

MVP: King & Spalding's Mark Polston

By **Morgan Conley**

Law360 (December 3, 2019, 3:04 PM EST) -- King & Spalding LLP's Mark Polston secured wins for some of the biggest names in medicine over the past year, including a federal appeals court victory for the American Clinical Laboratory Association, earning him a spot as one of **Law360's 2019 Health Care MVPs**.

HIS BIGGEST WIN THIS YEAR:

Among his recent achievements, Polston singled out his team's work representing a coalition of over a dozen Florida hospitals and hospital systems in an approximately five-year battle that originated at the administrative level.

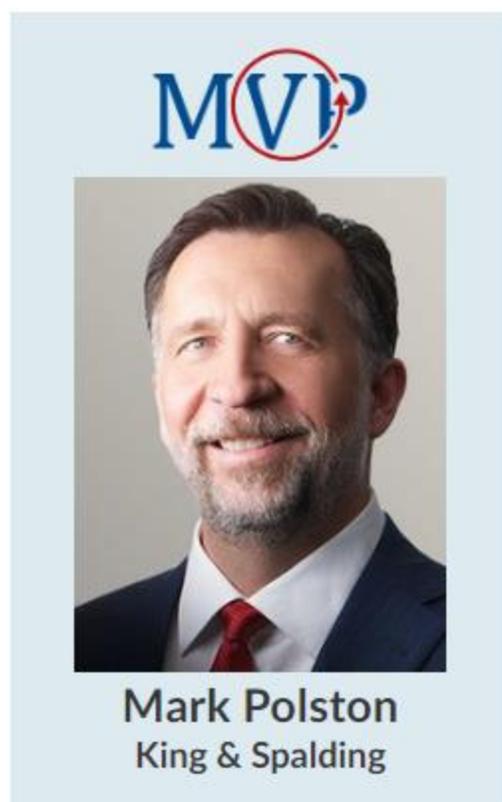
The groups had challenged a directive from the U.S. Secretary of Health and Human Services that they argued did not honor a Centers for Medicare & Medicaid Services reimbursement policy giving additional funding to hospitals that serve a disproportionate share of low-income patients.

In July, Polston secured a major victory when a D.C. federal court ruled in favor of the hospitals.

"We had to develop a very long-term litigation plan. We had to distinguish a lot of negative precedent, every step along the way," Polston told Law360. "It took a lot of strategic thinking at the administrative level, as well as at the district court level. And to see it all come together, and for the court to recognize our arguments there, it is something that makes you proud."

The ruling in *Bethesda Health et al. v. Azar* means that Polston's clients stand to receive a sizable boost to their reimbursements dating retroactively to 2007.

"I didn't do it alone. I did it with a team, who sat around and thought of these issues," Poston said. "We were able to come up with the best arguments and strategically plot that case from its inception back in 2013 up until today."



OTHER NOTABLE VICTORIES:

Polston scored another notable win in July when a unanimous D.C. Circuit panel revived the American Clinical Laboratory Association's challenge to hundreds of millions of dollars in Medicare payment cuts. The appeals court rejected the federal government's assertion that it was immune from judicial scrutiny and remanded the suit to the lower court, where it is still pending.

Prior to the July decision, there were several unsuccessful attempts by health care providers to convince the D.C. Circuit that federal courts had jurisdiction over their claims, Polston told Law360.

"Despite this, we were able to convince the D.C. Circuit that ACLA's claims were not barred by statute," Polston said. "More significantly, the court held that when the government invokes a jurisdiction stripping statute, it must show that there is no reading of the statute that would allow the court to take jurisdiction over the plaintiff's challenge."

"That's a tough standard for the government to meet, and it hopefully creates more opportunity for Medicare providers to challenge agency decisions," Polston continued.

WHY HE'S A HEALTH CARE ATTORNEY:

Polston, who began his legal career as a trial attorney for the U.S. Department of Justice, said "good fortune" played a large part in his becoming a health care attorney.

"I started my career doing False Claims Act enforcement a hundred years ago, and even back then there were health care cases that we pursued," Polston recalled. "And so that led to some understanding of the government paying health care programs and, eventually, I found myself at HHS, where I was a chief litigation counsel for CMS."

WHAT MOTIVATES HIM:

Polston identified his clients' commitment to providing top-notch health care as a driving force behind his practice.

"My motivation is to help them solve their problems and provide them opportunities so that they can keep doing the thing that they do best — helping people with the best health care in the world," Polston said. "I count myself as a lucky individual. I have clients who ... run some of the biggest health care organizations in the country."

HIS ADVICE FOR JUNIOR ATTORNEYS:

Polston cautioned against the tendency for new attorneys to be preoccupied with visualizing their future, speculating about what their career will look like in the next five, 10, even 20 years.

"Those are good things to think about, but they don't have to be static," Polston said. "Things will come along your way. Opportunities will arise from places that you never imagined. So you have to be flexible."

"Play the long game," Polston added. "Enjoy what you're doing now, but look for opportunities where they arise."

— *As told to Morgan Conley*

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