



BENJAMIN N. GLUCK

PRINCIPAL

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EDUCATION

Stanford Law School, J.D., *with distinction*, Executive Editor, Stanford Law Review, 1998

I.S.T.R.E., Brunoy, France, M.A., 1991

I.S.T.R.E., Brunoy, France, B.A., 1989

OVERVIEW

Mr. Gluck is regularly recognized by leading legal publications as one of the top white collar criminal defense attorneys in the nation. *Chambers and Partners USA*, one of the primary arbiters of achievement in the legal profession, has referred to him as "one of the smartest people doing criminal defense work" and "just unstoppable; a great strategist and team player who thinks outside the box."

Mr. Gluck devotes a significant portion of his practice to representing health care providers in state and federal criminal matters. He regularly leads defense teams in multi-defendant health care fraud cases involving hundreds of millions of dollars in alleged fraud. He has deep experience in cases relating to compound pharmacies, telemedicine, toxicology testing, co-pay waivers, alleged kickbacks and improper marketing, grey-market medications and devices, coding, physician-owned distributorships, over-prescribing, medical necessity, unlicensed practice, and many other areas. He has developed effective methods to challenge improper searches, seizures, and investigative tactics related to health care providers and has obtained numerous dismissals of charges based on prosecutors' misapplication of healthcare standards and regulations.

Mr. Gluck also practices in the area of complex civil litigation, including civil claims arising from allegations of health care fraud. He handles matters in state and federal courts and in arbitration.

Mr. Gluck has taught white collar crime in several local law schools. He is currently writing a book about conspiracy law.

EXPERIENCE

Health Care-Related Matters

Achieved a complete dismissal of all counts of a 20 count criminal complaint against a doctor that the state has described as “Public Enemy No. One” of the Medi-Cal system. The complaint alleged millions of dollars in fraud but following a lengthy preliminary hearing, the Court found the state failed to establish probable cause and dismissed the entire complaint.

Won dismissal of the 21 most serious charges in a high profile grand jury indictment against two physicians, a chiropractor, and eight employees and associates of a workers compensation healthcare provider. Each of the 21 now-dismissed counts carried a potential life sentence. Prosecutors alleged the defendants “permanently disfigured” 21 workers compensation patients in the course of committing insurance fraud by allowing a Physician’s Assistant to conduct all or portions of surgical procedures. The Los Angeles County District Attorney’s Office has described this case as the largest health care fraud in California history.

Successfully obtained a pre-trial dismissal of murder charges against the founder of a publicly traded company that runs substance abuse facilities. The case, which was prominently featured in local and national media, stemmed from a resident’s death at one of the company’s facilities in the state, and marked the first time in California history that murder charges were brought on such a theory of corporate liability.

Obtained dismissal of 89 out of 90 counts, including counts of insurance fraud and involuntary manslaughter, on behalf of client accused of allegedly masterminding a \$100 million medical workers’ compensation fraud scheme. Mr. Gluck argued that the indictment, which had previously been amended, violated their client’s constitutional and statutory rights based on the grounds that it’s illegal to add additional counts to an amended indictment without returning to the grand jury. Furthermore, the grand jury never found probable cause, a requirement for a criminal defendant to be prosecuted for a felony. After obtaining an order from the California Supreme Court requiring the review of the Orange County District Attorney’s grand jury practices, the Court of Appeal granted Mr. Gluck’s writ petition, ultimately resulting in the Court dismissing all but one count.

Reached a settlement with the SEC in our representation of the co-president and COO of the second largest publicly traded health care company. Mr. Gluck defended the executive in allegations of \$2 billion in False Claims Act violations, and securities and health care fraud. In addition, he defended the executive in the DOJ criminal investigation, which resulted in no charge, and achieved a favorable civil settlement with the SEC.

Advised and represented a major cancer hospital in an internal investigation triggered by billing practices of a doctor.

Preserved an oncologist’s practice at trial on claims of unapproved medication use. The government declined to offer a reasonable settlement and demanded our client receive eight years in prison. Mr. Gluck took the case to trial and achieved an outcome of straight probation with no cessation of practice. The doctor’s story is in development for a Hollywood movie.

Represent numerous clients in false claims actions involving compound medications, durable medical equipment, in-home health assessments, psychiatric referrals, cardiac testing, and many other health care related areas.

Represented the country’s largest Internet pharmacy service provider. The government announced its intent to charge our client with 83 felony drug trafficking counts, which carried decades of prison time. Mr. Gluck made several persuasive presentations showing that the government’s theory was legally defective. The government dropped the

threat and the matter was resolved for a single strict-liability misdemeanor and some community service. Afterwards, the National Federation of State Boards of Pharmacy and other government regulatory groups invited Mr. Gluck to give this same presentation to them.

Represented a licensed nurse at a skilled nursing facility who, along with twelve other nurses, was indicted and arrested on charges of felony elder abuse. The Attorney General's Office had conducted five days of video surveillance of the nurses' activities. Mr. Gluck crafted and presented a motion to dismiss, which was granted by the court, and charges against all twelve defendants were dismissed. The Attorney General's Office re-filed the charges under a different theory but Mr. Gluck successfully convinced the Appellate Department to order those charges dismissed as well. This decision established new, favorable law for all providers in California and Mr. Gluck was invited to speak about it to various industry groups.

Defended a doctor charged with drug trafficking arising from his alleged prolific prescribing of opiate pain medicine. The sentence imposed was a fraction of what the government demanded and was criticized for its leniency by the Los Angeles Times. The government was so upset by the sentence that, in an exceedingly rare move, it appealed our result.

Represented a durable medical equipment provider who was arrested and charged with defrauding Medi-Cal out of more than \$4 million. In presentations to the prosecutors, Mr. Gluck argued that his client's conduct was within regulations. Based on these arguments, the prosecutors dismissed the fraud charges and allowed the client to settle a non-health-care-related misdemeanor and time payments of less than a tenth of the amount at issue.

Represented successfully a chain of kidney dialysis centers against qui tam allegations that the chain overcharged Medicare for drugs.

Defended claims of unlicensed and unapproved products / medications on behalf of oncologists, dermatologists, cardiologists and other medical specialists against claims of using unlicensed products, including "generic" Botox, Viagra, cancer medications, IUD's, and other non-FDA certified products.

Additional Representative Matters

Defended West Coast branch of a company specializing in the international transportation of valuables, and accused of money laundering. The trial ended in a jury hung 10-2 for acquittal. Another defendant had previously been convicted in a trial in New York and received thirteen years in prison. Eventually, Mr. Gluck helped obtain a complete dismissal of criminal charges against his client.

Defended one of the largest merchant-side credit card processors in a claim arising from fraud allegedly perpetrated by one of its merchant customers. After quickly winning a motion to dismiss that substantially reduced the amount in dispute to approximately \$6 million, we won a dismissal on summary judgment.

Successfully represented a national newspaper being investigated by the U.S. Attorney's Office for improper disclosure of private medical records.

Defended a religious community in a tax, money laundering, and money remitting prosecution. After winning a motion to suppress a search, a settlement was struck on the eve of trial with the dismissal of all counts against four of the five organizations, and a mutually acceptable fine against the fifth.

HONORS & AWARDS

Local Litigation Star, *Benchmark Litigation*, 2018-present

Best Lawyers in America, Criminal Defense: White Collar, 2017-present

Chambers and Partners USA, Litigation: White Collar Crime & Government Investigations, 2017-present

Top 100 Southern California Super Lawyers, White Collar Criminal Defense, *Los Angeles Magazine*, 2017-present

Southern California Super Lawyers, White Collar Criminal Defense, *Los Angeles Magazine*, 2012-present

Criminal Justice Award Honoree, ACLU Foundation of Southern California, 2013

Southern California Rising Stars, White Collar Criminal Defense, *Los Angeles Magazine*, 2005-2010

AFFILIATIONS

Co-Executive Director, American Bar Association, White Collar Crime Division, 2019

Co-Chair, ABA International Litigation Committee, Criminal Litigation Subcommittee, 2013-present

Adjunct Professor, White Collar Crime, Loyola Law School, 2015

Adjunct Professor, White Collar Crime, Southwestern Law School, Los Angeles, CA, 2012-2014

Member, National Editorial Board, *Criminal Justice Magazine*, 2009-2012

Member, Executive Board, Los Angeles County Bar Association, Health Law Committee, 2008-2012

Program Coordinator, ABA White Collar Crime Committee, Southern California Regional Subcommittee, 2009-2010

National Co-Chair, American Bar Association, White Collar Crime Committee Newsletter, 2006-2008

National Co-Chair, American Bar Association, White Collar Crime Committee, Young Lawyers Subcommittee, 2005-2006

Chair, ABA White Collar Crime Committee, Los Angeles Regional Young Lawyers Subcommittee, 2004-2006

PUBLICATIONS

Quoted, "Judge Declines to Dismiss Case Over Attorney-Client Privilege Violations," *Daily Journal*, February 2019

Co-Author, "FedEx Indictment Creates Bad Incentives," *Daily Journal*, August 2014

Author, "Treating Secular Law Too Much Like Halacha," *Shma.com*

Author, "Some Thoughts About Advising Clients After the Amendments to the False Claims And Anti-Kickback Statutes," ABA White Collar Crime Committee National Conference, 2011

Author, "Expert Opinion Supporting Lack of Intent To Defraud: Distribution of Misbranded Drugs," ABA White Collar Crime Committee National Conference, 2010

Author, "More Than One Way To Skin A Cat: Prosecuting Internet Prescribing," *ABA Health eSource*, October 2006

Author, "Presenting Needles From Haystacks: Summary Exhibits in an Age of E-Discovery and Data Mining," ABA National Institute on White Collar Crime, March 2006

Co-Author, "Waiver of Copayments as False Claims," ABA National Institute on Healthcare Fraud, 2002

Co-Author, "A Patriotic Critique of the PATRIOT Act," *24 Los Angeles Lawyer*, No. 11, February 2002

Co-Author, "Medicare Cost Report Certification: The Government Asks Too Much," *Health Care Fraud and Abuse Newsletter*, January 2001

Co-Author, "Recent Developments in Money Laundering," ABA-CLE Publication on White Collar Crime, 2001

United States v. Daniel Louis Delaney, 427 F.3d 1227 (9th Cir. 2006)

Jackson v. Calderon, 211 F.3d 1148 (9th Cir. 2000) (reversing penalty phase in capital case)

Quoted, "Wide Awake and Under the Knife," *Self Magazine*, January 2011

Quoted, "Physician Wins Ruling Over Bank Accounts," *Los Angeles Times*, August 14, 2010

Quoted, "Judge Slams D.A., Orders Assets Returned," *Los Angeles Daily Journal*, August 10, 2010

Quoted, "Drug Smuggling Doctor Gets Sentenced To Probation," *Daily Bulletin*, September 21, 2009

EVENTS

Speaker, "Defending White Collar Healthcare Fraud Cases," Los Angeles County Bar Association, 16th Annual Healthcare Law Compliance Symposium, October 2019

Speaker, "A 360 Degree View of Using Independent Monitors to Resolve Licensing Matters," California Society for Healthcare Attorneys Annual Meeting, San Diego, CA, April 2019

Speaker, "Ethics – Consideration in FCA Litigation," CLE International 3rd Annual Qui Tam Conference, San Francisco, CA, September 2015

Presenter, "Prescription Audits: When the DEA or AG Come Knocking; Anticipating and Responding to Heightened Investigations of Prescribing and Dispensing Practices," Webinar, November 2013

Speaker, "Ethics – Trouble Spots in FCA Litigation," CLE International 2nd Annual Qui Tam Conference, San Francisco, CA, October 2014

Speaker, "Ethical Issues in False Claims Act Matters, CLE International, False Claims Act: All Points of View, San Francisco, CA, April 2013

Guest Lecturer, Federal Criminal Practice, USC Gould School of Law, October 2012

Speaker, "Ethical Issues for Healthcare Attorneys In The Land of Overpayment Disclosures, Provider Financial Relationships and HIPAA Violations," American Bar Association, Emerging Issues in Healthcare Law Conference, San Diego, CA, February 2012

Moderator, "Erosion of Criminal Intent," ABA Third Annual Sentencing & Reentry Institute and Criminal Justice Legal Educators Colloquium, Washington, D.C., October 2011

Panelist, "Health Care Fraud Prosecutions: Development And Trends/Defense Strategies," Association of Federal Defense Attorneys (AFDA) Online Education, December 2011

Panelist, "Rising Trends in Health Care Fraud and Enforcement," ABA White Collar Crime Committee, National Convention, San Diego, CA, March 2011

Panelist, "What's the VIG? Emerging Issues in Internet Gambling and Criminal Enforcement," New York State Bar Association, New York, NY, November 2010

Moderator, "Rising Trends in Health Care Fraud and Enforcement," ABA White Collar Crime Committee, National Convention, Miami, FL, February 2010

Presenter, "Internet Pharmacy: Regulatory Strategies," Federation of Associations of Regulatory Boards National Conference, Chicago, IL, 2009

Presenter, "Practicing Medicine And Prescribing Medication Online," 5th Annual Healthcare Law Compliance Symposium, Los Angeles County Bar Association, Healthcare Law Section, October 2008

Presenter, "Case Strategy: How to Investigate an Internet Pharmacy," National Association of State Boards of Pharmacy, Baltimore, MD, May 2008

Presenter, "Fraud and Abuse Litigation: How to Help Clients Already in Trouble," Los Angeles County Bar Association, Nuts and Bolts of Health Law, Los Angeles, CA, May 2006

Moderator, "Aggressive Use of the Rules of Evidence to Gain Tactical Advantage: Views from the Bench, the Government, and the Defense," ABA White Collar Crime Committee National Conference, San Francisco, CA, March 2006

Moderator, "Playing Hardball: Tactics and Strategies During The Pre-indictment Phase of A White Collar Case," Los Angeles ABA White Collar Crime, Young Lawyers Subcommittee, November 2005

FORMER POSITIONS

Law Clerk, Hon. Dean D. Pregerson, U.S. District Court, Central District of California, 1998-1999

Extern, United States Attorney's Office, Northern District of California, 1997

ADMISSIONS

California, 1999

Ninth U.S. Circuit Court of Appeals; Central District of California; Eastern District of California; Western District of Michigan