

LabMD Files Appeal, Takes Fight Against FTC Back to 11th Circuit

Judge tells FTC investigation is “a sad comment on your agency” but lacks jurisdiction to stop it

Washington, D.C. (May 15, 2014) – Today, Cause of Action (CoA) is filing an emergency appeal on behalf of LabMD, following a federal judge’s ruling that he lacked jurisdiction even while telling the Federal Trade Commission (FTC) “the public is served by guiding people beforehand rather than beating them up after.”

On May 7, 2014, in open court, U.S. District Court Judge William S. Duffey, Jr., criticized the FTC for its practice of monitoring blogs containing critical speech, for “parachuting in” to the highly regulated health care field, and for its failure to “tell...[health care companies] what the FTC rules are because they have never told anybody.” He told the FTC that its investigation of LabMD was “a sad comment on your agency ...” and that the FTC’s assault against LabMD harmed the “consuming public” by taking LabMD “out of the market” thereby reducing the number of companies providing cancer detection services. Judge Duffey advised the FTC that it had an obligation to give companies “guidance” as to what it does or does not expect with respect to data security because “the public is served by guiding people beforehand rather than beating them up after ...”

However, on May 13, 2014, Judge Duffey ruled he lacked jurisdiction to stop the FTC’s attack against LabMD.

Today, Cause of Action (CoA) is filing an emergency appeal on behalf of LabMD in the 11th Circuit seeking to stop the FTC’s assault.

Daniel Epstein, CoA’s Executive Director said:

“No federal agency should be able to act without authority to damage business and exert power it has never been granted, which is why LabMD must appeal the Federal District Court’s decision. Judge Duffey described the FTC’s aggressive actions against LabMD as ‘a sad comment’ on the agency, and accountability for its over-the-line attempts to insert the agency into the healthcare field must be stopped.

“When a district judge recognizes the egregious and shameful behavior of an agency but rules that he is unable to take action to stop it, the Federal Courts of Appeals are well positioned to ensure that runaway power is not tolerated in our federal system.”

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