



Healthcare / Senior Care Facilities



OVERVIEW

The healthcare clients we serve are numerous and varied, as are the legal services we provide to them. Medical groups, dental practices, skilled nursing facilities, senior care providers, hospices and home health agencies, medical device and pharmaceutical manufacturers, and pharmacies rely on us for advice on all aspects of their business. Our group of lawyers representing the healthcare, medical device and pharmaceuticals industry is assembled from diverse backgrounds that include experience with business, operations, compliance, finance, tax, employment, lobbying and litigation, to allow us to meet the full range of legal challenges facing industry participants of all sizes and varieties.

Litigation, Compliance and Regulatory Matters

Our lawyers have substantial experience in defending healthcare entities against personal injury claims, class action lawsuits, ERISA/employee benefits claims, and qui tam actions. We also defend manufacturers and suppliers in medical device and pharmaceutical products liability negligence litigation, in class action lawsuits, and in various other proceedings before trial and appellate courts, regulatory bodies and law enforcement agencies. Our lawyers also provide counsel to the largest providers of long term care in assisted living services in New Mexico, including in the areas of regulatory compliance, state licensure and certification. We also have defended these providers against numerous personal injury lawsuits.

We represent healthcare entities in a broad range of labor and employment matters, including physician contracting, discrimination and wrongful discharge litigation, wage and hour audits, union organizing and collective bargaining issues, pension and benefit issues, and peer review and medical staff review board proceedings.

Our lawyers frequently represent clients at all levels of administrative proceedings before state and federal agencies, including the New Mexico Nursing Board, New Mexico Pharmacy Board, New Mexico Medical Board, and the Board of Social Workers Examiners. We also represent clients in matters involving the New Mexico Attorney General's office, the District Attorney's office, Department of Health, and Adult Protective Services, and responding to subpoenas and document requests from various federal and state agencies.

Modrall Spierling's lawyers represent and advise health care facilities with regulatory matters in front of the New Mexico Department of Health, the Medical Assistance Division of the Human Services Department and its Fair Hearings Bureau including subsequent appeals, specifically related to compliance with Preadmission Screening and Resident Review (PASRR) and Medicaid laws at both the state and federal level.

Compliance and Regulatory Matters

The regulatory landscape is continually changing for health care providers. We advise on a variety of federal and state laws including the Affordable Care Act, HIPAA and health privacy, Stark, Fraud and Abuse, Medicare and Medicaid, licensure, and the corporate practice of medicine. Our lawyers proactively monitor state and nationwide developments and changes in health care



regulations and laws so that we can protect our clients by working to ensure compliance with applicable regulations and laws. We provide clients with ongoing updates and revisions to their compliance programs to address these changes.

We also assist clients with a variety of transactions, including the formation of medical groups and the purchase and sale of medical and dental practices. We have helped clients negotiate employment and professional service agreements, transition to concierge medical practices, develop expansion plans, and wind down/close their practices. We also advise on acquisitions and structuring relationships with other healthcare providers. We have conducted due diligence for clients' buying healthcare facilities or for banks providing loans to healthcare providers.

The penalties for violating healthcare laws can be enormous. We help keep our clients safe by preparing compliance plans and explaining compliance obligations, drafting agreements, reviewing and preparing employee policies and procedures, preparing and conducting trainings on HIPAA policies and procedures and advising on medical staff issues.

We also represent healthcare clients with respect to compliance issues before various government agencies. We have worked with clients to report Medicare overpayments and analyze whether a HIPAA breach occurred, and we advise on compliance with the required reporting obligations to minimize liability when there has been a HIPAA breach.

We have also handled a wide range of licensure issues, such as assisting clients with getting a license reinstated and representing clients that have faced complaints before professional boards, including the New Mexico Medical Board and Board of Pharmacy.

Industry Leadership

Our attorneys currently serve or have served on the Medical Review Board and Labor Board, EEOC, the Office of Civil Rights, the Office of Federal Contract Compliance, the New Mexico Department of Labor, the New Mexico Human Rights Commission, and the Workers Compensation Administration, and as community representative to the New Mexico Newborn Screening Advisory Committee.

Healthcare Lobbying

Our firm includes registered lobbyists who have represented healthcare client interests before both state and federal legislatures.

EXPERIENCE

- Obtained summary judgment in favor of a nursing home in a case seeking damages for wrongful death of a nursing home patient. Plaintiffs claimed that the nursing home was negligent in not implementing certain fall prevention measures and that the absence of those measures caused Decedent's death. The federal court found the Plaintiff had failed to obtain necessary expert medical testimony to establish that the Decedent's death was caused by the alleged negligence of the Defendant and entered judgment in the defense's favor. Plaintiffs appealed the trial court's ruling to the Tenth Circuit Court of Appeals. After oral argument, the Tenth Circuit affirmed the ruling of the trial court. See *Holley v. Evangelical Lutheran Good Samaritan Society*, 588 Fed. Appx. 792 (10th Cir. 2014).
- Extensive experience with issues involved in enforcement of arbitration clauses in business and healthcare agreements, under New Mexico law and the Federal Arbitration Act, and in state and federal courts. Won reversal on appeal of order denying motion to compel arbitration of nursing home liability action. See *Barron v. Evangelical Lutheran Good Samaritan Society*, 2011-NMCA-094, 265 P.3d 720.
- A continuing care facility had not been previously assessed for property tax because it had been financed with industrial revenue bonds, which resulted in title to the property being held by the City of Albuquerque. Property owned by a city is



exempt from property taxes. Once the bonds were retired the County Assessor sent the facility Notice of Valuation, on a property with a taxable value in the millions of dollars. We filed a protest against the imposition of any tax, arguing that a 2008 statute provided an exemption for continuing care facilities and both the District Court and Court of Appeals found for our client. As a result of the successful protest, we saved our client from a substantial tax burden.

- The New Mexico Healthcare Association is a professional trade association for facility-based long term care providers. We submitted an amicus brief on behalf of the NMHA in a matter certified to the State's Supreme Court by the United States District Court for the District of New Mexico. The federal court tendered to the Supreme Court the opportunity to issue a decision on several certified questions of critical importance to the long-term care community and its efforts at enforcement of arbitration clauses in nursing home contracts. These questions included whether an authorized agent can commit a resident to arbitrating any disputes which may come up with the nursing home, and whether the wrongful death beneficiaries are bound by such an election in favor of arbitrating disputes. The certification in a pending THI case offered the Supreme Court the fast-forward opportunity to rule with a case coming up through the usual appellate process, and without being burdened by a factual record. The New Mexico Supreme Court granted the relief we had urged as amicus for the New Mexico Healthcare Association, of de-certifying the questions specified even after the Court had initially exercised its discretion to accept them from the federal court.

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