



Thomas W. Hess

Of Counsel
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Annually appearing on the *Best Lawyers* list, as well as the *Ohio Super Lawyers* list, Tom has more than 40 years of experience representing assisted living facilities, durable medical equipment companies, home health agencies, hospice providers, hospitals, nursing homes, pharmacies, physicians and other licensed health care providers before state, federal and administrative courts across the country. He is a past member of the firm's Board of Directors and immediate past chair of the Government Relations and Health Care Industry practice groups.

Leveraging extensive experience with a thorough understanding of the issues facing the health care industry, Tom takes a practical, yet aggressive, approach to help clients meet their needs while also mitigating risk. Within the constantly-evolving industry, he guides clients through myriad challenges, including certificate of need, health care fraud investigations, as well as issues related to Medicare and Medicaid audits, overpayments, certifications, exclusions and reimbursement. Additionally, he has assisted clients with the acquisition and disposition of health care facilities and practices, demonstrating a knowledge of not only the industry's distinctive operations but also of traditional business transactions. Understanding that complex health care reform initiatives have dramatically impacted the industry's operations, Tom, a former assistant attorney general in Ohio, utilizes his familiarity with the regulatory agencies and their procedures to provide clients with the insight they need to confidently move forward.

A frequent speaker on health care issues throughout the country, he uses his experience to provide clients with knowledgeable and efficient counsel in a constantly-evolving industry.

Services

- Government Investigations
- Government Relations
- False Claims Act
- Health Care Industry
- Regulatory Compliance

Education

- Capital University School of Law (J.D., 1976)
- Ohio University (B.S.Ed., *cum laude*, 1973)

Bar Admissions

- Ohio

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals for the Sixth Circuit
- U.S. District Court for the Northern District of Ohio
- U.S. District Court for the Southern District of Ohio

Affiliations/Memberships

- American Bar Association
- Ohio State Bar Association
- Columbus Bar Association, Health Law Committee, past chairperson
- American Board of Colon and Rectal Surgery (2024-present)
 - Board of Directors
 - Governance Committee
 - Standard and Credentials Committee
- American Board of Medical Specialties, past member
 - Board of Directors (2014-2024)
 - Accountability and Resolution Committee, chair (2020-2022)
 - Governance Committee (2020-2023)
- American Health Law Association, LTC-SIR Advisor Editorial Board, past member
- Ohio Board of Examiners of Nursing Home Administrators, Board of Directors, past member, vice chairman
- Arthritis Foundation of Central Ohio, Board of Trustees, past member
- American Federation for Aging Research Ohio Chapter, Board of Trustees, past member
- Northeastern Ohio University College of Medicine and Pharmacy Foundation, Board of Directors, past member
- University of Cincinnati, College of Allied Health Sciences, adjunct professor

Distinctions

- *National Law Review*, "Go-To Thought Leader" (2020)
- *Best Lawyers*® (1995 - present)
 - "Lawyer of the Year" in Columbus for Administrative/Regulatory Law (2018)
 - Administrative/Regulatory and Health Care Law
- Peer Review Rated AV in *Martindale-Hubbell*
- Ohio *Super Lawyers*® (2004 - present)
- Top Lawyers by *Columbus CEO* magazine
- Mentor of the Year, Dinsmore (2015)

Experience

Advised a Large Nursing Home Through a Medicare Audit Appeal

Dinsmore advised a large Ohio nursing home through a three stages of a Medicare audit appeal in connection with physical therapy services. Our attorneys represented the client before an administrative law judge and reduced a multi-million dollar Medicare overpayment to less than \$15,000.

FHA/HUD Financing Under the LEAN Program

Represented O'Neill Management and its affiliates in the FHA/HUD LEAN Program financing in the amount of \$11,600,000 for a skilled nursing facility located in North Olmstead, Ohio.

FHA/HUD Financing Under the LEAN Program

Represented Meadow Wind Associates, L.P. in the FHA/HUD LEAN Program financing in the amount of \$1,575,000 for a skilled nursing facility located in Massillon, Ohio.

FHA/HUD Financing Under the LEAN Program

Represented a nursing care provider in the FHA/HUD LEAN Program financing in the amount of \$7,464,000 for a skilled nursing facility located in Cincinnati, Ohio.

Health Care Lending

Represented FirstMerit Bank, N.A. in a \$5,775,000 financing of skilled nursing facilities located in Painesville, Ohio.

Health Care Lending

Represented Kendal of Granville in the purchase of \$22,010,000 of revenue Refunding and Improvements Bonds, \$17,000,000 of construction/mini-perm loan, a \$6,500,000 draw loan, a \$2,500,000 revolving line of credit and interest rate derivative SWAPs for a skilled nursing and independent care facility located in Granville, Ohio.

Health Care Lending

Represented a nursing care provider in multiple financing projects, including \$8,000,000 construction financing of a skilled nursing facility located in Beavercreek, Ohio and \$8,630,000 construction financing of a skilled nursing facility located in Colerain, Ohio.

Conducted the Sale of Multiple Assisted Living Facilities

We assisted our client with the sale of nine nursing home/assisted living facilities. Our client wished to leave the nursing home industry, and we negotiated and prepared the sale/purchase transaction documents.

Successfully Argued Against a CON for a Client's Competitor

Our client, a nursing facility, was concerned that a project proposed by a competing facility would adversely affect their business. The competitor's facility would have been less than a mile from our client, and the surrounding area already includes multiple nursing facilities. We successfully appealed the decision to grant a Certificate of Need (CON) to the competitor during an Ohio Department of Health administrative hearing.

Successfully Argued for a Nursing Home's Right to Transfer a Resident

We successfully won an administrative hearing before the Ohio Department of Health granting our client, a nursing home, the right to discharge or transfer a resident. The facility proposed the discharge because it believed the resident was a threat to other residents and to staff.

Counseled Nonprofit in Sale of Two Nursing Homes

We represented an owner in the \$14 million sale of two nonprofit nursing homes in Ohio. Our role included negotiating terms of the sale, negotiating a purchase agreement, coordinating due diligence, filing appropriate documentation with state regulators, handling special considerations for the sale of a nonprofit property, and closing the transaction.

Counseled Nursing Home Owner in Sale of Two Nursing Homes

We represented an owner of nursing homes in the sale of two Ohio facilities. Our role included negotiating terms of the \$16.7 million sale, negotiating a purchase agreement, coordinating due diligence, filing appropriate documentation with state regulators, resolving real property issues at the sites, and closing the transaction.

Counseled Our Client During a Real Estate, Entity Sale

Our client was selling the real estate and operating entities from two nursing homes. We advised our client on the deal's financing, including ancillary loans and real estate transfers, as well as the final sales price.

Home Health Agency

Filed a lawsuit against the Ohio Department of Medicaid to reinstate a home health agency summarily suspended from the Ohio Medicaid program. The suspension was cancelled, and the home health agency was reinstated.

Dismissal of Federal Criminal Tax Indictment

We represented the owner of a Columbus-based home health agency who, along with others, was the subject of a federal criminal indictment alleging 43 counts of federal tax violations. The case was scheduled for a two week trial, but was dismissed with prejudice by the Government two weeks prior to trial. The investigation and prosecution were conducted by the United States Attorney's Office and the Internal Revenue Service.

Certificate of Need Objections on Behalf of a Nursing Home

We advised a nursing home facility and its related entities through their objection to two related Certificate of Need applications filed by another nursing home facility. After the Certificate of Need applications had been filed, we filed objections with the Ohio Department of Health to challenge the merit of the applications, and a hearing was granted. During the course of the administrative hearings, the parties reached a confidential settlement. The hearings were subsequently dismissed.

Claridge House, Inc. v. USDHHS, 795 F. Supp. 1393 (1991)

Filed a complaint for declaratory and injunctive relief against the United States Department of Health and Human Services on behalf of a nursing home. The federal government alleged the nursing home failed to meet Medicare/Medicaid certification criteria, and it wanted to terminate the nursing home's participation in the federal payment programs. On behalf of the nursing home, I argued the federal law did not permit the termination. The court agreed with the argument, stating the federal regulations were beyond the scope of federal law, and stated that defendants were enjoined from terminating the nursing home from federal payment programs. This was first lawsuit challenging the validity of federal regulations filed in the United States.

Edward Hamilton v. Ohio Department of Health

Three Ohio AIDS patients filed a lawsuit against the director of the Ohio Department of Health (ODH) to prevent enforcement of proposed rules that would arbitrarily deny funding for potentially life-saving medications to Ohio residents infected with HIV or suffering from AIDS-related symptoms. Defendants claimed that ODH failed to follow statutory rule-making process and the proposed rules were unenforceable. Court agreed that public interest would be served by protecting the right of a public hearing, and issued preliminary injunction preventing ODH from implementing new rules pending resolution of the lawsuit.

FHA/HUD Financing under the LEAN Program

Represented Lutheran Social Services of Central Ohio, Inc. and its affiliates in the FHA/HUD financing in the amount of \$1,800,000 for a senior housing apartment complex located in Mansfield, Ohio.

Nursing Home Sale

Represented Lutheran Social Services of Central Ohio, Inc. and its affiliates in the sale of a \$7,400,000 skilled nursing facility located in Columbus, Ohio.

Property Acquisition and Bond Financing

Represented a regional healthcare provider in the acquisition and bond financing of nine (9) intermediate care facilities located in Cuyahoga County in the amount of \$4,800,000.

Represented a home health care company against allegations of fraud and Ohio Medicaid audit, resulting in no fraud or liability

We represented a home health care company when the Ohio Department of Medicaid sought to implement an Ohio Auditor of State's audit to recover over \$700,000 that Medicaid claimed our client was over-reimbursed. During the case, we discovered that the auditor had considered incomplete and inaccurate data to support the claim and extrapolation of overpayment. We worked with the client to carefully and meticulously examine and organize all of the appropriate documents and files to show that the auditor's records were incomplete and that our client, in fact, had not been overpaid at all. After we exchanged discovery with Medicaid and prepared the case for hearing, Medicaid voluntarily dismissed the case, resulting in zero liability for our client. During the case,

our client and three related entities had also been suspended from Ohio Medicaid for a credible allegation of fraud, but our representation resulted in the suspensions being lifted.

Publications

October 25, 2022

Feds Announce More Aggressive Enforcement of Poor Performing Nursing Homes

November 25, 2020

Can Employers Mandate Employees to Take a COVID-19 Vaccine?

June 4, 2020

Mandatory COVID-19 Testing for Ohio Nursing Homes

June 4, 2020

CMS Announces Enhanced Surveys for Nursing Homes to be Completed by July 31, 2020

June 3, 2020

Nursing Home Safety Amid COVID-19: CMS Publishes Infection Control Guidance and Toolkit

March 25, 2020

CMS Announces New Targeted Plan for Health Care Facility Inspection

March 16, 2020

Coronavirus (COVID-19) Infection Control in Nursing Homes

June 28, 2019

Skilled Nursing Facilities No Longer Permitted to Bill for Room and Board for Residents Receiving Hospice Care

November 29, 2018

How to Prepare for the 2019 Nursing Home Compliance Program Mandate

October 23, 2018

Ohio Medical Professionals Now Must Report Suspected Elder Abuse