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Swing and a Miss: The Government Strikes Out in Pharmacy Executive Kickback Trial

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Last week, the government submitted its decision to the federal court not to retry partially-acquitted pharmacy executive, Chad Beene, for conspiracy and illegal kickback allegations. At the end of last year, a New Jersey jury partially acquitted Mr. Beene on charges related to an alleged $34 million illegal kickback scheme. At trial, federal prosecutors alleged that Mr. Beene and his colleagues crafted an illegal scheme through which they paid several marketing companies illegal kickbacks for securing prescriptions of “medically unnecessary” and “exorbitantly priced” compounded medications. While three of the indicted alleged co-conspirators pleaded guilty, Mr. Beene took the case to trial and was found not guilty on six counts. The jury was unable to reach a verdict on nine additional counts. These remaining counts left the door open for prosecutors to retry the case against Mr. Beene in an attempt to secure a conviction.

A federal grand jury indicted Mr. Beene and his alleged co-conspirators in July of 2020 for allegedly using their positions as pharmacy executives at Main Avenue Pharmacy to identify the most expensive medications, such as compounded scar creams, pain creams, migraine medication, and vitamins, and create pre-written prescription pads to encourage doctors to write prescriptions that would result in the highest pharmacy reimbursement, even where the medications were not medically necessary. The defendants then allegedly disbursed the prescription pads nation-wide through their contacts with marketing companies. As part of the scheme, the marketers would pay telehealth companies and healthcare providers to authorize the prescriptions, which were then sent back to the conspirators’ pharmacy and filled. The defendants would then submit requests for reimbursement from patient’s private health insurance, Tricare, and Medicare. After receiving their reimbursements, the defendants allegedly paid kickbacks to the marketers for the prescriptions received.

Federal prosecutors argued that the signed contracts with the marketers laid out the illicit kickback arrangement with the pharmacy. In total, the defendants, along with Main Avenue Pharmacy, were alleged to have received almost $34 million in reimbursements.

Two of the defendants, Jeffrey Andrews, the former pharmacy Chief Financial Officer, and Adam Brosius, the former pharmacy Director of Business Development and President, pleaded guilty to charges of conspiracy earlier this year. The remaining defendant Robert Schneiderman had previously pled guilty in 2022 to conspiracy to commit health care fraud and conspiracy to violate the Anti-Kickback Statute. Sentencing is scheduled for June 2025.

Mr. Beene did not agree to a plea deal and proceeded to trial where he argued that there was insufficient evidence of an illegal conspiracy and that he acted in “good faith”, or, in other words, that in his honest opinion and belief his conduct was entirely legal. Mr. Beene acknowledged that he served as the National Sales Manager of the Main Avenue Pharmacy, where he used his skill and knowledge of graphic software to clean up pre-prepared prescription pads and developed marketing plans, but showed that he had no previous health care work experience. Based on his limited health care training and understanding, Mr. Beene claimed that he lacked the understanding that certain business practices, such as commission-based payments to marketers or insufficient oversight of prescription authorizations, could be considered unlawful. Witnesses against Mr. Beene included his alleged co-conspirators Brosius and Schneiderman, others who worked at the pharmacy, and pharmacy patients.

The trial record indicates that the jury intently reviewed the evidence and jury instructions, sending notes to the judge during deliberations asking for specific pieces of evidence or copies of relevant statutes. In their verdict, the jury acquitted Mr. Beene of all counts related to the allegations that he caused the pharmacy to submit allegedly fraudulent claims to Medicare and other health care plans. However, after five days of deliberations, the jury could not come to a conclusion on the counts of conspiracy to commit health care fraud or to violate the Anti-Kickback Statute and other alleged payments of illegal kickbacks. The government’s conspiracy theories rested on Mr. Beene entering into an agreement with others to commit the crimes. After the verdict was issued, a juror reached out to defense counsel offering to speak regarding the verdict offering to answer any questions about the case and stating “ . . . I want you to know your team did a fantastic job at trial . . . I wanted to ensure I exhausted all options in securing a Not Guilty verdict on all counts. We were so close . . . I am unsure of the chances for a retrial, but the government's case is weak.”

Mr. Beene’s acquittal is a reminder that the government does not win every case it brings to trial, especially where the regulations are complex and intent is not easily proven. In heavily regulated industries like health care, it can be difficult for industry participants to parse through convoluted regulatory framework. For jurors without any health care industry experience, it can be even more difficult to understand or focus on the non-criminal intent behind convoluted business practices. While the Department of Justice continues to aggressively pursue health care fraud cases, Mr. Beene’s acquittal shows that proving illicit intent in the midst of the increasing complexities of regulatory compliance is difficult and a conviction is not a foregone conclusion simply because the government alleges that individuals “knew” that their conduct was improper. The government must prove knowledge beyond a reasonable doubt.

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