

# OUR PRACTICE

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## Litigation – Health Care

**For health care providers, liability insurance companies and everyone else in the health care industry, resolving regulatory disputes and civil litigation continues to grow more difficult and expensive, as new laws and regulations are enacted and computers store vast amounts of information that may or may not be relevant for discovery purposes. Privacy and security concerns create additional responsibilities and even potential liabilities just for defending a medical negligence claim.**

The level of sophistication necessary to meet the challenges of 21<sup>st</sup> century litigation requires a lot more from lawyers than was the case just ten years ago. Baker Donelson has assembled a multidisciplinary team of attorneys with broad experience representing health care clients, and our culture of collaboration and innovation enables us to work efficiently and effectively to address those needs. From initial investigation through discovery and pretrial motions to arbitration or a jury trial – and, if necessary, appeals – our Health Law Litigation Group focuses intently on crafting the best possible resolution to each unique challenge.

How we handle these cases sets Baker Donelson apart. From the outset, we strategize and work with clients to devise an innovative, individualized approach to litigation that effectively leverages our experience. Seldom do we encounter an issue we have not confronted before. We know the applicable laws, rules and regulations. We start out ahead and hit the ground running.

Our clients also benefit from Baker Donelson's innovative use of technology. Intranets, shared document sites, videoconferencing and other technology enable us to efficiently gather and share information while maintaining client confidentiality and complying with federal privacy laws. Our extensive database of proprietary forms, court rulings, experts, regulatory guidelines and other resources maximizes efficiency. We are adept at using technology to handle expensive discovery projects and often serve our clients as national or regional litigation counsel.

Our attorneys represent a wide array of health care providers, including acute care, regional and community hospitals, rehabilitation and long-term care facilities, physician practice management companies, health maintenance organizations, liability insurance carriers and state trade associations. We handle all types of regulatory conflicts and civil litigation, including commercial and contract disputes; peer review, disciplinary and credentialing actions; and allegations of medical negligence or malpractice. Liability insurers have engaged us in cases involving virtually every medical specialty. In addition to having individual health lawyers recognized by respected credentialing organizations such as *Chambers* and *Super Lawyers*, Baker Donelson is top-listed in the nation by *Best Lawyers in America*<sup>®</sup> for Litigation – Health Care.

Our lawyers have tried countless cases. But even though we have substantial jury trial experience, we know how – and when – to settle cases . . . if it's in the client's interest. One hospital system client had more than 75 active malpractice cases when it hired Baker Donelson. Within a year, we had reduced that figure by more than half. We can settle cases, on advantageous terms, because plaintiffs' counsel know we are willing and able to take cases to trial or arbitration.

Clients know they can trust Baker Donelson's Health Law Litigation Group to find the best possible solution to their litigation challenges, whether that means settlement, arbitration or aggressive trial representation.



## Case Studies

- [Unanimous Jury Defense Verdict for Nursing Home in Medical Negligence Trial](#) - Medical Negligence Litigation



## Representative Matters

- Obtained a "zero" jury verdict after a six-week jury trial in the 15th Judicial District Court for the Parish of Lafayette in a case involving a brain-damaged baby, valued by the plaintiffs to be worth between \$26 and \$40 million.
- Tried to a successful jury verdict the first long term care wrongful death case to go to verdict in more than a decade, for one of the largest privately-owned nursing home chains in the country.
- Achieved a defense verdict in a nursing home negligence trial in which the plaintiff alleged that a nursing home allowed a resident's foot ulcer to deteriorate into a large, stage IV wound, requiring a leg amputation.
- Litigated a multi-year hospital employment dispute with alleged sex and religious discrimination claims, as well as claims for voyeurism, eavesdropping, misrepresentation and breach of contract.
- Obtained the dismissal of multiple health care liability lawsuits based on the plaintiff's failure to comply with the requirements of the Tennessee Healthcare Liability Act, including successfully defending a dismissal on appeal.
- Successfully defended a physician hospital organization against claims that it conspired to boycott a surgery center and two of its physician investors from the outpatient surgery market in the Memphis area in violation of the Sherman Act, as well as state law unfair competition and tortious interference claims in the United States District Court for the Eastern District of Arkansas.
- Defended the largest hospital system in Tennessee in a class action lawsuit concerning third-party liability billing practices.
- Obtained summary judgment in a \$26 million medical staff credentialing matter brought by a disruptive physician.
- Successfully defended a nursing home at trial in a personal injury action involving claims spanning a three-year period.
- Represented a hospital in a civil and criminal false claim investigation regarding cardiac interventional procedures.
- Argued one of the first Medicare exclusion cases to be appealed to federal court: *Anesthesiologists Affiliated v. Sullivan*, 941 F.2d 678 (8th Cir. 1991).
- Defended a Maryland physician group for violations of the "incident to" coverage rules. Negotiated a \$3 million settlement with the Department of Justice (DOJ).
- Successfully represented a mental health facility in a wrongful discharge case based on race and disability discrimination, and a pendant state law claim for intentional infliction of emotional distress. Obtained summary judgment based on plaintiff's failure to comply with the procedural requirements of the Mississippi Tort Claims Act.
- Obtained summary judgment for a mental health facility and its individual board members in an action alleging breach of employment contract, Section 1983, freedom of association, and intentional infliction of emotional distress claims.
- Obtained a favorable jury verdict in a state trial alleging medical negligence and false imprisonment, with the decision ultimately upheld by the Mississippi Supreme Court.
- Served as lead counsel in connection with the prosecution of a multi-million-dollar claim to recover damages associated with the design and construction of a regional hospital in East Tennessee and the proper installation, coordination, and layout of highly specialized equipment.
- Successfully argued before a federal appellate court to obtain affirmance of summary judgment in favor of a health care client, resulting in the dismissal of the plaintiff's claim of negligent credentialing.

- Obtained a unanimous en banc reversal in a health care client's favor of a federal appeals court decision interpreting the *Parker v. Brown* state action doctrine under the Sherman Act.
- Obtained summary judgment in favor of a client's claims for breach of contract and tortious interference against a health care facility, after the facility raided the client's employees following a respiratory care program that it provided there.
- Obtained a ruling by the Tennessee Supreme Court holding that a physician cannot properly enter into a contingent fee arrangement to serve as an expert witness for his/her patient.
- Served as a member of the trial team that defended a health care provider where the U.S. District Court for the Northern District of Mississippi found the DOJ failed to carry its burden of proof in an \$895 million suit. The DOJ alleged that one of the country's largest skilled nursing facilities and an affiliate entered an AKS/FCA scheme with a pharmaceutical company. The case was significant because it was a rare FCA defense trial verdict and for the amount alleged.
- Successfully defended a class action suit against a multi-billion-dollar corporation alleging breach of fiduciary duty with respect to the management of a self-funded health benefit plan.
- Represented a hospital management company in a lawsuit filed by the hospital, establishing the negligence of the independent CPA's performance of annual audits and failure to comply with generally accepted auditing standards.
- Defended a major integrated health care system against dozens of claims seeking damages in excess of \$300 million for the alleged breach of management and consulting contracts. The case involved every facet of health care delivery, including health care system management, hospital operations, quality of care, academic interests, community service obligations, fiduciary duties, and operations of profit versus non-profit health care systems. Our efforts resulted in a favorable settlement for our client.
- Settled claims on behalf of a health care provider accused of Medicare fraud and False Claim Act violations for 10 percent of the amount originally sought by the DOJ.
- Achieved a favorable civil settlement as well as a favorable resolution of criminal charges on behalf of the owner of a home health agency accused of Medicare fraud.