

A View from Legal Street, Help Us Help You Get Paid, Episode 9: Data to Drive Healthcare Businesses to Maximize Reimbursement

Partner [Zachary Rothenberg](#) sits down with the CEO of Alpha Data Strategies, Sari Megan Kern, to discuss how data drives healthcare businesses to greater profitability in this latest episode.

“A View from Legal Street” is a series created by attorneys [Zachary Rothenberg](#) and [John A. Mills](#). These videos serve to showcase a “nuts and bolts” approach to maximize success in obtaining reimbursement for services rendered. Watch [Episode 1: Essential Documentation](#).

Have a topic you would like covered? Contact Us!

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<https://www.nelsonhardiman.com>

[Zachary Rothenberg](#)
zrothenberg@nelsonhardiman.com

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Client Alert: Is Your Professional Information Being Sought From Your Licensing Agency? Do You Know Your Rights?

California Court of Appeal Decision in *Board of Registered Nursing v. Superior Court of Orange* Draws A Line In the Sand: Health Care Professionals Must Be Notified When Their Professional Information Is Sought From An Administrative Body

Stemming from California's ongoing legal battle against pharmaceutical companies for deceptive marketing schemes in relation to the opioid epidemic (think Purdue), the issue of health care professionals' privacy rights came to the forefront when the State of California subpoenaed administrative records (including disciplinary records) and investigatory files (including complaints) about these professionals from their licensing boards, including the Medical Board, Nursing Board, Pharmacy Board, and Department of Justice.

In *Board of Registered Nursing v. Superior Court*, January 15, 2021, ___ Cal.App.5th ___ [2021 WL 140983], the administrative and governmental agencies referenced above took the position that the subpoenas issued by the State, demanding a broad swath of documents, were invalid because the State failed to provide notices to consumer (i.e., health care professionals) that their professional information was being sought. The agencies further maintained that the scope of categories demanded was protected by the official information privilege, deliberative process privilege, and constitutional right to privacy.

When the trial court ordered the agencies to produce documents in response to the State's subpoenas, despite the arguments above, the agencies sought and were granted writ relief by the Court of Appeal.

The Court of Appeal made the following findings, among others:

- Health care professionals (doctors, nurses, pharmacists, etc.) whose identities would be disclosed in an agencies' administrative records, investigatory files, and coroners report must be given notice of the subpoena.

The Court of Appeal denied the State's argument that the Information Practices Act of 1977 (IPA) allowed administrative and governmental agencies to comply with subpoenas without providing notice to consumer. Instead, it held that, because the subpoenas sought "the personal information of investigated or disciplined health care professions, without redaction, [the State] was required to provide notice to these persons."

- Requests for complete administrative records, investigatory files, and CURES data absent notice to consumer (i.e., health care professionals) was a violation of the constitutional right to privacy and the statutory official information and deliberative process privileges.

The Court of Appeal held that the private and public interest in confidentiality of the requested materials (which included investigatory files, administrative records, and CURES data) is substantial. "The health care professionals named in the investigatory files and disciplinary proceedings have a legally protected privacy interest in their personal information reflected in the records...This right to privacy is especially salient for those professionals who were investigated but never accused of wrongdoing..."

Take Away:

The arguments and assertions made by the administrative and governmental agencies in Board of Registered Nursing v. Superior Court in response to the State's subpoenas are the very same arguments and assertions that can and are raised when the same agencies issue similar requests/subpoenas to health care professionals. Health care professionals must keep a close eye on whether these administrative and governmental agencies are providing notice to consumer, whether the consumer is a health care professional or a patient, before turning over any records.

When you receive a subpoena or similar request, even if it is for your own administrative records or investigatory file, notice to consumer needs to be provided. If you did not receive notice or if you received notice, but do not know how to respond, contact an attorney immediately to discuss how to best protect your privacy rights. Statutory deadlines require a quick response to subpoenas or similar requests, so time is of the essence.

If you have any questions or would like to discuss how to protect your privacy interests, the attorneys at Nelson Hardiman are here to answer your questions. Feel free to contact [Sara Hersh](#) or [Miriam Mackin](#) at 310-203-2800.

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Rule speeds approvals for 'breakthrough' devices, other commercially covered services

Senior Counsel [Alan J. Sedley](#) was recently interviewed by Part B News to discuss a new final rule that allows items and services to gain approval for Medicare reimbursement more quickly than in the past, particularly medical devices that clear a specific FDA hurdle.

From the Article:

Alan J. Sedley, senior counsel with the Nelson Hardiman firm in Los Angeles, notes that "breakthrough" technology was originally "the primary focal point" of the rule, as suggested by then-President Trump's Oct. 3, 2019, Executive Order, which called for regulations to be written so that "innovative products are brought to market faster, and so that such products, including breakthrough medical devices and advances in telehealth services and similar technologies."

[Part B News AJS Interview](#)

Nelson Hardiman Successfully Defends Physician Facing

Suspension after Video Doctor USA Fraud

Nelson Hardiman Attorneys [Harry Nelson](#) and [Aviva Morady](#) recently represented a Physician after a former telemedicine employer, Video Doctors USA and Telemed Health Group, fraudulently used his Medicare provider number to bill for medically unnecessary orthopedic braces and other durable medical equipment (DME). Following the Department of Justice prosecution of the telemedicine company owners, CMS suspended the physician's Medicare enrollment and billing privileges. Medicare sought to suspend the Physician for an indefinite period of time, leading to dire repercussions on his medical career despite his lack of knowledge or participation in the fraud. Attorneys Harry Nelson and Aviva Morady successfully appealed the Physician's suspension, arguing that the Physician was a victim and not an enabler of the fraud, and that he appropriately exited promptly without delay upon encountering questionable practices from the telemedical provider. CMS agreed with the appeal and reinstated the Physician's Medicare enrollment and billing privileges and allowing the Physician to resume his ability to provide services.

For more information or business inquiries contact:

[Aviva Morady](#)

amorady@nelsonhardiman.com

310.203.2800

[Harry Nelson](#)

hnelson@nelsonhardiman.com

310.203.2800

Nelson Hardiman Attorneys Recognized as Super Lawyers' 2021 Southern California Rising Stars

[Katherine Bowles](#), [Aaron Lachant](#), and [Michael \(Akiva\) Newborn](#) were named by Super Lawyers 2021 as Southern California Rising Stars.

Each year, [Super Lawyers](#) conducts evaluations of lawyers across the country for its annual list of top attorneys. Each candidate is measured against 12 indicators of peer recognition and professional achievement. The Rising Stars list recognizes no more than 2.5 percent of attorneys in each state.

The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys.

8 Nelson Hardiman Attorneys Named to the 2021 Southern California Super Lawyers List

Nelson Hardiman is proud to announce that Attorneys [Rob Fuller](#), [Mark Hardiman](#), [Sara Hersh](#), [John A. Mills](#), [Harry Nelson](#), [Jonathan Radke](#), [Zachary Rothenberg](#), and [Alan J. Sedley](#) were named to the 2021 Southern California Super Lawyers list. Each candidate is evaluated on 12 indicators of peer recognition and professional achievement. Only 5% of attorneys in Southern California receive this distinction.

2021 marks the *11th consecutive year* that Co-Founder and Managing Partner [Harry Nelson](#) has been named as one of Southern California's Super Lawyers.

Congratulations to all for the selection to this prestigious list!

Should You Apply for Government Assistance?

Co-Founder and Managing Partner [Harry Nelson](#) was interviewed by [U.S. News & World Report](#) regarding public assistance programs for help relating to healthcare.

From the article:

Medicaid. For those with low incomes and limited assets, Medicaid provides free health insurance. Many states have expanded Medicaid coverage in recent years, so more people

are eligible. “This is no longer something that’s just limited to a narrow handful,” says Harry Nelson, a health care attorney and author of “The United States of Opioids: A Prescription for Liberating a Nation in Pain.” In his home state of California, Nelson estimates that about a third of people are covered by Medicaid.

[Read the full article](#)

Top-ranked Healthcare Law Firm Nelson Hardiman Elevates Sarvnaz “Miriam” Mackin to Partner

[Nelson Hardiman](#) is proud to announce that [Sarvnaz “Miriam” Mackin](#) has been elevated to partnership. Miriam is a key member of the firm’s Litigation, Administrative, and Regulatory practices and represents a range of clients including individual healthcare practitioners and healthcare organizations in matters encompassing licensing and compliance issues to complex litigation. Miriam has also applied her litigation and regulatory experience in assisting as outside counsel to medical staffs in peer review matters, disciplinary hearings, and drafting/revising medical staff bylaws and policies.

“Miriam is a star in every sense of the word. Her work ethic, her deep intelligence, and her savvy in solving clients’ problems are vital to our firm and have earned the confidence of our clients,” said the firm’s Founder, [Harry Nelson](#). “It is

no mistake that clients trust her in high stakes matters, whether it is defending and advising them on fraud and abuse-related matters, patient safety issues, privacy and data security-related challenges, or healthcare business litigation.”

Miriam’s dedication to assisting those in the healthcare field extends beyond the office. Engaged with organizations such as Women in Health Administration and the National Health Law Program, Miriam has built strong connections within the healthcare community and has a true appreciation for developing nimble and innovative strategies. “If the past year has taught us anything, it is that healthcare providers and organizations and the laws and regulations that guide the healthcare field are a vital component in ensuring the health and safety of our families and communities,” says Miriam. “I enjoy being able provide guidance to those individuals and organizations which enables our clients to continue doing their jobs and achieve their goals with the least number of hurdles as possible.”

Fellow Partner Sara Hersh, says “Miriam is dedicated and focused in her work with a true sense of compassion for the unique needs of her clients. Miriam’s broad range of experience in regulatory, administrative, and litigation matters ensures clients will benefit from her well rounded and proactive approach while resolutely protecting their interests.

[Nelson Hardiman LLP](#) is the premier healthcare and life sciences firm in Los Angeles, serving healthcare and life science providers, investors, and organizations that need a hard-to-find level of quality advice on the most sensitive industry issues. The firm’s litigation practice specializes in defending fraud and abuse and whistleblower actions, government investigations, and other complex business disputes. Nelson Hardiman’s transactional group handles healthcare organization acquisitions, sales, investment, and

financings, and Nelson Hardiman's regulatory team advises on compliance with licensing, operational, and reimbursement issues across the full continuum of healthcare industry sectors, with expertise on Medicare and Medicaid requirements, privacy and data security, FDA, and other regulatory matters. The firm has earned a singular position reputation nationally for its leadership in addressing issues in behavioral health and telehealth. More information about the firm is available at <https://www.nelsonhardiman.com> or at 310.203.2800.

[Press Release](#)

Client Alert: Certain “Just-in-Time” Inventory Practices Overruled for General Acute Hospitals; Hospitals Required to Maintain Stockpile of Personal Protective Equipment under AB 2537

NEW LAW REQUIRES REPORTING OF 2019 DATA BY THIS WEEK

Cal OSHA and OSHA regulations mandate that health care workers be protected from hazards at the workplace in hospitals, but these requirements merely address the general need “to furnish employment and a place of employment that was safe and healthful” and “to have an effective injury prevention program in place.” As such, hospitals were free to manage their

inventory of personal protective equipment (“PPE”) much as any other inventory, including the ‘just-in-time’ practice of prior day delivery of supplies for cost controls.

These minimal inventory practices, while cost-effective, proved disastrous in the pandemic.

While common sense in normal operations might prevail to increase PPE supplies over time against the reoccurrence of a pandemic, the California legislature has stepped in and passed AB 2537, that requires hospitals to have ready stockpiles of PPE for their workers exposed to hazards, including infectious disease.

Specifically, AB 2537 requires both private and public employers operating general acute hospitals to supply PPE to health care workers who provide direct patient care or provide services that directly support patient care in areas exposed to potential hazard. Hospitals are also required to conduct periodic training in the use PPE.

Additionally, beginning on April 1, 2021, the hospitals must maintain a supply of specified equipment (respirators, particulate filters or cartridges, surgical masks, isolation gowns, eye protection, and shoe coverings) in quantities equal to three months of normal consumption. Hospitals must document the management of this stockpile, including written policies and procedures for periodically reviewing and adjusting the par levels of inventory for all types of equipment to meet the three-month requirement.

A list of the Hospital’s PPE stockpile (with par levels) and a copy of its written policies and procedures must be provided to the Division of Occupational Safety and Health upon request. Failure to maintain the required stockpile may come with a civil penalty of up to \$25,000 per violation. Please note that these obligations extend to all hospital facilities, and responsibilities fall on owners, operators, and management

companies.

On or before January 15, 2021, general acute care hospitals (with the exception of hospitals under the jurisdiction of the State Department of State Hospitals) must also be prepared to report to the Department of Industrial Relations, under penalty of perjury, their highest 7-day consecutive daily average consumption of PPE during the 2019 calendar year.

If you have any questions about this new PPE Stockpile law, please contact Nelson Hardiman attorneys [Miriam Mackin](#), [Lara Compton](#), or [Rob Fuller](#) for further advice (310)203-2800.

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