



# Physicians Legal Issues

## Healthcare Delivery & Innovation Conference

**Fairmont Millennium Park,  
Chicago**

September 7-8, 2023



## Physicians Legal Issues: Healthcare Delivery & Innovation Conference

**September 7-8, 2023 – Choose from 13 CLE & CME Sessions!**

### Fairmont Chicago - Millennium Park

#### Target Audience & Scope of Professional Practice

Physicians Legal Issues: Healthcare Delivery & Innovation Conference (PLI) is a joint continuing legal education (CLE) and continuing medical education (CME) conference designed for physicians and attorneys who work in healthcare and closely aligned industries. Whether you are just starting your career or have decades of experience, this conference will provide valuable insight and strategies to improve your practice.

#### Program Detail

Economic, judicial, political, and regulatory forces, coupled with technological innovation, continue to challenge, and change the delivery and payment of healthcare. These changes have caused physician practices and community hospitals to consolidate or diversify forming large “super” groups or health systems that transform care delivery through clinical integration. Additionally, new government payment models, the push by private insurers to share risk, and other market conditions continue to shift physicians, hospitals, and other healthcare providers away from traditional fee-for-service reimbursement into value-based payment models. Finally, other forces affect healthcare delivery, such as telemedicine, changing state laws, and additional real-world factors. The net result is that physicians and other healthcare providers must navigate an evolving landscape of emerging legal risks and challenges to their business models.

Sessions will cover critical topics, including new payment models, compliance issues, enforcement trends, contracting, tips for managing transactions, the implications of modern technologies, and workplace issues for physicians. Speakers will share insights to help you navigate the current healthcare environment and prepare for future regulatory changes.

### GLOBAL LEARNING OBJECTIVES

The following sessions will address legal and clinical topics of importance to physicians and their legal counsel:

- Developing Healthcare Value-Based Models of Reimbursement
- Fraud and Abuse Issues Arising from the Pandemic
- AI in Healthcare
- Legal Issues Surrounding the Use of Emerging Healthcare Technology Products
- Legal Landscape of Protections for Providers of Reproductive Healthcare Post-*Dobbs*
- Practical Advice about the No Surprises Act

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## Physicians Legal Issues: Healthcare & Delivery Innovation Virtual Conference Planning Committee

### CO-CHAIRS



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The Health Law Partners, Farmington Hills, MI



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Access Community Health Network, Chicago, IL

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- **Carol Simmons**, Associate Director
- **Danielle Daly**, Meetings Manager
- **Ally Donnantuono**, Program Specialist
- **Alyssa Ewing**, Program Associate

### CHICAGO MEDICAL SOCIETY STAFF

**Ted Kanellakes**, Executive Director

## CONFERENCE SPONSORS

The Health Law Section acknowledges the following companies for their generous support of the Physicians Legal Issues: Healthcare & Delivery Innovation Conference.

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## SCHEDULE-AT-A-GLANCE

### Thursday, September 7, 2023

8:15 AM – 8:30 AM	<b>Opening Remarks</b>
8:30 AM – 9:15 AM	Hunting Pandemic Fraud: Audits and FCA Litigation Resulting From the PHE
9:15 AM - 10:15 AM	AI in Healthcare: Applications, Opportunities & Ethical Considerations
10:30 AM - 11:30 AM	The No Surprises Act: The IDR Process - A Regulatory/Litigation Update
11:30 AM - 12:30 PM	Existential Threats to Practices: Revocations, Suspensions & Extrapolations
12:30 PM – 2:00 PM	Lunch on your own
2:05 PM – 3:05 PM	Ethical Embrace of Bias to Tackle Healthcare Disparities
3:10 PM – 4:10 PM	What to Do When the Government Comes Calling: Tips from a Former FBI Agent
4:15 PM – 5:00 PM	Enforcement in Private Equity Health Care: A Burgeoning Trend?
5:00 PM – 7:00 PM	Networking Reception with heavy hors d'oeuvres and entertainment!

***Thank you to our sponsor for making this event possible:***

**KING & SPALDING**

### Friday, September 8, 2023

7:00 AM – 8:00 AM	Cancer Legal Advocacy Remembrance Run!
8:15 AM – 9:00 AM	The Current Healthcare System and Pressures on Physicians
9:00 AM – 9:45 AM	Legal Landscape of Protections for Providers of Reproductive Healthcare
10:00 AM – 10:45 AM	Reclaiming Physician Wellness: Burnout and Solutions in Law and Practice
10:50 AM - 11:50 AM	Using APPs, Residents, and Auxiliary Personnel: Rules and Requirements
11:50 AM – 12:50 PM	Ticketed Lunch
1:00 PM – 1:45 PM	More Value, Less Volume: Developing Healthcare Value-Based Models
1:50 PM – 2:50 PM	Build Your Practice's Tech Stack - Best Practices for Vendor Onboarding
2:55 PM – 3:55 PM	Data Connections with Patients: Risks to Providers and Networks

## CONFERENCE AGENDA

### Thursday, September 7, 2023

7:30 am - 4:00 pm **Registration Desk Open**

7:30 - 8:30 am **Continental Breakfast**

8:15 – 8:30 am

#### Welcome to PLI 2023!

**Adrienne Dresevic**, Chair  
ABA Health Law Section

**Tariq H. Butt, MD**, President  
Chicago Medical Society

8:30 – 9:15 am

CLE | CME

#### Hunting Pandemic Fraud: Audits and FCA Litigation Resulting From the PHE

This presentation will focus on how government agencies are auditing and investigating improper overpayments and potential False Claims Act liability resulting from the significant regulatory changes that occurred during the public health emergency, including:

- A significant amount of reimbursement is at risk due to the regulatory changes.
- The government's focus on key areas such as telehealth, laboratory testing for COVID-19, and emergency risks for providers in Medicare Part C.
- The significant changes to the 60-Day Rule.

#### Speakers:

- **Stephen Bittinger**, Health Care Partner, K&L Gates, Charleston, SC
- **Jonathan Porter**, Partner, Husch Blackwell, Washington, DC
- **Gabriel Scott**, Health Care Partner, K&L Gates, Morrisville, NC

9:15 am – 10:15 am

CLE | CME

#### AI in Healthcare: Applications, Opportunities & Ethical Considerations

This session will include an overview of how AI is and can be used in healthcare, such as by increasing the efficiency of clinicians, improving medical diagnosis and treatment, and optimizing human and technical resources. The session also will identify the main clinical, legal, and ethical risks posed by AI in healthcare and identify strategies to mitigate these risks. Attendees will learn:

- How AI is and can be used healthcare
- How to identify the main clinical and ethical risks posed by AI in healthcare
- Strategies to mitigate these risks

#### Speakers:

- **Roma Sharma**, Crowell & Moring LLP, Washington, DC
- Microsoft Speaker, TBD

10:15 – 10:30 am

#### Break

10:30 – 11:30 am

CLE | CME

## The No Surprises Act: The IDR Process - A Regulatory/Litigation Update

The No Surprises Act (NSA) restricts surprise billing for patients in health plans who obtain care by physicians from out-of-network providers at in-network facilities, and out-of-network air ambulance services. The regulations promulgated by federal agencies have generated criticism and litigation, including challenges to the Independent Resolution Process (IDR) designed to resolve billing disputes by arbitration. This presentation will cover:

- The IDR Process
- Challenges to the IDR Process
- Regulatory changes imposed by litigation - do the changes advance fairness for physicians and providers?

### Speakers:

- **Arthur Peabody**, Of Counsel, Hooper Lundy & Bookman, PC, Washington, DC
- **Michelle Skipper**, Vice President, American Arbitration Association, Charlotte, NC
- **Lisa Taylor**, Inglesino Taylor, Boca Raton, FL

11:30 – 12:30 pm

CLE | CME

## Ethical Embrace of Bias to Tackle Healthcare Disparities

Healthcare disparities are opportunities for constructive and valuable healthcare systems change. Artificial Intelligence bias and limited broadband access have surfaced as systemic problems. Leadership and professional bias can either deepen the problems or enhance solutions to those problems. Both physician and attorney leaders must recognize personal and cultural biases at individual and community levels and understand diversity, equity, and inclusion principles. Attendees will:

- Understand bias as a leadership skill.
- Understand the promotion of diversity as a professional responsibility.
- Understand methods for attacking healthcare disparities.

### Speakers:

- **William Hopkins**, Office Managing Partner, Spencer Fane, Austin, TX
- **Julian Rivera**, Professor of Practice, University of Pittsburgh School of Law, Pittsburgh, PA

12:30 – 2:00 pm

## Lunch on your own

2:05 – 3:05 pm

CLE | CME

## Existential Threats to Practices: Revocations, Suspensions & Extrapolations

CMS regularly takes actions against physician practices which can bankrupt them. For most physician groups, the biggest threats to their survival are not Stark, Anti-Kickback or Civil Monetary Penalties liability. Rather, revoking billing privileges can prohibit a practice from billing Medicare, Medicaid, or commercial payors for 10 years or more. CMS's program integrity contractors commonly and increasingly impose suspensions without prior notice. Extrapolations of overpayments can also severely damage or ruin a practice. Attendees will come away with:



- A familiarity with the grounds for adverse enrollment actions, and the need to stay current with enrollment form information.
- An understanding that overturning revocations, suspensions, and extrapolations is lengthy, expensive, and difficult.
- An appreciation of the need to be proactive in ensuring that services are reasonable and necessary and are properly documented.

## Speakers:

- **Lynn Barrett**, Partner, Wachler & Associates, PC, Royal Oak, MI
- **Don Romano**, Attorney, Romano Health Law LLC, Towson, MD
- **Debra Rossi**, Director, Coding, Compliance, and Operational Excellence, VMG Health, Hauppauge, NY

3:10 – 4:10 PM

CLE | CME

## What to Do When the Government Comes Calling: Tips from a Former FBI Agent

The healthcare industry has been in the cross hairs of the federal government for the past several years. All too often doctors, office managers and other professionals react out of fear and ignorance when the FBI or other law enforcement agencies raid their office, or an agent serves them a subpoena. Their immediate actions, which include signing documents, giving statements, or handing over files, can change the course and outcome of the case. This presentation will provide valuable information to healthcare professionals on what to do and what not to do if a government agent shows up and will help attendees:

- Understand options and rights when faced with a government inquiry.
- Understand the liabilities associated with various laws.
- Ensure organizational preparedness through policy development and personnel training/education.

## Speaker:

- **Anthony Box**, Partner, Gray Reed & McGraw, Dallas, TX

4:15 – 5:00 pm

CLE | CME

## Enforcement in Private Equity Healthcare: A Burgeoning Trend?

After years of escaping scrutiny in health care investigations, private equity firms and individuals over the last five years have been the subject of increasing government enforcement. Offering perspectives from both the government and the defense bar, this panel will explore recent enforcement trends and analyze potential traps for the unwary in deals and operations. Most importantly, the panelists hope to give you the tools necessary to make sure neither you nor your clients appear in the DOJ's next press release!

## Speakers:

- **James Gillingham**, Civil Chief, US Attorney's Office for the Eastern District of Texas, Dallas, TX
- **Ryan Meyer**, Partner, Katten Muchin Rosenman LLP, Dallas, TX

5:00 – 7:00 pm

## Networking Reception

Enjoy a chance to relax, network with colleagues, meet our speakers, and members of the American Bar Association Health Law Section and the Chicago Medical Society over drinks, food, and live entertainment!

Thank you to our sponsor for making this event possible.

**KING & SPALDING**

**Friday, September 8, 2023**

8:15 – 9:00 am

CLE | CME

## The Current Healthcare System and Pressures on Physicians

Attend this session to hear from the immediate past president of the AMA regarding the physician perspective on the current physician reimbursement landscape. By attending this session, attendees will:

- Understand current pressures on physicians from various healthcare programs.
- Identify where money goes and where profits are drivers of consolidation.
- Recognize the impact on quality and access to care from consolidation.

### Speaker:

- **Barbara L. McAneny MD**, AMA Former President, CEO New Mexico Oncology Hematology Consultants, Ltd. Albuquerque, NM

9:00 – 9:45 am

CLE | CME

## Legal Landscape of Protections for Providers of Reproductive Healthcare

The panel will address state abortion laws that protect abortion providers, providing an overview of various relevant state laws, an assessment of the legal issues regarding the enforceability of these laws, and the effect of conflicts between various state laws. The panel will cover criminal law, civil law, medical malpractice insurance, and state medical licensing implications. It will analyze the outer bounds of these laws, feasibility of implementation, and pros/cons as they pertain to healthcare access, interstate cooperation, malpractice, and medical licensing. Session goals include:

- Understanding the array of protections for reproductive healthcare providers, including in out-patient settings, emergency, and telemedicine settings
- Understanding the ways in which the US Constitution plays a role in the enforceability of shield laws.
- Strategies for best practices for providers and those who represent them to best protect themselves/their practices from issues regarding conflicting state laws regarding reproductive healthcare services.

### Speakers:

- **David Cohen**, Professor of Law, Drexel University, Thomas R. Kline School of Law, Philadelphia, PA

9:45 – 10:00 am

## Break

10:00 – 10:45 am

CLE | CME

## Reclaiming Physician Wellness: Burnout and Solutions in Law and Practice

Over 50% of doctors report burnout. The pandemic, workplace violence, provider shortages, and administrative burdens are compounding factors. When clinicians are afraid to seek the care they need, they may be unable to work due to depression, or burnout. Some abuse substances; some leave medicine. The stigma associated with seeking or even discussing behavioral healthcare is a primary driver of suicide. Join us for a discussion of these issues, the current legal barriers and impact on health care, and the solutions healthcare institutions and many of us may take to help tackle this crisis. This session will:

- Identify the issues facing physicians and healthcare providers before the pandemic and today related to the stigma around mental health access and the drivers for burnout.
- Help attendees understand the legal and other barriers and opportunities to address these issues and evaluate the related risks to quality of care and physician/healthcare provider well-being.
- Explore specific actions government, licensure and credentialing boards, health systems, and healthcare employers can take to remove barriers for providers to access mental health care, and other solutions to address the underlying causes of burnout and support the well-being of healthcare providers.

### Speakers:

- **Elizabeth Greene**, Partner, Mirick O'Connell, Worcester, MA
- **J. Corey Feist**, President, Dr. Lorna Breen Heroes' Foundation, Charlottesville, VA
- **Sarah Swank**, Counsel, Nixon Peabody, Washington, DC

10:50 am – 11:50 am

CLE | CME

## Using APPs, Residents, and Auxiliary Personnel: Rules and Requirements

Increased use of non-physician practitioners (NPPs) to provide medical care services has led to myriad rules for tracking and billing services and determining appropriate compensation for the NPPs and the physicians who supervise them. The circumstances and applicable requirements for physicians to bill for services performed with NPPs and medical residents is also an ongoing source of confusion. This session will provide an in depth look at the various complex regulations and considerations including:

- An overview of different types of NPPs, including APPs, residents and other auxiliary personnel
- A discussion of overview of billing issues that arise with split-shared, incident-to billing and resident services
- Determining compensation for services, including supervisory services, FMV and regulatory considerations

### Speakers:

- **Allison Cohen**, Shareholder, Baker Donelson Bearman Caldwell & Berkowitz PC, Washington, DC
- **Chip Hutzler**, Partner, HMS Valuation Partners, Nashville, TN

11:50 – 12:50 pm

## Ticketed Lunch

1:00 – 1:45 pm

CLE | CME

### More Value, Less Volume: Developing Health Care Value-Based Models

This session will provide a practical overview of how to structure health care value-based financial models. Panelists will discuss models that incentivize coordination of care, quality, and cost containment and that are defensible under Anti-Kickback, Stark, and federal Civil-Monetary Penalty requirements. The panel will also discuss opportunities for re-structuring current arrangements as value-based models. This session will cover:

- Key requirements of the Stark and Anti-Kickback value-based rules.
- Potential compensation models.
- Incentives for coordination of care, quality, and cost containment.

#### Speaker:

- **Joseph Wolfe**, Shareholder & Practice Group Leader, Hall Render Killian Heath & Lyman, Milwaukee, WI

1:50 – 2:50 pm

CLE | CME

### Build Your Practice's Tech Stack - Best Practices for Vendor Onboarding

Vendors and tools are critical for obtaining good clinical outcomes. What would a practice do without their EHR or patient experience application? However, they can come with legal risks. This session will outline the regulatory requirements that might apply to a new vendor relationship, including HIPAA, 42 CFR Part 2, and Medicare / Medicaid requirements. Further, it will outline some best practices to right size your approach to effectively diligence a new vendor and effectively negotiate the agreements to mitigate legal risks. Attendees will:

- Learn how to diligence vendors in the healthcare context
- Learn how to negotiate contracts with vendors to limit risk
- Learn how to safely leverage tools / vendors to build efficiencies in a healthcare practice or organization.

#### Speakers:

- **Matthew Buchbinder**, Lead Product & Regulatory Counsel, NexHealth, Chicago, IL
- **Ashley Thomas**, Senior Counsel, Holland & Knight, Washington, DC

2:55 – 3:55 pm

CLE | CME

### Data Connections with Patients: Risks to Providers and Networks

The increased use of health and wellness programs and apps to monitor and interact with patients, particularly in Value Based and other Risk Based alternative payment arrangements, adds significant obligations on physicians, provider organizations, integrated networks and other providers to protect patient data from inappropriate use and disclosure. The session will review Cybersecurity and Data Privacy risks associated with such patient interaction tools, including recent OCR and FTC matters and review steps to



better ensure that appropriate policies and safeguards are in place. This session will review:

- Identify cybersecurity and privacy risks associated with on-line patient communication tools
  - Review recent enforcement actions, and identify policies and procedures to consider to reduce risk
- 
- **Charles Normand**, Partner, Hinckley Allen Snyder LLP, Providence, RI
  - **Julian Rivera**, Julian Rivera Strategies, Pittsburgh, PA
  - **B. Stephanie Siegmann, Partner**, Co-Chair Cybersecurity, Privacy, & Data Protection Practice Group, Hinckley Allen Snyder LLP, Boston, MA

## FACULTY

**Lynn Barrett**

Wachler & Associates, PC, Royal Oak, MI

**Stephen Bittenger**

K&L Gates, Charleston, SC

**Anthony Box**

Gray Reed & McGraw, Dallas, TX

**Matthew Buchbinder**

NexHealth, Chicago, IL

**David Cohen**

Drexel University, Philadelphia, PA

**Allison Cohen**

Baker Donelson, PC, Washington, DC

**J. Corey Feist**

Dr. Lorna Breen Heroes' Foundation,  
Charlottesville, VA

**James Gillingham**

U.S. Attorney's Office for the Eastern District of  
Texas, Dallas, TX

**Elizabeth Greene**

Mirick O'Connell, Worcester, MA

**Sean Hammil**

Microsoft, New York, NY

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**Chip Hutzler**

HMS Valuation Partners, Nashville, TN

**Barbara McAneney**

AMA Former President  
CEO New Mexico Oncology Hematology  
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**Ryan Meyer**

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**Charles Normand**

Hinckley Allen & Snyder LLP, Providence, RI

**Arthur Peabody**

Hooper, Lundy, Bookman, Washington, DC

**Jonathan Porter**

Husch Blackwell, Washington, DC

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American Arbitration Association, Charlotte, NC

**Sarah Swank**

Nixon Peabody, Washington, DC

**Lisa Taylor**

Inglesino Taylor, Boca Raton, FL

**Ashley Thomas**

Holland & Knight, Washington, DC

**Joseph Wolfe**  
Hall Render, Milwaukee, WI

## CONFERENCE & CLE INFORMATION

### REGISTRATION

Online: [ambar.org/PLI2023](http://ambar.org/PLI2023)

### US MAIL

American Bar Association  
Health Law Section  
ATTN: Service Center/Meeting/Event  
Registrations Department  
321 N. Clark Street  
Chicago, IL 60654

**Register by July 14, 2023**, online to receive the early bird registration rates, by US Mail or online. Registration will be accepted only when accompanied by a check, money order, Visa, American Express or MasterCard information. Registrations will not be held without payment. Your payment will cover admission to the program, continental breakfasts, coffee breaks, conference luncheon, receptions and one set of program course materials.

### CANCELLATION POLICY

A refund will be issued upon **written cancellation received no later than August 31, 2023**, minus a \$75 handling charge for each registration. Cancellations received after this date cannot be refunded but substitutions are encouraged. The ABA reserves the right to cancel any program and assumes no responsibility for personal expenses.

### HOTEL INFORMATION

The conference will be held at the Fairmont Chicago - Millennium Park 200 North Columbus Drive Chicago, IL 60601. When making reservations by phone or online, please mention the ABA Health Law Section Physicians Legal Issues Conference to secure the group rate of \$279 for a standard room. **This special rate expires Wednesday, August 15, 2023.** A limited number of government-rate rooms have been reserved on a first available basis. Please note the GSA may change the government rate at any time, so please confirm the rate with the hotel when booking. [Book your room here!](#)

### CLE CREDIT –

The ABA will seek 12.25 hours of CLE credit in 60-minute states\*, and 14.7 hours of CLE credit for this program in 50-minute states. Credit hours are estimated and are subject to each state's approval and credit rounding rules. Please visit the program website at [Health Law Home \(americanbar.org\)](http://HealthLawHome.americanbar.org) for program CLE details or visit [www.americanbar.org/mcle](http://www.americanbar.org/mcle) for general information on CLE at the ABA.

### CME Information

Physicians that attend this conference may earn CME credits. For additional information about this CME activity, including any updates regarding faculty members and/or commercial support disclosures, please visit the Chicago Medical Society's (CMS) website at [www.cmsdocs.org](http://www.cmsdocs.org). You may also contact the CMC Education Department at [cms@cmsdocs.org](mailto:cms@cmsdocs.org) or via phone at 312-670-2550.

The Physicians Legal Issues: Healthcare Delivery & Innovation Conference has been planned and implemented in accordance with the accreditation requirements and policies of the Accreditation Council

for Continuing Medical Education (ACCME) through the joint provider ship of the Chicago Medical Society, the American Bar Association's Health Law Section, and the American Association for Physician Leadership. The Chicago Medical Society is accredited by the ACCME to provide continuing medical education for physicians. The Chicago Medical Society designates this live activity for a maximum of 16 PRA Category 1 Credit(s)<sup>™</sup>. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

## AIRLINE INFORMATION

### ABA NEGOTIATED AIRFARE DISCOUNTS – AVAILABLE ONLINE FOR ABA MEMBERS!

\*A Travel Profile is required when booking airline reservations with ABA Egencia

## HEALTH LAW SECTION MEMBERSHIP

As a bonus, the member's tuition rate will be available to registrants who become new members of the ABA Health Law Section. Membership dues are not deductible as charitable contributions for federal income tax purposes, but such dues may be deductible as a business expense. American Bar Association membership is required to become a member of the Health Law Section.

## TAX DEDUCTION FOR EDUCATIONAL EXPENSES

An income tax deduction may be allowed for educational expenses undertaken to maintain or improve professional skills. This includes registration fees, travel, meals, and lodging expenses. (See Treas. Reg. 1.162-5) (Coughlin vs. Commissioners, 203 F. 2d 307).

## SERVICES FOR PERSONS WITH DISABILITIES

If special arrangements are required for an individual with a disability to attend this program, please contact the Health Law Section staff at (312) 988-5146 or [danielle.daly@americanbar.org](mailto:danielle.daly@americanbar.org).

## DRESS CODE

Business attire, including business casual, is appropriate for all meetings, CLE programs and social events during the program.

## SCHOLARSHIP

Financial scholarship applications are available for this conference. To request an application or receive additional information, please contact Danielle Daly ([danielle.daly@americanbar.org](mailto:danielle.daly@americanbar.org)). **Deadline for receipt: August 19, 2023**, no cases will be considered after the deadline, and all standard registration fee rates will apply after August 19, 2023.



## REGISTRATION

Online: [ambar.org/PLI2023](http://ambar.org/PLI2023)

REGISTRATION FEES	Full Conference Early Bird Price:	Full Conference Price:
Health Law Member	\$650	\$750
ABA Member, Non-Health Law Section Member	\$705	\$805
Non-Member	\$895	\$995
In-House Counsel / Solo Practitioner / Government / Academic / Physician (full-time only)	\$375	\$475
Law Student	\$50	\$50
I would like to make a one-time tax-deductible gift to the Health Law Section's Program Support Fund 501(c)3 (visit <a href="http://donate.americanbar.org/healthlaw">donate.americanbar.org/healthlaw</a> for details)		
<b>TOTAL FEES ENCLOSED</b>		

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## UPCOMING EVENTS

### **Washington Health Law Summit**

December 11-12, 2023

The Ritz-Carlton Hotel

Washington, DC

### **Emerging Issues in Healthcare Law Conference**

March 3-6, 2024

JW Marriott

New Orleans, LA