



## → Brian M. Daucher

**Partner**  
650 Town Center Drive  
Tenth Floor  
Costa Mesa, CA 92626

T: +1.714.424.2843  
F: +1.714.513.5130  
bdaucher@sheppardmullin.com

Brian Daucher specializes in business litigation with emphasis on contract, healthcare, and intellectual property disputes. Brian has represented clients in a wide range of industries including healthcare, technology, consumer products, fiduciary and banking services, food and alcohol, sports and energy. He is also a member of the firm's Compensation Committee.

### Key Experience

- Won \$16 million arbitration award against Dentsply international for willful trademark infringement.
- Defeated \$66 million earn-out claim by seller brought against major sports clothing and equipment manufacturer.
- Won \$8 million arbitration award against Avaya for termination of longstanding reseller.
- Defeated claim of constructive trust over undeveloped land valued in excess of \$20 million.
- Won \$6.4 million jury verdict against Cisco Systems for breach of deal registration and wrongful termination of reseller, including judicial invalidation of key Cisco reseller agreement clauses.
- Defeated trustee petition to confirm extraordinary compensation of \$45 million to trustee and affiliates.
- Won \$16 million jury verdict against commercial institution for fraud.
- Successfully invalidated hospice cap regulation, with set aside of cap repayment demands in excess of \$75 million.

### Honors

Martindale Hubbell AV-Preeminent Rated  
Best Lawyers in America, Litigation, *Best Lawyers*, 2018-2021  
Recipient, American Health Lawyers Association, 2016  
Southern California Super Lawyer, 2010-2020  
RAVES (Recognizing AHLA Volunteer Engagement and Success)

### Articles

- "Elect that Proportional Method," *Caring*, September 2011
- "Who Protects the Intellectual Property of your Business?" April 10, 2006

- "Bankruptcy Considerations In Intellectual Property Licensing - Concerning The Unthinkable," March 4, 2005

## Hospice Law Blog Posts

- "CMS Sending Hospice Cap Demands Ahead of Schedule," March 30, 2020
- "CARES Act: Telehealth Allowed for Hospice Recertification/Face to Face," March 27, 2020
- "Coronavirus: Hospices Can Help," March 18, 2020
- "Annual DDE Recertification Due 9/30 (And Other DDE Pitfalls)," September 23, 2019
- 
- "Hospice False Claims: AseraCare Lost A Battle But Has Helped Win The War," September 17, 2019
- 
- "CMS Finalizes 2020 Hospice Rule: Big Changes Coming," August 12, 2019
- "CMS Proposes To Shift Hospice Funding From Routine To Enhanced Care Days," May 2, 2019
- "CMS Proposes To Force Hospices to Specify Unrelated Treatments," April 29, 2019
- "PRRB Sides With CMS On Hospice Cap Sequestration – Federal Court Next," March 5, 2019
- "End Game Up For Academy Award" rel="noopener noreferrer" href="https://www.hospicelaw.com/2019/02/hospice-short-film-end-game-academy-award/">"Hospice Short Film *End Game* Up For Academy Award," February 4, 2019
- "Can AI Help Solve The Hospice Eligibility Question?," June 19, 2018
- "CMS Rolls Out Provider Appeals Settlement Efforts," April 12, 2018
- "Hospice Live Discharges: Some Perspective," August 23, 2017
- "CMS Publishes 2016 Hospice Data, Indicating Further Scrutiny/Changes," May 11, 2017
- "Hospice Cap Calculation Changes," January 9, 2017
- "CMS Issues Suggested Notice Of Election Statement," January 2, 2017
- "ZPICs Terrorize, Close Hospices; CMS Blesses Approach," November 22, 2016
- "OIG Issues Report On Hospice Election Statements," September 26, 2016
- "CMS Proposes ALJ Hearing Changes," July 15, 2016
- "Hospice Cap Determination – 2015 Self Reporting Window Opening," January 25, 2016
- "Hospice Notice of Election / Direct Data Entry Perils," January 12, 2015
- "Hospice Payment Changes Take Effect," January 5, 2016
- "Hospice False Claims Case Helps Clarify Law," November 20, 2015
- "Hospice Cap Sequestration Update," November 3, 2015
- "CMS Proposes Payment Reform/Cap Adjustments," May 6, 2015
- "ALJ Now Dismissing Hospice Appeals For Allegedly Insufficient Service On Beneficiary," April 28, 2015
- "Sequestration Adjustments To Hospice Cap – See Examples," April 14, 2015
- "MACs Issue FY 2013 Hospice Cap Demands With Sequestration; Group Appeal Now Open," March 25, 2015

- "Hospices To Self-Report Cap Without Sequestration; MACs To Capture Sequestration Later," March 5, 2015
- "CMS Plans To Add Sequestration Dollars To Hospice Cap," November 17, 2014
- "2014 Cap Year Mandatory Hospice Cap Calculation – Be Ready," November 4, 2014
- "New CMS Hospice Item Set Reporting Invades Privacy Rights," June 18, 2014
- "CMS Proposes: Calculate Your Own Cap (CYOC)," June 3, 2014
- "Notes from AHLA Presentation on Post Payment Audits," March 12, 2014
- "Notes On Increasing Acute and Post-Acute Integration," March 5, 2014
- "MEDPac's View of the Hospice Benefit: December Meeting Update," January 10, 2014
- "Hospice to Provide "Virtually All" Care – First Up, Prescription Drugs," December 19, 2013
- "'Tis The Season for Hospice Probe Edits – Be Ready," November 7, 2013
- "Hospice Face 2 Face Audit Update," October 14, 2013
- "A Review of CMS' Approach to \$125 Million Recoupment of Payments to Providers for Services to Incarcerated / Unlawfully Present Beneficiaries," August 5, 2013
- "Hospice Cap Calculation Update," August 2, 2013
- "Hospice Cap: Past, Present, and Future," May 10, 2013
- "ZPIC/RAC Audits – What You Need To Know," February 26, 2013

## Healthcare Law Blog Posts

- "Health Plans and Pharmacy Benefit Managers – Past and Future," April 13, 2018

## Speaking Engagements

Presenter: ZPIC Audits, given before the American Health Lawyers Association Annual Meeting for Long Term Care and the Law Conference, (2013 and 2014)

Presenter: Hospice and Home Health Litigation, given before the American Health Lawyers Association Annual Meeting for Long Term Care and the Law Conference, Phoenix, Arizona (2012)

Speaker: Recent Development in Hospice Litigation, given to American Health Lawyers Association (2011)

Speaker: Mitigating Operating Risk In Channel, given to Channel Focus Working Group (2010)

Panelist: Deconstructing the Agent Agreement, given at the Channel Partners Conference & Expo in Las Vegas (2009)

Presenter: Litigation E-Discovery: What You Need To Know Before Litigation, given before the Dartmouth Lawyers Association (2006)

Panelist: Bankruptcy Considerations in Intellectual Property Licensing: Concerning The Unthinkable, before the Orange County Patent Law Association (2005)

Panelist: Advertising in the Outfield: Sweepstakes, Contests and Promotions, given before the American Corporate Counsel Association, Southern California Chapter (2003)

## Events

What Happens if You Get Sued? Litigation Basics  
Third Thursday Emerging Company Webinar Series  
via WebEx, 07.17.2014

What Happens If You Get Sued - Litigation Basics  
Third Thursday Emerging Company Webinar  
WebEx, 12.15.2011

## Memberships

President, Project Youth Orange County Bar Foundation (2018)  
Orange County Bar Association Judiciary Committee (2006-2011, Chair (2011))  
Vice President, Dartmouth Lawyers Association  
Board Member, Intervention Center for Early Childhood

## Practices

Litigation  
Healthcare  
Intellectual Property

## Industries

Financial Services  
Healthcare

## Education

J.D., Duke University, 1994  
A.B., Dartmouth College, 1991

## Admissions

California  
U.S. Supreme Court  
U.S. Court of Appeals for the Fifth Circuit  
U.S. Court for the Ninth Circuit

U.S. Court of Appeals for the Tenth Circuit