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Spencer Pittman named Fellow of the Litigation Counsel of America

Shareholder Pittman was selected to the invite-only honorary society comprised of <0.5% of litigators in America.

New Online Billing Option for Clients

The Firm now offers online payment for client bills, which will increase efficiency in the billing process.

DID YOU KNOW?

The term "separation of church and state" is not actually in the Constitution. It comes from Thomas Jefferson's 1802 letter to the Danbury Baptists.

CONTACT US

WINTERS & KING, INC.
CityPlex Towers
2448 E. 81st St., #5900
Tulsa, OK 74137
Phone: 918.494.6868

Updates on Safety-Sensitive Positions and Medical Marijuana-Related Employment Actions in Oklahoma

By: Attorney Whitney Cox

Oklahoma House Bill 3127 ("HB 3127") takes effect November 1, 2026 and amends certain employment drug testing provisions in the Oklahoma Medical Marijuana and Patient Protection Act (the "OMMA"). Upon the effective date, employers with written drug testing policies may take adverse action against certain medical marijuana license holders and must enforce a zero tolerance standard on employees in safety-sensitive positions.



Before Nov. 1, 2026, employers can take adverse action against an employee or applicant having a medical marijuana license if: (i) the license holder does not have a valid medical marijuana license, (ii) the license holder is under the influence of marijuana at work or while working, or (iii) the position involves "safety-sensitive" job duties. Employers are to use reasonable belief to designate safety-sensitive positions. HB 3127 amends the OMMA to allow employers to take adverse action against a license holder for a positive marijuana test if such action is taken pursuant to a written drug testing policy that complies with Oklahoma law. Simply stated, Oklahoma employers with a legally compliant drug testing policy may take adverse action against a license holder for a positive marijuana test.

If the license holder is employed in a safety-sensitive position, a new *mandatory* "zero tolerance standard" applies. This means holding a medical marijuana license will not exempt a license holder from an adverse action as a result of a positive marijuana test if the holder is in a safety-sensitive position. Employers do not have discretion in applying the new zero tolerance standard or enforcing policies that conflict with the zero tolerance standard. Any adverse action taken by the employer for a positive marijuana test will be governed by the employer's legally compliant drug testing policy, and may include termination, refusal to hire, suspension, demotion, or reassignment.

While some employers might be inclined to breathe a sigh of relief with these revisions to the law, exhale with caution. While HB3127 removes the employer's "reasonable belief" standard and provides a non-exhaustive list of what constitutes a safety-sensitive position, a standard for determining what constitutes "safety-sensitive" has yet to be articulated. Again, the zero tolerance standard is mandatory and must be applied to all employees in safety-sensitive positions regardless of circumstance.

Existing drug testing policies should be reviewed and revised to comply with HB 3127's changes. Employers are encouraged to evaluate the job duties of each employee to determine safety-sensitive positions. Employers must provide timely notice to employees before implementing a revised (or new) drug testing policy. The attorneys at Winters & King are available for questions regarding compliance with these significant changes.

The “Knowledge” Element Under the Federal Anti-Kickback Statute

By: Attorney Zander Chonka

The federal Anti-Kickback Statute (“AKS”) generally prohibits “knowingly” offering or receiving something of value to induce or reward referrals involving federally reimbursable healthcare services. Federal circuits are split as to what “knowledge” the government is required to prove to convict.

In the August 18, 2026 decision of *U.S. v. Chun*, the Eleventh Circuit clarified how the “knowingly” element applies to the AKS. *Chun* grew out of the prosecution of physicians who took speaking fees from a pharmaceutical manufacturer in exchange for prescribing their patients with the manufacturer’s new drug. The question before the Eleventh Circuit was, how much must a physician know about the federal source of payment before the AKS applies? The government’s argument was that the federal healthcare program reference in the AKS was merely a jurisdictional hook. Conversely, the defendants argued that the government was required to prove the defendants *knew the specific patients* they referred were federally insured.

The Eleventh Circuit held the government has to prove the defendant knew the referred services *could be paid* for by a federal healthcare program, but the government does not have to prove that the defendant knew *a particular patient* was a Medicare beneficiary. The government in *Chun* met its burden by showing that the physicians were contracted with Medicare and therefore had knowledge that the federal government may be reimbursing them for their patients’ visits.

For healthcare providers, ignorance of an individual patient's insurance status may not provide much protection when a practice serves patients who plausibly include Medicare or other federally insured patients. Arrangements involving referral payments, consulting fees, speaker programs, marketing agreements, or other compensation deserve scrutiny (not only for what is being paid, but also why). However, *Chun* leaves open the question on how far the reasoning may extend to less obvious arrangements.

If you have questions about whether a compensation or referral arrangement could create Anti-Kickback Statute concerns, contact Winters & King so we can help evaluate the arrangement before a problem develops.



Spencer Pittman named Fellow of the Litigation Counsel of America

Shareholder Spencer C. Pittman has been selected as a Fellow of the Litigation Counsel of America. The Litigation Counsel of America is a trial lawyer honorary society composed of less than one-half of one percent of American lawyers. Fellowship in the LCA is highly selective and by invitation only. Fellows are selected based upon accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation.

Established as a trial and appellate lawyer honorary society reflecting the American bar in the twenty-first century, the LCA represents “the best in law among its membership.” The number of Fellowships has been kept at an exclusive limit by design, allowing qualifications, diversity, and inclusion to align effectively, with recognition of excellence in litigation across all segments of the bar. Fellows are generally at the partner or shareholder level, or are independent practitioners with recognized experience and accomplishment. In addition, the LCA is dedicated to promoting superior advocacy, professionalism and ethical standards among its Fellows.

New Online Billing Option for Clients

Beginning September 2026, Winters & King clients can now pay legal bills online. The Firm has partnered with a third-party vendor to offer this option. Each monthly invoice will now include a payment hyperlink directing toward an encrypted portal for easy and secure payment with no added fees. This new process will reduce paper mail, postage, checks, and other delays.

If you are a Winters & King client and still receive paper bills, you are encouraged to switch to electronic billing to make this functionality easier. To make the change, contact Rosa Santana at rsantana@wintersking.com.