

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, Texas) 2019, 2018
- *The Legal 500 United States*
 - Healthcare: Service Providers 2019, 2018
- *U.S. News – Best Lawyers®* “Best Law Firms”
 - Health Care Law (National, Chicago, New York) 2019, 2018



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.

"They are extremely thorough and very experienced in bringing healthcare fraud cases."

Chambers USA 2015 (Litigation)

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.

Our Experience

- Counsel to various hospitals, academic medical centers and independent medical practices clients in False Claims Act cases and related investigations 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.
- Representation of a large municipality and a large health care system in a *qui tam* False Claims Act case, alleging that the defendants submitted or caused the submission of false Medicaid claims for services alleged to have been provided in violation of Medicaid regulatory requirements, and also alleging a "reverse false claim" cause of action pursuant to 31 U.S.C. § 3729(a)(1)(G).
- Representation of a health system in a putative *qui tam* case alleging Katten's client defrauded the government by engaging in a widespread practice of submitting knowingly false claims for the work of nurse practitioners. The case was dismissed as a sanction for misconduct by the plaintiff.
- Counsel to an academic medical center in challenging a threatened State recoupment of millions of dollars' worth of Medicaid payments received by the client's long-term home health program. Katten successfully negotiated a settlement of less than one percent of the initial audit finding.
- Representation of a hospital system in a trial against the New York State Office of the Medicaid Inspector General involving novel issues of what services provided to undocumented immigrants are reimbursable under Medicaid.
- Representation of a hospital system in a DOJ civil investigation of Medicaid billing practices relating to services furnished to undocumented immigrants.
- Counsel to a health system on compliance matters and internal investigations. We have advised this client on numerous self-disclosures, assisted in the development of a new compensation review process, advised on the structure of a new physician subsidiary, advised on numerous regulatory issues, and served as litigation counsel in a False Claims Act case.
- Representation of a PSO in preparing amicus curiae briefs in cases involving the scope of privilege protections afforded under PSQIA, including a case of national importance regarding the scope of confidentiality/privilege protections afforded to hospitals and other licensed health care providers as applied to patient adverse incident reports and peer review materials under PSQIA.
- Representation of a national for-profit hospital network in responding to a CID from the DOJ regarding potential violations of the False Claims Act regarding reimbursements for government health care programs, as well as potential improper self-referrals and kickbacks.
- Representation of a health care system in connection with an extensive investigation being conducted by the New York Attorney General and DOJ into suspected Medicare/Medicaid fraud in the distribution and related marketing of a pediatric prophylactic.
- Primary outside counsel to a large health care system in a variety of matters, including defense in suspected Medicare/Medicaid fraud and False Claims Act investigations, assistance regarding supplemental Medicaid payments, opposing government audits, creation and implementation of a corporate-wide compliance program, effecting a major reorganization of affiliate relationships, prosecution of Medicare appeals, HIPAA and health care privacy matters, provision of health services in

correctional facilities and a threatened suit against the State regarding Medicaid payments.

- Representation of a hospital system in an FCA investigation being conducted by the US Attorney's Office for the District of Vermont focused on the use of a certain electronic health record system at a correctional health facility that was supposed to monitor inmates who took certain types of heat-sensitive medications. The investigation focused on eClinicalWorks (ECW), a software vendor; no action has been taken against our client. ECW settled the FCA allegations for \$155 million.
- Representation of a hospital staffing, administrative support and management company in a federal False Claims Act *qui tam* litigation alleging a nationwide scheme to fraudulently bill anesthesiology services as "medically directed" instead of the less expensive "medically supervised."
- On behalf of a major university, conduct an internal investigation of several whistleblowers' claims that the university's faculty dental clinic was performing medically unnecessary services, submitting fraudulent and up-coded bills and failing to comply with state and federal infection control practices.
- Representation of a state board of pharmacy in a lawsuit brought by pharmacy benefit managers (PBMs), claiming that certain state regulations of pharmacies and their relationships with PBMs are preempted under the Employee Retirement Income Security Act of 1974 and Medicare Part D.
- Representation of a municipal department of education (DOE) in two FCA cases based on allegations that the DOE fraudulently billed Medicaid for certain services provided to disabled schoolchildren. The first case was settled in 2009 in the US District Court for the Northern District of New York (NDNY) and the US District Court for the Southern District of New York (SDNY) granted our motion to dismiss in the second case; the Second Circuit affirmed the dismissal of the relators' claims in an unpublished decision.

During the settlement negotiations for the above case in the NDNY, DOJ informed municipality that a *qui tam* case had been filed challenging DOE's Medicaid billing for counseling services; the allegations in this case were expressly carved out of that settlement agreement. We assisted the municipality's law department and DOE in negotiating a settlement of this case, which was finalized in January 2014.

- 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.
- 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 payments.
- Successful defense of a pharmacy store chain against a subpoena issued by the State of Illinois seeking the production of incident reports that had been submitted to a component PSO created by our client pursuant to the PSQIA. When the client 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 our client. The decision dismissing the State's lawsuit 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.