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LAW FIRM BUSINESS

Clinical Precision

Fenton Law Group LLP's team of 10 attorneys have honed in on the litigation, transactions and regulatory matters that surround the changing health care industry.

By **Kibkabe Araya**
Daily Journal Staff Writer

In the mid-1980s, Henry R. Fenton, at the time a labor attorney, successfully defended a physician whose license was threatened by the state medical board because a woman alleged the physician inappropriately touched her. Once the physician was exonerated from the charges, Fenton said he began receiving referrals from the board.

"I became interested in the field because I saw that physicians and health care provider professionals were getting highly regulated, and they really didn't see lawyers specializing in this field," he said.

Having now spent a quarter-century in the health care arena, Fenton started Fenton Law Group LLP last year after dissolving Fenton Nelson LLP. With 10 attorneys and six staff, Fenton Law Group specializes in litigation, transactions and regulatory matters surrounding an industry in flux due to the Affordable Care Act, the Health Insurance Portability and Accountability Act, Stark Law and other evolving health care laws.

The firm boasts over 100 active clients, including physicians, medical groups, surgery centers, hospices and medical device companies.

Fenton and longtime colleague Dennis E. Lee started setting precedence in health care law with a 2000 state Supreme Court decision involving an OB-GYN client who lost patients after his insurance company dropped him for his malpractice history.

The trial court ruled the insurer's "without cause" termination clause in contract was legit, but the appellate court reversed the decision and the state's high court affirmed that doctors are entitled to a fair procedure because a release affects their careers. The decision enforced insurance companies to follow the

common law right of fair procedure and allow health care providers to dispute their termination. *Potvin v. Metropolitan Life Insurance Co.*, 997 P.2d 1153 (Cal. 2000).

The duo will soon return to the state Supreme Court on a privacy law issue with partner Benjamin J. Fenton in a case revolving around the state's prescription database, Controlled Substance Utilization Review and Evaluation System or CURES.

The firm represents physician Alwin C. Lewis, who was reported to the Medical Board of California by a client claiming his "Five Bite Diet" was an unhealthy suggestion. After the complaint, an MBC investigator accessed all his clients' prescriptions via CURES over a three-year period, later testifying that assessments like that are done all the time for any investigation against a physician. *Lewis v. Superior Court of Los Angeles*, S219811 (Cal.)

The trial court rejected Lewis' claims that CURES searches violate patients' privacy and are improper without good cause. The appellate court denied petition for the writ of administrative mandamus, but last September, the state Supreme Court granted review.

"You have a right to privacy under the California constitution. It gives it a really heightened right," said Benjamin Fenton, who's also Henry's son. "People are saying, 'Well, you know, it's good that the government looks at doctors,' but in our view, it's a sliding scale. And if they're looking at his records, they can look at anyone's records."

The role of the CURES database in investigations is one of the latest issues in pharmaceutical law, according to new counsel Herbert L. Weinberg formerly of McGuireWoods LLP who joined Fenton Law Group last week. A pharmacist himself,



Alexander Drecun / Special to the Daily Journal

Benjamin J. Fenton, left, and Henry R. Fenton, two of Fenton Law Group LLP's health care litigators.

Weinberg said he moved from a large international firm to a boutique specialty firm because his practice focused on administrative law with independent pharmacists — a conflict when big pharma gets representation in the same place.

"This firm was a perfect match for me," he said. "I found a home here."

On top of litigation, transactions in the health care industry have risen due to the Affordable Care Act. An increasing number of hospitals have merged with or acquired medical providers in order to stay afloat and grow in the new setting. Beth Kase said she recently represented a party in a deal with Apollo Medical Holdings Inc. to acquire a hospice.

"You have to structure your transactions to avoid getting into trouble because if you have trouble, you can become excluded from Medicare, you can have sanctions," Kase said. "So they really look to us to help them structure their transactions and keep them out of trouble and that's what we do. We are constantly staying abreast."

Keeping the firm small has made it more cost-productive to clients, Henry Fenton and partner Nicholas Jurkowitz say, though it does not have the luxury of placing four to five attorneys on a case. But associates say making the foundational phone calls, arranging client meetings and working on cases solo is valuable experience unparalleled to other firms.

Kase's daughter, Marissa K. Segal, also works at the firm, and is the mother to a 21-month-old son. She said the flexible schedule helps her juggle motherhood and work.

"I know the client personally, and I feel I'm personally invested, rather than getting piecemeal work to do," she said. "I don't know what defines this, but the inclusive aspect of it has really allowed me to see the arc of the projects and be involved with every step. I think work quality is superior when that happens."

Starting last year with five attorneys from the previous incarnation, the firm now is looking for a larger office space to accommodate the growth.