

Healthcare

Recognized by Chambers USA for Healthcare in New Jersey – our team is well known for high caliber representation of healthcare providers, major hospitals, and health systems in capital finance matters.

The healthcare industry is facing unprecedented changes, presenting unique challenges and opportunities for our clients in the market. Staying at the forefront of these developments, our Healthcare lawyers can guide you through the business, regulatory and legal obstacles. We serve as advisors for organizations across the healthcare continuum, including acute and sub-acute care facilities, academic medical centers, nursing homes and continuing care retirement communities (CCRCs), federally qualified community health centers (FQHCs), physicians, nonprofit foundations, and healthcare trade associations. We deliver strategic solutions for pharmaceutical manufacturers, medical device and medical equipment providers, investment and commercial banks, venture capital funds, and other healthcare lenders or investors.

Capital Finance & Transactions

Our team has delivered sophisticated legal services to the healthcare capital markets for more than three decades. We have served as bond, underwriter's, bank and borrower's counsel for billions of dollars of acute and sub-acute debt, financing, and refinancing assets relating to thousands of beds and units along many different service lines. We have contributed to the development of some of the most complex and innovative financing structures utilized by healthcare providers. We help clients with many kinds of regulatory and compliance issues that emerge following a bond transaction, including covenant and other defaults. We particularly excel in the sub-acute area, where our Public Finance lawyers have served as bond counsel for nearly every congregate care community financed in New Jersey and helped develop access to the tax-exempt debt market for these providers.

Mergers, Acquisitions & Affiliations

We protect the interests of hospitals and other healthcare providers in numerous mergers, acquisitions, consolidations and other major transactions. We have the experience and perspective necessary in these transactions, including structuring the deal, drafting and negotiating transaction documents, performing essential due diligence, obtaining regulatory and corporate approvals, and closing the transaction. We are fully prepared to advise our clients on the other legal issues that commonly arise during these transactions including antitrust, tax, real estate, environmental, employment and public finance. We have been involved in most of the "acquisition" transactions in New Jersey requiring approval under the New Jersey Community Health Care Assets Protection Act (CHAPA), N.J.S.A. 26:2H-7.10, et seq. We have advised clients in connection with the formation of New Jersey's largest health systems, including complex debt restructurings involving the largest tax-exempt bond offerings through the new Jersey Health Care Facilities Financing Authority.

Tax & Tax Exemption

In close collaboration with our Tax lawyers, we regularly counsel our healthcare clients on tax and tax-exemption issues that arise from their operations and bond-financed facilities, including intermediate sanctions, executive compensation, governance, and property tax exemption. We are experienced in the formation and qualification of nonprofit, tax-exempt organizations, their foundations, and creating and reorganizing healthcare systems. We are also familiar with the tax laws and regulations that restrict or affect transactions between tax-exempt and taxable entities, including hospital-physician joint ventures, physician

recruitment and employment contracts, and the formation of for-profit subsidiaries by tax-exempt organizations.

Data Security

Our lawyers are dedicated to staying ahead of the developments regulating healthcare technology and information. We advise clients in operational, governance, and compliance matters, with a particular emphasis on privacy and data security in regulated industries, including the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act, the Payment Card Industry Data Security Standards, and SSAE-16 and AT 101 requirements.

Antitrust Counseling & Litigation

We provide legal counsel to healthcare clients on federal and state antitrust laws that are implicated in structuring hospital mergers, acquisitions, affiliations, and joint ventures. The need for such advice also arises in negotiating contracts and cooperative arrangements with health insurers, HMOs, and other third-party healthcare payers. Hospitals' various relationships with physicians, as well as their efforts to regulate the conduct of their medical staffs, frequently implicate potential antitrust claims. We also counsel physician groups, pharmaceutical companies, medical supply distributors, and equipment manufacturers on a wide variety of competition issues. Our skilled trial and appellate lawyers are experienced in handling antitrust issues in all courts, and effectively and efficiently litigate cases in the healthcare field. Our team also assists clients in quickly and effectively responding to government inquiries and investigations.

Intellectual Property

Representing world-renowned research hospitals, our intellectual property team includes patent practitioners with advanced degrees in fields such as physics, material sciences, molecular biology, cell biology, immunology, biochemistry, microbiology, organic and polymer chemistry, and inorganic chemistry. We are experienced and innovative in developing strategies for protecting critical core technologies and patenting innovations based on our clients' immediate and long-term business goals. We are also routinely involved in negotiating licenses for our clients, which include some of the biggest names in the biotechnology, pharmaceutical, university, and life sciences fields. We build and manage our clients' complex patent portfolios, protect their blockbuster biotech and small-molecule drugs, and develop global strategic plans.

General Counseling

We provide ongoing general legal counsel to hospitals and a variety of other healthcare providers. In this capacity, our lawyers field inquiries on a daily basis on the full spectrum of legal issues confronting management, including contracts, employee relations, insurance, liability, tax, and tax exemption. Our Healthcare lawyers have sufficient breadth of experience to handle these situations as they arise, but also have the ability to draw on other practices to meet each client's unique needs.

Governance & Compliance

Our Healthcare lawyers have a great deal of experience advising clients on governance and compliance issues. We work extensively with nonprofit healthcare clients in adopting governance best practices, including the formation of independent audit committees and adopting codes of conduct and conflicts-of-interest policies. We also assist clients in developing and completing corporate compliance programs, and have represented them in government investigations involving state and federal agencies, including NJDOH, USDHHS-Office of Inspector General, US Department of Justice, and SEC. We have also assisted clients in conducting internal investigations relative to possible violations of the law by their employees, contractors, or medical staff.

Labor & Employment

We regularly advise healthcare clients on all types of labor and employment issues. Having worked with healthcare institutions for decades, our practitioners understand the unique issues associated with operating a clinical environment on a regular basis. We handle preventive employment counseling, physician contract enforcement actions, internal investigations, policy development, management training, and employment litigation. We also assist clients with union-related matters, such as collective bargaining, unfair labor practice proceedings, and strike consultation. We also advise on wage and hour litigation, employment agreements, ERISA litigation, OSHA, immigration, and workers' compensation issues.

Medicare/Medicaid Fraud, Abuse & Stark Issues

Our Healthcare lawyers regularly advise our clients concerning the Medicare and Medicaid fraud and abuse and Stark implications of their existing operations, contracts, and transactions as well as new or potential relationships with physicians and other providers. We perform statutory and regulatory reviews and analyses and develop contracts and transactions that minimize fraud and abuse concerns. We also help examine and restructure existing arrangements to address potential problems as well as ongoing corporate compliance strategies.

Renewable Energy

An innovative structure can allow even a nonprofit organization to enjoy indirect benefits from federal and state tax incentives that promote investments in renewable energy and the growing green jobs economy. For example, our lawyers helped a nonprofit healthcare provider put together a state-of-the-art financing structure to support the development of a large-scale solar photovoltaic array that will provide up to 50% of the electrical power for the provider for 25 years.

Representative Matters

New Jersey Health Care Facilities Financing Authority—Debt restructuring

Led working groups through the largest tax-exempt bond offerings of the New Jersey Health Care Facilities Financing Authority, which proceeds were used to facilitate complex debt restructurings for large New Jersey health systems following numerous merger transactions. These transactions involved the development of modern-style master trust indentures and the synchronization of complex financial reporting obligations, including issuer-required early warning tests, among 26 series of publicly-offered and privately-placed taxable and tax-exempt debt.

New York City Community Hospital—Debt restructuring

Guided a New York City community hospital with the restructuring of an existing credit facility, which involved the resolution of complex intercreditor rights of HUD, the disposition of assets, including developments rights, and the leasing of replacement office space.

Acute-care hospital—Healthcare systems transaction

Represented an acute-care hospital and its affiliates in its affiliation with New Jersey's largest academic health system. The transaction involved filings required by Hart-Scott-Rodino with the Federal Trade Commission, CHAPA approval by the New Jersey Attorney General's Office and the Superior Court, and approval of The Holy See.

Faith-based university—Debt restructuring

Represented a faith-based university in the restructuring of its debt in forbearance, as well as other debt, creating a new master trust and covenant structure, reducing lenders from five to two, with tax-exempt and taxable pieces, converting a construction loan to permanent

financing, while creating a debt structure more conducive to the long-term operating needs and plans of the university.

Faith-based health system—Sale of skilled nursing facility

Guided an urban, safety-net, faith-based healthcare system in the sale of its skilled nursing facility – a division of an acute care provider – extracting those components that applied just for the SNF, but preserving stewardship by the founding religious congregation as well as SNF care for its aging members. This shortly followed representing that same system in its investment in a novel supportive housing project, designed to locate low-income residents closer to clinical care.

NJ health system—Separation from legacy parent

Represented a New Jersey health system in connection with its separation from an out-of-state health system, including related legacy financing matters and approval of the proposed settlement and transfer of ownership by the New Jersey Attorney General and the New Jersey Department of Health. Promptly pivoted to reentering the public debt market as a stand-alone system with an operating history that was co-mingled with the legacy parent.

Major health system—Receivership management guidance

Guided a major health system in connection with its appointment as the manager of a troubled nursing home that was in the national news during the pandemic. Operating under a receivership and overseeing the critical care of residents as operations discontinued, our client swiftly moved to depopulate the SNF. We worked in conjunction with state regulators after CMS eliminated funding, addressing issues including patient advocates and commercial lenders, along with petitioning the court as part of a process to best protect the quality of care for the residents, many of whom suffered from severe acuties.

Health systems collaboration—Debt restructuring

Represented two collaborating health systems in connection with restructuring seven separate bond/direct loan facilities, along with the development of an innovative security structure tailored to the unique co-membership recently created between these health systems. The “Aa”-rated system borrowed from a major money-center bank and deployed proceeds plus equity to the “Baa”-rated affiliate at a rate derived from the preferred credit, with a 15-year moratorium on principal amortization. This structure created a window to allow the affiliate to utilize cash flow savings for capital and operating flexibility with the affiliate having only one related creditor.

Federally Qualified Community Health Center—Substance abuse treatment facility development

Represents one of Connecticut’s largest federally qualified community health centers in the development of a community substance abuse treatment facility and compliance with healthcare regulatory requirements.

Alerts

OCR Updates Bulletin on Use of Online Tracking Technologies by HIPAA Covered Entities and Business Associates, 3.28.2024

Payment Flexibilities and New Legislation Introduced Regarding Healthcare Cyberattacks, 3.28.2024

Next Stop, Revalidation Station: CMS Final Rule for Nursing Home Transparency to Prompt Off-Cycle Revalidation, Revised Form CMS-855A, and Sub-regulatory Guidance, Healthcare Alert, 12.4.2023

Slow and Steady Wins the Race: Hospitals Should Evaluate Their Split/Shared Services Notwithstanding the Delay Under CMS's 2024 Physician Fee Schedule Proposed Rule, Healthcare Alert, 10.24.2023

New Law Will Impact Change in Control Transactions Between Health Care Entities in New Jersey, Healthcare Alert, 9.6.2022

Latest Resources available to NJ Acute and Sub-Acute Care Providers to mitigate the effects of the COVID-19 pandemic, 4.2.2020

Generators of Regulated Medical Waste in New Jersey Must Meet Federal Standards After Preemptions, Environmental & Healthcare Alert, 1.21.2016

Health Law Insights Newsletter – Issue 4, McCarter & English Newsletter, 7.1.2014

Health Law Insights Newsletter – Issue 3, McCarter & English Newsletter, 5.6.2014

Health Law Insights Newsletter – Issue 2, McCarter & English Newsletter, 4.24.2014

Health Law Insights Newsletter – Issue 1, McCarter & English Newsletter, 3.17.2014

Articles

Biden Admin's Mental Health Proposal May Not Be Enough, Law360, 9.21.2023

Fake Nursing Degree Liability Is a Hot Potato — Will Hospitals Get Stuck with It?, Becker's Hospital Review, 3.15.2023

What's the State of M&A Market Post-pandemic? An Expert Weighs In, NJBIZ, 10.3.2022

Navigating COVID-19's Impact: Advice for Healthcare Clients, Commerce Magazine, 3.1.2021

Financial Impact of COVID on Healthcare Clients, Commerce Magazine, 10.1.2020

The Path to Successful Utilization of Alternative Payment Models, American Bar Association: Health Lawyer, 5.3.2020

Health Law Insights Newsletter – Issue 7, McCarter & English Newsletter, 3.23.2016

Health Law Insights Newsletter – Issue 6, McCarter & English Newsletter, 11.17.2014

Health Law Insights Newsletter – Issue 5, McCarter & English Newsletter, 9.30.2014

Speaking Engagements

Nuts and Bolts: How to Protect Your Company from False Claims Act Claims and Investigations, ACCNJ, 9.1.2023

Research and Rules: How Current Regulations are Impacting Healthcare Innovation and What Needs to Change, Invest: North & Central Jersey 2022-2023 Launch Conference, August 24.2023

Telehealth Services Transactions: Establishing & Scaling, American Health Law Associations 2023 Health Care Transactions Conference, 4.18.2023

The "FCA" Does Not Mean "Free Company Assets", ACCNJ, 10.4.2022

Due Diligence Issues for Buyers and Sellers of Urgent Care Centers, BRI Network's 2022 Urgent Care Centers Congress, 3.1.2022

Grab a Seat at the Table: Strategic Planning and Tools for Physicians and Group Practices at the American Bar Association Health Law Conference, American Bar Association Health Law Conference, 9.25.2020

Anatomy of an Active Shooter Incident, Marsh and McLennan Companies 2018 US Health Care Roundtable, 11.7.2018

Criminal Background Screenings: How Far Should You Go?, Home Care Association of NJ , 11.10.2015

Data Privacy & Cybersecurity: The Risk You Cannot Ignore, Home Care Association of NJ - 2015 Annual Conference, 5.11.2015

Data Privacy & Cybersecurity: The Risk You Cannot Ignore, Home Care Association of NJ, 5.7.2015

Physicians' Due Process Rights vs. a Hospital's Obligation to Effect 'Prompt Remedial Action' When the Alleged Harasser Is a Physician – Who Controls the Process?, New Jersey Hospital Association In-House Constituency Group, 3.17.2015

New Jersey Hospitals – Current Marketplace Trends, Healthcare Financial Management Association, 10.10.2014

Labor Law and Wage & Hour Updates, New Jersey Home Care Association 2014 Annual Conference, 5.12.2014

Health Care Facilities and Redevelopment, 2014 Annual Redevelopment Law Institute, 1.31.2014

Webinars

Structuring Healthcare Management Arrangements: Corporate Practice of Medicine, Regulatory Compliance, Strafford, August 16.2023

COVID-19: Cybersecurity, Telehealth and E-Commerce, Rutgers Law Record, 4.26.2021

A Healthcare Revolution: Telehealth Becomes the New Normal, CIANJ, 3.25.2021

Quoted

McCarter & English Adds Khaled Klele to Newark Healthcare Group, Bloomberg Law, 3.27.2024

From Hacking to Healthcare: McCarter & English Attorney Says Advancing Medical Technology Paints Big Cybercrime Bull's-Eye on Industry, ROI-NJ, 2.15.2019

Eds & Meds' Are in a Race to Finish Line for Financing, ROI-NJ, 11.22.2017

Is Bigger Really Better for Health Care Legal Services?, NJBIZ, 5.6.2016