

Health Care

The Sussman Shank Health Care team is a breed apart because of our unparalleled client-side experience. We can serve our clients because we've been our clients. The lawyers of our post-acute practice have extensive professional experience as in-house counsel for the facilities and companies we advise and represent today. As a result, we excel at providing legal guidance combined with business and operational understanding of a complex, ever-changing industry.

Whether the facility is a long-term care provider, skilled nursing facility, assisted living community, or another operational model that patients and families rely on, our health care team delivers a combination of unsurpassed legal knowledge and real-world, hands-on thinking, grounded in direct experience working within the operations of health care businesses. We understand that our role is to help our clients with the day-to-day business of running their enterprises. Whether that means advising them on the terms of a potential transaction or counseling them on a day-to-day employment issue, we take a practical, bottom-line approach to legal representation that sets us apart.

Post-Acute Care

Our post-acute care practice is focused on assisting clients in effecting transactions. Whether our client seeks to buy or sell one or multiple facilities, or obtain a loan – we provide effective, to-the-point and actionable guidance. Our lawyers work with clients in the acquisition and divestiture of both the real estate and operations of long-term care facilities and related businesses and act as borrower's counsel with respect to real estate, account receivable, Fannie Mae, and HUD financing transactions, and often work as local real estate and licensure counsel. We also work to purchase facilities out of bankruptcies and receiverships.



In all this work, our level of experience makes us extraordinarily skilled at distinguishing the essential from the secondary and focusing our efforts on the former. We are aggressive, knowledgeable negotiators, and advise our clients on potential risks they may not see. We do a great deal of client education – whatever the nature of the deal is, we have almost certainly done one like it many times and can teach our clients what the representations, warranties, indemnifications and terms of a transaction are, what impact they will have, and why they are – or are not – important.

We also complete and submit licensure applications and counsel providers regarding licensing issues, including revocation, denial, and imposition of conditions on licenses. Our lawyers are also skilled at helping providers assess risk, develop risk management strategies, and comply with resident rights and duties under state and federal law.

OUR ADVANTAGE

COVID Changed Everything

The post-acute care industry has been roiled by the impact of COVID, which has decreased the number of staff, and thus the number of patients in facilities. This is exacerbated by legal staffing requirements. All of this affects pricing and structure of transactions, which need to be factored into the timing and structure of transactions.

Use Noncompetes with Care

Noncompete agreements are becoming an increasingly contentious issue in acute care facilities. The FTC has recently promulgated new regulations that attempt to limit the abusive use of these contracts, which ideally should be used only when the employee has access to proprietary business information that needs protection. Absent this, use of noncompetes is a significant liability risk many clients unknowingly incur.

Reimbursement Affects Financing

Medicare reimbursement, resident care litigation and financing all need to be evaluated and factored into any transaction involving a post-acute facility. Financing is almost always an essential part of healthcare-related deals, and the status of these issues can have a profound impact on the availability, cost, and limitations of financing.

AREAS OF EXPERTISE

Post-Acute Care

- Purchase and Sale of Healthcare Businesses and Real Estate

- Operations Transfer Agreements
- Management Agreements
- Health Care Facility Leases
- Health Care Finance
- Residency and Admission Agreements
- Health Care Contract Drafting and Disputes
- Bankruptcy and Receivership Issues for Health Care Companies
- Distressed Sales and Acquisitions

REPRESENTATIVE WORK

Post-Acute Care

- We counseled a client through the sale of 2 significant campuses of assisted living/memory care and independent living facilities in Clark County. We represented the seller; the buyer was a REIT that is a major player in the senior housing market. The value of the transaction exceeded \$250 million.
- We advised a client in the sale of a large, complex skilled nursing and assisted living operation. The client had over 50 facilities spread across several states, and the transaction included both real estate and the operation of the actual business.

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