

Health Law

The Gray Plant Mooty Health Law Practice Group is dedicated to providing the best client value by offering unmatched expertise, deploying an enthusiastic and talented team tailored to each project. We regularly help our clients—from large multistate delivery systems and health plans to solo rural practitioners—resolve complex regulatory issues, and we work proactively to help implement sensible plans for the future in an ever-shifting regulatory landscape. We take a practical, collaborative approach, working alongside our clients to understand their businesses and empower them to pursue their missions with confidence.

Our areas of deep expertise include health care compliance and regulatory matters, health care transactions, and health care litigation. We also regularly provide general counsel services to our health care clients and assistance on a wide range of routine business matters, including contracting, employment, labor law, employee benefits, and real estate issues.

Academic Medicine

The Gray Plant Mooty health law team is one of the most experienced groups of attorneys working with academic medical centers, as well as their related professional schools (including medical schools, dental schools, nursing schools, and schools of pharmacy), in the Twin Cities and surrounding area. Gray Plant Mooty's extensive Labor, Employment & Higher Education Practice Group lends us additional expertise to address the complex, intersecting issues faced by academic medical centers.

Our expertise particular to academic medicine includes:

- Advising on reimbursement and billing in physician teaching settings and other complex areas, such as transplant services, clinical labs, and in joint ventures with community providers
- Issues related to graduate medical education funding
- Negotiating and drafting electronic health record arrangements to facilitate clinical care, education, and research
- Clinical research contracting, compliance and reporting issues
- Negotiating and drafting contractual arrangements involving AMC physicians
- Structuring relationships between components of AMCs
- Obtaining favorable OIG advisory opinions for AMC clients
- Negotiating and drafting contracts between AMC components and other health systems.

Health Care Regulatory Counseling

Health care providers in the United States offer their services and conduct their businesses in an environment of ever-changing and highly technical laws and regulations, state and federal oversight, and political and public scrutiny. Gray Plant Mooty's health law team understands that when it comes to compliance, the rules are complex and the stakes are high. We routinely help our clients develop compliance plans and guide them through responding to and defending against federal and state regulatory inquiries.

Our expertise includes:

- Federal and state fraud and abuse laws
- Stark Law and Anti-kickback Statute compliance
- Government investigations and self-disclosure
- False Claims Act
- HIPAA and state privacy, security and breach matters

- Medicare and Medicaid billing and reimbursement issues
- Patient rights, including vulnerable adult and child protection laws
- Medical staff issues
- Medicare and Medicaid enrollment, participation and program integrity matters
- Tax and tax exemption law
- Antitrust law
- Advising diagnostic imaging centers, clinical labs, DMEPOS, HHAs and other ancillary providers
- State fee splitting and corporate practice of medicine
- Facility and provider licensing
- Provider, vendor, and managed care contracting

Health Care Transactions

The Gray Plant Mooty health law team provides the highest levels of expertise, experience, and specialization in virtually every type of health care contracting relationship, merger, acquisition, and joint venture. Whether it involves negotiating the terms of a physician practice sale to or by a hospital, a long-term professional services or management agreement, adding a hospital to an existing system, adding an additional service or location, forming hospital-physician joint ventures, or enabling providers to collaborate in bringing new services to the community, the Gray Plant Mooty health law team provides the expertise, leadership, and creativity critical to developing strategies that meet the challenges presented by such transactions.

Our expertise includes:

- Affiliations, joint ventures, and collaborations
- Mergers and acquisitions
- Antitrust counseling in transactions
- Health care financing
- Facility and provider licensing
- Provider, vendor, and managed care contracting

Health Care Litigation

Our health care litigation specialists provide our clients in the health care field with knowledgeable, practical representation. The litigators on the health care team represent health plans, hospitals, clinics, physician groups, individual health care professionals, and other providers in litigation, before state licensing boards and administrative bodies, and in responding to civil and criminal investigations.

Our expertise includes:

- Qui tam and whistleblower defense
- Government and internal investigations
- False Claims Act
- Federal and state fraud and abuse laws
- Matters before state licensing boards
- Patient rights, including vulnerable adult and child protection laws
- Medicare enrollment, billing, reimbursement, and participation disputes

- Licensing and credentialing disputes

Experience

University of Minnesota Health Clinics and Surgery Center

We worked closely with our client, University of Minnesota Physicians, in the development and construction of an innovative health care facility in Minnesota. The University of Minnesota Health Clinics and Surgery Center opened in February 2016 as a 342,000 square foot facility which houses 37 medical specialty clinics as well as an ambulatory surgery and procedure center. Housing both freestanding and provider-based clinics and owned by a joint venture with the University's affiliated health system, the project presented challenging legal compliance issues as well as a design and care delivery structure which is among the first of its kind nationally.



Key services GPM's health law team provided included:

- Obtaining a first-of-its kind OIG advisory opinion (OIG Adv. Op. 10-15) that supported the formation of a joint venture entity between Fairview Health Services, the nonprofit system owner of the University's primary teaching hospital, and University of Minnesota Physicians, the nonprofit faculty practice organization that employs over 1,000 specialists practicing in the Twin Cities
- Advising on all regulatory compliance aspects of design and construction, including issues related to surgery center and clinical laboratory licensure and accreditation, ionizing-radiation producing equipment certification, radiation safety and pharmacy licensure, dispensing, and distribution
- Advising on design and operational strategies to ensure compliance with regulations governing co-location of provider-based clinics and freestanding clinics in the same physical structure, as well as guidance on issues related to siting and staffing of clinical laboratories, ambulatory surgery centers, independent diagnostic testing facilities, and durable medical equipment suppliers
- Assisting on issues related to Medicare, Medicaid, and commercial payor provider and supplier enrollment; physician and non-physician practitioner licensure, supervision, and staffing; payor credentialing; and other program integrity and participation matters
- Counseling on compliance with federal and state conditions of participation and licensure requirements for a range of provider categories including provider-based clinics, ambulatory surgery centers, clinical laboratories, mammography centers, hearing aid dispensers, dental labs, and durable medical equipment suppliers
- Structuring the joint venture legal entity and addressing issues of funding, asset contribution, and development of payment models to support goals and meet health regulatory guidelines
- Negotiating long-term leases, related real estate and facility agreements, and bond financing agreements that reflect the University's ownership of the building and real estate and issuance of tax-exempt bonds to finance construction
- Creation of surgery center medical staff structure, including background studies, peer review, and credentialing processes, as well as coordination with hospital medical staff guidelines
- Negotiating scores of services agreements between the owners and third parties to ensure legal and regulatory compliance

- Advising on all aspects of reimbursement compliance including coordination between billing rules applicable to freestanding patients versus hospital outpatients, as well as complex ancillary service billing issues in the areas of clinical lab and pathology, infusion, retail pharmacy, diagnostic imaging, radiation therapy, surgical billing, mammography, physician-dispensed drugs, and purchased test and anti-markup restrictions
- Compliance with state and federal privacy laws relating to electronic health record arrangements, organized health care arrangement structure and operational design and the use of innovative electronic signage and badge location system

CentraCare Health

We represented CentraCare Health in its acquisition of the 40-physician St. Cloud Medical Group. Despite a challenge by the Federal Trade Commission on potential antitrust grounds, our team was able to reach a favorable settlement that allowed the transaction to proceed. Ultimately, the acquisition was finalized in October 2016, bringing together two of the largest primary care service providers in central Minnesota.

Minnesota Department of Health – Privacy, Security, and Consent Management for Electronic Health Information

The Minnesota Department of Health retained GPM to work with the department to advise health care providers in Minnesota on compliance with federal and state privacy laws. Issues for which we have advised on behalf of the department include:

- Analysis of complex privacy issues involving the interplay between HIPAA, other key federal privacy laws (such as FERPA and Part 2 substance abuse regulations), Minnesota law, and other states' privacy laws
- Releasing information in response to public health crises or law enforcement emergencies
- Sharing information among providers via health information exchange arrangements
- Use and disclosures of patient information in chemical dependency treatment settings
- Sharing information in coordinated care models, such as medical or health care home arrangements and accountable care organizations

We have worked with the department to develop a series of practical, easy-to-use tools by health care providers for purposes of responding to various privacy and security scenarios. For example, we have created policies, procedures, flowcharts, and other tools to aid providers with privacy incident breach analysis; authorization and consent rules; clinical research involving PHI, limited data sets, and de-identified information; fundraising issues; and the use and disclosure of mental health information. We have also hosted a series of webinars and in-person events, on behalf of the department, for purposes of educating and training providers on these and numerous other privacy and security issues.

HealthPartners and Park Nicollet Combination

We represented HealthPartners in several phases of its combination with the Park Nicollet System, another major Twin Cities health care system. The combined entity is now Minnesota's second-largest health care system in revenue behind the Mayo Clinic, with 1.4 million medical and dental members, 20,000 employees, 1,500 physicians, and more than one million patients. GPM's health law team provided practical advice in many areas, resulting in a smooth process and a favorable outcome for all stakeholders involved, including patients that will be served by the combined organization.

Areas of service included:

- Real estate and environmental review and counseling
- Hart-Scott Rodino filing and obtaining satisfactory state and FTC approvals
- Tax-exemption compliance and structuring assistance
- Strategic advice relating to impact on existing joint venture and other legal relationships

- Tax-exempt bond compliance and impact



We represented University of Minnesota Physicians in the formation of a virtual health care system that provides co-management of adult services delivered at the University of Minnesota campus and selected service lines through the formation of joint venture entity controlled by Fairview Health Services, University of Minnesota Physicians, and the University of Minnesota.

Areas of advice include:

- Formation and governance of joint venture entity
- Development and negotiation of complex management agreement for joint venture to manage inpatient and outpatient operations of 800-bed inpatient facility and multi-specialty clinics
- Negotiation of academic funds flow agreement and development of payment structure
- Counseling on development of nurse practitioner-run clinic and other unique care delivery models

Medical Student FICA Refunds

We assisted a non-governmental teaching hospital in analyzing and facilitating the refund of FICA tax for its medical residents over a 10-year period, resulting in the return of millions of dollars to the institution and its medical residents.

Student Health Services

We have advised a variety of institutions of higher education on the structure and operation of their student health centers. Our work in this regard includes:

- Structuring contracts between secondary and post-secondary schools and community health care providers
- Counseling on provider licensure, staffing, supervision, and background studies matters
- Advising on participation of students in care delivery
- Providing guidance on application of FERPA, the relationship between FERPA and HIPAA in a student health setting, and issues of confidentiality for minors
- Providing guidance on financial responsibility for care and health plan requirements related to claims submission
- Use of technology, apps, and wearable devices to facilitate care delivery and exchange of patient information with providers
- Advising on patient incentive and marketing strategies