



John A. Mills
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Admissions

State Bar of California

State Bar of Texas

Ninth Circuit Court of Appeals

Federal Circuit Court of Appeals

Central, Southern, and Eastern District of
California

Affiliations

American Bar Association

Los Angeles County Bar Association,
Healthcare Section

American Health Lawyers Association

California Society for Healthcare Attorneys

Beverly Hills Bar Association Healthcare Law
Committee (*Secretary 2013-Present*)

Education

University of Texas School of Law, J.D.
University of Texas at Austin, B.A.

PROFILE

Navigating between regulatory compliance and litigation, the versatility of John Mills' healthcare practice and the diversity of his clients provide him with a keen understanding of the unique business objectives and risks facing different segments of the healthcare provider community. Among John's diverse range of clients are hospitals, ambulatory surgery centers, addiction treatment centers, community clinics and 340B covered entities, healthcare districts, physicians and other healthcare professionals, medical groups and IPAs, peer review bodies, management service organizations and medical billing companies, and pharmacies.

Focus on Regulatory Compliance Issues for Healthcare Providers

John's regulatory compliance work focuses on key issues facing providers that could potentially impede their business operations. He advises clients on compliance with managed care and reimbursement programs, voluntary disclosures of possible Medicare over-payments, medical staff and peer review, analysis of business arrangements to ensure compliance with the anti-kickback and Stark laws, and provides regulatory guidance to covered entities and contract pharmacies in connection with the federal 340B program.

Litigation Success Bolstered by Regulatory Compliance Acumen

John's deep knowledge of regulatory compliance lends invaluable insight to his litigation practice. John represents and advises healthcare providers on managed care and reimbursement litigation, commercial business litigation, healthcare fraud lawsuits and investigations, peer review hearings and licensing board proceedings. In addition to jury trial experience, he has handled numerous arbitrations and administrative hearings. John's litigation successes include obtaining numerous pre-trial dismissals of lawsuits, including a summary judgment in favor of a large hospital in a civil False Claims Act lawsuit and a demurrer sustained without leave to amend in favor of a large hospital in a whistleblower claim brought by a member of its medical staff. Additionally, he has obtained numerous favorable settlements for healthcare providers in reimbursement disputes with commercial insurance payors and ERISA plans, won a reversal of a finding of ERISA preemption on appeal, and garnered favorable results for clients following arbitrations and administrative proceedings.

Accolades

John has been recognized by Best Lawyers in America for his work in Health Care Law for six consecutive years (2016-2021) and in Administrative / Regulatory Law for the last four years (2018-2021). John has also been named to the Southern California Rising Stars or Super Lawyers lists eight times.

Before Nelson Hardiman

Prior to joining Nelson Hardiman, John practiced at the Los Angeles office of a law firm dedicated solely to the representation of healthcare providers and suppliers, where he focused on managed care litigation, medical staff and peer review compliance and litigation, as well as commercial litigation. John also served as a Law Clerk to the Presiding Justice of the Texas Third District Court of Appeals after finishing law school.

Life Outside the Firm

The range of John's interest outside the firm is just as diverse as his practice. When he's not guiding clients through their business challenges, he enjoys family time with his wife and two sons, hiking, sailing, listening to music, reading history and literature, and rooting for

Texas Longhorns football.

EXPERIENCE

Litigation, Administrative Hearings, and Appeals

Board Hearings John has represented a variety of providers in administrative actions brought by their respective licensing boards. For example:

John represented a group home in a license revocation action brought by the Department of Social Services following numerous citations that DSS imposed on the provider. After engaging in aggressive discovery against DSS and motion practice challenging DSS' grounds for the citations, John was able to negotiate a settlement with DSS that was favorable for the provider.

In another example, John successfully obtained a favorable settlement for his residential treatment facility client in an action brought by the Department of Healthcare Services.

Civil Fraud and Anti-Kickback Defense

In a civil action brought by a physician against a hospital alleging violations of anti-kickback statutes and other statutory violations, including an alleged violation of Health & Safety Code 1278.5, John successfully obtained a dismissal of the entire action in favor of his hospital client on a demurrer.

In another case, John successfully defended a physician in a civil action by a hospital alleging the fraudulent inducement to enter into a contract for anesthesia services and illegal kickbacks. Promptly after the lawsuit was filed, Nelson Hardiman brought a demurrer to have the lawsuit dismissed on the grounds that it was baseless and failed to assert a legally viable claim against the physician. The court sustained the demurrer and ultimately dismissed the lawsuit with prejudice.

Civil Rights Litigation

John successfully defended a physician who was sued by another physician for alleged civil rights and antitrust violations. Notwithstanding that the plaintiff alleged \$750 million in damages, John was able to convince the plaintiff and his counsel to abandon the lawsuit without any monetary recovery.

John also has represented several healthcare providers with civil rights claims against government actors. For example, one of John's health system clients sued the Attorney General of California in federal court for violations of the hospital's equal protection and due process rights under the Fourteenth Amendment arising from the de facto denial of the health system's bid to purchase nonprofit hospitals. In another case, John represented a physician in a Section 1983 lawsuit against a healthcare district for violations of the physician's First Amendment rights. John has also counseled other healthcare providers on whether they have grounds for alleging that their civil and constitutional rights have been violated.

Complex Business Litigation Represented a national health system in a contract dispute with another health system and its management company involving an unsuccessful purchase of five financially distressed nonprofit hospitals. John's client was unable to move forward with the purchase of the hospitals because the Attorney General of California imposed conditions on the transaction that made it financially unfeasible to turn around the failing hospitals. The seller sued John's client for allegedly breaching the contract by pulling out of the transaction and sought \$40 million in liquidated damages plus attorneys' fees and prejudgment interest. John's client countersued because the seller refused to release millions of dollars that had been deposited in escrow. The case turned on the economic impact of the AG's conditions, which involved complex issues of hospital operations and finances. John managed the litigation on a day-to-day basis and successfully kept his client's claims alive past summary judgment. The case settled favorably for John's client on the day before trial.

Contract Disputes John frequently represents providers in litigation over contract disputes.

John defended a skilled nursing business that was being sued for failing to close on the purchase of another skilled nursing facility. John brought a cross-complaint for fraudulent inducement against the seller, and ultimately obtained a settlement for his client in which the seller dropped its claims and agreed to pay money to John's client in exchange for a dismissal of the cross-complaint.

In another example, John represented an Independent Physician Association (IPA) in a contract dispute involving risk pool sharing agreement between the IPA and a hospital. After filing an arbitration demand, John was able to obtain a favorable settlement for the IPA under which the hospital agreed to resume distributions of risk sharing payments. John successfully defended an addiction treatment provider from an alleged breach of settlement agreement, convincing the court that it had no jurisdiction to enforce the settlement agreement that was allegedly breached.

ERISA Preemption Represented out-of-network hospital in litigation against Blue Cross and ERISA plan for violating a provision of the California Knox-Keene Act by failing to pay for emergency services treatment provided to a Blue Cross member. In a published opinion in the case, *Coast Plaza Doctors Hosp. v. Blue Cross of California*, 173 Cal.App.4th 1179 (2009), the California Court of Appeal, Second District in Los Angeles, held that the Knox-Keene provision was not subject to ERISA preemption because it fell within ERISA's savings clause. The case ultimately settled favorably.

Fair Hearing Rights Litigation Defended a large Southern California IPA in a case brought by a physician whose contract with the IPA was terminated. The physician argued that his common law right to a fair hearing had been violated when the IPA terminated the contract without giving him a hearing to contest the termination, and sought over \$10 million in damages. John was able to negotiate an extremely favorable settlement for his client long before the trial date.

False Claims Act Dismissal Obtained a complete dismissal with prejudice of a federal False Claim Act lawsuit brought against a hospital. A former patient of the hospital filed as a Relator on behalf of the United States alleging that the hospital defrauded the Medicare program by billing its facility charge when patients visited their surgeons for follow-up care. The Relator argued that the charge was for physician services, in violation of Medicare's 90-day global surgery rule. We moved for summary judgment on the ground that there was no merit to the claim because the visits occurred in outpatient clinics entitled to bill a facility charge. The district court ordered the Relator's \$35M lawsuit dismissed with prejudice. The dismissal was affirmed by the Ninth Circuit Court of Appeals in *United States ex rel. Zeman v. University of Southern California*, 664 Fed.Appx. 641 (9th 2016).

FEHBA Benefits Litigation Represented national provider of pharmacy services and patient in federal lawsuit brought against Blue Shield of California and the federal Office of Personnel Management (OPM) for denial of IVIG treatments provided to a federal employee under the Federal Employee Health Benefits Act (FEHBA). As a result of the federal complaint, OPM conducted an independent review of the claims and determined that the treatments were medically necessary, and consequently ordered Blue Shield to issue benefits.

Managed Care Contract Dispute Represented a healthcare district in San Bernardino County in a breach of contract lawsuit against a large HMO which refused to refer radiology services to the district. The case ultimately settled favorably, resulting in an improved provider services agreement.

Managed Care Reimbursement Litigation Represented an out-of-network infusion pharmacy in a case against a large national health insurer alleging that the insurer had underpaid on claims. John's client alleged that the insurer had entered into an oral contract to pay the pharmacy a certain rate but then underpaid by over \$1 million dollars. After aggressive discovery and successfully opposing the insurer's motion for summary judgment, the case settled favorably for John's client during the jury trial.

Out-of-Network Rate Litigation Represented out-of-network outpatient surgery centers (ASCs) in federal putative class action against United Healthcare, Ingenix and numerous ERISA plans for alleged failure to reimburse the ASCs according to a proper methodology for calculating the usual, customary and reasonable (UCR) reimbursement

as set forth in the plans. A class-wide settlement was eventually reached.

Peer Review Hearings and Writs John has handled numerous peer review matters on behalf of both physicians and medical staffs.

John represented a physician in a peer review hearing in which the medical staff sought to revoke the physician's privileges because he allegedly violated the medical staff's conflict of interest policy by investing in a medical device distribution company. Prior to the hearing reaching a decision by the Judicial Review Committee ("JRC"), John was able to negotiate a favorable settlement for his client that avoided any 805 reporting to the Medical Board or the National Practitioner Data Bank.

In another recent case, John represented a large teaching hospital and its medical staff in California Superior Court to defend a JRC's decision to revoke a physician's privileges. The writ that was filed by the physician under CCP § 1094.5 was denied. On appeal, the Court of Appeal affirmed the Superior Court's decision. The Court of Appeal determined that the physician failed to exhaust her administrative remedies at the peer review level because she failed to challenge the adequacy of the medical staff's termination and revocation notice until she sought to overturn the medical staff's decision in court. The Court of Appeal also noted that, in any event, the revocation and termination notice was legally sufficient. Furthermore, in response to the physician's argument that the medical staff's decision was defective because it was based in part on an unnoticed charge, Nelson Hardiman was able to convince the Court of Appeal that, even if there was error in the unnoticed charge, there nonetheless was more than sufficient grounds in the record to uphold the medical staff's decision.

Reimbursement A major health insurer refused to pay numerous addiction treatment centers alleging fraudulent activity. Nelson Hardiman stepped in and negotiated confidential settlement agreements whereby our clients received payment for their claims and the insurer released their claims against our clients. We achieved this favorable result efficiently and cost-effectively without having to file expensive and time-consuming lawsuits, in large part, because of our deep industry knowledge and prior experience negotiating with the health insurer's counsel.

Surgery Center Litigation Defended an outpatient surgery center in arbitration with a surgeon alleging deceptive marketing practices in violation of the federal Lanham Act and breach of an exclusive services contract. Following an arbitration hearing, the surgeon's Lanham Act and unfair business practices claims were dismissed. The breach of contract claim ultimately settled favorably, and John was able to get his client's insurer to cover a significant portion of the settlement payment.

Third Party Coverage Dispute Represented an ambulance company in a lawsuit against its outsourced human resource provider and liability insurer due to their failure to defend and indemnify the ambulance company in an underlying wrongful termination lawsuit brought by former employees. Following a summary judgment in favor of the ambulance company, the case settled favorably.

Trade Name Disputes Represented an outpatient surgery center in an action against a competing ASC for trade name infringement. John obtained an injunction for his client that prohibited the competing center from further using the infringing trade name.

Trade Secret Disputes John has handled numerous cases involving trade secrets for healthcare providers. Most recently, John represented a hospital that sued another hospital and its management company for misappropriating trade secret information concerning financial and turn-around initiatives. John's client's trade secret claim survived the defendants' motion for summary judgment, resulting in a settlement once the defendants realized they would have to try the trade secrets issue before a jury. In another case, John defended a physician in a misappropriation of trade secrets and interference with contract case brought by another physician involving disputes over access to patient lists. The case ultimately settled favorably for John's client.

Whistleblower and Retaliation Claims John has successfully represented a number of physicians who have been discriminated or retaliated against as a result of their willingness to bring to light unlawful or harmful practices by their employers or the hospitals where they have privileges. For example, John represented a physician in a dispute with a hospital concerning the summary suspension of the physician's privileges

after the physician brought to light quality of care issues in his department. The physician sued as a whistleblower under California Health & Safety Code section 1278.5 and for discrimination against him in violation of the California Unruh Civil Rights Act. In *Armin v. Riverside Community Hospital*, 5 Cal.App.5th 810 (2016), the California Court of Appeal ruled that the physician's lawsuit against the hospital was permitted to move forward notwithstanding the pendency of a peer review investigation.

Wrongful Termination Defended San Bernardino medical group in a wrongful termination action brought by a former physician employee. The case settled favorably for the medical group on the eve of trial. In a separate case, John defended the former CEO of a health clinic who was sued, along with the clinic, by an employee alleging wrongful termination and other employment-related claims relating to his termination. John obtained a favorable settlement for the former CEO.

Reimbursement Resolved reimbursement dispute between residential addiction treatment facilities and Fortune 100 health insurance company after filing suit and engaging in aggressive discovery.

Regulatory Compliance

- **ASC Transactions and Operations** John represents many ambulatory surgery centers and handles a variety of their needs, from initial formation to litigation over reimbursement and every step between. For example, John represented the buyer of an ASC in the preparation of the transaction documents, including the purchase agreement and lease agreement, and prepared the ASC's operating agreement, the medical staff bylaws, licensing agreements, marketing agreements, anesthesia services agreements, and the physician membership agreements. John is well versed in the unique requirements for complying with the Medicare ASC safe-harbor to the Anti-Kickback Statute, and counsels his ASC clients on creative solutions to increasing surgeon involvement and referrals without running afoul of the fraud and abuse laws. John also drafted the ASCs' patient intake documentation, including assignment of benefits and physician ownership disclosures, and has also advised and provided training regarding policies and procedures that will maximize insurance reimbursement while reducing the risk of audits and payment disputes. John also has represented ASCs in Medicare audits. For example, John and his team successfully convinced CMS not to terminate the ASC's Medicare agreement following several surveys in which numerous deficiencies were found. John worked closely with the ASC and its consultant to correct the deficiencies and draw up a corrective action plan that eased the surveyor's concerns.
- **Board Investigations** Represented a physician in a Medical Board investigation in which a patient complained of inappropriate contact. John was able to get the Board to close the case without bringing any accusation or disciplinary action. In another recent matter, John represented a therapist that was being investigated by the Board of Behavioral Science as a result of a complaint submitted by the therapist's former employer. John was able to get the investigation dropped by writing a single letter that demonstrated the baselessness of the employer's allegations.
- **Corporate Practice of Medicine** Represented a physician that was being terminated from his medical office by a large national medical practice management company. The management company had made the physician the "owner" of a medical practice in an effort to get around California's prohibition against the corporate practice of medicine, but had maintained for itself significant control over the practice as well as the right to force the physician to sell his shares in the local professional corporation to a successor physician handpicked by the management company. The dispute centered on the management company's desire to prevent the physician's patients from following the physician to his new practice. With his deep understanding of the corporate practice of medicine doctrine in California and the ways in which the management company's overbearing "friendly P.C." structure ran afoul of the doctrine, John was able to negotiate a settlement with the management company that allowed the physician to keep his patients and receive fair compensation for his work in developing the local office.
- **Fee-Forgiving Disputes** John regularly advises his out-of-network provider clients on the

risks they will face when they regularly forgive or waive their insured patients' cost-sharing responsibilities (deductibles, copays and coinsurance), and he has drafted policies and procedures for his clients to enable them to safely and legally give their patients discounts for financial hardship or prompt payment. John has represented numerous surgery centers and addiction treatment centers that have been "flagged" for their alleged fee-forgiving practices, and has managed to get the flags lifted and the payers to resume paying John's clients' claims. In one case, the payer had flagged John's surgery center client for "fee-forgiving" and had alleged hundreds of thousands of dollars in overpayments. John successfully negotiated a settlement with the payer that resulted in the overpayment allegation being dropped, the flag being lifted, and the claims being paid with statutory interest.

- **Medical Staff Governance and Bylaw** Advised numerous Southern California hospitals and medical staffs on self-governance issues. John has drafted and revised hospital governing bylaws, medical staff bylaws, and rules and regulations for numerous California hospitals and medical staffs.
- **Medi-Cal Audits and Appeals** John has represented a number of healthcare providers in responding to Medi-Cal audits and appealing overpayment and exclusion decisions. For example, John represented a Southern California university medical center in a petition for writ of mandate to overturn a Medi-Cal audit decision by the Department of Health Care Services (DHCS) regarding whether a clinic operated by the medical center was a Federally Qualified Health Clinic (FQHC). The court determined that the clinic was an FQHC and issued the writ.
- **Overpayment Disputes** John has successfully resolved numerous disputes between his clients and commercial payers concerning overpayment determinations and refund demands. For example, John has represented a number of rehabilitation centers and ambulatory surgery centers in disputes concerning alleged overpayments for deficiencies in medical records. Following aggressive appeals, the payers abandoned the refund request altogether or dropped it in exchange for a corrective action plan.
- **Peer Review Investigations** John frequently advises physicians and medical staffs on peer review investigations. For example, John represented a hospital medical staff in its investigation of a physician who was engaged in inappropriate drug dispensing practices, including removing drugs from dispensing machines for personal use. The investigation resulted in discipline that the physician chose not to appeal. John also represented a physician who was being investigated as a result of complaints from nursing staff and patients. John was able to work out a resolution with the medical staff and hospital administration that avoided the need for disciplinary action.
- **Self-Reporting to CMS and OIG** John frequently represents providers when they discover a potential Medicare or Medicaid overpayment and desire to self-report the overpayment. For example, John represented a healthcare district that had failed to collect rent from a referring physician who was leasing a medical office from the district. The physician was very obstinate about not paying rent, which led to John using his litigation skills to ultimately obtain a settlement agreement with the physician that resulted in substantial rental payments. Concerned that the failure to collect rent created a violation of the Stark Law, John then drafted the self-disclosure report to CMS pursuant to the Self-Referral Disclosure Protocol (SRDP) and represents the district in connection with reaching a settlement with CMS.
- **SIU Audits** John regularly represents healthcare providers that are being investigated by insurance companies' Special Investigations Units (SIU). John frequently convinces the SIU to close its investigation against John's client without any adverse action. For example, one of John's medical group clients was audited by an SIU with respect to potentially improper mark-ups of lab testing. With John's help, which included assisting his client with an onsite inspection by the auditors, the SIU dropped the investigation. Even where the investigation leads to an adverse decision by the SIU, John regularly negotiates a favorable resolution for his clients, including corrective actions plans that foster an improved business relationship between the provider and the payer.
- **Telehealth Regulations** Advised a telehealth company regarding regulatory and operational issues for providing telemedicine services across state lines.

- **340B Compliance** Represented several covered entities and contract pharmacies regarding their participation in the federal 340B drug discount program. John's representation included drafting contract pharmacy agreements, drafting policies and procedures for the pharmacies and the covered entities, advising on audits, drafting professional service agreements between covered entities and physicians, and drafting management and administrative service agreements with respect to program compliance. Recently, John negotiated a settlement agreement between his contract pharmacy client and a covered entity to resolve allegations that the contract pharmacy had failed to provide sufficient reports and was dispensing to individuals who did not meet HRSA's definition of eligible patient. With John's assistance, his client was able to keep the account and the parties developed a more transparent relationship with more robust written policies and procedures that John drafted along with counsel for the covered entity.
- **Fair Housing Rights** Resolved disputes with five cities across California regarding complaints concerning behavioral health housing.