Health Care

OVERVIEW

Eckert Seamans provides a broad array of legal services to hospitals, health systems, and other clients in the health care industry. As a full-service national law firm, we draw upon the breadth of skills and experience of our attorneys across multiple practices to serve health care industry clients in matters regarding regulatory compliance, data security and privacy, intellectual property, labor and employment, professional liability, public finance, technology, and finance, among others.

Our services span strategic consulting, assisting with medical staff issues, licensing, credentialing, privileging, public finance, corporate governance, conflicts of interest, internal investigations, labor and employment, and addressing the complexities of physician misconduct. Our attorneys have in-depth experience in regards to risk assessment, avoidance, and mitigation as well as crisis management. We have the litigation and transactional expertise to assist hospitals, health systems, and other clients in the health care industry address all of their legal needs. Whether related to a discreet issue or general ongoing legal support, Eckert Seamans has a dedicated, specialized, and experienced staff of attorneys to assist you with all of your legal needs. Through our coordinated, multidisciplinary team approach, we work together to provide legal counsel in an efficient and cost-effective manner.

CYBERSECURITY, DATA PROTECTION & PRIVACY

Attorneys in our Cybersecurity, Data Protection & Privacy Group regularly advise clients on issues related to the privacy and security of health information under the Health Insurance Portability and Accountability Act (HIPAA), including compliance with the requirements of the Health Information Technology for Economic and Clinical Health (HITECH) Act. Our attorneys routinely design and implement compliance plans and performs audits for covered entities and business associates. In addition, our team can provide workforce training, perform breach assessment and counsel on risk assessment and documentation. Our clients include hospitals, physician organizations, long-term care facilities, educational institutions, software providers, pharmaceutical companies, medical device manufacturers, self-insured group health plans sponsored by employers, welfare benefit funds, and governmental plans.

INTELLECTUAL PROPERTY

Health care institutions at the cutting edge of patient care and clinical research rightly pride themselves on their contributions to medical innovation. It is important that these institutions understand how to properly recognize, protect and leverage such innovation in the form of intellectual property (IP). Strategic protection and out-licensing of IP can provide significant revenue streams to a health care institution and strengthen its reputation as an innovator.

Our IP and corporate health care attorneys advise clients on matters related to domestic and foreign patents, the interface between patent law and FDA regulations, trademarks, copyrights, trade dress, trade secrets, and unfair competition laws. Many of our attorneys have years of in-house corporate experience as well as experience protecting and leveraging health care clients' IP. Our IP and corporate health care attorneys help clients with the negotiation, preparation, and enforcement of a wide variety of related agreements, including IP license, assignment, consulting, employment, nondisclosure and joint venture agreements. Our IP and corporate health care attorneys serve clients across many diverse fields, including pharmaceutical, biological, biotechnological and medical device companies. In addition, the firm has a dedicated IP Litigation Group to handle significant intellectual property litigation matters.

LABOR & EMPLOYMENT

Attorneys in Eckert Seamans' Labor & Employment Group have deep experience in consulting with and representing heath care institutions, groups and individual physicians in connection with the myriad issues they confront, and understand their business and regulatory challenges. Our lawyers work closely with the labor relations, human resources, and management professionals of our institutional health care clients to strategize and implement effective and efficient solutions to the time-sensitive issues that confront employers in health care and other industries. We take a proactive approach to identify and minimize the potential for costly litigation through counseling, workplace training, and creating practical and effective

policies and labor agreements. However, if litigation becomes necessary, our seasoned attorneys have a track record of successful outcomes at both the trial and appellate levels throughout the United States as well as before labor arbitrators.

NONPROFITS

Lawyers in the nonprofit practice group at Eckert Seamans have a long history of helping health care providers and other agencies and organizations accomplish their objectives in the most cost-effective manner possible. Our team of professionals has extensive experience and understands the roles nonprofits play as well as the ethical and fiduciary standards for which they are held accountable. We serve nonprofits at every level in connection with their formation, operation, and reporting obligations. In addition, as a full-service national law firm, we leverage the comprehensive skills and knowledge across all of our practice areas to advise and assist nonprofit organizations with general counsel on a spectrum of matters involving tax, general business, planned giving and gift annuities, employment, intellectual property, operations, litigation, and risk management.

PROFESSIONAL LIABILITY

Eckert Seamans' Professional Liability Group defends professionals who practice in a number of industries against challenging and sensitive claims of malpractice, breach of fiduciary duty, breach of contract, negligence, and securities violations, among other claims of wrongdoing.

Our health care defense team is among the most respected in the country. The complexity of this practice area is as diverse as the clients we serve. We represent physicians and other health care professionals; hospitals, nursing homes and health care systems; health insurance companies; pharmaceutical companies and professional corporations. We provide counseling and litigate matters concerning physician rights, medical malpractice defense, regulatory and licensure issues, guardianship proceedings/incapacitated patients, insurance issues, pharmacy liability, and reimbursement, in addition to other related matters. We also assist in developing and implementing risk management strategies concerning issues related to the application of peer review privilege and related confidentiality concerns for hospitals and other health care institutions.

In addition, our white collar defense and investigation lawyers routinely represent health care clients in both civil and criminal investigations and prosecutions in matters relating to regulatory compliance, drug enforcement and "Stark" and "Anti-Kickback" matters.

PUBLIC FINANCE

Our Public Finance Group attorneys work with underwriters, financial advisors, health care facilities, educational facilities and authorities to provide the type of financing best suited to the institution, consistent with the particular requirements of the municipal issuer, state law, and the Internal Revenue Code of 1986, as amended. Eckert Seamans regularly serves as bond counsel, borrower's counsel, trustee's counsel, and counsel to regional and national underwriters and banks in tax-exempt and taxable health care and education revenue bond issues. The firm has participated in financings for hospitals, medical centers, acute care facilities, assisted living facilities, and continuing care retirement communities as well as other health-care-related nonprofit organizations.

TECHNOLOGY & LICENSING

We serve hospitals and universities regarding the development, integration, and implementation of software, hardware, and complex technology-based systems. Our attorneys also provide the full range of services required for securing ownership of intellectual property rights, as well as the protection and enforcement of those rights.

REPRESENTATIVE MATTERS

Cybersecurity, Data Protection & Privacy

- Perform audits of HIPAA compliance for covered entities and business associates.
- Provide, review, and negotiate business associate agreements and other HIPAA-compliant contracts

for health care providers and group health plans, as well as business associates, subcontractors, and agents of such covered entities.

- Prepare HIPAA compliant security and privacy policies and procedures.
  Serve as HIPAA compliance counsel.
- Breach assessment and notification policies, procedures and counseling, including risk assessment and documentation.
- Advise on state privacy law compliance related to health care information.
  Provide workforce training.

Intellectual Property

- Prepared and prosecuted patent applications for:
  - Devices for treating sleep apnea, a magnetic resonance imaging apparatus, dilation catheters, cardiovascular stents, and other medical equipment;
  - In vivo drug delivery compositions and methods for controlled release of active ingredients;
  - Chemical compositions useful for the preparation of pharmaceutical drugs; and
  - Radiotherapy and other cancer therapies and biomarkers.
- Handled trademark and copyright matters for numerous pharmaceutical companies.
- Litigated numerous pharmaceutical patent infringement actions, including actions related to a number of well-known drugs.
- Advised on Orange Book listings and citizen petitions to the FDA.

Labor & Employment

- Represented heath care institutions in connection with union organizing campaigns, collective bargain negotiation, unfair labor practice cases, and union decertification elections as well as discrimination, fair labor standards act and other employment-related claims and litigation.
- Eckert Seamans has represented several municipal entities in the sale or spin-off of former government functions such as nursing homes and shelter functions.
- Provided counsel and litigated employment claims for a company that distributes medical and acute care supplies to hospitals and urgent care facilities.
- Represented executives and founders of bio-tech and medical device companies in connection with their ownership interests and employment agreements.
- Represented a pharmaceutical company in an Americans with Disabilities Act claim.
- Assessing successor employer liability and applicability and enforceability of existing non-compete agreements for clients acquiring new entities or participating in a merger.
- Counseling employers on hiring, discipline and discharge, and reductions in force; negotiating and drafting individual and group separation and severance agreements.
- Advising employers on proper employee classification for wage and hour purposes as well as providing guidance to employers facing workplace audits from the Department of Labor, and representing employers in single-plaintiff and class action wage and hour litigation.
- Guiding employers with regard to the administration and implementation of policies to comply with the Family and Medical Leave Act (FMLA), Fair Labor Standards Act, Employee Retirement Income Security Act (ERISA), as well as policies covering social media and other technology driven areas.
- Counseling and assisting clients with employment-related investigations involving claims of employee misconduct, workplace incidents involving the Occupational Safety and Health Act (OSHA) and sexual harassment.
- Negotiating and drafting physician employment agreements for institutional health care clients and physicians finishing residency or fellowship training – or when changing affiliations.

Nonprofits

- Draft and negotiate a variety of contracts between nonprofit organizations and their vendors.
- Provide advice with respect to executive compensation and compliance with private inurement and excess benefit regulations.
- Provide counsel regarding limitations on political and lobbying activities.
- Counsel on corporate restructuring, mergers, joint ventures, and dissolution.
- Advise on sales tax and real property tax exemption issues.
- Represent charitable organizations as beneficiaries of trusts and estates.
- Formation of tax exempt organizations, including pre-incorporation planning, selection of optimal organizational form, preparing articles of incorporation, bylaws and other organizational documents, and completing the Internal Revenue Service (IRS) application for recognition of tax exempt status. Recent examples include:
    - Multiple organizations that provide benefits and services for children and the intellectually and developmentally disabled;
    - Wholly-owned physician practice subsidiary of regional hospital; and
    - Educational organization providing support and training for individual home care attendants employed by the elderly and people with disabilities who wish to live independently and receive services in their homes.

Professional Liability

- Successfully defending a hospital and its employed physician in complex case alleging failure to diagnose toxic exposure to various chemicals.
- Successful in motions for forum non conveniens and summary judgment.
- Managing over 500 cases involving alleged improper placement of cardiac stents in Maryland. These cases included claims of professional malpractice, corporate liability and fraud. Our lawyers were involved in all aspects of the defense, including serving as lead trial counsel.
- Defense verdicts in hundreds of cases alleging legal and medical malpractice, including the following complex cases:

Trauma

- Alleged negligence in Level 1 trauma work-up with death of highly compensated executive from aortic transection.

Emergency Medicine

- Alleged negligent discharges of young father who subsequently died from cardiac infarction, alleged negligent failure to admit for work up. Multiple ED presentations.
- Alleged negligent failure to diagnose colon cancer in patient presenting with acute abdominal pain.

Spine Surgery

- Alleged negligent performance of spinal fusion post trauma, paralysis post-surgery.
- Post-operative vision-loss following spinal surgery. Co-defendant was found 100 percent liable for verdict of $20 million.

Obstetrics

- Alleged negligent delivery resulting in death of child.
- Alleged negligence in labor and delivery resulting in cerebral palsy.
- Alleged negligence in delivery with shoulder dystocia, Erb's palsy.

Radiology

- Alleged misread of chest imaging, delayed diagnosis of lung cancer.

- Alleged misread of abdominal CT, delayed diagnosis of ovarian cancer.

Critical Care

- Death of young mother allegedly due to negligent failure to timely diagnose and treat infection and sepsis.

Primary Care

- Death of a 40-year-old husband and father of five children for allegedly failing to diagnose and treat congestive heart failure.
- Alleged negligent failure to timely diagnose colon cancer.

Anesthesia

- Alleged nerve injury from positioning.

Orthopaedics

- Alleged negligent performance of discectomy, resulting in need for repeat surgery.
- Alleged negligent performance of hip replacement surgery, resulting in infection and multiple additional surgeries.

Public Finance

- Served as underwriter's counsel for an Ohio port authority in connection with the issuance of more than $145.6 million of hospital facilities revenue refunding and improvement bonds for an obligated group project.
- Served as bond counsel for county hospital authority in connection with the issuance of two series of bonds for a medical center totaling over $100 million.
- Served as obligated group counsel for a county health and education facilities authority in a transaction exceeding $66 million.
- Served as trustee's counsel for a city economic development authority in the execution of a supplemental loan and trust agreement in connection with a continuing care retirement community.

Technology & Licensing

- Negotiated multimillion-dollar, multi-vendor replacement of an automated pathology laboratory.
- Regularly negotiate and draft software, professional services and support agreements for health care facilities to seek a fair/balanced allocation of risk, consequential accountability (pay for results, not effort), and predictability (such as price protection; ownership of and security for data; and transition assistance following termination).
- Experience in negotiating with over 50 different software vendors, from billing, to electronic medical records, to medication dispensing, and a variety of other operational areas.