

# Health Care Litigation & Regulation

Our health care attorneys serve a range of clients within the ever-expanding realm of healthcare law. We offer a comprehensive suite of services that touches on every aspect of the healthcare industry.

For physicians, practice groups and hospitals, the regulatory landscape changes quickly and can impact your ability to focus on the practice of medicine. We offer guidance to help you meet regulatory requirements and we will represent you if things go awry, so you can get back to caring for patients.

## LEADERSHIP



HEALTH CARE

BUSINESS  
LITIGATION

**Heather Macre**

Chair

**Phoenix**

PH 602.916.5396

FX 602.916.5596

[hmacre@fennemorelaw.com](mailto:hmacre@fennemorelaw.com)

## WHAT WE DO

As the practice of health care continuously evolves with new laws, regulations, technologies, practices and breakthroughs, health care law continues to shift. Our experienced health care group offers innovative, responsive and practical solutions for legal problems arising from the heavily regulated and extremely intricate health care industry. We focus on resolving issues and garnering results that provide clients flexible solutions that are built to work long-term.

Our group assists clients with all aspects of health care and hospital law, including, but not limited to, complex transactions, fraud and abuse, HIPAA, licensing, insurance issues, hospital-physician relations, issues germane to assisted living and nursing home settings, health care employment and labor law, health care litigation, and government relations. Our experienced health care attorneys are also experienced in defending physicians, as well as other health care professionals, in actions brought against professionals by licensing entities such as the Medical Boards of Arizona, California, Colorado, Nevada and other similar agencies.

The laws governing health care become more complex as new regulations are enacted by both states and the Federal Government. Navigating through the system requires the knowledge of well-read advisors to make certain no detail is overlooked. Our health care practice group works relentlessly to remain updated and informed as the industry evolves and trends emerge, ensuring adherence to the most current laws as they apply to each client.

## HOW WE CAN HELP YOU

Our comprehensive list of healthcare services include:

### HEALTHCARE REGULATION/GENERAL HEALTHCARE LAW

- We work on matters concerning compliance with federal and state fraud and abuse laws, including Stark Law, Anti-Kickback Statute, and Beneficiary Inducement Statute as well as related investigative matters.

- We draft, review, and negotiate health care contracts, including professional services arrangements, leases, and physician employment agreements.

- We can assist with licensing, accreditation, and certification of health care facilities and health care professionals.

- We advise clients in the senior living industry, including but not limited to assisted living facilities, nursing care homes and skilled nursing facilities. We represent health care professionals in disciplinary proceedings.

- We can draft and implement a host of healthcare agreements, including but not limited to recruitment agreements, employment agreements and non-competes, office sharing, etc.

- We can assist with Healthcare licensing and credentialing, both for facilities and individuals.

- We can advise on the use of telemedicine/telehealth and technology in healthcare.

- We can represent you regarding AHCCCS, Medicare, and insurance reimbursement issues.

### DATA SECURITY AND EMERGING TECHNOLOGIES

- We can advise you enact data security programs and advise on the use of protected health information (PHI) as well as privacy regulations, privacy policies and agreements.

- We can assist in negotiating, drafting and reviewing healthcare software license and service agreements.

- We can help protect and market Intellectual property rights, including issues pertaining to licensing, data ownership, patents, copyrights, trademarks, and trade secrets.

- We help clients navigate HIPAA privacy and security rules and to draft HIPAA policies and procedures.

- We assist clients when a breach or security incident has occurred.

- We assist clients with other data privacy compliance matters, including GDPR, CCPA and other relevant federal and state privacy laws.

- We can draft and negotiate Business Associate Agreements.

### HEALTHCARE EMPLOYMENT ISSUES

- Our labor and employment attorneys provide counsel in virtually all aspects of the employment relationship.
  - We work with clients to develop programs designed to improve and define employment relationships and reduce the likelihood that disputes will arise.
- In the event that disputes occur, we regularly represent our clients in labor arbitrations, wage and hour issues, employment contract disputes, discrimination matters and in contested cases in state and federal courts.
- We can help draft noncompete and nondisclosure agreements or litigate them as needed.
- In addition, we appear frequently on behalf of clients before federal and state administrative agencies.

## **HEALTHCARE LITIGATION**

- We represent clients in quality of care and risk management issues, staff privilege matters, product liability, and business tort actions.
  - We specialize in practice break-ups and other business-related lawsuits, such as those concerning contracts.
- Our attorneys focus on assisting clients with both pre- and post- litigation planning, including document and records retention policies, litigation hold policies, and the creation of in-house e-discovery teams, as well as assisting clients with the development, implementation and management of a strategy for collecting, reviewing and producing electronically-stored information through the discovery phase.

## **INSURANCE, REIMBURSEMENT AND ERISA**

- We help clients stay in compliance with government payor reimbursement rules and requirements, including those of Medicare, Medicaid, and managed care payors.
  - We assist clients as they navigate government reimbursement audits.
  - We handle Medicare and Medicaid reimbursement cost reports (for Medicare) and related administrative litigation.
  - We assist clients with False Claims Act and overpayment rule compliance.
  - We assist health care providers in payor disputes related to compliance with the Affordable Care Act.
- We work with clients in the design, documentation, and compliance with requirements for medical, dental, cafeteria, life insurance, and flexible benefit arrangements whether they are fully-insured or self-funded.
- We advise clients on Affordable Care Act (ACA) compliance requirements including coverage and reporting and on the provisions of ACA that impact small employers' provision of benefits and the means to stay compliant and negotiating resolutions to IRS Employer Mandate assessments.
  - We advise clients on satisfying COBRA responsibilities and the proper handling and disclosure of protected health information (PHI) under HIPAA.

- We assist employers who sponsor health plans when they are audited by the Department of Labor.
- We assist employers who sponsor health plans to comply with ERISA's reporting and plan document requirements.
- We defend plans in benefit claim disputes including long-term and short-term disability disputes.

## **HEALTHCARE TRANSACTIONS (BUSINESS/FINANCE/TAX)**

- We help clients navigate health care regulatory matters involved in transactions, including acquisitions, divestitures, and joint ventures.
- We can help you plan for and set up a practice, or grow or restructure an existing practice.
- We can assist with practice and healthcare company sales, practice group arrangements and/or practice breakups.
- We can help you select and form the right type of entity and formulate ownership and management agreements.
- We can assist with healthcare supply contracts and distribution agreements.

## **HEALTHCARE REAL ESTATE**

Our real estate group regularly assists hospitals and individual or group healthcare providers with real estate needs taking into account the variety of laws, regulations and business issues impacting the health care industry. We have extensive experience in commercial, retail, manufacturing and industrial real estate law and represents sellers, buyers, users, landlords, tenants, developers and redevelopers to achieve their individual goals and obtain a competitive advantage while lowering transaction costs. In addition, our real estate attorneys assist our clients at every stage, and have a great deal of experience with state and local government economic incentives and tax issues; land use and zoning; regulatory entitlements; assemblage and acquisition; entity formation and tax ramifications; construction; permanent financing; and leasing.

We couple our real estate industry expertise with our healthcare knowledge and experience to approach and resolve the particular issues facing healthcare clients. We have significant experience in construction of healthcare facilities and the various healthcare impacts upon the construction process. Our real estate attorneys develop and implement leasing procedures for office, healthcare, industrial, and retail properties, including the development of lease forms tailored to particular strategies, development of documents that encompass both the requirements of lenders and the practicalities of property management, and facilitate negotiation and consummation of leases in a manner unique to the healthcare industry. In other cases, particularly for major national real estate advisors, asset managers, developers, and institutional investors, we work within pre-established lease forms and procedures.

We can help with loans and refinancing for assisted living, nursing care facilities, and similar facilities, including loans backed by HUD and Freddie Mac.

## GOVERNMENT RELATIONS

• Our government relations attorneys help insurers, healthcare providers, and healthcare facilities:

- Develop and implement effective strategies in support of legislative and regulatory agendas.
- Understand how changes to state and local laws and regulations affect their businesses.

• Navigate state and local licensing requirements and resolve compliance and disciplinary issues.

Monitor and provide defensive government relations services to modify or prevent passage

- of legislation that creates issues for clients in the healthcare industry. This includes advocating for clients in the stakeholder process and creating coalitions as legislation is considered.

Oversee the introduction of legislation, including but not limited to identifying sponsors,

- creating coalitions, developing and executing strategies to effectively advocate for the bill's passage in each legislative chamber.

• Advocate for support of legislation with the Governor's Office to promote the successful passage or veto of legislation.

• Arrange meeting at the agency level to address client issues. This includes working with division directors, the Agency Director and Deputy Director.

- Meet with the Governor's Office to advance issues related to agency actions.