

Health Care Fraud and Regulatory Enforcement

Bird Marella represents health care providers facing criminal investigations and enforcement. Our practice extends beyond classic reimbursement matters to claims involving fraud, medical standards, and state and federal regulatory enforcement.

Overview

We have achieved victories spanning from prosecutors declining to charge our clients to complete trial acquittals affirmed on appeal. Our diverse clients range from world renowned cancer centers to sole practitioner clinics, and from the president of one of the country's largest hospital groups to individual employees.

In addition to fraud, we regularly represent providers on substantive health care issues, such as quality of care, validity of prescriptions, compliance with regulations, and similar matters.

The professional and personal stakes are high for many health care clients. We are keenly aware that how we resolve allegations, and the discretion we maintain, carries ramifications for our clients' freedom, reputations, and future livelihoods.

Criminal and Civil Health Care Legal Defense

We protect clients on all fronts. The firm's experience in both criminal and civil health care matters is invaluable in the parallel proceedings common in health care litigation.

Several attorneys are former Assistant United States Attorneys, and all are respected trial attorneys. Governing authorities and judicial bodies view us as credible and persuasive. Our representative matters illustrate Bird Marella's track record in effectively avoiding government charges against our clients.

Experience

FRAUD

Averted \$2 Billion Medicare Fraud Prosecution: The government threatened to charge our client, the president of the country's second largest publicly traded hospital chain, with an alleged \$2 billion Medicare fraud. After a thorough investigation and multiple presentations to prosecutors in Los Angeles and Washington, D.C., we convinced the government that our client had not committed any fraud and the government dropped the matter.

Earned Trial Acquittal for Doctor Accused of Medicare Billing Fraud: Our client was one of several doctors charged with Medicare fraud in connection with mobile respiratory therapy. While the other physicians other pled guilty, we took the matter to trial and achieved his complete acquittal on all counts.

Achieved Post-Trial Dismissal and Civil Settlement for Doctor: We represented a doctor in a seven-week, four-defendant health care fraud trial. After the jury hung 10-2 in favor of acquittal, we persuaded the U.S. Attorney's office to drop the criminal case and settled the civil case on a non-fraud basis for a tiny percentage of the alleged dollar amount.

Obtained Dismissal of \$4M Medi-Cal Fraud Claim and Settled Misdemeanor Charges: Our client, a durable medical equipment provider, was arrested and charged with defrauding Medi-Cal out of more than \$4 million. In our presentations to the prosecutors, we argued that our client's conduct was within regulations. Based on these arguments, the prosecutors dismissed the fraud charges

and allowed the client to settle a non-health-care-related misdemeanor and time payments of less than a tenth of the amount at issue.

Defended Qui Tam Action Successfully for Renal Care Centers: We successfully represented a chain of kidney dialysis centers against qui tam allegations that the chain overcharged Medicare for drugs.

Thwarted Charges Against Reimbursement Consultant: We represented a cost report consultant threatened with criminal felony prosecution for alleged improper suppression of overpayment data. After a thorough factual and legal investigation, we had several contentious meetings with the government in which we argued that the consultant's conduct was not illegal. The government reversed its intent to charge our client with several felonies and dropped the matter. We also persuaded the government not to name our client as a defendant in a parallel civil False Claims Act suit.

MEDICAL STANDARDS

Defended Validity of Internet / Non-Face-To-Face Rx, Eliminated Felony Threat: In one of the country's first internet prescribing cases, we represented the country's largest internet pharmacy service provider. The government announced its intent to charge our client with 83 felony drug trafficking counts, which carried decades of prison time. We made several persuasive presentations showing that the government's theory was legally defective. The government dropped the threat and we were able to resolve the matter for a single strict-liability misdemeanor and some community service. Afterwards, the National Federation of State Boards of Pharmacy and several government groups invited our lawyers to give this same presentation to them.

Represented California's Most Prolific Opiate Prescriber: In another matter implicating the validity of prescriptions, we successfully defended a doctor charged with drug trafficking arising from his alleged prolific prescribing of opiate pain medicine. The sentence imposed was a fraction of what the government demanded and was criticized for its leniency by the *Los Angeles Times*. The government was so upset by the sentence that, in an exceedingly rare move, it appealed our result.

Achieved Dismissal / Declination of Standards-of-Care Allegations: We have represented numerous providers in connection with threatened criminal charges arising from alleged violations of standards of care. These include conditions in skilled nursing facilities, care provided at cosmetic surgery centers, improper supervision of medical staff, and others. We have successfully convinced numerous agencies to decline to charge such cases or even to dismiss those already charged.

FEDERAL REGULATORY ENFORCEMENT

Successfully Defended "Most Wanted" Physicians in Criminal Fraud: We have defended many doctors facing various fraud allegations, including several "most wanted" targets of California and federal regulators. Our representation has included investigations and charges related to allegations of kickbacks, unnecessary medical services, and drug trafficking.

Secured Dismissal of Anti-Kickback Charges Against Hospital Executive: Our client, a hospital executive, was the subject of a criminal investigation and prosecution of Anti-Kickback Act violations. We persuaded the government to decline charges against our client, while the government proceeded with charges against others.

Convinced Multiple Prosecutors Not to Prosecute Hospital CEO: We represented a CEO of a psychiatric hospital who was a target in multiple jurisdictions. We persuaded the prosecutors in each jurisdiction to reverse their initial decisions and not to charge our client.

Defending Newspaper in HIPPA Violations Involving Celebrity: We are criminal counsel to a national publication alleged to have violated HIPPA regulations in its reporting of a celebrity death.

Achieved “No Charge” Result for Hospital in False Cost Reports: Our client, a hospital, was the subject of a federal investigation concerning false cost reports in connection with the Medicare program. We persuaded the government to decline bringing civil or criminal charges against our client.

Prevailed in Hospital-Doctors Group Business Arbitration: We arbitrated on behalf of a hospital in a dispute revolving around the hospital’s termination of its agreements with a radiology group. The bases for termination included 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.

Defended Fraud Claims Successfully for Home Health Agencies: We provide ongoing defense counsel to several health care providers in fraud charges related to kickbacks, services not rendered, and unlicensed professionals.

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

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. In our representation of him, we obtained a “no charge” decision in the criminal investigation and the civil action settled on favorable terms thereafter.

Defended Pharmacists on Prescribing Standards Violations: The firm represents numerous pharmacists and pharmacies, operating online and brick and mortar shops, in charges of violating federal statutes governing controlled substances.

REGULATORY ENFORCEMENT

Preserved Oncologist’s Practice at Trial on Unapproved Medication Use: We represented an oncologist charged with using unapproved medication. The government declined to offer a reasonable settlement and demanded our client receive eight years in prison. We took the case to trial and achieved an outcome of straight probation with no cessation of practice. The doctor’s story is in development for a Hollywood movie.

Cleared Nursing Home Worker of Responsibility, Set New Law: We defended one of several nursing home employees charged by the state with violating certain nursing home regulations. During our

representation, we achieved a ruling from the appellate court establishing new law that individual employees cannot be charged with violating these regulations. This caused the entire case to be dismissed.

Persuaded AG to Dismiss Felony Case Against Cardiologist: The firm defended a cardiologist who, along with several other defendants, was charged with multiple felonies by the California State Attorney General's Office. Just prior to the preliminary hearing, and after several presentations to the prosecutor, we convinced the AG's office to dismiss all charges against our client. The criminal case against all of the other defendants proceeded.

Defending Hospitals in Skid Row / Patient Dumping Claims: We represent several hospitals and executives in claims of patient dumping onto skid row, as well as claims of paying indigents to become hospital patients.

Defeated Nursing Home Patient Death Claims and Kickback Investigations: In our representation of several nursing homes, we have defended administrators and facilities in various claims. These include defeating claims in connection with patient deaths and investigations into claims of kickbacks from vendors.

Settled Plastic Surgeon's Unlicensed Practice Charges: We defended a Beverly Hills plastic surgeon in charges connected to the unlicensed practice of medicine. We achieved a satisfactory resolution of the claim.

Defended Claims of Unlicensed and Unapproved Products / Medications: Our firm defends oncologists, dermatologists, cardiologists and other medical specialists against claims of using unlicensed products, including generic Botox, Viagra, and other non-FDA certified products.