

# Antitrust - Health Care

Polsinelli has one of the country's leading health care antitrust practices. Our antitrust lawyers have decades of experience in all aspects of the application of antitrust law to health care providers' transactions and business issues. Our antitrust practice benefits from working closely with our full-service national health care practice, a deep bench of experts in all areas of health care law. Our interdisciplinary teams often include professionals in intellectual property law, payer contracting, data privacy and others. This approach allows us to give practical, industry-specific advice that recognizes the complex regulatory framework affecting health care.

Our experience includes:

## **Health Care M&A, including Government Merger Reviews & Litigation**

- Lead antitrust counsel in dozens of recent hospital mergers, physician practice acquisitions and other provider affiliations, including some of the largest health care transactions in recent years.
- Advising parties on transaction structure, integration planning, Hart-Scott-Rodino filings and second requests.
- Defending government merger investigations and litigation, including as lead counsel for the acquiring hospital system in the Washington AG's recent lawsuit seeking to enjoin and unwind two completed physician practice acquisitions (summary judgment for defendants on one acquisition; case settled with no divestitures).
- Protecting the rights of providers injured by anticompetitive conduct, including representing a hospital as trial witness for the FTC in its successful challenge to a physician practice acquisition (acquisition enjoined on the FTC's motion).

## **Structuring Provider Joint Ventures, including Clinically Integrated Networks**

- Forming and operating antitrust-complaint networks of competing providers.
- Creating, maintaining and documenting legally sufficient clinical and/or financial integration.
- Advice on payer contracting strategies, including gain sharing, risk sharing and pay-for-performance.
- Forming and operating provider-owned group purchasing organizations.

## **Representing Providers in Antitrust Disputes with Payers**

- Representing providers, not payers, so we have no conflicts when disputes arise.
- Representing six health care systems in the pending national class action challenging market allocation and monopsony.
- Handling payer disputes relating to network formation, exclusive contracts, narrow-network and tiered plan designs and pricing.

## Representing Pharmaceutical Companies

- Defending government litigation and private class actions alleging price-fixing.
- Antitrust advice on Hatch-Waxman issues, including patent litigation and settlements.
- Antitrust advice on pricing, marketing and product-development issues, including addressing efforts by branded drug makers to exclude generics.

## Health Care-Specific Antitrust Compliance Programs

- Designing and implementing antitrust compliance policies tailored to each client's needs.
- Conducting antitrust training and antitrust audits to identify risks and proactively solve antitrust compliance problems.

# Matters

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- Represented two national hospital systems and many regional systems with operations nationwide. Lead counsel on dozens of M&A transactions, joint ventures and other affiliations, including several transactions valued at over \$1 billion.
- Represented academic medical centers in several states. Lead counsel on hospital and physician practice acquisitions and formation of clinically integrated provider networks.
- Defended a hospital system against the Washington Attorney General's antitrust challenges to two acquisitions of physician practices. We won the first challenge on summary judgment (the only known case in which a government merger challenge has been defeated on summary judgment) and settled the second with no divestitures.
- Defended health care providers against monopolization claims based on exclusive contracting practices. In one case, we won complete dismissal of an antitrust claim brought against a Texas hospital system by invoking the state's anti-SLAPP statute, marking the first successful use of the statute to defeat an antitrust claim.
- Defended a generic pharmaceutical manufacturer in pending multidistrict antitrust class actions alleging price-fixing and related criminal investigations.
- Represented a generic drug manufacturer in a pending antitrust challenge to a branded drug manufacturer's use of bundled discounts and exclusive dealing, forcing retailers not to carry generics.