



Gary S. Pancer

Partner

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Gary Pancer has focused his practice on general civil, business and managed health care litigation for more than three decades. He has extensive experience representing HMOs, PPOs, TPAs, IPAs, physicians and other health care clients, and other professionals in complex business litigation and consumer disputes through trial. Clients regularly rely on Gary to manage their most difficult, high-stakes or “bet-the-company” matters, where business consequences are significant. Gary also represents health care clients in administrative proceedings before various state and federal agencies. He is a co-chair of the firm's national Life, Health, Disability & ERISA practice. Prior to becoming a lawyer, Gary worked for several years in a management position for a large publicly traded HMO.

Managed Care Litigation

Gary has successfully litigated many cases on behalf of health care clients in trial courts and binding arbitration, including several multimillion-dollar business and consumer cases. These include representation of health plans and their administrators in a variety of provider disputes ranging from reimbursement and contract disputes to more complex matters, including representing plans and medical provider networks (MPNs) in provider selection and removal disputes. In a closely watched case in California, Gary obtained a defense judgment after a lengthy trial in the Complex Division of Orange County Superior Court that was later upheld by the California Court of Appeal. In member/enrollee disputes, Gary has represented managed care payors and their administrators in ERISA and non-ERISA cases involving multimillion-dollar wrongful denial of benefits cases with claims from bad faith, wrongful death, fraud, rescission and unlawful business practices to RICO actions. Gary's experience in the managed care industry helps him guide his clients through these complex cases. He has been extremely successful in getting large cases dismissed on early pre-trial challenges to the pleadings and developing factual defenses to support summary judgment motions. Gary has a demonstrated record of success representing clients in jury trials and in binding arbitration.

Services

- Commercial Litigation
- Health Care Law
- Managed Care Litigation & Compliance
- Life, Health, Disability & ERISA
- Complex Tort & General Casualty

Commercial Litigation

While the focus of Gary's representation of clients is in the health care industry, he also represents other corporate clients in the entertainment, construction, and manufacturing industries in general business litigation. These matters include complex business disputes, including unfair business practices, trade secret and noncompete actions, defamation, interference with business relationships and intellectual property.

Risk Management

In addition to litigation, Gary frequently advises health care clients concerning quality assurance and general risk management issues and helps health care companies develop and revise internal policies and procedures to help avoid litigation exposure. He also serves on the Quality Assurance and Compliance Committees of several health care clients. Gary co-authored a chapter in the treatise "Common Managed Care Disputes," Chapter 2 of Managed Care Litigation, published by the Bureau of National Affairs, Inc. (2013) in addition to cumulative supplements in 2011 and 2012. Gary has authored several other publications on health care legal issues, including for the American Health Lawyers Association and has presented on emerging health care topics throughout the country.

Regulatory Compliance/Government Investigations

With support from several other Wilson Elser offices across the country, including Washington, DC, New York, Texas, Illinois and Florida, among others, Gary also routinely advises health plans and organizations concerning regulatory compliance issues and government investigations in state-specific issues nationally and federal matters. For example, representing health plans and their administrators in investigating matters involving potential overpayments under state and federal False Claims Act statutes, investigations of Medicare Advantage Plans by the Centers of Medicare & Medicaid Services (CMS), and defense of clients before the Office of Inspector General (OIG), U.S. and state departments of justice and other state and federal regulatory and prosecuting agencies.

Directors & Officers

Gary represents directors and officers in various matters in complex commercial litigation with an emphasis on representing directors and officers and corporate entities in the health care industry, from health plans and independent physician associations (IPAs) to skilled nursing facilities (SNFs). He also represents health care clients in shareholder derivative actions.

HIPAA

Gary represents corporate health care clients in HIPAA matters, including single-plaintiff and class action cases involving alleged breaches of protected health information. With assistance from Wilson Elser's Cybersecurity & Data Privacy team, Gary is able to assist clients in meeting appropriate federal and state filing requirements whenever a suspected breach has occurred, and to develop policies and protocols to help protect against future data breaches.

General Liability

Gary is frequently engaged to step in as trial counsel on complex, high-exposure general

liability matters for commercial liability insurers, often transitioning matters from prior counsel. Typically, the cases involve catastrophic injuries or alleged wrongful death claims in various industries, including retail, manufacturing, construction, and entertainment.

Pro Bono Activities

Gary is a past president of the Frank D. Lanterman Regional Center, a large nonprofit that operates under the umbrella of the California Department of Developmental Disabilities, with a statewide budget of more than \$4 billion annually. Lanterman provides services to thousands of children and adults with developmental disabilities in the greater Los Angeles area. Gary also served as vice president of Newbury Park Pony Baseball, serving more than 700 children (ages 5–15). In addition, Gary has been active in pro bono activities, including representation of a refugee from Africa fleeing political persecution and torture and unaccompanied minors from Central America fleeing gang violence. In these matters, Gary has successfully obtained relief from deportation and grants of asylum from the U.S. Immigration Courts under the Convention Against Torture. Gary also has represented several holocaust survivors in obtaining pensions from the German government for work performed in Jewish ghettos through the Bet Tzedek Holocaust Survivors Justice Network.

Education

- Southwestern Law School (J.D., 1992)
 - Exceptional achievement awards in the study of Health Care Liability, Health Care Regulations and Mass Communications Law
- California State University, Northridge (B.A., *cum laude*, 1984)

Bar Admissions

- California

Court Admissions

- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, Northern District of California
- U.S. District Court, Central District of California
- U.S. District Court, Eastern District of California

Professional Affiliations

- The American Health Lawyers Association
- The Healthcare Law Section of the Los Angeles Bar Association
- The California Society of Healthcare Attorneys

Representative Matters

Obtained defense trial judgment on behalf of client, a national provider of industry-leading workers' compensation products, and physician network in a wrongful termination suit brought by an orthopedic surgeon, which included claims of breach of contract, violation of B&P Section 17200, retaliation, violation of fair process, negligent infliction of emotional distress, defamation, misrepresentation and violation of the Knox-Keene Act. Plaintiff sought damages in excess of \$4 million. The case was also upheld by the California Court of Appeal.

Obtained defense award on behalf of a large health plan in a multimillion-dollar provider dispute after multi-month binding arbitration regarding managed care risk pools. Also recovered award of attorney's fees as prevailing party, which was upheld on appeal by the California Court of Appeal.

Obtained fully favorable defense award in binding arbitration on behalf of Life & Health Plan in a multimillion-dollar dispute brought by a Taft-Hartley Trust Fund regarding enrollee eligibility.

Acted as co-lead national counsel for a Pharmacy Benefit Manager (PBM) in multi-district litigation involving allegations of unlawful business practices related to formulary decisions and pharmacy rebate arrangements with a large pharmaceutical company.

Obtained non-suit on first day of jury trial from an Orange County Superior Court judge in a consumer lawsuit regarding allegations of bad faith and unlawful business practices. Successfully obtained numerous judgments following the granting of demurrers without leave to amend in various state courts throughout California in member litigation on federal preemption grounds, including Medicare, ERISA and FEHBA.

Obtained Temporary Restraining Order in Orange County Superior Court on behalf of large health plan against national hospital chain, preventing unlawful termination of managed care contract that would have resulted in potential patient harm in having to immediately reassign thousands of enrollees to alternate providers in the middle of care.

Obtained voluntary dismissal on behalf of a large health plan from plaintiffs in a class action involving allegations of unlawful business practices pertaining to third-party liability recovery practices.

Obtained summary judgment from state court on behalf of specialized behavioral health plan in a bad faith and unlawful business practices claim related to the denial of residential treatment for anorexia.

Obtained summary judgment on behalf of a large health plan in a bad faith and unlawful business practices case involving allegations of wrongful denial of out-of-network services where claim was that appropriate services were not available within the HMO network.

Obtained summary judgment on behalf of a large health plan in a bad faith and unlawful business practices case involving allegations of wrongful denial of proton beam radiation therapy for prostate cancer.

Successfully defended large health plan in numerous lawsuits brought by hospital and medical groups involving contract and risk pool disputes.

Successfully defended a large health plan and provider groups in claims brought by non-contracting emergency providers regarding reasonable and customary charges.

Successfully defended a large health plan in numerous Administrative Law Judge hearing through the Social Security Administration as well as the Medicare Appeals Council on Medicare coverage disputes.

Successfully defended specialized vision plan in interference with business practices claim brought by terminated provider.

Publications

Attorney Articles

Survey of State Fair Procedure Rights Triggered by Excluding Providers from Health Care Networks

November 2013 - American Health Lawyers Association's Payers, Plans and Managed Care Practice Group Member Briefing

Attorney Articles

Common Managed Care Disputes

2013

Additional Publications

Co-author, "Common Managed Care Disputes," Chapter 2 of Managed Care Litigation, Cumulative Supplement, published by the Bureau of National Affairs, Inc., 2011, 2012.

Author, "Insurance Coverage for Treatment of Autism: Legal Trends in California and Nationwide," California Health Law News, Vol. XXIX, Issue 2, Spring 2011.

Co-author, "Recent Trends in Insurance Coverage Litigation for Treatment of Autism," Healthcare Law Newsletter, Winter 2011.

Co-author, "Common Managed Care Disputes," Chapter 2 of Managed Care Litigation, 2010 Cumulative Supplement, published by the Bureau of National Affairs, Inc., May 2010.