

Q&A With Epstein Becker's David Matyas

Law360, New York (May 17, 2012, 3:43 PM ET) -- David E. Matyas is a member of Epstein Becker Green PC's health care and life sciences practice, in the firm's Washington, D.C., office. His practice focuses on federal and state fraud issues such as anti-kickback, self-referral, false claims and regulatory compliance.

Matyas represents an array of health care providers, including hospitals and health systems, pharmaceutical and medical device manufacturers, academic medical centers, retail and specialty pharmacies, ambulatory surgery centers, home health agencies and physician organizations.

He also advises investors and other financial institutions that invest in or support the health care industry.

Q: What is the most challenging project you have worked on and what made it challenging?

A: We had a private equity client that needed us to investigate the potential regulatory risks of purchasing a company in the midst of a three-year, ongoing federal investigation.

This matter was extremely challenging because of the time constraints we were given: We had only 72 hours to conduct our review of documents — and there were hundreds of thousands of documents produced for the government — to complete interviews with numerous attorneys and company individuals who were familiar with and worked on the issues, and then to provide the client with a meaningful hypothesis of what the potential exposure might be.

We had to make sure that, within this short timeframe, our team was able to connect the dots between what was reviewed on paper and what was learned in interviews.

The task was further complicated by the fact that although the investigation had focused during the previous 12 months on activities in one jurisdiction, the investigation originally examined allegations on a national level.

I likened it to trying to put a dollar value on a locked safety deposit box that could be empty or filled with millions worth of jewelry, and having limited information on who had access to the box over the last several years.

Q: What aspects of your practice area are in need of reform and why?

A: The health care fraud and abuse laws were developed largely in an era of health care goods and services being paid on a fee-for-service basis. However, as payment methodologies have changed and there is a growing need to reform our health care system, these laws need to be reevaluated and modified, as they otherwise have been a barrier to potential innovation.

In particular, the federal physician self-referral law, enacted in 1989 and commonly known as the Stark Law, should be modified. Its purpose is to prohibit physicians from referring patients to a health care entity with which the physician, or an immediate family member, has an improper financial relationship, in the form of ownership or compensation.

While there are certain situations the law clearly aims to prohibit, there are many innocuous arrangements that fall within the ambit of the statute. They can result in the potential imposition of huge penalties and government recoupment of millions of dollars for health care services rendered that were, in fact, medically appropriate.

Given that more than 20 years have passed since enactment, U.S. Congress — in an ideal world — would revisit and change this law.

Q: What is an important issue or case relevant to your practice area and why?

A: Currently, the health care industry and employers are eagerly waiting to learn the decision of the U.S. Supreme Court of the United States on the constitutionality of the Patient Protection and Affordable Care Act (PPACA).

At the center of the debate is whether the Commerce Clause authorizes Congress to require that almost all persons in the U.S. purchase health insurance.

Specifically, PPACA included the "individual mandate," which requires that, beginning in 2014, most people above the Medicaid eligibility level purchase health insurance or suffer a penalty administered under the Internal Revenue Code. The tax penalty for those without health insurance is capped at the average price of a health insurance policy, and the tax penalty is the only sanction for failing to have health insurance.

Another significant issue that the Supreme Court is considering is "severability" — whether the entire PPACA must be struck down if one or two of its provisions are deemed unconstitutional.

While most of the provisions of PPACA have nothing to do with insurance or the mandate — e.g., there are provisions related to expansion of the Federal False Claims Act, the development of accountable care organizations, expansion of programs to train and educate health professionals — the rhetoric surrounding the law's enactment can be interpreted as Congress accepting the mandate as being the legislative price for everything else in the bill.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: I came to know Rebecca Hurley when she was transitioning from being a tax attorney in private practice to becoming the chief compliance officer for a for-profit hospital system, where she subsequently became the general counsel.

In addition to Rebecca's intellect and ability to quickly learn the nuances of an area of law that was completely new to her, I was most impressed with her ability to organize a team of professionals and earn their trust in a very short amount of time.

She helped me to appreciate the importance of not taking oneself too seriously and that even when working in stressful conditions, there is no reason why someone should lose perspective — or their cool. See <http://www.lhphospitalgroup.com/rebecca-hurley>.

Q: What is a mistake you made early in your career and what did you learn from it?

A: Early in my career, I feared what would happen if I made a mistake and allowed that fear to paralyze my ability to reach a conclusion and provide meaningful advice to a client.

As with many areas of law, there are not always clear answers in interpreting the myriad laws that affect health care entities. Instead, we are asked to address complex problems where there may be little precedent.

While one should never act recklessly by simply giving off-the-cuff responses without doing research, spending time deliberating and finding resources with which to collaborate, one cannot allow the fear of making a mistake impede his or her ability to provide sound, definitive advice.

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