medical Center Physician Practice in False Claims Act (FCA) Lawsuit

Representation of a large academic medical center physician practice in a False Claims Act lawsuit alleging improper referral arrangements among area hospitals and our physician practice client. The matter resolved for nuisance value with no CIA or other penalty imposed on our client.

Defense of National Physician Practice in False Claims Act (FCA) Lawsuit

Representation of a national physician practice in a False Claims Act lawsuit involving emergency department billing practices. The government declined intervention and the relator quickly abandoned prosecution of the case.

Represented Home Health Agency During Health Care Fraud Investigation

Representation of a Kentucky home health agency in a dual investigation by the Eastern District of Kentucky U.S. Attorney's Office and Kentucky Medicaid into alleged improper mail order supply business, operating without a Certificate of Need and other claims. The investigation was closed without either agency taking any adverse action against the client.

Conducts Internal Investigations Relating to Potential Health Care Fraud and Business Conduct for Clients

Conducts internal investigations relating to potential health care fraud and other business conduct for clients across the health care spectrum, including a large health insurer, national long-term care and other providers, hospitals, physician practices, ambulance providers, therapy services providers, community mental health providers, DME suppliers, pharmaceutical and medical device manufacturers, laboratories, and others.

National Health Care Litigation Counsel for Large Multi-State Provider

Serve as national litigation counsel to a large, multi-state provider, overseeing litigation and serving as lead counsel nationwide. By taking consistent positions on discovery and other issues in every case, clients are better positioned to avoid litigation potholes and arrive at more favorable outcomes.

Represents Clients with Security Breaches

Representation of clients over 100 security breaches, including clients in the health care, financial and other industries, including state data breach laws.

Dispute Over Physician Compensation

We represented a medical practice in a case in Northern Kentucky in which one of the practice's former physicians was contending that he was owed several hundreds of thousands of dollars of additional compensation associated with his departure from the practice. The case culminated in a bench trial. At the conclusion of the bench trial proceedings, the judge agreed with our arguments associated with the interpretation of the pertinent contracts, and dismissed all of the Plaintiff's claims.

Representation of Client in State Medicaid Fraud Investigation

Representation of an ambulance supplier in state Medicaid audit/investigation into allegedly medically unnecessary transports and other claims. Client ultimately received a minimal payback request.

Representation of Large National Health Insurer in ERISA Litigation

Handled all aspects of health plan denial of benefits issues in numerous lawsuits and administrative claims, in particular analyzing whether plans were ERISA or non-ERISA plans, whether claims were governed by federal or state law, whether administrative process was followed, and defended against claims brought by participants for denial of benefits, breach of fiduciary duty, and other ERISA-related and/or state law claims.

Successfully Defended Client's Insurance Plan

Successfully defended a church plan by obtaining a voluntary dismissal of the church plan from litigation claiming breach of fiduciary duty under ERISA, state breach of contract, fraud and bad faith failure to pay accidental death benefits.

Representation of National Insurer/Third-Party Administrator in ERISA Litigation

Successful handling and resolution of short-term and long-term disability denial of benefits claims under ERISA. Representative cases:

- ***Storer v. Prudential Insurance Co. of America, et al.***
 - Early resolution of case after successful mediation.
- ***Wheeler v. Prudential Insurance Co. of America, et al.***
 - Obtained decision in favor of long-term disability benefits plan leading to resolution on appeal.

Representation of Large Multi-National Company in ERISA Litigation

Successful handling of multiple ERISA denial of benefits and breach of fiduciary duty lawsuits involving all aspects of ERISA litigation, plan drafting, standard of review, coverage and jurisdictional analyses for large employer-sponsored plans in defense of claims for denial of retirement, health, disability and other employee benefits under the plans. Representative cases:

- ***Bybee v. Procter & Gamble Co., et al***
 - Obtained court ruling in favor of employer-sponsored health plan after evidentiary hearing on the merits in ERISA denial of benefits case.
- ***Mechley v. Procter & Gamble Co. Disability Benefit Plan, et al.***
 - Decision in favor of disability benefit plan affirmed by Sixth Circuit on appeal of ERISA denial of disability benefits claim.
- ***Halcomb v. The Procter & Gamble Disability Benefits Plan, et al.***
 - Reached successful early resolution of ERISA denial of disability benefits claim.

Publications

January 8, 2025

New Year, New HIPAA Security Rule?

November 27, 2024

Deadline Approaching for Compliance with New HIPAA Reproductive Health Care Privacy Rule

October 12, 2023

Blackbaud Reaches \$49.5 Million Multistate Settlement Over Data Breach

September 20, 2023

OCR Investigation Results in \$1.3 Million Settlement, Updated Risk Assessment Tool Published

June 30, 2023

Supreme Court Backs DOJ's FCA Dismissal Power; Dissent Questions Relator's Role in Declined Cases

June 2, 2023

The Supreme Court Clarifies the Meaning of "Knowingly" Under the False Claims Act

May 25, 2023

Settlement Reached After 200,000 Affected by HIPAA Breach

February 13, 2023

The FTC Announces First Health Breach Notification Rule Enforcement Action

April 14, 2022

OCR Highlights HIPAA Enforcement Actions under Right of Access Initiative

November 5, 2021

CMS Requires COVID-19 Vaccine for Health Care Workers at all Facilities Participating in Medicare and Medicaid

November 2, 2021

OCR Issues Clarifying Guidance on HIPAA, COVID-19 Vaccinations, and the Workplace

May 6, 2021

HHS Advises on Fraudulent Postcard Disguised as Official OCR Communication

March 16, 2021

Comment Period Extended for Extensive Changes to HIPAA Privacy Rule

December 21, 2020

CMS Clarifies Rules for Physician Group Practice Profit Distribution

December 7, 2020

New Cybersecurity Donation Safe Harbor and Exception – AKS and Stark Final Rule

November 24, 2020

Stark and Anti-Kickback Final Rules Aim to Facilitate Transition to Value-Based Care and Ease Administrative Burdens

April 10, 2020

\$30 Billion Under CARES Act Comes With Strings Attached – What Do You Need To Know?

March 23, 2020

The Impact of Ohio Department of Health Stay at Home Order on Ohio Health Care Workers

March 17, 2020

HHS Waives Certain EMTALA Requirements, Medicare Conditions of Participation, and HIPAA Sanctions during the COVID-19 Pandemic

March 16, 2020

Congressional Health Care Law Response to the COVID-19 Pandemic

March 10, 2020

Helping Human Resources Managers Prepare for Coronavirus Pandemic

January 29, 2020

HHS Advises Health Care Entities Immediately Patch Operating System Vulnerabilities
HealthBEAT

January 29, 2020

Federal Court Strikes Down HIPAA Fee Limitations for Third-Party Medical Records Requests
HealthBEAT

October 7, 2019

Dental Practice Pays \$10,000 in HIPAA Settlements for Disclosing Personal Health Information on Social Media
HealthBEAT

June 4, 2019

HHS Proposes New Rule to Revise Section 1557 and Repeal Notice Requirements

June 4, 2019

Two New Recent Developments Impacting False Claims Act Litigation and Investigations
Dinsmore on FCA

April 8, 2019

OCR Publishes Recommendations to Prepare for Cybersecurity Threats

April 3, 2019

340B Drug Ceiling Prices Now Available

February 21, 2019

Ohio Enacts New Cybersecurity Requirements for Insurers

January 31, 2019

HHS and HSSC Release New Cybersecurity Practices for the Health Care Industry

January 30, 2019

OCR Issues Request for Information on Potential Changes to HIPAA Rules

January 8, 2019

Federal District Court Rules HHS Cuts to 340B Reimbursement 'Exceeded' Authority

January 7, 2019

New Ohio Standard Authorization Forms for Use and Disclosure of Protected Health Information

December 14, 2018

FDA Releases Medical Device De Novo Pathway Proposed Rule

November 15, 2018

FDA Proposes Changes to Clinical Trial Informed Consent Rules

November 7, 2018

Proposed Rule Would Require Ohio Providers to Accept Standard Authorization Form for Use and Disclosure of Protected Health Information

October 23, 2018

Ohio Medical Professionals Now Must Report Suspected Elder Abuse

October 1, 2018

Three Boston Hospitals Pay Close to \$1 Million in HIPAA Settlements for Disclosing Personal Health Information to Film Crews

September 20, 2018

Ohio Enacts First of its Kind Data Protection Act

September 20, 2018

OIG Recommends FDA Use Pre-submission Program to Evaluate Cybersecurity Risks

September 18, 2018

CMS Proposes to Reduce Medicare CoPs and CfCs Burdens

September 18, 2018

Federal Judge Vacates Medicare Advantage Overpayment Rule

August 28, 2018

OIG Considering Changes to Anti-kickback Statute and CMP Law

August 23, 2018

Attorney General Sessions Announces First Ever Controlled Substances Act Civil Injunctions

July 27, 2018

CMS Extends Medicare Part B 340B Drug Reimbursement Policies

July 2, 2018

Attorney General Announces Ninth Annual Fraud Takedown Targeting Opioid Epidemic

February 20, 2018

Enhanced Nurse Licensure Compact Implemented in 29 States

February 14, 2018

Two DOJ Memos to Impact Health Care False Claims Act Litigation

February 2, 2018

HHS announces \$3.5 million HIPAA settlement with Fresenius resolving five breach reports

February 2, 2018

New OCR Checklist Outlines How Health Care Facilities Can Fight Cyber Extortion