

# Daily Journal

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## TOP BOUTIQUES IN CALIFORNIA 2016



Alex Dracon / Special to the Daily Journal

From left, Benjamin J. Fenton, Nicholas D. Jurkowitz, Beth A. Kase, Henry R. Fenton, Alexandra De Rivera, Marissa Kase Segal and Dennis E. Lee.

### HEALTH CARE

## Fenton Law Group LLP

### LOS ANGELES AND OAKLAND

When Henry R. Fenton first got interested in health care law, the practice did not exist as a specialized field. Fenton was a union-side labor lawyer. An association of anesthesiologists referred to him an elderly doctor whose license was threatened after a woman patient — whom he had delivered decades earlier — claimed he had touched her inappropriately. Fenton, then practicing at a firm known as Levy, Van Bourg & Hackler, won the case for his client. “I did it by good lawyering,” he said. “The woman had issues. Then I started getting referrals from the [California] Medical Board.” The state agency licenses medical doctors, investigates complaints, holds hearings and disciplines those found to have violated the law.

Today, his firm, founded in 2014, has 12 attorneys providing legal services to a health care industry that has expanded, morphed and shape-shifted

as new laws like the Affordable Care Act, the Health Insurance Portability and Accountability Act and the Confidentiality of Medical Information Act have influenced how clients do business — from HMOs to hospices to home health care providers to pharmacies and medical device companies.

“Early on, I got so busy I couldn’t do other stuff,” said Fenton, who now practices with four partners: son Benjamin J. Fenton, Nicholas D. Jurkowitz, Herbert L. Weinberg and Beth A. Kase. “I wrote some articles and the Union of American Physicians and Dentists retained me. Physicians felt their rights were being infringed upon. There was a large need, and there still is,” Henry Fenton said.

Fenton specializes in fraud and abuse cases, medical staff disputes,

credentialing, Medicare and Medi-Cal, reimbursement, Stark Law and other anti-kickback rules, Drug Enforcement Administration and Food and Drug Administration issues, business disputes, long-term care, behavioral health and alcohol and substance abuse. His firm’s transaction team negotiates the intricacies of entity formation, provider licensing, business and employment agreements and entity acquisitions and sales.

For a neurosurgeon client, Fenton Law Group lawyers fended off an accusation that a hospital’s peer review had correctly determined that his practices fell below the standard of care. “We obtained a complete dismissal of the charges,” Fenton said. “Sometimes, hospitals deny privileges for competitive reasons. Here the medical staff had on it very politically powerful physicians. They were not as good as the new guy, but they were able to keep him off the staff. The saving grace is that we have a justice system that can correct things like that.”

In 2000, Fenton argued successfully before the state Supreme Court

to establish physicians’ common law right to fair procedure after an Orange County obstetrician was arbitrarily terminated from a network of health care providers and denied a hearing to appeal. “Physicians were at the mercy of insurance companies for credentialing,” Fenton said. “My client got dinged because the insurer felt he spent too much on tests. We changed the law in California.” *Potvin v. Metropolitan Life Insurance Co.*, 22 Cal.4th 1060.

This year, Fenton is back before the state high court on a privacy law issue in a case arising from California’s drug prescription database, the Controlled Substance Utilization Review and Evaluation System, known as CURES. Client Alwin C. Lewis, a Burbank physician, was reported to the Medical Board by an overweight client who claimed Lewis’ “Five Bite Diet” was not supported by medical evidence, Fenton said. Despite an absence of issues with Lewis’ prescription practices, a board investigator accessed all Lewis’ prescribing records and added charges concerning five patients that were unrelated to the original complaint. The justices agreed to decide whether a physician’s patients have a protected privacy interest in CURES data and whether disclosure is justified by a compelling state interest. The court accepted the case for review in 2014; it has long been fully briefed and awaits an oral argument date. *Lewis v. Superior Court (Medical Board of California)*, S219811.

“This case has huge implications for physicians’ right to privacy,” Jurkowitz said. “We have recently heard from a lawyer who was casually informed by a Medical Board investigator that it was known the lawyer was a patient of a doctor he represented. Was it to intimidate the lawyer? It was shocking — there was no good motive there. The Medical Board is supposed to get patients’ authorization to obtain those records. If we’re successful in Lewis, it should put an end to this.”

—John Roemer