

Health Care Group Of The Year: King & Spalding

By **Danielle Nichole Smith**

Law360 (January 27, 2020, 3:35 PM EST) -- King & Spalding LLP has deftly handled precedent-setting cases, including the American Clinical Laboratory Association's challenge to the implementation of a Medicare statute and Prime Healthcare's defense against allegations it submitted false claims, landing it among Law360's 2019 Health Care Groups of the Year.

James W. Boswell III, the leader of the firm's national health care team, told Law360 that the practice is unique in its interdisciplinary nature, as it combines health care regulatory, litigation and transactional work into one team.

Additionally, the firm has developed talent in a number of health care spaces, including mergers and acquisitions, strategic affiliations, Medicare reimbursements, False Claims Act litigation and government investigations, he said.

"I think we go deeper than many firms in some key areas," Boswell said.

Last year, King & Spalding showed its skill in the health care industry through its representation of Prime Healthcare and an affiliate, Encino Hospital, in a suit from the California Department of Insurance and a whistleblower.

The case, which involved allegations of false claims submitted to commercial insurers, posed a \$200 million potential exposure to the hospital system before the firm was able to narrow it before trial, Boswell said.

The firm was able to convince the court that the claims brought under the California Insurance Fraud Prevention Act weren't suitable for a jury trial and ultimately secured a full defense verdict for Prime Healthcare in September after a trial before the judge.

According to Boswell, the case — one of the few to be tried under the state statute — also established precedent about the types of claims that are subject to the law.

"That was a helpful and groundbreaking ruling, because it significantly limited the reach of the statute," Boswell said.



King & Spalding also scored a big win for the American Clinical Laboratory Association at the D.C. Circuit in July in a suit challenging the U.S. Department of Health and Human Services' implementation of the Protecting Access to Medicare Act.

A lower court had found that the association couldn't bring the case because of a jurisdiction stripping provision in the statute barring courts from reviewing Medicare reimbursement rates.

But the firm explained to the D.C. Circuit that the association wasn't challenging HHS' establishment of rates but rather an entirely separate process, Mark D. Polston, the co-chair of the firm's life sciences and health care industry group, said.

According to Polston, the D.C. Circuit had issued several rulings involving jurisdiction stripping provisions that supported the agency's position in the suit around the time that they were arguing the case.

But King & Spalding was able to distinguish those from the association's suit, he said, ultimately securing a win that allowed the association to proceed and challenge HHS' policy on the merits.

Polston said the D.C. Circuit's ruling in the case had wider implications, as well. The court essentially found that, unless a statute was "abundantly clear" in blocking a plaintiff's ability to bring a suit, then the plaintiff should be allowed to move forward, he said.

"It creates a new standard by which the D.C. Circuit is going to interpret these jurisdiction stripping provisions, and it applies not just in a Medicare context but it applies in all other contexts where Congress has established a statute that prohibits people from challenging an agency's actions," Polston said.

In 2019, King & Spalding also helped the University of Texas Southwestern Medical Center enter into a long-term master affiliation agreement and master services agreement with the Children's Health System of Texas the firm said.

And the firm said it is representing the University of Texas Health Science Center at Houston in its ongoing renegotiation of a long-term affiliation agreement with Harris County Hospital District.

Kristin M. Roshelli, a partner in the Houston health care practice, said the firm's long-standing relationships with clients — such as the University of Texas, which the firm has worked with for decades — allows it to contribute significant value and support to their business and operations.

For instance, the University of Texas has certain parameters in which it needs to operate as a state agency that holds state-owned assets, Roshelli said. The school must have the ultimate say in some of its decision-making, which can be challenging when creating affiliations, she said.

Also in the health care transactional space, King & Spalding has aided the California Public Employees' Retirement System, or CalPERS, in negotiating agreements with the health plans for state employees and retirees. The firm has helped the program consistently keep their premium increases at a low rate, Boswell said.

Boswell said that the firm has 195 lawyers who spend most of their time working on health care and life sciences matters, making it a significant practice area for the firm and one of the largest health care

practices in the country. Those attorneys are spread across the U.S. in offices in Atlanta, Chicago, Denver, Washington, D.C., and Texas, according to Boswell.

The firm also has attorneys based in Los Angeles, Sacramento and San Francisco. Having lawyers in California is another element that sets King & Spalding's health care practice apart, Boswell said.

Boswell said the practice group has added about 21 attorneys in the past year and plans to continue to grow, particularly in Chicago — a "growing and emerging market" for the firm. The group also hopes to grow in California and on the East Coast, he said.

"The recruiting of partners and associates is something that I spend a lot of time on, and we're really excited about the talent that is out there," Boswell said. "Our firm has declared health care and life sciences as an initiative of our law firm, and we're certainly working hard try to attract additional talent into our group."

--Editing by Nicole Bleier.