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Law Firm Profile: Duane Morris

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Friday, January 12, 2007 --- When Philadelphia-headquartered Duane Morris started a health law practice in 1977, most hospitals were represented by lawyers who served on their boards.

Other work in the field was often done on an institution-by-institution basis. But Roland Morris, the grandson of the founder of Duane Morris, brought in the Hospital Association of Pennsylvania and provided the seeds of a group that now includes about 35 lawyers and represents hospitals, post-acute care providers and physicians in regulatory, litigation, transactional and other matters.

"Our goal is to be able to address any issue in the health care area," said Donald R. Auten, the co-chair of the practice group.

Its client list is diverse, and includes Albert Einstein Medical Center, Implant Purchasing Solutions, Mental Health Association of New York City, Virtua Health Inc., Project Renewal and National Healthcare Associates Inc.

The group's work for its clients is certainly varied. Susan Kayser, a partner in the New York office, chairs the post-acute care subgroup of the practice group. She specializes in transactional work for post-acute care providers. While similar to other transactional work, the regulation involved with health care makes it more complicated, she said.

For example, she helped an investor-owner of a large national assisted living company acquire 17 assisted living facilities in six states. She had to handle state licensing applications and win licensing approval in time to close the deal, and she had to ensure that the transactional documents reflected the regulatory requirements and prohibitions.

"Frequently facilities won't be granted a license until they have a lender," she said. "And a lender won't give the money until the facility has a license. So it takes a lot of orchestration."

In a completely different kind of case, co-chair David E. Loder managed to get a substantial amount of money owed to more than 20 Pennsylvania health systems when a Medicaid Health Maintenance Organization went belly up.

In 2000, the health care providers started realizing their claims weren't being paid on time. After being notified, the Pennsylvania Department of Public

Welfare told the providers to keep caring for patients. By late 2001, the organization became insolvent.

The providers sued the Department of Public Welfare, and were able to win $10 million. Then, the group tried an innovative solution with the insolvent HMO.

They submitted claims to the HMO liquidator, but would have been down the list of creditors waiting to get their claims paid. So they agreed to allow the senior creditors to be paid in front of them and get 100% of what they were owed. The health care providers agreed to take what was left.

Loder said that the group ended up receiving more than $18 million, and split the money among them. The amount was more than half what the providers were owed in unpaid claims.

Loder said they saved the providers the cost of litigating the claims, which would have taken away from the end result by adding administrative and legal expenses.

Another unconventional way the health care practice group has served its clients was setting up an insurance plan for health care providers.

Attorneys in the Duane Morris group kept hearing physicians in Philadelphia complain that they were unable to get malpractice insurance.

“This wasn’t just one doctor, it was 25 or 30, and they were saying they hadn’t had any claims. The insurance providers weren’t renewing their policies, and weren’t giving a reason why,” said C. Mitchell Goldman.

Physicians were being forced into the high-risk pool for insurance, even if they didn’t have any claims against them – a concept that seemed inexplicable to Goldman.

Eventually, Goldman went to the firm, and started an insurance group in the beginning of 2003 through a Duane Morris wholly owned affiliate. The affiliate owns a holding company that has a majority share of the insurance group.

The pitch wasn’t a hard sell because the model of starting other businesses wasn’t foreign to Duane Morris. The firm had previously started a wealth management company with high net worth individuals.

But Goldman said they found that the big problem with insurance for doctors is that the physicians wouldn’t report a claim until an average of 23 months after a potentially litigious incident since the insurance wouldn’t take effect anyway unless there was a claim asserted by the patient. That system was one that often pitted hospitals against doctors because many hospitals are self-insured and capable of offering settlement immediately if they wish. But the doctors had to wait.

Goldman said that doctors in the plan now are required to report an incident early, which allows time for immediate investigations and potential settlements. “We’ll sit at the table immediately,” Goldman said. “The sooner it happens, the less costly it is and it’s less costly for the patient.”

Since the company hasn’t been around for long, Goldman didn’t want to pronounce it a success yet. But the rates haven’t increased, and more than 2,000 doctors are participating in Pennsylvania, Maryland, Florida and New Jersey. Physicians are owners of the plan so, at least in theory, they are more attentive.

“We come up with a lot of good ideas when we are working with our clients,” Goldman said. “We have been very successful at getting our clients money. Instead of being a cost, we can be a source of revenue.”

