

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 both our acute and post-acute practices 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 involved is an acute care hospital system, a post-acute assisted living facility, or any of the many different operational models that patients depend on, our healthcare team delivers a combination of unsurpassed legal knowledge and real-world, hands-on thinking based in professional experience as part of the operational teams of healthcare 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.

Acute Care

Our acute care practice advises hospitals, medical and dental practices, physical therapy companies, ambulatory surgery centers, specialty practices, and accountable care organizations. We guide these clients on the full range of legal issues that affect their operations. These include licensure and regulatory issues as well as employment issues specific to healthcare businesses, including employment agreements, advice and training concerning hiring, evaluations, compensation, background checks, discipline and discharge, and leave laws.

We are particularly known for our deep understanding of the financial and regulatory pressures under which acute care facilities operate. In a heavily-regulated industry like healthcare, we understand the different

Practice Area Chair

Aaron J. Besen

SPECIAL COUNSEL

O: 503.972.4253

abesen@sussmanshank.com

actors, and cogently advise our clients on the risks and benefits of different courses of action. We tailor our advice, and our involvement, to the client and the situation. If in-depth, aggressive representation is warranted, we deliver it. However, if what's appropriate is a quick resolution, or summary advice, that's provided instead. We understand what our clients need and deliver it. It's as simple as that.

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

Acute Care

- Personal Services and Employment Agreements
- Healthcare Regulatory Issues (Stark, Anti-Kickback, False Claims Act)
- HIPAA Compliance
- Non-Compete Agreements
- Medical Practice Formation, Partner Withdrawals, and Sales
- Management and Purchase Agreement Drafting and Negotiations
- Provider Employment Issues
- Defense Before Professional Boards
- Facility Operational Matters

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.

Acute Care

- We represented a physician who was not paid by his medical practice for over six months under the alleged provisions of a noncompete agreement. We succeeded in getting an injunction against the client due to the practice's breach of the doctrine, invoking the equitable doctrine of "unclean hands".
- We helped mediate, and ultimately resolve, a dispute between a rural fire district and a county hospital over the provision of ambulance service to residences. In a negotiation involving the county commissioners and the fire district, we succeeded in getting an ordinance put in place to resolve the dispute, with updates required every five years.

Related People

Aaron J. Besen

SPECIAL COUNSEL

O: 503.972.4253

abesen@sussmanshank.com

Susan S. Ford

MANAGING PARTNER

O: 503.243.1657

sford@sussmanshank.com

Thomas (Tom) W. Stilley

PARTNER

O: 503.243.1649

tstilley@sussmanshank.com

Hansary (Hans) A. Laforest

ATTORNEY

O: 503.243.1650

hlaforest@sussmanshank.com

Darin D. Honn

PARTNER

O: 503.243.1629

dhonn@sussmanshank.com

Majesta P. Racanelli

PARALEGAL

O: 503.243.1661 x 232

mracanelli@sussmanshank.com