



Kathlynn Butler Polvino

Founding Partner

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Kathy has practiced exclusively in health care law for nearly thirty years. Her expertise handling complex transactions, regulatory issues, strategic planning initiatives, and administrative proceedings is recognized by clients, colleagues, and the healthcare industry. She's continuously ranked as a top attorney in health law by Chambers USA®, with clients praising "her unique ability to assist with complex acquisitions" (2015) and noting her "tremendous insight and understanding of the business and regulatory needs of healthcare sector operators" (2016). For twelve straight years, she's been named one of the Best Lawyers in America®, earning Tier One recognitions. Additionally, Kathy was honored as the 2018 Atlanta Lawyer of the Year: Health Care Law.

Kathy brings a unique perspective with experience in all major specialties within healthcare law: M&A/transactional, litigation, compliance, and regulatory matters. She successfully represents clients in connection with acquisitions and dispositions of healthcare facilities, joint ventures, hospital-physician alignment, co-development, co-management, and other affiliations. She also helps clients with pre-closing, post-closing, transitions, and ongoing operations, including assistance with transition services agreements, billing services arrangements, professional service contracts or arrangements, and confidentiality and nondisclosure agreements.

A dedicated legal + strategic partner with a creative approach, she's also adept at identifying opportunities and outmaneuvering competition in connection with strategic health planning and strategic acquisitions. She understands the complexities of the healthcare industry as well as health policy, serving as outside general counsel to a healthcare association with more than 90 member hospitals. She regularly appears before governmental agencies, legislative committees, and courts in matters pertaining to or involving the interpretation of existing or proposed healthcare laws and regulations. Kathy routinely advises clients regarding healthcare laws and regulations, Medicare and Medicaid and other payor conditions and reimbursement considerations, accreditation standards, and facility guidelines.



SERVICES

- Strategy + Planning
- Healthcare Regulatory + Compliance
- Mergers, Acquisitions + Alliances
- Hospitals + Health Systems
- Outside General Counsel

REPRESENTATIVE MATTERS

Transactional

- Served as lead outside counsel in the privatization of a multi-hospital healthcare system, which also involved long term-care and other ancillary service lines. Assisted with operationalizing the lease and transfer of the system properties and assets, including transition agreements, IT matters, shared services, interim billing arrangements, and medical records arrangements.
- Served as lead transactional counsel (coordinating with tax, bond, ERISA, labor and employment, and other counsel) for a large, expanding multi-hospital system in the acquisition of ancillary outpatient services, including:
 - Nine separate transactions involving eleven diagnostic imaging facilities, and
 - Five separate transactions involving multiple ambulatory surgery centers.
- Served as regulatory/transactional counsel in the acquisition of 22 imaging facilities by a three-hospital system, including negotiating and drafting the asset purchase, management services, transitional services agreements, and other ancillary closing documents.
- Served as lead transactional counsel in the development of numerous joint-venture ambulatory surgery centers between hospitals, physician groups, and, in some cases, national ambulatory surgery management companies. Assisted with operationalizing the joint ventures, including advising the boards, developing policies and procedures, serving as a liaison with regulatory authorities, and drafting agreements for and negotiating the admission of new members. (Experience includes both hospital clients and surgery center clients.)
- Served as lead transactional counsel for existing surgery centers in the conversion to hospital-physician joint ventures.
- Advised numerous different health systems in structuring strategic affiliations and joint venture arrangements with tertiary facilities for the development of specialized programs and services.



- Developed and drafted as co-lead counsel the operative documents for the development of a clinically integrated network affiliated with a two-hospital system.
- Assisted freestanding imaging provider with the acquisition of additional facilities in multiple states.

Healthcare Policy

- Served as outside general counsel for healthcare association.
- Assisted association members in evaluating the impact of proposed legislation and regulations and provide written comments and testimony regarding legislative/regulatory proposals.
- Assisted association members in complying with new statutory and regulatory requirements.
- Oversaw the preparation of amicus briefs in litigation involving issues broadly impacting the healthcare industry.

Regulatory Litigation

- Served as lead counsel in over 40 separate matters involving administrative and judicial appeals of healthcare administrative determinations.
- Advised and represented clients in all aspects of the Certificate of Need (CON) review and appeals process, including projects for new acute care hospitals, new long-term acute care hospitals, new psychiatric and substance abuse hospitals, new comprehensive inpatient rehabilitation facilities, new ambulatory surgery services, new megavoltage radiation therapy

services, new skilled nursing facilities, and expansions of existing facilities and service lines, including open heart surgery services and neonatal intensive care.

- Served as co-lead counsel representing a managed care company in multi-district litigation alleging a RICO conspiracy between the largest HMOs in the United States, including serving on the Steering Committee for the 10-defendant joint defense team, co-leading the Affirmative Discovery Committee, deposing four named plaintiffs, and being selected as one of a few attorneys to successfully argue motions for summary adjudication on behalf of the defendants.

Compliance/Advisory/Strategic Planning

- Assisted multi-facility health system in its disclosures and favorable settlement of violations of the federal Stark Law to the Centers for Medicare and Medicaid Services (CMS).
- Provided fraud and abuse and HIPAA training to sales teams for clinical laboratories.
- Assisted physician groups in developing compliance programs, responding to audit requests, and investigating billing and compliance issues.
- Assisted healthcare client in connection with FTC investigation and CID.
- Assisted investors that acquired hospital out of bankruptcy established healthcare policies, procedures, medical staff bylaws, compliance program, rules, regulations and policies.



- Assisted multi-hospital LTACH system in developing and implementing strategic initiatives, including development of new service lines and negotiation of potential affiliations, in the wake of significant reimbursement changes.
- Assisted national correctional healthcare provider in obtaining regulatory approvals in various states to develop skilled nursing facilities for special, hard-to-place parolee and behavioral health populations.
- Assisted national assisted living/memory care provider with entry into new markets.
- Assisted long-term care provider with affiliations for skilled nursing care, intermediate care, and hospice services.
- Assisted health system with all of its physician contracting and recruitment.
- Attended meetings and advised healthcare Boards of Directors.

Representative Contested CON Matters - Lead Counsel

- Obtained summary dismissal of core challenges to CON for replacement hospital project, leading to withdrawal of appeal.
- Successfully defeated challenges to CON exemption determinations obtained by national health system.
- Assisted three-hospital system in obtaining reversal of initial denial of CON for open heart surgery service and successfully defended against further appeals.
- Assisted multi-hospital system in obtaining CON approval to develop open heart surgery service despite initial review analyst desk denial and objections of two

competing health systems. Obtained dismissal of petition for judicial review challenging final agency favorable decision as well as service-specific rule.

- Assisted hospital in obtaining CON approval for freestanding imaging center based on unprecedented outreach program.
- Assisted multi-hospital system in re-opening closed service lines for rural hospital acquired after bankruptcy and successfully defeating competing CON applications.
- Assisted existing inpatient psychiatric and substance abuse hospital in successfully defeating market entry of new inpatient psychiatric and substance abuse hospital in contiguous county through two rounds of CON applications and appeals through the Georgia Court of Appeals.
- Assisted inpatient psychiatric and substance abuse hospital in expanding over opposition from competing applicant, including obtaining summary dismissal of appeal following evidentiary hearing.
- Assisted existing hospital system in development of inpatient geri-psych program over opposition of existing and approved facilities.
- Assisted multi-hospital LTACH system in obtaining CON approvals for new service lines at the hospitals (skilled nursing services and surgical services).
- Assisted national correctional healthcare provider in obtaining CON approval for skilled nursing facility and successfully defended approval throughout



administrative appeals. Obtained approval to expand in Georgia and bring model to other states.

- Assisted community hospital in obtaining CON approval for gamma knife acquisition over opposition of three existing special-purpose megavoltage radiation therapy providers and successfully defended approval during administrative appeals.
- Assisted community hospital in obtaining permission to relocate and replace its hospital under CON exemption and successfully obtained summary judgment dismissing appeals of the exemption.
- Assisted community hospital in obtaining CON approval for open heart surgery program despite opposition by three existing open heart surgery providers and successfully defended approval during administrative appeals.
- Assisted multi-hospital system in obtaining CON approval to expand obstetrical service line to other facilities despite lengthy objections and appeals of existing perinatal programs, including representation of hospital system before the Georgia Court of Appeals and Georgia Supreme Court.
- Assisted two-hospital nonprofit healthcare system in obtaining CON approval for new short-stay acute care hospital in competitive process and successfully defended approval in appeals brought by losing applicant.
- Assisted hospital system in the re-opening of a freestanding ambulatory surgery center following years of litigation by competing

hospitals and surgery centers seeking to permanently close the facility.

Litigation Precedents.

Kathy's victories in certain matters have garnered public attention and/or established important precedents, including:

- Defeated Petition for Judicial Review challenging constitutionality of agency health planning rule and obtained decision clarifying award of attorney's fees under statute. *Tanner Medical Center, Inc., et al. v. Vest Newnan, LLC, et al.*, 344 Ga. App. 901 (2018); *Tanner Medical Center, Inc., et al. v. Vest Newnan, LLC, et al.*; *Georgia Department of Community Health v. Vest Newnan, LLC, et al.*, 337 Ga. App. 884 (2016).
- Obtained dismissal of class action litigation for four nonprofit hospital systems in state and federal courts challenging uninsured billing practices. E.g., *Satterfield v. Southern Regional Health System, Inc.*, 280 Ga. App. 584 (2006).
- Obtained summary judgment in the lead case of the provider track in MDL 1334. *In re Managed Care*, 430 F. Supp. 2d 1336 (S.D. Fla. 2006), *aff'd*, 2007 WL 1695735 (11th Cir. June 13, 2007). [Note: Eight of the 10 defendants settled claims prior to summary judgment.]
- Obtained denial of class certification in the subscriber track of MDL 1334. *In re Managed Care Litigation*, 209 F.R.D. 678 (S.D. Fla. 2002).
- Obtained dismissal of malpractice claims against health plan under ERISA, *Garrison v. Northeast Georgia Medical Center*, 66 F.



Supp.2d 1336 (N.D. Ga. 1999)(affirmed by the 11th Circuit within eight days of oral argument in an unpublished decision.)

RECOGNITIONS

- The Best Lawyers in America© (2011 to 2023)
 - 2018 Atlanta Lawyer of the Year
 - Atlanta: Health Care Law, Tier One
- Chambers USA: Healthcare in Georgia (2009 to 2022)
- Georgia "Super Lawyer" (2006 to 2009)

CREDENTIALS

Education

- Emory University School of Law, Atlanta, Georgia. Juris Doctor, May 1994, with distinction
- Boston University, Boston, Massachusetts. Bachelor of Arts, Political Science, June 1996, *cum laude*

Professional Associations

- State Bar of Georgia
 - Chair, Health Law Section (2006 to 2007)
 - Vice Chair, Health Law Section (2005 to 2006)
 - Secretary, Health Law Section (2004 to 2005)
 - Executive Committee (2003 to 2009)
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- American Health Lawyers Association
- Georgia Academy of Healthcare Attorneys
- Georgia Health Law Developments: Editor (2006 to 2009)
- Lamar Inn of Courts (1998 to 2000)

Admissions

- Georgia
- Georgia Supreme Court
- Georgia Court of Appeals
- U.S. Court of Appeals, Eleventh Circuit
- United States District Court for the Northern District of Georgia

Prior Positions

- KBP Law, P.C., Founder, January 2016.
- Baker & Hostetler LLP, Equity Partner.
- McKenna, Long & Aldridge, LLP (n/k/a Dentons US LLP), Equity Partner
- Powell, Goldstein, Frazer & Murphy, LLP (n/k/a Bryan Cave Leighton Paisner LLP), Equity Partner

SPEAKING ENGAGEMENTS

Kathy is a frequent lecturer at healthcare seminars. She is a regular presenter at the Fundamentals of Health Care Law seminar co-sponsored by the Institute of Continuing Legal Education, the Georgia Academy of Healthcare Attorneys, and the State Bar of Georgia Health Law Section. She also serves as a guest lecturer at Georgia State University College of Law on specialized health law topics, including certificate of need laws and regulations

COMMUNITY



- Atlanta Legal Aid Society, Board Member (2007 to 2009)
- Atlanta Legal Aid Society, Advisory Committee to Board (1998 to 2006, 2010 to 2011)