

Health Care Group Of The Year: Morgan Lewis

By Y. Peter Kang

Law360 (January 31, 2022, 2:03 PM EST) -- Morgan Lewis & Bockius LLP helped a renowned cancer center escape a multimillion-dollar Health Insurance Portability and Accountability Act penalty, leading to a new legal precedent, and conducted an investigation of a COVID-19 outbreak at a veterans' home, earning the firm a spot as one of Law360's 2021 Health Care Groups of the Year.

The Philadelphia-based firm's health care practice handles not only traditional matters affecting health care industry clients such as False Claims Act suits, regulatory issues, and mergers and acquisitions activity, but it also has had its hands full in recent years with fast-growing technologies and businesses like telehealth and the home hospice care industry.

The COVID-19 pandemic created new challenges for the practice group, but Morgan Lewis was well-positioned to address them, according to health care practice group leader Howard J. Young, who also serves as co-leader of the firm's cross-practice health care industry team.

"Bringing to bear our broad regulatory knowledge with industry knowledge — particularly during the rapid changes caused by the pandemic — really helped benefit our clients," Young told Law360. "One hallmark of Morgan Lewis' health care practice is our proven ability to work across practice groups on a regular basis."

In addition to advising on commercial litigation for clients, Young said the practice group does a lot of transactional work that draws on the firm's M&A expertise, and, in the past two years, the pandemic has spawned new employment law issues regarding COVID-19 testing and vaccination requirements.

Michele L. Buenafe, who serves as co-leader for the firm's health care industry team, said the group's pre-pandemic work in virtual health care, telehealth and the retail delivery of new health care products gave it a head start when those areas saw growth as a result of the novel coronavirus.

"Those were already in the works before the pandemic, but COVID just accelerated the adoption of those cutting-edge products and services," she said. "We were already working quite a bit in that space, so it was just an expansion of things we were well-versed in."



One of the firm's biggest accomplishments over the past year was helping the University of Texas MD Anderson Cancer Center, one of the largest cancer centers in the world, reverse a \$4.3 million HIPAA penalty imposed by the U.S. Department of Health and Human Services' Office for Civil Rights.

An MD Anderson employee had been using an unsecured laptop and unencrypted thumb drives when they were stolen in a home burglary, potentially exposing the personal health information of more than 33,000 people. Following years of administrative proceedings culminating in the \$4.3 million fine, the cancer clinic appealed in federal court and eventually emerged victorious after the Fifth Circuit found in January 2021 that the penalty did not jibe with statutory guidelines.

Scott McBride, a Houston-based partner who served as lead counsel in the case, said the victory was important because it gives clarity to HIPAA enforcement actions.

"This was a case of first impression; it was the first federal circuit court to issue an opinion related to HIPAA enforcement matters," he said. "It's a major victory for the health care industry because it gives needed guidance in this area where the government is enforcing a regulatory standard."

McBride said the Fifth Circuit's unanimous decision provided some much-needed transparency on how the OCR had been enforcing HIPAA rules, as opposed to how they should be enforcing them in accordance with the law.

"The court specifically noted that the OCR needs to treat these matters consistently and act within the guidelines set forth in their regulations," he said. "We argued that with MD Anderson, they stepped beyond what was required and held it to a standard not set by the regulations, and the court agreed with us."

Morgan Lewis also conducted an internal investigation for the Pennsylvania Governor's Office probing the COVID-19 outbreak and the fallout that occurred at the Southeastern Veterans' Center in the spring of 2020.

Prompted by media reports of several deaths at the state government-run facility, the governor's office tapped Morgan Lewis to find out what happened to trigger such an outbreak and what could be done to ameliorate any deficiencies at the facility.

Partner Daniel Tehrani said that one daunting aspect of the four-month investigation that took place during the summer and fall of 2020 stemmed from the need to conduct all interviews of staff and others remotely due to the pandemic. This was a first for Tehrani, who has conducted dozens of similar investigations while serving as a former federal prosecutor in Manhattan for nearly a decade.

"Traditional internal investigations are done in person, but this was in the middle of 2020 with everyone figuring out what life was going to be like," he said.

The biggest challenge arising from the investigation, Tehrani said, was conducting it while the facility's staff members were continuing to put themselves and their families at risk. Because it was a "scary time" for everyone, it was somewhat difficult to get some staffers to talk about their experiences, he said.

"Obviously you try to be as understanding as possible, but the people were recounting something dramatic," he said. "It was also challenging to differentiate between second-guessing [the facility's staff]

and things that were obvious missteps, so we wanted to be careful of that."

In the end, the Morgan Lewis team concluded in December 2020 that the home's administrators made a number of missteps, including the lack of a proper infection control program. The team made several recommendations, such as restructuring the agency that oversees Pennsylvania's veterans' homes, and many of those recommendations were acted on immediately.

Eric Sitarchuk, head of the firm's white collar and government investigations practice, praised his team for being able to work effectively amid a global pandemic.

"We were pleased with how our practice of law was able to adapt to it, conducting investigations and learning on the fly due to the multitude of challenges that COVID presented," he said.

--Editing by Steven Edelstone.