

Despite Dobbs And COVID, Hooper Lundy Leader Is Hopeful

By Emma Cueto

Law360 (November 18, 2022, 4:52 PM EST) -- Mark Reagan, managing shareholder at health care boutique Hooper Lundy & Bookman PC, spoke to Law360 Pulse recently about how the firm is helping clients navigate the implications of the Dobbs decision, the pandemic's lingering effects on health care organizations and why he's optimistic about 2023.

The past two and a half years have had a massive effect on the health care industry and health care providers, from the COVID-19 pandemic to the U.S. Supreme Court's June decision in *Dobbs v. Jackson Women's Health*, which struck down *Roe v. Wade*. All these factors have meant Hooper Lundy has needed to stay ahead of the curve in order to advise clients.

Reagan, who has been managing shareholder since 2019, told Law360 Pulse that despite the challenges, the firm is strategically positioning itself to respond to future developments — and that he is optimistic about the year to come. This interview has been edited for clarity and length.



Mark Reagan

How have things shifted for Hooper Lundy and your clients as the pandemic has evolved?

We as an organization have maintained the flexible, hybrid work environment that was in place during the pandemic. We found it worked just great. We found we can maintain cohesion even working in this more flexible way.

I think the biggest challenge for our clients has been that we're now seemingly in the recovery phase of the pandemic, but so many things are left over from the pandemic. The most significant is, I think, workforce. Finding caregivers — particularly caregivers that want to work in health care institutions like hospitals and long-term care facilities — has a lot of challenges. That then creates a set of related challenges. A lot of the trend lines in government regulatory policy have been around ensuring sufficient staffing. So if workforce is a challenge, compliance is a challenge, unless you serve fewer people. So from a client's perspective, that's probably the biggest ongoing issue we're trying to support them in.

Another thing we've been focusing on is that we were one of the first firms to get ahead of the post-Dobbs environment and form a reproductive health work group. That's been a really important element for our practice, whether we are representing health care groups in states like California that have not implemented restrictions on those services, as well as states that now have restrictions. It was really

important to us to provide those services to our clients and to be prepared. We're the kind of organization that has all of the particular disciplines and expertise to serve that population, because all of the issues that arise from that are issues we already deal with, just in a new context.

And what are some of the issues that you are seeing clients have post-Dobbs, or things that are concerning to them?

There are four big topics, though of course it depends somewhat where a health care provider is.

First, there are questions around situations involving telehealth and the prescribing of abortion-related medication, particularly if you have an out-of-state prescriber but you are prescribing in a state that may have those prescriptions.

And that relates to the second issue. Let's say you have California physicians who are providing reproductive services, including abortion, for women from other states where they may not have access to those services. Are there going to be some attempts to either criminalize or create licensure-related consequences for physicians? There were significant California legislative acts — what are commonly known as shield laws — so that's an area we've been focusing on.

A third, related area has to do with working with hospital medical staff to understand how to protect their physicians practicing in those specific areas. And in red states, where there are greater restrictions, helping clinicians understand how to go about assessments and making treatment plans for women who may come into those facilities with a significant health condition where abortion may be one of the necessary services to respond to the condition. How do they make sure women get appropriately assessed and get the care they need in the case of an ectopic pregnancy or other condition? It's really important for clinicians to understand what they can and can't do in terms of what their state law provides. And this is all a work in progress right now as people try to find their way in this new normal we're experiencing.

And the last big topic is privacy. Our privacy lawyers are being asked, "How can we keep information associated with pregnancies and abortion services private and confidential, rather than having them be searched by those who would seek to discover them for whatever purpose?"

So those are the most predominant questions our clients are grappling with. And we're happy to be in the position to provide that kind of advice and counseling, because it's not easy territory.

In response to the shifting landscape affecting your clients, with the Dobbs decision and the pandemic, how is the firm positioning itself? Are those factors affecting decisions around things like staffing or your view of the firm's geographic footprint?

Not surprisingly, I think one of our fastest growth areas through the pandemic was the digital health practice, and that's an area where we've really staffed up. I think that there are some sustainability questions to the flexibility that has occurred during the pandemic, and that might require some congressional action. But we see digital health and telehealth in particular being significant drivers into the future. That practice at our firm is headed up out of our Boston office, and we have been growing that office with practitioners around the telehealth practice, particularly on the business side. There's been an explosion of physician organizations looking to get into that particular space, and we've been helping them with that.

By the same token, we're starting to see the first wave of U.S. Department of Justice investigations around telehealth practices. So we've positioned the way we structure our fraud and abuse practice to respond to that. There's a lot of misunderstandings within law enforcement about that sector. So fraud and abuse and governmental investigations is another area where we're growing.

From the standpoint of the firm generally, we are increasing the number of summer associates we bring on. Our best method of growth is internal and organic — we have many practitioners at our firm who joined us as summer associates or first-year attorneys who are now partners. We are less in the lateral market and are more interested in growing from the ground up. It's something we really enjoy, developing junior attorneys into partners and ultimately shareholders in the firm.

As we head into the end of 2022, what are some of the things you have your eye on or challenges you foresee in the future?

We've been spending a lot of time over the course of the pandemic focused on our internal systems — our financial systems, our IT systems. We'll have a new website in the near term. The things that we had maybe put off for a while we really focused on in 2022, and those will be in place by the end of the year.

And then I think the conversation in 2023 is what we want our footprint to look like. Do we want to be in other markets? Do we want to open new offices? How large do we want to be? What's our vision of the best places for us to go into the future? That's the kind of conversation we're having. We're also spending a lot of time working with clients around health equity, looking with our clients to find creative ways to expand the ways they serve low-wealth populations.

I think 2023 will be an interesting year for us. I think we'll come out from a systems standpoint remarkably strong at the end of 2022, having done things that maybe we put off and had a bit more bandwidth to focus on this year. We've been in the midst of a succession process for several years. All three of our founders continue to practice, but we have grown up an amazing group of younger professionals who are poised to take us into the next generation. So I'm really excited to focus on 2023 and beyond.

--Editing by Alanna Weissman.