

'2 Troubling Litigation Trends': Medical Professionals Suffering Burnout Are Driving Health Care Lawsuits

By Charles Toutant
What You Need to Know

- The pandemic has seen growth in the number of disputes between health care professionals and the public and between professionals and their employers.
- Health care professionals are bringing more challenges to restrictive covenants and medical staff rulings that they believe are unfair or have otherwise impacted their ability to practice medicine.
- Government regulation, investigation of billing practices, relationships with insurance companies and cybersecurity threats have continued to pose challenges for health care entities and providers.

When he was younger, John Kaveney aspired to become a doctor. But while in high school, he got to observe a physician in the operating room, which made him realize he was not destined for that profession. He said he came out of the hospital “as white as a ghost” that day.

Yet Kaveney remained interested in medicine and helping people, and now he is a health care lawyer at Greenbaum Rowe Smith & Davis.

Representing individuals and health care entities in litigation and regulatory settings, Kaveney’s practice has seen a major impact from the extreme stresses facing health care professionals during COVID-19.

And the impacts from those factors show no sign of abating soon, he said.

Kaveney attended the University of Notre Dame and Seton Hall University School of Law, where he graduated with a health care concentration. He paused to discuss his work. His answers were edited for length and news style.

First, what sort of matters do you generally deal with in your practice?

My practice consists of a mix of judicial and quasi-judicial matters. In the judicial setting before federal and state courts, I represent various types of health care entities and individual providers in corporate litigation involving breaches of contract and tort claims, restrictive covenant enforcement cases, and medical staff disputes. In the quasi-judicial setting, I represent health care entities and individual providers in reimbursement disputes, [Health Insurance Portability and Accountability Act] cybersecurity breaches, medical staff and licensing matters, and compliance disputes before federal and state agencies and private insurers.

What’s the biggest litigation trend you’re seeing right now?

Over the last two years as we’ve endured the pandemic, I have seen two frankly troubling litigation trends impacting the health care industry.

The first trend involves the relationship between health care professionals and the general public. What started at the beginning of the pandemic as well-deserved recognition by the public of the hard work, dedication, and selflessness of health care professionals to care for those infected with COVID-19 has seemed to morph over the past year into a general lack of respect and appreciation for health care professionals.

I have witnessed this dynamic firsthand in numerous disputes, whether over a patient’s demand for particular treatment methods, a patient’s unhappiness with the use of telemedicine, or a patient’s frustration with the level of



(Courtesy photo)

John Kaveney of Greenbaum Rowe Smith & Davis.

attention and/or service they’ve received due to staff shortages or logistical limitations caused by social distancing and infection protocols.

This has resulted in disputes arising within hospitals and private practices, complaints being filed against health care professionals with the Board of Medical Examiners or other licensing authorities, and even lawsuits.

The second trend involves the relationship between health care professionals and the entities where they work. Once again, it may be due to the ongoing and persistent stress that the pandemic has created or exacerbated, but there seems to be a growing number of disputes in which health care professionals are filing litigation against the entities that employ or contract with them alleging breaches of contract, torts and other alleged harm.

Moreover, many health care professionals seem to be making ever-increasing challenges to restrictive covenants or medical staff rulings that they believe are unfair or have otherwise impacted their ability to practice medicine. As a result of these trends, many disputes that could previously have been resolved internally,

or possibly with the assistance of legal counsel negotiating on behalf of their clients, have instead, more often than not, resulted in formal litigation, costing both sides significant time and money at a most inopportune time for everyone involved. Unfortunately, I anticipate there will only be more litigation in these situations as the pandemic continues to persist.

What's the biggest lesson you learned in your practice in 2020 and 2021?

Over these past two years it has become clear to us all just how digitally connected we are with each other, and how possible it now is to practice law, represent clients, and litigate cases in a virtual environment without face-to-face meetings, in-person office visits or court appearances.

However, the pandemic experience has also demonstrated to me how vitally important it remains to have a personal touch, to show empathy, and to go the extra mile for your clients.

This has especially been the case in the health care industry, where so many individuals, on both the clinical and administrative side, have been working long hours, taking on new roles and responsibilities beyond anything in their job descriptions, and working with limited recognition or opportunities to recharge their batteries.

I have found that being willing to listen to their struggles and acknowledge their hard work, being available when they need me, and helping cross a few items off their ever-increasing to-do lists has made a huge difference to my clients. While the practice of law may never fully return to its pre-pandemic version, even in a more virtually connected world, outstanding client service and a personal touch will remain extremely important.

What opportunities do you see for your practice in 2022?

The health care industry, like many others, has by and large been in survival

mode, in many instances merely trying to keep up with the pressures and resource strains of the pandemic. However, during this same period the health care legal landscape has not stood still.

New federal and state health care laws have been passed or have gone into effect, government agencies have continued to monitor and investigate billing practices and other aspects of health care operations, insurance companies have continued to create challenges for health care entities and providers, and external cybersecurity threats loom large. Furthermore, with both health care professionals and the general public facing daily pressures and endless stress from COVID-19, there seems to be an especially high number of legal disputes being raised as patience and understanding are in short supply.

This combination of circumstances means that clients in the industry are in need of guidance as they continue to navigate an ongoing pandemic while also trying to refocus their efforts on compliance with federal and state laws, prepare for inquiries from state and federal agencies and private insurers, and respond to litigation and other legal challenges from health care professionals and the public.

What are the major threats to your practice, and what are you doing to adjust?

The health care industry has generally been insulated from the typical cyclical trends in the economy, and so while the pandemic has certainly been an anomaly resulting in short-term disruptions, there will inevitably continue to be a need for legal services.

Rapid technological innovation, the continued evolution of methods for delivering care, and the highly regulated nature of the industry will continue to drive this demand. Given the constantly evolving nature of health care law, the challenge is to continue to stay current with the latest trends and legal/regula-

tory developments while also working to maintain a strong team of attorneys with diverse experience in this specialized area of practice. I am fortunate to be surrounded by just such a team and our goal is to continue to recruit and develop the next generation of health care attorneys.

Is there any aspect of your work that is particularly satisfying to you?

Health care professionals often see people on the worst days of their lives and work tirelessly to help those individuals through difficult times. When faced with legal challenges, these professionals must take time out of their day and turn their attention away from patient care. I take great pride in helping members of the health care sector navigate the legal landscape so they can focus their time and energy on caring for others rather than worrying about legal issues.

During the pandemic I have seen firsthand just how difficult the circumstances have been for everyone working in the health care field. Anything I can do, no matter how small, to help alleviate legal distractions and challenges for them is greatly rewarding.

Who had the greatest influence in your career?

For approximately 15 years, I have had the privilege of working with an amazing group of health care attorneys, and in particular with four extremely talented colleagues who are not only great lawyers but also exceptional people. Collectively, they possess many decades of health care law knowledge and through them I have learned not only the practice of law—and in particular health care law—but also how to be a professional, how to interact with clients, and how to maintain a work-life balance.

Each one of these mentors has their own unique style and approach to matters, and I like to think that my own personal style has evolved to incorporate the best aspects of each that I have picked up over the years.