

Katten

Katten Muchin Rosenman LLP

HEALTH CARE LITIGATION

Our Clients

We represent providers, pharmaceutical and medical device companies, health plans, insurers, private equity firms, lenders and other industry participants in all types of litigation relating to the delivery of and payment for health care services.

Our Services

Attorneys in the Health Care Litigation practice work closely with the firm's transactional health care attorneys and others to provide a full range of health care litigation, investigative, regulatory and transactional services.

We represent clients in all types of health care-related litigation involving hospitals, provider groups, members of national health and dental benefits associations, provider networks, pharmaceutical suppliers, health data analytics firms, and others involved in the delivery of health care and related services. We have extensive experience defending against *qui tam* and False Claims Act cases. We handle litigation relating to the purchase and sale of hospitals and other health care assets, including regulatory actions and matters relating to health care information privacy, health care facility expansion and construction projects, the revocation of charitable property tax exemptions, reimbursement rates, the termination of participation agreements, payment for emergency and out-of-network services, and referrals to in and out-of-network surgery centers. Working in conjunction with our health care transactional and regulatory colleagues, we handle antitrust claims, including claims arising from collaboration between

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- *Chambers USA*
 - Healthcare (Illinois, New York) 2015, 2014
- *U.S. News – Best Lawyers®* “Best Law Firms”
 - Health Care Law (National, Chicago, New York) 2016, 2015



health care providers and the integration of various health care services, as well as Racketeer Influenced and Corrupt Organizations Act (RICO) claims.

Katten attorneys also have extensive experience with litigation involving physician compensation agreements, anti-kickback and Stark cases, physician employment actions, and ERISA matters.

Our pharmaceutical work includes pay-for-delay and related antitrust cases, matters relating to the publication of clinical, reimbursement and marketing information about pharmaceutical products, pharmaceutical products liability and actions based on failure to warn, and misfiled prescriptions. Our litigators work closely with our patent lawyers litigating various aspects of pharmaceutical patent challenges, primarily in the generic market.

By combining cutting-edge litigation practices with deep experience in health care, Katten's Health Care Litigation team helps clients achieve business-savvy, cost-effective and sustainable results.

“This group is very knowledgeable.”

Chambers USA 2013
(Healthcare)

Our Experience

False Claims Act

- Provision of advice to a hospital management firm in settlement of allegations that it breached the False Claims Act by aiding the inappropriate admissions of patients for hospital services. Katten's client did not admit any wrongdoing and is one of several defendants in New York federal litigation dating back to 2002.
- Successful defense of the New York City Department of Education against an alleged False Claims Act violation regarding the submittal of Medicaid claims. The US District Court for the Southern District of New York dismissed the case, holding that Medicaid providers (such as school districts that provide health services) cannot be found to have violated the False Claims Act when they followed state guidance in submitting their Medicaid claims, even if that guidance is inconsistent with federal Medicaid law.
- Counsel to a large municipal school district in obtaining dismissal of a *qui tam* case alleging violations of the False Claims Act in connection with the school district's Medicaid claims for case management services. The case is on appeal before the US Court of Appeals for the Second Circuit.
- Representation of a large, academic medical center against a False Claims Act lawsuit alleging violations of the Medicare teaching physician rules and other Medicare rules. The complaint sought tens of millions of dollars in damages. Katten successfully obtained dismissal by the federal district court and ultimately achieved an extremely favorable settlement of all claims against our client.
- Counsel to clients in False Claims Act cases involving allegations of duplicate billing, billing for medically unnecessary services, billing for services by unlicensed providers, violations of the Stark Act and anti-kickback statute, and billing for physician

services in teaching hospitals, school-based health care services, early intervention services and personal care services in violation of applicable requirements.

- Provision of advice to clients regarding physician compensation agreements, anti-kickback and Stark cases, including cases arising under the False Claims Act.
- Guidance to hospital client in cases alleging violations of state and local public accommodations laws.
- Representation of clients in disputes between hospitals and exclusive provider groups.
- Defense of clients in pharmaceutical products liability and negligence actions in connection with failure to warn and mis-filled prescription claims.

Class Action

- Defense of a major teaching hospital against a class action suit alleging violations of various statutes in connection with the hospital's billing and collection practices. The suit alleged liability of approximately \$20 million. By limiting the scope of the suit through discovery, statutes of limitations and class certification arguments, and the resulting restrictive court rulings, Katten achieved a highly successful settlement of the litigation.

Reimbursement

- Representation of a large municipal health system in a suit filed against the federal Medicare agency alleging an illegal and arbitrary cap on reimbursement cost apportionment.
- Representation of a national wellness provider in a dispute with a major commercial insurer regarding billing, coding and the right to reimbursement for procedures performed in connection with insured and self-funded/Administrative Services Only (ASO) coverage. Katten settled the dispute and achieved a result which paved the way for the wellness provider to continue providing the services and receiving reimbursements from the insurer.
- Successful representation of a wellness provider in a dispute with a major national insurer regarding the right to reimbursement for procedures performed in connection with risk and ASO coverage. Katten achieved a result which paved the way for the

wellness provider to continue serving clients and receiving reimbursement from the insurer.

- Counsel to clients in a case involving alleged violations of Medicare payment to bank rules.
- Defense of hospital clients in Medicare appeals before the Department of Health and Human Services Provider Reimbursement Review Board in cases involving issues such as cost report audit adjustments, graduate medical education and indirect medical education payments, reimbursement for physician services, bad debt reimbursement, and disproportionate share hospital (DSH) payments.
- Provision of advice to clients regarding cases challenging Medicare and Medicaid reimbursement limitations, restrictions and recoupments.
- Representation of clients in disputes relating to the publication of clinical, reimbursement and marketing information about pharmaceutical products.

Patient Safety Organization

- Successful defense of Walgreens against a subpoena issued by the State of Illinois seeking the production of incident reports that had been submitted to a component Patient Safety Organization (PSO) created by Walgreens pursuant to the Patient Safety and Quality Improvement Act of 2005 (PSQIA). When Walgreens refused to produce the reports, Katten served as PSO consultant to litigation counsel and authored an *amicus* brief filed on behalf of 20 PSOs and health care trade associations supporting Walgreens. The decision dismissing the State's lawsuit against Walgreens was affirmed on appeal, and this was the first state appellate court case in the country to interpret and apply the provisions of the PSQIA which render qualified information non-discoverable and non-admissible in state and federal court proceedings.
- Author of *amicus* briefs filed on behalf of 30 PSOs and health care trade associations before the Kentucky Court of Appeals and the Supreme Court of Kentucky regarding the protection of patient safety work product in a medical malpractice action. Following a split decision of the Kentucky Supreme Court which allowed the trial court's order compelling disclosure to stand, Katten is participating in an *amicus* brief to be filed with the US Supreme Court.

- Preparation of *amicus* brief on behalf of major university health consortium's PSO before the Kentucky Supreme Court on a direct appeal involving a ruling by the appellate court that quality and peer review materials prepared by hospitals were not privileged and confidential under the federal Patient Safety Act. Ruling conflicts with the other reported decisions. This will be the first state supreme court to rule on the Patient Safety Act. Others participating in our *amicus* brief include over 20 PSOs from around the country as well as the American Medical Association, The Joint Commission and possibly the American Hospital Association.
- Counsel to national prescription company in its successful appeal in the Illinois Appellate Court against an attempt by the State of Illinois to access confidential information that had been reported to the company's component PSO. In a case of first impression, the trial court dismissed the state's lawsuit, upholding the patient safety organization protections promulgated under PSQIA. In the first appellate court ruling in the country, the court affirmed the trial court's dismissal.

Peer Review

- Successful defense of a major Chicago-area hospital in a suit brought by a provider whose privileges were revoked following peer review, a fair hearing and board action. Katten obtained an order from the trial court dissolving a temporary restraining order, thus permitting the hospital to revoke the provider's privileges, and successfully defended an emergency appeal filed on the eve of the termination and the submission of a report to the National Practitioner Data Bank.
- Defense of a major Chicago-area hospital in a suit for tortious interference and related claims brought by a provider whose privileges were terminated following peer review. Achieved a final dismissal from the trial court, successfully defended all appeals and obtained an order for sanctions.
- Representation of clients in more than 250 peer review fair hearings.

Defamation

- Representation of a hospital, its CEO and hospital employees in a defamation and breach of contract

lawsuit filed by a radiation oncologist whose exclusive contract was not renewed. The defendants' motion to dismiss was granted and affirmed on appeal, based in part on Katten's argument that the hospital's response to a third party's inquiry about the quality of plaintiff's services was a protected peer review communication and therefore not subject to discovery or admissibility into evidence.

Antitrust

- Counsel to a hospital, department chair and senior management in a state antitrust lawsuit filed by three retinal surgeons whose request for medical staff membership and clinical privileges was denied based on the hospital's position that there was no demonstrated need for these specialists. The suit was dismissed based on the "rule of non-review" as well as the plaintiffs' failure to demonstrate injury to competition in the relevant geographic and product markets.
- Representation of clients in connection with claims alleging anti-competitive collaboration among health care providers in violation of the antitrust laws.
- Representation of one of the world's largest pharmaceutical companies in a pay-for-delay case.

RICO

- Representation of clients in claims against third-party administrators for alleged breach of contract, fraud and RICO violations.
- Defense of clients in RICO and other claims arising in connection with the lease of health care provider networks.

Employment

- Provision of advice to clients regarding ERISA fiduciary duty claims and non-ERISA benefit claims.

- Representation of clients in physician employment actions, including covenants not to compete, wrongful termination and claims relating to Title VII, the Retaliatory Employment Discrimination Act (REDA), the Age Discrimination in Employment Act of 1967 (ADEA), the Family and Medical Leave Act (FMLA), the Office of Federal Contract Compliance Programs (OFCCP), the Worker Adjustment and Retraining Notification Act (WARN), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), and the Health Insurance Portability and Accountability Act (HIPAA), among others.

Dispute Resolution

- Counsel to clients in connection with patent, trademark, copyright and other intellectual property matters arising in the health care industry.
- Representation of clients in disputes among members of national health and dental benefits associations.
- Advice to clients regarding disputes between provider networks and pharmaceutical suppliers.
- Advocate for client in connection with the revocation of charitable property tax exemptions for health care entities.
- Provision of guidance to clients in disputes relating to the denial of insurance benefits.
- Counsel to client in connection with refusal by the government to adjust hospital cost reports to account for collective bargaining costs, incremental working capital interest expenses and pension costs.
- Representation of clients in regulatory matters relating to health care facility expansion and construction projects.