

# Daily Journal

DECEMBER 4, 2019

## TOP Health Care LAWYERS 2019

### LLOYD A. BOOKMAN

Forty years ago, when he was starting out, Bookman said he didn't know the difference between Medi-Cal and Medicare.

"Then I interviewed with some health care lawyers who actually sounded interested in what they do," he said. "That, and the public interest aspect of the practice fitted in with my wishes for a career."

He and two like-minded friends founded Hooper, Lundy & Bookman in 1987. Now, at 60 lawyers, it's the largest law firm in the nation that exclusively represents health care providers and suppliers.

Bookman is lead counsel in representing the non-profit Catholic health care provider Providence Health & Services, a Renton, Washington-based system operating multiple hospitals in six states, including California.

The client is the target of a whistleblower plaintiff who is not an insider with a claim of first-hand knowledge of wrongdoing. Rather, the plaintiff is a for-profit company called Integra Med Analytics, which Bookman described as existing to file False Claims Act cases based on a novel statistical analysis of national Medicare hospital payment data. *U.S. ex rel. Integra Med Analytics LLC v. Providence Health & Services*, 2:17-cv-01694 (C.D. Cal., filed March 2, 2017).

Integra's complaint claims that Providence fraudulently added false diagnoses to Medicare claims based on its analysis of hospital payment data.

"They're hoping they've latched onto something lucrative based on Medicare

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claims data," Bookman said of Integra. He called his client's potential exposure "horrendous." Integra's claims assert \$188 million in single damages—and that's before potential trebling under the False Claims Act.

"I'd like to stop this before it goes further," Bookman said. "[Integra] is trying to get traction for other cases. Many are watching this." U.S. District Judge Philip S. Gutierrez of Los Angeles declined Bookman's motion to dismiss the case. Instead, he certified two questions for interlocutory appeal to the 9th U.S. Circuit Court of Appeals.

Bookman's appeal to the circuit advances two reasons for dismissal.

One is the public disclosure bar, which limits claims based on information that has already been revealed. The second is whether statistical analysis is sufficient to plead Medicare fraud.

Those are the key questions. If Integra gets to go forward, Bookman said in his appeal, that would "create a new business model



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for non-insider, opportunistic relators, as anyone with a statistical background and access to the internet could troll for what appear to be statistical outliers and state a case that survives a motion to dismiss."

"If the plaintiff can get past our motion to dismiss, they can try to coerce a settlement," Bookman said. "If someone can bring a False Claims Act case just by spending time on the net, boy, that really opens the door."

— John Roemer

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### MARK E. REAGAN

Reagan is managing shareholder of Hooper, Lundy & Bookman, the nation's largest law firm dedicated exclusively to the representation of health care providers and suppliers. He focuses on advising trade groups including the American Health Care Association, the California Association of Health Facilities and the Massachusetts Senior Care Association. His clients also include long-term care facilities, hospitals, physician groups, home health agencies, hospices, medical product suppliers and others.

"Trade associations shape how the system develops," Reagan said. "I spend a lot of time on that."

In July he obtained reversal for his client, the California Association of Healthcare Facilities, on an issue involving the protection of health care facility residents who lack the capacity to make decisions but have no legal advocate or guardian. An Alameda County Superior Court judge struck down as unconstitutional a Health & Safety Code provision that enables an interdisciplinary care team to make decisions on behalf of such individuals.

"But it's not viable for facilities to go to probate court every time a significant change in a nursing home resident's care occurs," Reagan said, echoing the argument he made before the 1st District Court of Appeal for his client and in collaboration with the state Department of Public Health.

In addition, he contended that the statute supports the concept of informed consent as part of the relationship among the numerous

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federal and state laws governing patients' rights.

The panel agreed, finding the proper course was to affirm the provision's constitutionality but require additional safeguards. *California Advocates for Nursing Home Reform v. Smith*, A147987 (1st DCA, appeal filed April 13, 2016).

Though he appeared as amicus, Reagan presented part of the defense's lengthy argument before the panel along with a deputy attorney general representing the health department.

"It was long and complex—we were there for two and a half hours," he said. "A week before, the panel gave us a series of 15 or 20 questions to guide the discussion. That created a really good framework for the argument. I walked away realizing that this was a remarkable health care and bioethics discussion that I'll remember for my entire career."

Further litigation to define the additional



**"It's always great to do legal work that makes a difference."**

— Reagan

safeguards will continue in Superior Court.

In another matter, Reagan sued on behalf of a skilled nursing facility and won a writ of mandate compelling state regulators to offer appeal rights to such facilities if they are found to have been out of staffing level compliance for a single day.

"Thousands of dollars of quality bonuses were at stake for many facilities," he said. "I looked for the right case, and I found it. It's always great to do legal work that makes a difference."

— John Roemer