

Jenner & Block Secures Victory in Seventh Circuit Anti-Kickback Statute Appeal

News

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In an important decision, the US Court of Appeals for the Seventh Circuit took the rare step in *United States v. Sorensen* of overturning a defendant's conviction under the Anti-Kickback Statute, establishing important new boundaries for the statute's application to healthcare advertising and marketing. This case is the Seventh Circuit's first comprehensive examination of how the statute applies to advertising and marketing arrangements in the healthcare sector.

Co-Chair of the firm's Appellate and Supreme Court Practice Annie Kastanek and Stephen Chahn Lee of the Law Office of Stephen Chahn Lee represented Mr. Sorensen in challenging his conviction on appeal. Mr. Sorensen was found guilty of violating the federal Anti-Kickback Statute in connection with his ownership of SyMed Inc. The appellate court reversed his conviction, ruling that payments for advertising and marketing services for medical equipment do not violate the Anti-Kickback Statute when physicians maintain independent decision-making authority over patient care.

Annie and Stephen successfully persuaded the Court to adopt a narrower and more precise interpretation of the law that prevents prosecutorial overreach while still preserving the statute's core purpose.

The court drew a critical distinction between two types of payments: illegal kickbacks to those who can influence healthcare decisions versus legitimate compensation for advertising services. Judge Hamilton, writing for the unanimous panel, noted that while the statute can apply to non-physicians, it requires evidence that the payee "leverages fluid, informal power and influence over healthcare decisions."

The Seventh Circuit's decision concludes this hard-fought appeal and establishes crucial guardrails around prosecutorial discretion in Anti-Kickback Statute cases, finding that percentage-based compensation structures are not inherently unlawful under the statute.

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