BIRD MARELLA LLP

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Health Care Litigation

Bird Marella has attained notable health care litigation victories in a wide range of areas, including HMO balance billing, reimbursement rates and third-party guarantees in nursing homes.

Overview

Our health care representation commences at the pre-litigation phase and continues through the trial and appeal stages. We have litigated, tried, and settled cases for national hospital chains, multifacility nursing homes and world-class cancer centers as well as individual practitioners and clinics.

Defense of Private and Regulatory Civil Claims

Our clients frequently face dual exposure in parallel criminal and civil actions. The firm's deep experience in health care criminal and regulatory enforcement widens the defense strategies available to clients. Many Bird Marella attorneys are former Assistant United States Attorneys, and we maintain a highly credible reputation for effectiveness before federal and state courts and agencies.

We act early and persuasively in government inquires and investigations. Our track record includes numerous examples in which we reversed regulators' original intent to file charges, or significantly reduced charges and demands levied against clients.

Bird Marella attorneys also achieve trial victories and settlements in complex disputes arising from health care business transactions and commercial practices. These include class actions, shareholder suits, and individual litigation emanating from patient claims, physician groups, and private insurers.

Experience

Protected Hospital in Arbitration with Doctors Group: We represented a California community hospital and trauma center in an arbitration revolving around the hospital's termination of its agreements with a radiology group. The termination was based on provider-based rules, licensing, and other fraud and abuse concerns. The hospital's right to terminate the agreements for cause was upheld by the arbitrator.

Established "Balance Bill" Clarity in Hospital-ER Dispute: We provided trial and appellate counsel to a hospital group in a case of great significance to the health care field. The higher court supported our argument and held that emergency-care providers cannot "balance bill" HMO enrollees for the difference between the amount billed by the provider and the amount paid by the HMO. *Prospect Med. Group, Inc. v. Northridge Em. Med. Group*, 45 Cal.4th 497 (2009).

Achieved Dismissal of Overbilling PAGA Action for Hospital: On behalf of our hospital system client, we achieved dismissal of the entire claim involving allegations of Medicare overbilling and failure to reimburse. The action was brought by a high-profile individual under the Private Attorney General Act.

Defended Hospital Chain in Business Disputes: We represent a California-based hospital chain in their wide ranging business litigation. This includes challenges related to valuation of its hospitals, "going private" shareholder litigation, and numerous compensation disputes with individual personnel and doctors' groups.

Resolved Parallel-Civil Charges for Medical Researcher: A senior scientist at a major pharmaceutical company faced parallel civil and criminal actions involving alleged violations of the federal Computer Fraud and Abuse Act and the Economic Espionage Act. We obtained a "no charge" decision in the criminal investigation and the civil action settled on favorable terms.

Obtained Appellate Victory on Third-Party Guarantees in Nursing Home: The firm served as pro bono counsel with Bet Tzedek Legal Services in representing family members of elderly individuals admitted into nursing homes in a precedent-setting representative action. The action invalidated as deceptive the defendant nursing home's practice of seeking voluntary third-party guarantees for private-pay patients upon admission into nursing homes that receive any Medicare or Medicaid funds. The receipt of funding precludes such facilities from requiring third-party guarantees as a condition for admission of private pay patients.
Podolsky v. First Healthcare Corp., 50 Cal. App. 4th 632.

Prevailed Over Blue Cross to Establish New State Billing Rates: In our defense of a hospital in litigation concerning payment rates and hospital reimbursement, we attained a resolution that helped establish billing rates for California.

Resolved Emergency Room Rate Dispute for Hospital: We successfully defended a hospital in a private action involving an emergency room rate dispute.

Prevented Filing of Felony and Civil False Claim Act Charges: We represented a Part A consultant who was told that the government would file felony charges against our client. After several detailed presentations to the government, we persuaded the government to reverse its decision and not file charges. We also persuaded the civil division not to name our client as a defendant in a parallel Civil False Claims Act suit.

Averted Multiple Criminal Charges and Settled Qui Tam Case: We represented an individual, and several corporations owned by the individual, who were targets of criminal investigations in multiple federal jurisdictions. We also defended a parallel qui tam action. After several years of contentious proceedings, we persuaded the government in each jurisdiction not to criminally charge our individual client or his operating companies. Instead, a company which was no longer operating pled guilty. The civil qui tam case was also settled on favorable terms.

Defended Hospital Billing Practices Challenges: The firm has represented several hospitals in litigation involving overpayment, placement of hospital out of network, and rates.

Resolved Suits Made by State Insurance Department: Our attorneys have represented hospitals in private litigation with state insurers.

Internal Investigations: Advised and represented a major cancer hospital in an internal investigation triggered by billing practices of a doctor.

Advised Medical Provider Group in Internal Investigations: We are advising and representing a major provider group in an internal investigation surrounding approximately $45 million worth of HCC-related encounter data that may have erroneously been submitted to Medicare Advantage health plans.