

Health MVP: Sheppard Mullin's Eric Klein

By **Jeff Overley**

Law360, New York (November 20, 2013, 3:44 PM ET) -- Sheppard Mullin Richter & Hampton LLP partner Eric A. Klein has carved out a prime place in the vanguard of health care industry consolidation, helping guide such mega-deals as the \$4.4 billion acquisition of physician network chain HealthCare Partners LLC by dialysis giant DaVita Inc., earning himself a spot among Law360's Health MVPs.

The DaVita deal was notable not just for being big, but also for representing a mammoth bet on the future of coordinated care, which had long been HealthCare Partners' forte and which is viewed as a centerpiece of the Affordable Care Act's long-term cost-control efforts.

What's more, the acquisition heralded the possible creation of a truly national health care provider, which is not common. DaVita's specialty clinics are already present across most of the U.S., and by scooping up a company with a footprint in such major population centers as California and Florida, it laid the groundwork for more comprehensive services.

"You've got a leading kidney disease ... company that sees an opportunity to become a national branded player in a broader health care sector," Klein said. "DaVita's transaction was really unusual in that they were deciding to go into a new sector with the [intent] to go national."

Klein, who boasts a quarter-century of experience and helms Sheppard Mullin's 85-attorney health practice, has seen these sorts of waves before. The 1990s were memorable as Wall Street "lost its mind for a little bit" and began snapping up physician groups like hotcakes before the technological infrastructure existed to enable proper integration, he recalled.

The latest rush came around the dawn of the Obama administration, as recession and the prospect of health reform made it imperative for providers to deliver better care at a lower price.

"It was very clear that there would be a need to move toward much more cost containment," Klein said.

One challenge for M&A attorneys in the health space has been understanding the diverse types of entities looking to do deals. Since 2012, Klein has aided the sale of Greater Houston Anesthesiology and two management companies to a private equity fund, advised clients on contracting for electronic health records, helped medical groups enter formal alliances with insurance companies, and overseen physician practice sales and strategic alliances.

While Klein says that being an “omnivorous reader” helps with keeping abreast of all the goings-on, the real key is connecting personally with other experts.

“I’ve got a very strong national network of participants in the health care industry,” he said. “We’re constantly talking to each other about new regulation, trends, etc.”

Often times, those regulations and trends are at odds. For example, while the ACA prodded providers to work more closely with one another, it didn’t do much to relax antitrust and anti-kickback rules that are often implicated when their business dealings overlap.

“It’s a significant challenge — we are seeing that over and over again in our deals these days,” Klein said. “You’ve basically got a schizophrenic policy approach coming from the federal government.”

In response, Klein says he’s seen a sharp uptick in commercial accountable care organizations — partnerships between doctors, hospitals and insurers, without the compliance headaches that emerge when Medicare is paying the bills.

“You’ve got a blank slate, and you can create whatever you want to,” Klein said.

But reimbursement from Medicare and Medicaid still drives a great deal of business decisions, and those payments are increasingly getting squeezed. That’s in large part because of the nation’s worrisome debt load, a demand for better outcomes, and GOP opposition to most new taxes.

“Government, since it’s not able to raise taxes significantly, is looking to recapture revenue,” Klein said.

That, in turn, means providers of all stripes will only face more pressure in coming months and years to team up in hopes of achieving greater efficiency.

“Everybody in the health care industry is driving for scale right now,” Klein said, “so we’re seeing every single sector consolidate.”

--Editing by John Quinn.