

## HEALTHCARE

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The healthcare industry today is like a giant jigsaw puzzle in which the pieces, and even the picture itself, are constantly changing. What fits today may not apply to tomorrow, and vice versa. Add to that the multitude of divergent interests involved—payors (M+C, Medicaid, commercial, ERISA plans, etc.), providers (medical groups, IPAs, primary care providers, specialists, etc.), hospitals, service providers (MSOs, PBMs, TPAs, etc.) and government regulators (the DHHS, CMS, DOJ, OIG, FTC, DMHC, DHS, Medical Board, etc.), among others.

The Healthcare attorneys of Sheppard Mullin provide experienced legal counsel to healthcare providers, payors, institutions and almost every form of healthcare related organization. This experience gives us a unique perspective and understanding of the mindset that each side brings to the table. It also enables us to develop effective solutions to fit our clients' needs and objectives—making the pieces of the puzzle fit together within a complex framework that includes fraud and abuse, antitrust, Medicare/Medicaid/commercial reimbursement, HIPAA, corporate M&A and restructuring and insolvency issues, to name only a few.

We have represented almost every variation of healthcare and industry associated organization, only a sampling of which has included:

- Medical groups, IPAs ("Independent Practice Associations") and integrated delivery systems
- Hospitals (including nonprofit, for profit and academic hospitals)
- Universities and medical centers
- Health Plans ("HMOs") and Preferred Provider Organizations ("PPOs")
- Skilled nursing facilities and assisted living centers
- Medical device manufacturers
- Ambulatory surgery centers
- Medical imaging centers
- Pathology labs
- Medical billing companies
- Medical management companies

Our counsel spans the host of issues ranging from fraud and abuse to antitrust, Stark law to HIPAA, Medicare compliance to investigation defense, hospital joint ventures, integrated delivery system formation to workouts and restructuring, outpatient imaging and surgery centers, corporate, tax and finance to intellectual property, real estate, land use and labor/employment. We help our clients resolve all manner of disputes through alternative dispute resolution strategies, advocacy before administrative agencies, traditional litigation, appellate advice and antitrust prosecution and defense.

### **Medical Groups and Healthcare Transactions**

Sheppard Mullin represents medical groups, hospitals and other healthcare related organizations in a variety of financial, structural and traditional corporate law matters. We have represented healthcare entities on the purchase and sale of medical practices, mergers and acquisitions of medical practices or outpatient facilities and the affiliation of medical groups and hospitals, as well as in the more recent joint ventures between medical groups and hospitals.

Our expertise spans the continuum of legal counsel ranging from medical group/IPA organization and structuring, group formation and the integration of groups and provider networks to MSO and integrated delivery systems including affiliations, restructurings, unwindings and MSO transactions. Our attorneys also advise on health plan contracts and antitrust and price fixing matters.

We counsel the full range of clients involved in healthcare financings and leasing endeavors, including lending institutions, banks, healthcare organizations and insurance companies. Our attorneys have also served as bond and

borrower's counsel in healthcare industry transactions, as well as advising hospitals and other healthcare clients on tax exempt transactions and bankruptcies.

### **Hospital and Facility Representation**

Our attorneys are accomplished in structuring hospital provider and risk compensation arrangements with health plans and other payors. We represent hospitals in a wide variety of litigation matters, including pursuing health plans for reimbursement and defending against claims of overpayment, challenged billing practices and disputes involving risk funds. We have defended hospitals against fraud and RICO charges involving physician/hospital arrangements.

We also represent hospitals with regard to compliance, fraud and abuse counseling, as well as advise on other regulatory matters. We counsel hospitals and health systems in connection with the design, development and implementation of effective Corporate Compliance Programs, as well as assist in conducting risk assessments to determine where our client may be exposed to potential regulatory enforcement. Our attorneys represent hospitals in mergers and affiliations, as well as in providing the day-to-day legal advice required to successfully operate a hospital.

Our attorneys advise clients on hospital purchase and sale transactions on both the buyer and seller sides. Such transactions involve extensive legal due diligence, licensing issues, Medicare/Medicaid provider certification or assignment and structuring the transaction to minimize disruption of reimbursement.

We have also advised various other types of facilities in connection with a wide range of regulatory, licensing, reimbursement and contractual issues. Types of facilities represented include mental health facilities, chemical dependency recovery hospitals, group homes and other community care facilities.

### **Health Plan Representation**

Our representation of health plans includes Medicare+Choice plans, Medi-Cal "local initiative" plans and ERISA plans. We have assisted clients in obtaining licensure from the Department of Managed Health Care under the Knox Keene Health Care Service Plan Act of 1975 and certification from the Centers for Medicare and Medicaid Services as a M+C plan. We have also dealt extensively with other regulatory agencies, including the Department of Health Services, in connection with the regulation and reimbursement of the state's Medi-Cal local initiative plans. In addition, we advise our health plan clients on numerous other regulatory, licensing, reimbursement and contractual issues, including network development, benefit compliance, provider contracting and insolvency issues.

### **Fraud and Abuse Compliance**

The healthcare industry is one of the most highly regulated and scrutinized industries in the country. Virtually every major contractual and business relationship entered into by physicians and hospitals has the potential for scrutiny by the government. Sheppard Mullin has been working with these laws and regulations on a daily basis for many years. We routinely assist clients in evaluating and structuring transactions or relationships to comply with the Stark Law, fraud and abuse laws, anti-kickback and fee splitting laws, Medicare billing compliance and the pertinent tax exemptions.

### **Antitrust**

Understanding both antitrust law and the complexities of its application to the healthcare industry is truly a unique and specialized area of expertise. Particularly since the adoption of the Statements of Antitrust Enforcement Policy in Health Care in 1996 by the federal antitrust enforcement authorities, the application of the antitrust laws to physician groups, physician and hospital joint ventures, hospital joint ventures and joint purchasing arrangements among healthcare providers is determined by a set of principles derived from other aspects of antitrust law. Sheppard Mullin is highly experienced in the practical application of these guidelines.

### **HIPAA**

HIPAA is alive and here. "Covered entity" clients must take a proactive approach to ensure compliance with the administrative simplification rules, including the privacy rules. We provide HIPAA advice and compliance representation—from the applicability of the privacy rules to clients based on their activities and/or types of health information which they transmit—to developing policies and procedures, business associate agreements and training.

### **Healthcare Litigation**

The firm's Healthcare litigators include trial lawyers with far reaching commercial litigation and appellate capability. We have successfully overcome a broad base of challenges, a sampling of which has included disputes pertaining to:

- Insurance/health plan reimbursements
- Non-governmental reimbursements
- Medicare investigation defense and litigation
- Whistle blower defense
- Enforcing covenants not to compete
- Managed Care reimbursement and risk fund disputes
- Fiduciary Duty/Health Plan liability litigation
- Medical intellectual property litigation
- White collar and healthcare business crimes defense
- Representing hospitals or health plans as creditors in bankruptcy

### **Medical Devices and Intellectual Property**

Sheppard Mullin advises healthcare industry clients on the laws governing patents, trademarks, copyrights, trade secrets, false advertising and other matters involving intellectual property. We routinely secure and enforce patents, trademarks and copyrights. Our attorneys maintain a high degree of success representing clients in trials and appeals in federal and state courts, in arbitrations and in adversarial proceedings before the U.S. Patent and Trademark Office, the Federal Trade Commission and other tribunals, as well as in industry investigations such as those before the National Advertising Division of the Council of Better Business Bureaus, Inc.

### **Labor and Employment**

Sheppard Mullin has one of the largest and most highly respected Labor and Employment practices in California. We have been retained to represent healthcare employers and their trade associations, including the California Healthcare Association ("CHA") and the Healthcare Association of Southern California ("HASC") in a number of high profile court cases and administrative actions.

Our attorneys are also directly involved in a number of important changes to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission. We have assisted in obtaining every change to the California Wage Orders adopted since 1980. During this process, we drafted and assisted in the adoption of all special healthcare rules regarding such issues as flexible work arrangements, exemptions, meal periods, compensation, overtime, compensatory time off and other wage and hour practices.

Sheppard Mullin advises healthcare employers in traditional labor matters. We have been involved with many of the major union organizing campaigns in the healthcare industry. Our attorneys have represented healthcare clients before the National Labor Relations Board in connection with unfair labor practice charges, and recently authored an amicus brief to the United States Supreme Court on a traditional labor law issue of vital importance to the healthcare industry.

### **Healthcare Related Industries**

Many of our clients have businesses that are related to healthcare, such as biotech and pharmaceutical companies or medical device manufacturers. Sheppard Mullin assists these organizations in acquiring, selling, developing and marketing research and technology for healthcare related services.

We have advised a cross section of organizations interested in developing drug research, medical devices and instruments. Our representation of life science entities ranges from the research and development of site specific drug delivery systems to the creation and development of genomics products and services. We also advise commercial enterprises that produce libraries of chemical compounds isolated from plants for use by pharmaceutical and biotechnology companies in connection with their drug discovery programs, among other issues.