

# Howard R. Rubin

*Partner and Chair, Appeals and Critical Motions*

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## Practices

FOCUS: Appeals and Critical Motions

Health Care

Health Care Litigation, Reimbursement and Regulation

Health Care Regulatory and Compliance

Insurance and Health Care Fraud Litigation Litigation

Howard leads two different legal practices that are national in scope and reputation. Applying nearly 30 years of experience as an appellate litigator, he heads the firm's Appeals and Critical Motions practice, representing clients in their most important disputes. Separately, in the health care industry, Howard leads the most prominent practice in the nation devoted to advising independent physician medical practices. Howard also is a member of the firm's Board of Directors.

## Industries

Family Offices

Medicare/Medicaid Reimbursement

## Education

JD, Duke University School of Law, *with high honors, Order of the Coif*

BA, University of Miami, *summa cum laude, Phi Beta Kappa*

## Bar Admissions

District of Columbia

Maryland

## Court Admissions

US Supreme Court

US Court of Appeals, Federal Circuit

US Court of Appeals, Second Circuit

US Court of Appeals, Third Circuit

US Court of Appeals, Fourth Circuit

US Court of Appeals, Fifth Circuit

US Court of Appeals, Sixth Circuit

US Court of Appeals, Seventh Circuit

US Court of Appeals, Ninth Circuit

US Court of Appeals, Tenth Circuit

US Court of Appeals, Eleventh Circuit

US Court of Appeals, District of Columbia Circuit

## Appellate advocacy for bet-the-company matters

Over his career, Howard has served as lead counsel in more than 100 appeals, including matters in the US Supreme Court, 11 of the 13 federal circuit courts, and various state appellate and supreme courts. Clients often call on Howard and his team of former federal appellate clerks to brief and argue bet-the-company cases and other high-stakes disputes in the appellate courts. His cases have covered a wide variety of subject matter, including administrative law, criminal law, environmental law, health care, intellectual property (patent, copyright and trademark cases in the Federal Circuit) and securities litigation.

## Best-in-class representation of independent medical practices

In the health care industry, Howard leads an interdisciplinary team that represents dozens of the country's largest, most sophisticated independent physician specialty practices as well as private equity-backed physician practice management services organizations in complex transactions, regulatory matters and investigations. He devotes a substantial portion of his practice to internal and government investigations and related False Claims Act cases arising from allegations of Medicare fraud and abuse under the federal Anti-Kickback Statute and Stark Law. Howard's team also represents physician medical practices and third-party financial sponsors in recapitalization transactions, having closed dozens of transactions over the last many years.

Under Howard's leadership, Katten has developed an unrivaled understanding of the legal, clinical and business challenges confronting independent

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physician specialty medical practices, making the firm the counsel of choice across medical specialties such as gastroenterology, medical and radiation oncology, nephrology, orthopaedic surgery, urology and emergency medicine. Given how deeply entrenched Howard and his team are in representing independent medical practices, they are able to respond rapidly and with great efficiency in answering their clients' most pressing questions.

In addition to representing medical practices on their most significant matters, Howard has developed a national reputation for his creation of state and national medical associations focused on promoting and protecting the high-quality, cost-efficient care furnished in the independent practice setting. Howard has created and serves as lead counsel for single-specialty and multi-specialty medical associations with hundreds of member medical practices in nearly all states across the country.

Howard began his career as a law clerk to the Honorable Sam J. Ervin III, Chief Judge of the US Court of Appeals for the Fourth Circuit. While attending law school, he served as an editor of the Duke Law Journal and won Duke's prestigious Hardt Cup Moot Court Competition.

## Representative Experience

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- Argued appeal on behalf of a publicly traded company before the US Court of Appeals for the Third Circuit. The company had been pursuing FDA approval to market its signature drug for a new indication. A group of plaintiffs filed a putative class action under the Securities Exchange Act of 1934, alleging that the company misled investors about the prospects of FDA approval. The Third Circuit affirmed dismissal of the plaintiffs' complaint.
- Lead appellate counsel for an industry association in the US Court of Appeals for the Ninth Circuit. Defended the district court's favorable ruling that California's Low Carbon Fuel Standard program violates the dormant Commerce Clause by discriminating against out-of-state corn-derived ethanol while favoring in-state corn ethanol and impermissibly regulating

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extraterritorial conduct.

- Obtained victory in the US Supreme Court, vacating an adverse decision from the Federal Circuit, in a highly publicized tax case that addressed the issue of whether an understatement of income resulting from an overstatement of tax basis for sold property qualifies as an omission from income giving rise to an extended six-year (as opposed to three-year) period for tax assessment.
- Obtained a victory in the Supreme Court of Washington that orthopaedic surgeons and other physicians are permitted to employ physical therapists in their medical practices consistent with the State's physician self-referral law and corporate practice of medicine doctrine.

## Recognitions

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*Recognized or listed in the following:*

- *Super Lawyers*
  - Washington, DC, 2014–2016, 2018–2020

## News

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- Katten Adds James Saling to Health Care Transactions Group in New York (April 25, 2022)
- Katten Attorneys Named to 2020 Washington, DC Super Lawyers, Rising Stars Lists (April 16, 2020)
- Katten Partners Selected to 2019 Washington, DC Super Lawyers List (April 19, 2019)
- Katten Attorneys Selected to 2018 Washington, DC *Super Lawyers*, Rising Stars Lists (May 11, 2018)
- Dan Barnowski Joins Katten as Litigation Partner in DC (February 8, 2018)

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- Eight Katten Attorneys Named to 2016 Washington, DC *Super Lawyers* Ranking (April 21, 2016)
- Katten's Pro Bono Victory for Transgender Ironworker Mentioned in Law360 and Bloomberg BNA's *Daily Labor Report* (June 22, 2015)
- Katten Successfully Represents Cumulus Media in Illinois Appellate Court Defamation Case (April 21, 2015)
- Eleven Katten Attorneys Named to 2015 Washington, DC *Super Lawyers* List (April 16, 2015)
- Ten Katten Attorneys Recognized in 2014 Washington, DC *Super Lawyers* Rankings (April 25, 2014)
- Third Circuit Affirms Katten's District Court Victory for Microsoft in Kinect Trademark Suit (January 14, 2013)
- Katten Continues Growth of Washington Litigation Practice with Addition of Three High-Profile Partners (January 19, 2010)

## Publications

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- *Health Care Perspectives* (March 2016)
- *Health Care Credentialing Update* (November 2011)
- *Health Care Update* (November 2011)
- *Health Care Litigator* (September 2011)
- *Health Care Update* (October 2010)
- *Health Care Credentialing Update* (October 2010)

## Presentations and Events

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- *Rutledge v. PCMA* Webinar (September 29, 2020)

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- American Urological Association Mid-Atlantic Section (October 5, 2018) | *Going Alone or Gaining a Partner: Evaluating Options with Hospitals, Private Equity and MSOs*
- Anatomy of a Medical Practice's Data Breach: The First 72 Hours (April 26, 2017) | *Presenter*
- Large Urology Group Practice Association Annual Meeting (November 4, 2016) | *Going Alone or Gaining a Partner: Evaluating Options with Private Equity MSOs and Hospitals*
- Employment Challenges in Medical Practices (January 27, 2016) | *Presenter* | *Employment Challenges in Medical Practices: Ten Tips to Minimize Liability and Better Manage Your Workforce*
- GI Roundtable (March 27, 2015) | *The Battle to Protect Integrated Care Furnished by Independent GI Practices: A National and State Perspective*
- Managing Risk: Lessons Learned From a Decade Representing Specialty Practice in Internal and Regulatory Investigations (July 17, 2014)
- When the Government Comes Knocking: What Every Medical Practice Group Should Know in Advance (June 20, 2013)
- The OrthoForum 2012 Mid-Year Meeting (March 9, 2012) | *The Battle to Protect Integrated Care Furnished By Independent Orthopaedic Practices*
- 7th Annual Urology Joint Advocacy Conference (March 5, 2012) | *Mobilization: Lessons Learned from the New Jersey Patient Care and Access Coalition*
- Amelia Island Orthopaedic Forum (September 16, 2011) | *The Battle to Protect Integrated Care Furnished By Independent Orthopaedic Practices*
- Western Section American Urological Association Health Policy Forum (August 21, 2011) | *Urology Under Attack: The Battle at the State Level*
- Large Urology Group Practice Association Symposium, American Urological Association National Convention (May 15, 2011) | *Defending the Integrated Model of Cancer Care: Lessons from Florida*

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- American Urological Association: American Association of Clinical Urologists Joint Advocacy Conference (March 27, 2011) | *Maryland: Ground Zero in the Battle to Protect In-Office Ancillary Services*
- Urological Association of Pennsylvania Annual Meeting (October 16, 2010) | *Speaker* | *Coalition Building and the Protection of Urological Interests in Pennsylvania from Legislative and Regulatory Attacks*
- North Carolina Orthopaedic Association 2010 Annual Meeting (October 8–10, 2010) | *Speaker* | *Ancillary Services Under Attack? The Battle at the State Level*
- Mid-Atlantic Section of the American Urological Association Annual Meeting (September 23–26, 2010) | *Speaker* | *State-Level Coalition Building and Advocacy*
- American Association of Orthopaedic Surgeons State Societies Strategy Meeting (April 28, 2010) | *Ancillary Services Under Attack: An Update on Physician-Owned Physical Therapy Services and In-Office Imaging*
- American Association of Orthopaedic Surgeons State Societies Strategy Meeting (April 29, 2009) | *Ancillary Services Under Attack? The Battle at the State Level*
- Washington State Orthopaedic Association 2008 Annual Meeting (November 15, 2008) | *Responding to the Attack on In-Office Imaging and Radiation Therapy Services*
- Florida Association of Orthopedic Administrators Annual Conference (September 26, 2008) | *The Legal Battle for Ancillary Services*
- South Carolina Orthopaedic Association Annual Conference (August 8, 2008) | *The Legal Battle for Ancillary Services*
- American Urological Association National Convention (May 18, 2008) | *Urology Practice Consolidation: Achieving Better Patient Service and Enhanced Economies of Scale*
- National Orthopaedic Leadership Conference (April 30, 2008) | *The Legislative-Legal Connection: Shaping Policy Through Parallel Strategies*

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- American Urological Association / American Association of Clinical Urologists Joint Advocacy Conference (March 30, 2008) | *Case Study in State Activity: Urology's Role in Maryland*