



## Jennifer Orr Mitchell

Partner  
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Jen focuses her practice on complex health care litigation, investigations, regulatory compliance, and cybersecurity. Jen is a chair of Dinsmore's Health Care Industry and Government Relations practice groups and also leads the firm's health care privacy and cybersecurity practice and initiatives.

She has significant experience leading the defense of health care entities in False Claims Act (FCA) and other litigation involving claims of health care program fraud and abuse. Her litigation practice involves handling health care lawsuits in federal and state courts nationwide, including serving as national litigation counsel for a health care provider with locations across the country. She is experienced in ERISA and other benefits and coverage litigation, as well as business practices, fiduciary, and class action litigation.

In her cybersecurity practice, she works with clients in all industries to minimize the risk of privacy and data security breaches and assists with all aspects of privacy and security compliance, 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 served as a health care privacy 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 federal and state anti-kickback laws, the Stark law, the HIPAA regulations, Medicare/Medicaid rules and regulations, the Affordable Care Act, FDA and ADA regulations, telemedicine, and other laws, rules and regulations impacting their businesses.

Drawing upon her health care litigation and compliance background, 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 health care fraud and abuse, HIPAA breaches, and other regulatory non-compliance.

## **Services**

- Litigation
- White Collar Crime
- Cybersecurity & Data Privacy
- Health Care Industry
- False Claims Act
- Government Relations
- ERISA Litigation & Administrative Proceedings
- Pharmaceutical & Medical Devices
- Government Investigations

## **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*® for Health Care Law
- Go-To Thought Leadership Award from National Law Review (2018)

## Experience

### 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 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 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 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 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 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 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, 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 Health Care Clients in Alleged HIPAA Violation 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.

### **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

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**

October 4, 2017

**Ohio Supreme Court broadens Ohio's apology statute protections for health care providers who apologize to patients**

October 2, 2017

**Escobar's Effect on False Claims Act Qui Tam Actions**

Law Journal Newsletters

September 15, 2017

**The Equifax Data Breach: What You Need to Know and What You Can Do to Protect Your Personal Information**

July 14, 2017

**Attorney General Announces Eighth Annual Fraud Takedown Targeting Opioid Epidemic**

June 5, 2017

**Supreme Court Holds Church-Affiliated Hospital Pension Plans Qualify as Church Plans**

October 14, 2016

**Landmark Rule Transforms Medicare Physician Reimbursement: What to Know**

August 2, 2016

**E.U.-U.S. Privacy Shield: A new, valuable tool for cross-border data transfers**

June 14, 2016

**Cybersecurity Alert: Ransomware Attacks on the Rise**

April 22, 2016

**FTC Creates Interactive Tool for Developers of Mobile Health Applications**

March 23, 2016

**OCR's Highly Anticipated Phase 2 HIPAA Audits Are Underway**

March 21, 2016

**Sixth Circuit FCA Ruling on Speculative Damages May Have Broader Implications for Health Care Providers**

February 5, 2016

**Administrative Law Judge Upholds Rare \$239,800 HIPAA Civil Monetary Penalty Against Home Health Provider**

June 17, 2015



**"Cyber Security Incidents and Data Breaches: Is Your Law Firm Protected?," Kentucky Bar Association, Bench and Bar Magazine**

March 23, 2015

**Ohio Department of Medicaid Issues Notices in Error to Ohio Providers**

February 5, 2015

**Anthem Cyber Attack: Another Warning to Health Care Industry**

January 5, 2015

**A Lesson to be Learned: Electronic Data Breaches Surge in 2014**

December 22, 2014

**New Cybersecurity Laws Protect Government Agencies from Cyber Attacks**

December 12, 2014

**FDA Issues Guidance on "Patient Counseling Information"**

October 9, 2014

**CMS to Modernize Home Health Regulations**

October 3, 2014

**OIG Offers Greater Protections for Health Care Providers in New Proposed Rule**

June 24, 2014

**HHS Announces \$800,000 HIPAA Settlement in Medical Records "Dumping" Case**

March 31, 2014

**Government Releases New Tool to Assist with HIPAA Security Rule Risk Assessments**

December 20, 2013

**Is Your Photocopier HIPAA Compliant?**

Health Lawyers Weekly

August 16, 2013

**Health Plan Fined for HIPAA Breach Relating to Information Stored on Photocopiers**

February 6, 2013

**CMS Shines Light on Financial Relationships with Final Physician Payment Sunshine Act Rule**

January 18, 2013

**HIPAA Final Omnibus Rule Brings "Sweeping Change" to Health Care Industry**