

## Departments

### Healthcare

From regulatory issues to complex transactional and litigation matters to day-to-day business counseling, today's healthcare industry faces a myriad of legal challenges that require the depth and breadth of a well-rounded and experienced team of professionals. The attorneys in the Healthcare Department at Greenbaum, Rowe, Smith & Davis possess a sophisticated understanding of the unique healthcare business environment, both here in New Jersey and beyond.

The members of the firm's healthcare team counsel a roster of clients that includes many of New Jersey's foremost healthcare systems, hospitals and medical facilities, medical staffs, organized delivery systems (ODSs), clinically integrated networks (CINs), independent practice associations (IPAs), physicians and physician group practices, dentists and dental practices, physician and hospital-physician joint ventures, pharmaceutical companies, managed care organizations, home health agencies, nursing homes, behavioral health organizations, healthcare industry vendors, medical device manufacturers, management service organizations (MSOs), private equity firms, and industry-associated financial and corporate entities. This inclusive representation has propelled the team to statewide and national prominence within the healthcare field.

Our comprehensive healthcare practice encompasses numerous areas of focus. The attorneys in this practice area possess the requisite targeted expertise and hands-on experience to effectively represent a broad range of healthcare industry clients across a spectrum of legal concerns. In addition, the firm publishes "Healthcare Perspectives," a blog covering issues of interest to the healthcare industry.

#### Regulatory and Compliance

- Regulatory counseling, including compliance issues under federal Stark Law, federal and state anti-kickback laws and self-referral laws
- Federal and state regulatory approvals
- State licensure and certification issues
- State Attorney General, *cy pres* and Community Health Care Assets Protection Act (CHAPA) approvals
- IRS exempt organization applications

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## Departments (Cont.)

- Antitrust counseling and Hart-Scott-Rodino pre-merger filings with the Federal Trade Commission (FTC)
- Fraud and abuse counseling
- Corporate and HIPAA compliance
- Corporate practice of medicine
- Human resources counseling
  - Employee hiring and discharge
  - Human resources training
  - Wage and hour and equal pay audits
  - Internal investigations
  - Litigation avoidance practices
  - Drafting of employee handbooks and general employment policies

### **Litigation**

- Hospital and physician reimbursement cases
- Read our Healthcare Reimbursement Practice Overview to learn more about the firm's representation in reimbursement matters and claims denial cases on behalf of hospitals and health systems, physicians and physician group practices, ambulatory surgery centers, nursing homes and other healthcare providers.
- State regulatory appeals before the New Jersey Superior Court, Appellate Division
- Antitrust litigation
- Defense of medical malpractice, professional liability, and legal ethics claims
- Representation in state and federal courts and before the Board of Medical Examiners (BME)
- Federal False Claims Act and State insurance fraud defense
- Defense of discrimination, harassment and whistleblowing retaliation claims in state and federal court
- Enforcement of restrictive covenants, including non-compete and non-solicitation agreements

### **Transactional**

- Mergers & acquisitions and joint ventures involving hospitals, healthcare systems, independent physicians and group practices
- Multi-disciplinary due diligence and compliance reviews
- Formation and business counseling of managed care organizations and integrated delivery systems, including IDSs, ODSs, MEWAs, ACOs, PHOs, IPAs, MSOs, PPOs and HMOs

## Departments (Cont.)

- Read our Managed Care Contracting Practice Overview for more information about our experience in representing both providers and payers in managed care contracting negotiations and in the resolution of related disputes.
- Taxable and tax-exempt capital financing and tax counseling
- Matters concerning medical staff, including employee relations and benefits
- Private placements of securities
- Patient-related issues including consents, guardianships and treatment
- Real estate acquisitions, leasing and dispositions
- General corporate representation including the drafting and negotiation of agreements, contracts and leases
- Estate planning and administration
- Healthcare information technology
  - Information privacy and data security issues arising under HIPAA and the Health Information Technology for Economic and Clinical Health Act (HITECH)
  - Assisting in the drafting and enforcement of privacy and security agreements and policies, including recording retention requirements and the physical or electronic storage of medical records
  - Investigation, reporting and remediation of information breaches and the liability such breaches create under information privacy and security laws
- Negotiation of executive compensation, restrictive covenant, and separation agreements

### Healthcare Private Equity

- Advisors to private equity clients and portfolio companies on investment and financing activities
  - Growth investments and buy-and-build strategies
  - Control, non-control and minority investments
  - Buy-outs and recapitalizations
  - Auction processes, strategic dispositions and exit strategies
  - Bankruptcy, restructurings and workouts
- General counsel for portfolio companies
  - Advising on a range of issues, from significant transactions to day-to-day legal matters
  - Providing efficiency and continuity for platform acquisitions, bolt-on transactions, operational issues, compliance matters, sales

## REPRESENTATIVE MATTERS

- Representation of a County Improvement Authority as special healthcare counsel through the RFP, bidding and selection process to identify and approve a successor tenant-operator for the State's largest psychiatric hospital, which included the negotiations in connection with, and drafting and execution of, a 20-year Sublease and Operating Agreement with the new tenant-operator. In connection with this representation, the firm's healthcare attorneys were instrumental in drafting amendments to the municipal hospital authority statute to permit the formation of a county hospital authority.
- Representation of a County and County Improvement Authority as special healthcare counsel to advise and assist in the County's COVID-19 response, and the direction of over \$175M in CARES Act and Stafford Act funding as well as budgetary expenses incurred in response.
- Representation of the buyer of the assets of three hospitals forming a larger health system in the U.S. Bankruptcy Court for the District of New Jersey, which involved certificate of need, CHAPA, and bankruptcy court approvals.
- Representation of over a dozen New Jersey hospitals in connection with their merger, consolidation and acquisition transactions, resulting in the formation and growth of some of the largest New Jersey healthcare systems. Our representation included certificate of need approvals, IRS 1023 tax-exemption approval, FTC antitrust approvals, Vatican approvals (in the case of Catholic hospitals), and *cy pres*/CHAPA approvals.
- Representation of hospitals and other healthcare facilities in their recent decisions to close their facilities, which included NJDOH and New Jersey Attorney General oversight and/or approvals in addition to operational logistics.
- Representation of a dermatology practice in its sale to private equity sponsored management company and larger dermatology practice.
- Representation of a private equity firm in its investment in an ambulatory surgery center holding company.
- Representation of a private equity firm in the sale of its stake in a dental practice management company.
- Representation of a private equity sponsored dental practice management company in its affiliations with multiple dental practices.
- Representation of both buyers and sellers in private equity assignments involving healthcare companies, including a neurosurgery practice in connection with a minority investment from a private equity firm.

## Departments (Cont.)

- Representation of a cardiology practice in its affiliation with a New York healthcare network, the network's first affiliation with a medical practice in the State of New Jersey.
- Representation of a large health system's (1) sale of its home health agency to a national home health company, and (2) sale of its outpatient dialysis unit to a wholly owned subsidiary of a national dialysis company. Both transactions required *cy pres* and/or CHAPA approval by the New Jersey Attorney General and NJDOH.
- Representation of a hospital to establish and obtain regulatory approval from the New Jersey Department of Banking and Insurance for the first hospital multiple employer welfare arrangement (MEWA), which provided healthcare benefits to the hospital's employees and various other small businesses in and around the hospitals' primary services areas.
- Representation of a stand-alone Medical Center in its establishment of a clinically integrated network.
- Representation of two large health systems in the establishment of their respective Organized Delivery Systems which involved obtaining will licensure by the New Jersey Department of Banking and Insurance, coordinating healthcare providers and facilities to share in the value they create by practice efficiency and effectiveness, and assuming risk in contracts with health plan payers.
- Representation of a large South Jersey health system in the development and creation of an accountable care organization (ACO) which is currently collaborating with the casino industry to manage the healthcare needs of the casinos' employees who are members of their self-insured healthcare welfare plans.
- Representation of a stand-alone Medical Center in the application process, New Jersey Department of Health review, and appeal before the Superior Court of New Jersey, Appellate Division of certificate of need applications to operate a full-service cardiac catheterization laboratory and offer primary PCI services.
- Representation of over 200 hospitals in 34 separate health systems across the United States in appeals challenging their Medicare reimbursement before the Provider Reimbursement Review Board (PRRB).
- Representation of New Jersey's largest charity care hospital in its challenge to its final Medicare Cost Report Settlements for fiscal years 2006 through 2016 in administrative appeals before the PRRB.
- Representation of 33 New Jersey hospitals challenging the adequacy of their Medicaid rates under the regulatory marginal loss formula and the failure of the State Medicaid program to apply the correct TEFRA economic factor to the hospitals Medicaid DRG rates.

## Departments (Cont.)

- Representation of multiple hospitals challenging their state fiscal year charity care, HRSF, and GME subsidy allocations in administrative appeals before the NJDOH and DMAHS.
- Representation of 25 New Jersey hospitals in federal court challenging on Equal Protection grounds CMS' refusal to permit them to include charity care inpatients days in the Medicaid proxy of the Medicare DSH calculation, when CMS permits hospitals in other states that have been granted an 1115 waiver to include substantially similar days in their Medicare DSH calculation.
- Representation of 14 New Jersey hospitals challenging the requirement that the hospitals provide treatment to all patients without regard to the patients' ability to pay or source of payment as an as-applied violation of the Takings Clauses of the United States and New Jersey Constitutions.

### OF NOTE

"Greenbaum, Rowe, Smith & Davis has a highly regarded team active in the New Jersey healthcare market, acting for a broad client base of providers, pharmaceuticals and those investing in the industry. It has an extensive regulatory practice that includes areas such as Stark Law and HIPAA compliance, as well as certification issues. The firm is also noted for its strong transactional and litigation experience, and for its dedicated private equity practice that advises both sponsors and portfolio companies."

- 2025 edition of *Chambers USA* (a publication of Chambers and Partners) Practice Review