Overview

HunterMaclean’s skilled and experienced health care lawyers can effectively guide your organization through the dynamic and demanding health law landscape, offering comprehensive regulatory, transactional, and litigation services, coordinated with HunterMaclean’s full array of legal professionals, including fraud and abuse, corporate, information technology, tax, employment, real estate, and litigation experts.

Our health care attorneys provide advice and counseling to major health care providers regarding, among other matters: strategic and regulatory counseling, managed care contracting and strategy, negotiation and implementation of contractual and employment arrangements with physicians and other health care providers, establishment of and ongoing operational advice to independent physician associations and physician-hospital organizations, analysis and advice concerning compliance with Fraud and Abuse, Anti-Kickback Statute, False Claims Act, and Stark statutes and regulations, Medicare and Medicaid reimbursement, development and implementation of strategies to create vertically integrated delivery systems, CON and licensure compliance, and provider consolidation and related mergers, acquisitions, and joint venture transactions.

Our partnership includes a former chairman of the Product Liability Advisory Council, an Assistant U.S. Trustee for the District of Delaware, a former trial attorney with the U.S. Trustee Program in Delaware, former Assistant U.S. Attorneys, former federal judicial law clerks, former attorneys for the Internal Revenue Service, former attorneys in the U.S. Air Force’s and U.S. Army’s Judge Advocate General’s Corps, a past chairman of the Admiralty Committee of the American Bar Association’s TIPS section, a former member of the board of directors of the Maritime Law Association of the United States, past presidents of the Georgia Academy of Healthcare Attorneys, and members of the National Association of Bond Lawyers, the American Health Lawyers Association, the American Immigration Lawyers Association, and the American Trial Lawyers Association. Our attorneys are also admitted to practice in the U.S. Supreme Court, U. S. Tax Court, several federal appellate and district courts, and numerous state courts.

Experience

▪ Hospital-physician structures and ventures including integration strategies, ambulatory surgery centers, diagnostic imaging centers, and medical office buildings

▪ EMTALA obligations

▪ Intermediate sanctions/IRC Section 4958 and IRC Section 409A compliance and private inurement/private benefit analysis

▪ Recovery Audit Contractor (RAC) audits and development of tool kits for internal staff use

▪ Medicare and Medicaid reimbursement appeals

▪ HIPAA (including HITECH) compliance and development of business associate agreements

▪ Compliance Program development and effectiveness reviews

Contacts

T. Mills Fleming

Attorneys

Partners

H. Mitchell Dunn, Jr.
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Bradley M. Harmon
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Milton L. Petersen
Christopher W. Phillips
Christopher H. Smith

Special Counsel

Ada-Marie W. Aman

Counsel

Rebecca L. Szczenkspi

Related Practices

Nonprofit Organizations
ERISA & Employee Benefits
Immigration
Information Technology & Outsourcing
Medical Malpractice
Strategic and regulatory counseling, fair market value assessments, managed care contracting and strategy, and negotiation and implementation of contractual and employment arrangements with physicians and other health care providers

Advice to boards of directors on governance, regulatory risks, fiduciary obligations, and compliance and operational issues

Establishment of and ongoing operational advice to independent physician associations and physician-hospital organizations

Analysis and advice concerning compliance with Anti-Kickback Statute, Stark, False Claims Act, qui tam/whistleblower investigations, and Medicare and Medicaid reimbursement

Tax-exempt bond financing and compliance assessments and programs

Development and implementation of strategies to create vertically integrated delivery systems

Certificate of Need and licensure (including licensed bed) compliance

Physician recruitment and retention (including hospital-physician immigration matters)

On-call agreements and subsidies

Executive compensation and deferred compensation plans (qualified and non-qualified) including ERISA and IRC Section 409A compliance

Development of hospital-physician Centers of Excellence

Hospital liens

Medical residency, graduate medical education, and academic medical center integration

Provider consolidation and related mergers, acquisitions, and joint venture transactions

The Firm has been engaged to assist health care clients in the following specific matters:

- Obtaining a favorable letter ruling from the U.S. Department of Justice’s Antitrust Division on a joint collaboration between two competing hospital systems for supply purchasing
- Representing a major hospital system in U.S. Department of Justice qui tam/whistleblower investigation and settlement involving the False Claims Act, Stark, and the Anti-Kickback Statute
- Successfully negotiating a waiver agreement with the bond insurer for a major hospital system that was in technical default of its tax-exempt bond covenants
- Obtaining a dismissal of a defendant in a U.S. Department of Justice qui tam/whistleblower action against a health system and members of its medical staff
- Successful defending a Medicare audit and reducing an alleged overpayment from more than $2M to just over $8,000
- Obtaining IRS Private Letter Rulings for a major hospital reorganization and a hospital-physician tax-exempt entity
- Obtaining tax-exempt status for respective cancer, ophthalmology, and otolaryngology entities
- Negotiating service provider agreements on behalf of plan sponsors for welfare plans and retirement plans (e.g. claims administration services agreement for a self-insured medical plan; investment management agreements for pension plans; consulting agreements for medical plans; investment consulting agreements for 401(k) plan fiduciary committees)
- Assisting a major hospital system in obtaining reduced penalties assessed by the U.S. Department of Labor for late deposits of employee contributions to 401(k) plan
- Assisting plan fiduciaries in adoption of fiduciary policies and investment policies for retirement plans
- Advising ERISA plan administrative committees on determinations of ERISA claims and appeals
- Serving as hospital counsel for tax-exempt bond financings
- Organizing and structuring a hospital-based ambulatory surgery center
- $300M agreement whereby electronic medical record (EMR) technology is supplied to regional health care providers
- $80M expansion of a software license, and establishment of a hosted services arrangement, for an EMR system on behalf of a large integrated health care delivery network in the Midwest
- $68M software licensing and implementation services agreement for EMR system of a complex, multi-hospital health system
- $67M licensing and implementation of health information system of major health care vendor for multi-entity academic hospital medical center
- $35M licensing and implementation of health information system of major vendor by large private hospital system
- $29M licensing and implementation of health information system of major vendor for large metropolitan county hospital
- $27M licensing and implementation of enterprise-wide health information system (designed to meet the requirements for “meaningful use” of CCHIT-certified EMR technology) for a regional hospital system in the Southeast
- $25M licensing and implementation of health information system for a large, multi-entity hospital chain
- $20M line of credit procurement between a national bank and a major hospital system
- $15M procurement of health information system by one of the largest networks of community health care centers in the United States
- $15M procurement of information technology infrastructure (network, unified voice communications system, security, real time location system) to support large new hospital in major metropolitan area
- $9M licensing and implementation of an electronic health record system by an academic medical center in a major metropolitan area
- $9M exclusive license of advanced bio-informatics software
- $8M licensing and implementation of a transformational, hospital-wide health information system for multi-entity hospital group
- $7M acquisition of hospital-wide health information system, as well as server co-location and outsourcing services project, for one of the nation’s top pediatric hospitals
- $3.5M licensing and implementation of a state-of-the-art, 3D-capable, picture archiving and communication system (PACS) to store and serve medical images for the radiology department of an academic medical center in a major metropolitan area
- $3M licensing and implementation of an in-house pharmacy automation system for a major southeastern regional hospital
- Licensing of medical performance analysis/management software by one of the nation’s leading pediatric hospitals
- Licensing of electronic health record software for large federally qualified health care center operating agencies that provide health care and social services to large urban neighborhoods
- Review of applicability of Stark 85/15 rule to various EMR acquisitions
- Drafting and negotiating the various agreements associated with a RHIO being implemented in the Northeast, including software licenses and services agreements; agreements with labs, hospitals, health plans, and other data providers; and subscription agreements for use with individual physicians and physician groups
- Creation and negotiation of information sharing agreement between large academic medical institution and community health care center to allow interactive use of electronic health records by physicians serving both institutions
▪ Licensing of emergency department information systems and integrated software solutions for the critical and high-acuity care units, as well as surgery and anesthesia departments, of various large hospitals and integrated delivery networks (IDNs) for a leading health care technology company

▪ Licensing and implementation of health information system for not-for-profit community hospital

▪ Licensing of electronic prescription software license by one of the largest networks of community health care centers in the United States

▪ Creation of form ASP agreement for the provision of billing systems to neurosurgery-focused physician practice groups by a leading service provider

▪ Creation of laboratory services agreement for hospital group to use in making laboratory services, and related systems and software, available to individual physicians and independent physician groups

▪ Procurement of managed firewall services for a health care client that develops, markets, and supports leading-edge solutions for patient billing and online account management

▪ Licensing of software from leading clinical laboratory for internet-based lab testing orders and reports that interact with electronic medical record software

▪ Negotiated agreement for deployment and operation of electronic health record connectivity through community health integration platform

▪ Licensing of software, and purchase of services, to create system for the clinical staff of a large hospital group to use in bidding on work shifts

Publications

▪ Georgia Looks to Ease Regulations on Struggling Rural Hospitals
  HunterMaclean attorney T. Mills Fleming was quoted in this article by Chris Marr, published in BNA’s Health Care Daily Report on May 3, 2018.

▪ Opioid-Dispensing Pharmacists to Pay $5M Penalty to Community
  HunterMaclean attorney T. Mills Fleming was quoted in this article by Chris Marr, published in BNA’s Health Care Daily Report on October 31, 2017.

▪ Non-profit Hospital Reorganizations

▪ A Prescription for Struggling Hospitals

▪ Community Health Needs Assessment Requirements for Tax-Exempt Hospitals

▪ Short ACA Enrollment Window May Offer COBRA Cost Saving

▪ Stage 2 Meaningful Use Set to Kick Off in 2014 for Health Care Providers
  By HunterMaclean Attorneys, published on December 18, 2013, in Business in Savannah.

▪ Data Security Concerns for Health Care Providers: A two-part series
  By HunterMaclean Attorneys, published on September 27, 2013, on HealthITSecurity.com.

▪ October 1 Affordable Care Act Deadline Will Affect Local Employers
New Health Care Exchanges to Impact Employers, Hospitals

Compliance Plans Are Critical For Health Care Providers

Federal Work Plan to Impact Hospitals, Health Care Providers

New Government Scrutiny Demands New Strategies for Health Care Clients

Sign of the Times: More Hospital-Physician Alignment

Health Care Providers Get Ready: EHR Incentive Payments Are Coming

Mills Fleming Op Ed: The Local Impact of Health Care Reform

HITECH Act Widens Scope of HIPAA Liability

USDOJ - Business Review Letter approving joint collaboration between two competing health care systems

The Final HIPAA Rules

New Federal Rules on Patient Privacy Could Mean Big Changes for Health Care Providers and Employers
By T. Mills Fleming, published in the Savannah Morning News as a three-part series of articles on September 1, September 15, and October 6, 2002.

Hospital Medical Records

Health System Restructuring, IRS Private Letter Ruling

Physician Compensation/Gain Sharing, IRS Private Letter Ruling

Hospital Medical Records

Presentations

Evolution and Impact of Foreign Physician Immigration on Medical Care in America

Stark, Anti-kickback Statute and False Claims Act Primer for Physician Recruiters

Physician Contracts - Stark and Anti-Kickback Regulations
- **Compliance Guidance Oversight for Health Care Governing Boards**
  Presented by T. Mills Fleming to a large health system’s senior management and board members on February 15, 2018.

- **Contracts – What Every Health Care Materials Manager Needs to Know**

- **Connecting the Dots: Measuring the Effectiveness of a Compliance Program**
  Presented by T. Mills Fleming at the 2017 Georgia Hospital Association-Compliance Officer’s Roundtable on September 7, 2017.

- **Affordable Care Act Replacement: More Changes for Health Care**

- **Healthcare Legal Matters**
  T. Mills Fleming served as a panelist for this presentation at the American Bankruptcy Institute’s Annual Southeast Bankruptcy Conference in Hilton Head, South Carolina, on July 27-30, 2017.

- **Negotiating Health Care IT Agreements**

- **Physician Contracts - Stark and Anti-Kickback Regulations**
  Presented by T. Mills Fleming at the ASPR Annual Conference in San Diego, California, on April 29-May 3, 2017.

- **The Changing Landscape of Immigration Law: A Panel Discussion of Recent Changes in Immigration Policy**
  T. Mills Fleming participated in this panel discussion at Georgia Southern University in Statesboro, Georgia, on April 4, 2017.

- **Visa Processing and the Conrad 30 Program for Foreign National Physicians**
  Co-presented by T. Mills Fleming and the Georgia Department of Community Health’s State Office of Rural Health at the Georgia Society for Healthcare Physician Services & Recruitment’s 2016 Annual Conference on July 22, 2016, at the Ritz-Carlton/Reynolds Plantation, Lake Oconee, Georgia.

- **Navigating the Bermuda Triangle of Stark, the Anti-Kickback Statute and the False Claims Act**

- **Physician Contracts - Stark and Anti-Kickback Regulations**

- **Health Care, Immigration and Physicians**

- **Hospital Contracts and Stark Law Implications**

- **21st Century Patients / 20th Century Practices - Legal Aspects of Digital Communications**
  Presented by HunterMaclean Attorneys to the Savannah Area Medical Managers Association (SAMMA) at its Annual Meeting on May 20, 2015.

- **Protect the Practice - Compliance Programs for Physician Practices**
  Presented by HunterMaclean Attorneys to the Savannah Area Medical Managers Association (SAMMA) at its Annual Meeting on May 20, 2015.

- **Physician Contracts – Stark and Anti-Kickback Statute Regulations**
• Fraud and Abuse Primer for Physician Recruiters – Anti-Kickback Statute/Stark/False Claims Act

• Lessons Learned from Recent Data Breaches
  Presented by HunterMaclean Attorneys to the Savannah Area Medical Managers Association (SAMMA) at its Monthly Meeting on February 18, 2015.

• Hospital-Physician Compensation Relationships: Community Need, Fair Market Value and Commercial Reasonableness Considerations
  Presented by T. Mills Fleming to major health system’s Board of Directors in 2014.

• Health Law Update

• Hospital and Health Care Compliance: New Rules We Need to Know
  Presented by T. Mills Fleming to major health system’s Board of Directors in 2010.

• New Rules for an Old Game: Structuring Winning EHR Contracts
  Presented at the Healthcare Information and Management Systems Society Annual Conference in Atlanta, Georgia, in March 2010 by Diana J. P. McKenzie.

• Prescription for HIPAA and HITECH Compliance
  Presented at Sophros audio-conference in March 2010 by Diana J.P. McKenzie.

• Whistleblowers, Form 990 and Tax-Exempt Bond Compliance
  Presented by T. Mills Fleming to major health system’s Board of Directors in 2009.

• Employed Physician Fair Market Value Compensation Opinion Summary and Analysis
  Presented by T. Mills Fleming to major health system’s board of directors in 2009.

• Hot Issues in eHealth and Healthcare Technology
  Panel discussion moderated by Diana J. P. McKenzie at ITechLaw Annual European Conference in Brussels, Belgium, on November 6, 2009.

• Seminar on Medical Record Documentation
  Presented for a health care client in 2009 by Bradley M. Harmon.

• Lose a Laptop? Practical Approaches to Navigating Breach Notification Laws

• Form 990, Tax Exempt Bonds and a Stark Reality: New Rules We Need to Know
  Presented by T. Mills Fleming to major health system’s Board of Directors in 2008.

• A Stark Reality: New Rules We Need to Know – Stark III and Beyond
  Presented by T. Mills Fleming to the Atlanta Chapter of the Association of Healthcare Internal Auditors in Atlanta, Georgia, in 2008.

• Health Law Update and Contract Boilerplates: Are You Getting What You Deserve or What You Negotiate?

• New Frontiers for Stark: Fair Market Value and Commercial Reasonableness for Physician Employees

• Legal Update: Stark II-Phase III, Section 409A, ERISA Plan Fiduciaries and Other Current Topics for Healthcare Internal Auditors
  Presented by T. Mills Fleming to the Atlanta Chapter of the Association of Healthcare Internal Auditors in Atlanta, Georgia, in 2008.
- **Fair Market Value for Physician Practice Acquisitions and Physician Employment: A View from the Rear View Mirror**

- **Navigating Security Breach Notification Laws When Patient Information is Exposed**
  Presented at the Eclipsys Seminar on Patient Identity Theft in Atlanta, Georgia; Long Beach, California; New York City, New York; and Plymouth, Michigan, in December 2008 by Diana J. P. McKenzie.

- **Post-Issuance Compliance for Tax-Exempt Bonds**
  Presented by T. Mills Fleming to major health system’s Board of Directors in 2008.

- **Innovative and Strategic Ideas in Healthcare Technology Contracting**

- **Recent Stark Law Developments**

- **Form I-9 Verification and Compliance**
  Presented by T. Mills Fleming to major health system’s Board of Directors in 2007.

- **Contract Boilerplates: Are You Getting What You Deserve or What You Negotiate?**

- **Nonprofit Hospital Reorganizations**
  Presented by T. Mills Fleming as a Georgia Hospital Association webinar in 2006.

- **Healthcare Price Transparency**

- **Drafting Information Technology Contracts That Work for Healthcare Providers**
  Presented at the Healthcare Information and Management Systems Society Annual Conference in San Diego, California, in February 2006 by Diana J. P. McKenzie.

- **Purchasing Rules for Healthcare Material Managers: Rebates, GPOs and Other Incentives**

- **The Future of Health Care**

- **Georgia Rules and Regulations for Corporate Governance**

- **Fraud and Abuse Developments: Stark II, Phase II**
  Presented by T. Mills Fleming to major health system’s board of directors in 2004.

- **Compliance Countdown: Real World Strategies for Implementing the HIPAA Privacy Regulations in Illinois**
  Presented at the ISBA Health Care Section, Southern Illinois University School of Medicine Seminar in Chicago, Illinois, in April 2002 by Diana J. P. McKenzie.

- **Implementing HIPAA Privacy Regs – A Report from the Trenches**
- **When Worlds Collide: Ethical Considerations in Law and Medicine - A patient’s Right to Choose**
  Presented by T. Mills Fleming at the Meadows Regional Medical Center’s Hot Topics in the Practice of Medicine Multispecialty Symposium in Vidalia, Georgia, on April 21, 2001.
- **Cyberhospitals: A Practical Legal Approach to Putting Healthcare Organizations Online**
- **HIPAA & Beyond: The Future of Medical Data Privacy**
- **Physician Contracting: Knowing the Nuts and Bolts to Keep You from Getting Nailed**
  Presented by T. Mills Fleming to the University of Florida College of Medicine’s Department of Anesthesiology in Gainesville, Florida, on February 6, 2001.
- **Medical Data Privacy on the Internet: What You Need to Know**
- **Top Ten Concerns for Net Pharmacies**
  Presented at the Net Pharmacy Conference in San Francisco, California, in July 2000 by Diana J. P. McKenzie.
- **Destination Unknown: HIPAA Effects on Patient Security and Confidentiality**
  Presented at the Healthcare Information and Management Systems Society Annual Conference and Exhibition in Dallas, Texas, in April 2000 by Diana J. P. McKenzie.
- **Tackling the Issues of Selling Drugs on the Internet**
  Presented at the Net Pharmacy Conference hosted by the International Quality and Productivity Center in San Francisco, California, in February 2000 by Diana J. P. McKenzie.
- **Understanding the Legal Developments and Practical Strategies Regarding Internet Pharmacies**
  Presented at the Net Pharmacy Conference hosted by the International Quality and Productivity Center in San Francisco, California, in February 2000 by Diana J. P. McKenzie.
- **The New Rules in Protecting Health Data**
- **Destination Unknown: HIPAA Effects on Patient Security and Confidentiality**
  Presented by Diana J. P. McKenzie as a keynote speaker at the QuadraMed National Users Conference in Miami, Florida, in September 1999.
- **Tackling the Issues of Selling Drugs on the Internet**
  Presented at the Net Pharmacy Conference hosted by the International Quality and Productivity Center in Chicago, Illinois, September 1999 by Diana J. P. McKenzie.
- **Understanding the Legal Developments and Practical Strategies Regarding Internet Pharmacies**
  Presented at the Net Pharmacy Conference hosted by the International Quality and Productivity Center in Chicago, Illinois, in September 1999 by Diana J. P. McKenzie.
- **Liability for the Year 2000: What Hospitals Need to Know**
- **Effective Technology Policies for Today’s Health Care Organizations**
  Presented at the Healthcare Information and Management Systems Society Annual Conference and Exhibition in Atlanta, Georgia, in February 1999 by Diana J. P. McKenzie.
- Liability for the Year 2000: What Hospitals Need to Know
  Presented at the Healthcare Information and Management Systems Society Annual Conference and Exhibition in Atlanta, Georgia, in February 1999 by Diana J. P. McKenzie.

- Protecting Patient Privacy and Data Quality in a Community Health Information Network

- Maintaining Medical Data on the Internet
  Presented at the Tenth National Managed Health Care Congress Annual Meeting in Atlanta, Georgia, in April 1998 by Diana J. P. McKenzie.

- Year 2000 Legal Issues for Healthcare Providers

- Guarding the Safe: Practical Steps to Protect Electronic Patient Records

- Healthcare on the Web: Recognizing the Risks and Limiting the Liability

- Legal Aspects of Data Capture and Retention with Computerized Patient Records
  Presented at the National Managed Healthcare Congress Meeting in San Francisco, California, in November 1996 by Diana J. P. McKenzie.

- A Model Defining and Exploring Information Transactions Between Public Health and Healthcare Organizations: Legal and Data Security Issues

- Community Health Information Networks: How to Overcome the Security Issues

- Healthcare Technology Law

- Avoiding the Crisis: Protecting the Confidentiality of Patient Data in a Healthcare Information Network Environment
  Presented at the MIS Training Institute Conference in Boston, Massachusetts, in October 1995 by Diana J. P. McKenzie.

- Overcoming the Legal Challenges in Converting to a Computerized Medical Record
  Presented at the Texas Association for Home Care Annual Meeting in Dallas, Texas, in September 1995 by Diana J. P. McKenzie.


- Changing Relationships with Competitors: To Be or Not to Be Competitive
  Presented by T. Mills Fleming to the Georgia Society of Healthcare Planning and Marketing in Atlanta, Georgia, on March 2, 1995.

- Legal Ramifications of Converting to a Computerized Patient Record
  Presented at the Midwest Alliance of Nursing Informatics Meeting in Highland Park, Illinois, in February 1995 by Diana J. P. McKenzie.
- **Patient Data Privacy and Community Health Information Networks: A Legal Perspective**
  Presented at the SunHealth Alliance Video Teleconference in Charlotte, North Carolina, in February 1995 by Diana J. P. McKenzie.

- **Smart Strategies for Licensing Managed Care Systems**

- **How the Law Affects Community Health Information Networks**
  Presented at the Institute for International Research Conference in Boston, Massachusetts, in October 1994 by Diana J. P. McKenzie.

- **Whose Right Is It Anyway: A Physician's Guide to Georgia Law on Living Wills, Do Not Resuscitate Orders and Durable Power of Attorney for Health Care**
  Presented by T. Mills Fleming at the Memorial Health University Medical Center Research Day Competition in Savannah, Georgia, on May 5, 1993.