

KEVIN E. RAPHAEL PARTNER

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KEVIN E. RAPHAEL is a Partner at Pietragallo Gordon Alfano Bosick & Raspanti, LLP where he assists clients in the following practice areas: Healthcare, Commercial Litigation, Class Actions, Government Compliance and Enforcement, Internal Investigations, White Collar Criminal Defense, Title IX, and Institutional Responses to Claims of Sexual Misconduct. With over two decades of experience, Mr. Raphael counsels and represents entities and individuals in several industries including: healthcare, higher education, and food and beverage. Mr. Raphael supports his clients with creative legal and business strategies to further their strategic goals.

Mr. Raphael has tried hundreds of bench and jury trials to verdict and has represented clients in appellate courts in Pennsylvania, New Jersey, Delaware, and the Third Circuit Court of Appeals. He is recognized by *Chambers and Partners* in the area of Litigation: White Collar Crime & Government Investigations in Pennsylvania, rated AV Preeminent by Nexis Martindale Hubbell, and has been repeatedly recognized by *Super Lawyers* in Health Care Law. Mr. Raphael was also included in the 2022 edition of *Best Lawyers in America* for his practice in Health Care Law.

Mr. Raphael was recently appointed for a third term as a Senior Hearing Committee Member for the Disciplinary Board of the Supreme Court of Pennsylvania. He served as an Adjunct Professor of Health Law for both Widener University Delaware Law School and Thomas Jefferson University College of Population Health. Mr. Raphael writes and speaks frequently on healthcare litigation, government enforcement and white-collar issues (including healthcare fraud and abuse and compliance), and Title IX/Responding to Sexual Misconduct. Mr. Raphael annually updates the “Investigations” chapter of *Medicare and Medicaid Fraud and Abuse*, (Gosfield, A, ed.).

Mr. Raphael received his J.D., cum laude, from the State University of New York of Buffalo Law School. He earned his B.A., magna cum laude, from St. Lawrence University, where he was also inducted into Phi Beta Kappa.

Healthcare

Mr. Raphael represents health systems, provider practices, hospice and long-term care facilities, mental health facilities, and licensed practitioners related to:

- Litigation concerning joint venture agreements, practice lease arrangements, and other contract disputes;
- Overpayment, billing, and reimbursement disputes with private health insurance companies;
- Recovery Audit Contractor (“RAC”) disputes and Medicaid Integrity Program (“MIP”) audits;
- The defense of False Claims Act investigations;
- The defense of RICO and civil fraud suits;
- Medicare overpayment demands and appeals;

- Employment litigation, including non-competes and restrictive covenants;
- Business matters such as employment, shareholder, and partnership agreements.

Mr. Raphael also represents licensed professionals before licensing boards, credentialing committees, privileging committees, Board organizations, and other administrative entities.

Representative Matters:

- Hospitals, nursing homes, mental health facilities, hospice and long-term nursing facilities, and practice groups in Medicare, Medicaid, and private health insurance company overpayment demands and fraud investigations;
- A large cardiology practice in a contractual dispute with a health system;
- A large anesthesiology practice in a contractual dispute with health system;
- Providers before credentialing committees, privileging committees, and other administrative entities;
- Physicians, pharmacists, nurses, psychologists, and other licensed practices in licensing board investigations.

Mr. Raphael is a long-standing member of the American Health Lawyers Association, where he has served several terms as Vice Chair of Education and Vice Chair of Publications for the Fraud and Abuse Practice Group.

Commercial Litigation/Class Actions

Mr. Raphael counsels and represents businesses and individuals in commercial litigation. He has both defended corporations in class actions and served as Class Counsel.

Representative Matters:

- A corporation in the food and beverage industry in defense of an employment benefits class action;
- Serving as class counsel in a national consumer fraud class action that resulted in a large cash settlement, as well as injunctive relief and related class benefits;
- A corporation in the food and beverage industry in responding to third-party discovery in a suit between the corporation's packaging suppliers;
- Private health insurance companies in affirmative fraud and RICO lawsuits in federal and state courts.

Government Compliance & Enforcement and White Collar Criminal Defense

Mr. Raphael handles federal, state, and local grand jury investigations for government agencies, religious organizations, publicly traded and privately held businesses, hospitals, Durable Medical Equipment (DME) companies, compound and specialty pharmacies, physician practices, individual corporate entities, clergy, and licensed professionals. Mr. Raphael regularly conducts internal investigations for his clients in several industries, including healthcare.

Prior to entering private practice, Mr. Raphael served as an Assistant District Attorney for the Philadelphia District Attorney's Office from 1995 to 2001. As a member of the Family Violence and Sexual Assault Unit, Mr. Raphael was responsible for investigating and prosecuting sexual assaults on minors and young adults and was the Office's primary prosecutor of child pornography offenders.

Representative Matters:

- Hospitals, hospice and long-term care facilities, practice groups and physicians in government investigations related to healthcare fraud;
- Clergy before the Pennsylvania State Grand Jury investigating child abuse in the church, on appeal before the Supreme Court of Pennsylvania, related to the constitutional deficiencies of the Pennsylvania Investigating Grand Jury Act;

- Municipalities and public officials in investigations related to public corruption;
- Religious organizations in federal, state, and local criminal investigations related to sexual and physical abuse and alleged concealment;
- Physicians and physician practices in government investigations related to alleged violations of the Food Drug and Cosmetic Act;
- Compound pharmacies, marketing companies, pharmacists, and business owners in DEA, FDA, and DOJ investigations;
- Numerous internal investigations of healthcare entities related to allegations of healthcare fraud or alleged compliance violations;
- Chemical engineers and entities in investigations related to alleged environmental law violations;
- A Fortune 500 Internet Service provider related to its reporting and compliance obligations under federal, state, and international law concerning the discovery of child pornography placed by users.

Title IX

Mr. Raphael provides training and compliance advice to educational institutions concerning Title IX and Clery Act compliance. Mr. Raphael also conducts investigations for educational institutions pursuant to their Title IX obligations and internal investigations in response to allegations that an institution's policies and procedures are inadequate.

Representative Matters:

- Conducting an internal investigation that a university did not adequately investigate and respond to a Title IX sexual misconduct complaint;
- Providing Title IX training to presidents of a 14 university state system of education;
- Providing Title IX training and policy guidance to a number of colleges and universities;
- Serving as a Title IX investigator for several colleges and universities;
- Conducting an internal investigation for a university concerning allegations of numerous compliance violations in its Athletic Department;
- Conducting an internal investigation concerning allegations of racial discrimination related to a university's Division II Men's basketball team.

Responding to Claims of Sexual Misconduct

Mr. Raphael counsels a variety of institutional clients including: medical facilities, educational institutions, and corporations concerning the investigation of, and response to, claims of sexual misconduct. He authored "Risk of the Internet," in *Child Maltreatment: A Clinical Guide and Reference*, and "Sexual Misconduct in Health Care" in the *Health Law Handbook* (2015). Representations include conducting investigations for hospitals and health care entities into allegations of sexual and physical abuse by providers of patients or staff.

Community and Professional Involvement

Mr. Raphael has been on the Board of Northwest Victim Services, a non-profit providing counseling and advocacy services to victims of crime, since 2001 and he has served terms as President and Treasurer. Mr. Raphael served as an Elder on Session of the Presbyterian Church of Chestnut Hill. He is actively involved in Habitat for Humanity building projects in the Philadelphia area.

He is a member of the American, Pennsylvania and Philadelphia Bar Associations, the Health Care Compliance Association, the National Association of Criminal Defense Lawyers, and the Pennsylvania Association of Criminal Defense Lawyers.

Publications

Raphael, Kevin E., and Douglas E. Roberts. "Investigations" *Medicare and Medicaid Fraud and Abuse*, (Gosfield,

A, ed.), 2010-2021

Raphael, Kevin E., and Douglas E. Roberts. "A Primer on Federal and PA. Electronic Surveillance Law," *The Legal Intelligencer*, May 31, 2016.

Raphael, Kevin E., and Leslie A. Mariotti. "Health Law Handbook (2015 Edition) "Sexual Misconduct in Health Care," *Health Law Handbook*, December 9, 2014.

"Clery Reporting Obligations Amended and Title IX Investigative Duties Codified," *The Legal Intelligencer*, June 25, 2013.

"Patient Protection and Affordable Care Act Upheld," *Bulletin*, August 2012.

"The Expanding Scope of, and Strategies for, Health Care Litigation in the Fraud, Abuse, and Waste Arena," *Inside the Minds: Health Care Litigation Strategies*, September 2011.

"Crimes and Misdemeanors: The Intersection of Health Care Law and Ethics," *Pennsylvania Bar Association Quarterly*, July 2011.

"Sentencing Strategies for Clients With Significant Health Issues," *The Champion*, August 2010.

"Prosecution of Physicians for Off-Label Marketing of FDA Approved Drugs: an Emerging Trend?" *Health Law Litigation Newsletter*, Winter 2007-2008.

"Healthcare Providers' Use of Non-FDA Approved Drugs: A Treacherous Course Regardless of Intent," *Health Law Litigation Newsletter*, Vol. 7, Issue 1.

"Chapter 22: Risk of the Internet," *Child Maltreatment: A Clinical Guide and Reference*, January 1, 2015.

Speaking Engagements

"What You Need to Know About Current Title IX Regulations," *University Risk Management and Insurance Association's (URMIA) Northeast Regional Conference* (Virtual Conference) April 15, 2020

"Expert Insights – Fraud and Abuse: 2020 Outlook," *Speaking of Health Law, American Health Lawyers Association* (podcast) December 16, 2019

"Sexual Harassment by Physicians: Implications on Medical Staff Privileges, Licensures, and Physician Practices," *AHLA In-House Counsel Program and Annual Meeting* (Chicago, IL) June 25, 2018

"Responding to Allegations of Sexual Misconduct," *Pennsylvania Bar Institute* (Philadelphia, PA) March 22, 2018

"State and Federal Criminal and Civil Enforcement Priorities in Healthcare in 2018: A Discussion," *Pennsylvania Bar Institute's 24th Annual Health Law Institute* (Philadelphia, PA) March 13-14, 2018

"Updates in Qui Tam Litigation," *PACDL White Collar Conference* (Philadelphia, PA), November 22, 2016

"Recent Litigation Updates," *Higher Education Conference* (Philadelphia, PA), November 10, 2016

"Entering the Practice of Medicine - Eyes Wide Open," *Boston Scientific Fellowship Program* (Philadelphia, PA), October 20, 2016

"Entering the Practice of Medicine - Eyes Wide Open," *Boston Scientific Fellowship Program* (Pittsburgh, PA), October 18, 2016

"Understanding Pennsylvania Grand Jury Practice," *Pennsylvania Bar Institute* (Philadelphia, PA), July 21, 2016

"Understanding Pennsylvania Grand Jury Practice," *Pennsylvania Bar Institute* (Pittsburgh, PA), July 15, 2016

"Private Health Insurance Companies: Current Strategies to Curtail Fraud, Abuse and Waste," *22nd Annual PBI Health Law Institute* (Philadelphia, PA), March 16, 2016

"Compliance for Academic Medical Centers," *AHLA Advanced Compliance Education Series*, January, 2016

"Update on Title IX, Clery Act, and Sexual Assault at Higher Educational Institutions," November 5, 2015

"Entering the Practice of Medicine: Eyes Wide Open," September 30, 2015

"What You Need to Know about Compliance Programs and Defending Fraud and Abuse Matters," *PBI: Understanding the Basics of Fraud and Abuse in the Healthcare Industry* (Philadelphia, PA), September 28, 2015

"Responding to Allegations of Sexual Misconduct: A Legal Update for Employers, Educators, and Health Care Providers," *PBI Program- Course Planner and Speaker* (Philadelphia and Pittsburgh, PA), July 14 and 21, 2015

"Title IX Litigation Update," *PBI Program on Higher Education: Representing Colleges and Universities* (Philadelphia, PA), June 3, 2015

"The States' Perspective: Strategies and Current Priorities for Combating Fraud, Abuse, and Waste," *AHLA Fraud and Abuse Conference* (Baltimore, MD), September 28, 2015

"Who Do You Love? Torn Between the Corporate Entity and the Corporate Client," *PBI Commercial Litigation Institute*, March 18, 2015

"Academic Medical Centers' Obligations and Title IX," *PBI Health Law Institute*, March 13, 2015

"Title IX, Clery Act and Sexual Assault," (Philadelphia, PA), January 14, 2015

"Title IX and Sexual Assault," *CAPE Institute CLE* (PA), December 16, 2014

"Intersections of Ethics and Health Law," *Attention in Health Care* (Wilmington, DE), November 4, 2014

"Reflections by E.D. Pa USA Zone Manage," *AHLA Fraud and Abuse Conference* (Baltimore, MD), October 6, 2014

"Eyes Wide Open: Even the Practice of Medicine," (Philadelphia PA), September 9, 2014

"Government Enforcement on Corporate Compliance," *Defense Research Institute* (Washington D.C.), July 24, 2014

"Lessons Learned in Litigation," *PBI's Representing Colleges and Universities* (Philadelphia, PA), April 4, 2014

"Sexual Misconduct Allegations in a Healthcare Setting: Views From Both Sides," *PBI's Health Law Institute* (Philadelphia, PA), March 13-14, 2014

"Sexual Misconduct: Creating Safe Environments and Avoiding Employer Liability," *American Law Institute CLE* (Philadelphia, PA), December 17, 2013

"Entering the Practice of Medicine: Eyes Wide Open Legal and Regulatory Issues in an Evolving Health Care Environment," (New York, NY), December 7, 2013

"Entering the Practice of Medicine: Eyes Wide Open Legal and Regulatory Issues in an Evolving Health Care Environment," (Philadelphia, PA), September 17, 2013

"Confidentiality and Behavioral Health: Current Limitations on the Mental Health Procedures Act Confidentiality Provisions and the Patient Psychotherapist Privilege - What to Know to Avoid Potential Liability," *PBI's 19th Annual Health Law Institute* (Philadelphia, PA), March 12-13, 2013

"Allegations of Sexual Misconduct in a Post-Sandusky World: What Educational Institutions And Employers Must Know," *Philadelphia Bar Institute* (Philadelphia, PA), February 14, 2013

"Introduction to Health Care Fraud and Abuse," *AHLA Fraud and Abuse Practice Group Boot Camp Webinar* (Philadelphia, PA), February 13, 2013

"Entering the Practice of Medicine: Eyes Wide Open Legal and Regulatory Issues in an Evolving Health Care Environment," (Boston, MA), January 17, 2013

"Investigating Allegations of Sexual Misconduct: The Criminal, Civil and Administrative Considerations for Educational Institutions and Employers," *ABA White Collar Crime Mid-Atlantic Region: CLE Event and Networking Reception* (Philadelphia, PA), November 8, 2012

"What You Need to Know About Compliance Programs" and "Defending Fraud and Abuse Matters: Conducting Internal Investigations and Responding to Subpoenas, Search Warrants and Other Information Requests," *PBI's Understanding the Basics of Fraud & Abuse in the Health Care Industry CLE* (Philadelphia, PA), July 26, 2012

"Collateral Consequences of White Collar Prosecutions of Professionals," *ABA White Collar Crime Committee's Philadelphia Young Lawyers' Division CLE Program* (Philadelphia, PA), July 11, 2012

"Defending Against Fraud and Overpayment Actions By Insurance Companies: Emerging Theories of Defense," *PBI's 18th Annual Health Law Institute* (Philadelphia, PA), March 14, 2012

"Entering the Practice of Medicine: Eyes Wide Open Legal and Regulatory Issues in an Evolving Health Care Environment," (Philadelphia, PA), February 1, 2012

"Part I: Fraud Healthcare Primer," *AHLA Healthcare Fraud and Abuse Bootcamp Webinar Series*, January 17, 2012

"Entering the Practice of Medicine: Eyes Wide Open Legal and Regulatory Issues in an Evolving Health Care Environment," (Boston, MA), January 12, 2012

"Entering the Practice of Medicine: Eyes Wide Open Legal and Regulatory Issues in an Evolving Health Care Environment," (Houston, TX), December 6, 2011

"Entering the Practice of Medicine: Eyes Wide Open Legal and Regulatory Issues in an Evolving Health Care Environment," (Houston, TX), December 6, 2011

Environment,” (Las Vegas, NV), December 1, 2011

“Crimes and Misdemeanors: The Intersection of Health Care Fraud and Rules of Professional Conduct,” *Pennsylvania Bar Institute “A Day on Health Law”* (Philadelphia, PA), October 19, 2010

“Times They Are A’Changing – Hot Topics In Contracting and Litigation With Private Health Insurance Companies,” *PBI’s 16th Annual Health Law Institute* (Philadelphia, PA), March 11-12, 2010

“Crimes and Misdemeanors: The Intersection of Health Care Fraud and Rules of Professional Conduct,” *PBI’s 16th Annual Health Law Institute* (Philadelphia, PA), March 11-12, 2010

“The Mechanics of Pennsylvania Civil Procedure,” *National Business Institute* (Philadelphia, PA), December 18, 2009

“Self-Disclosure and the Ethical Duties of a Health Lawyer (ETHICS),” *PBI’s 15th Annual Health Law Institute* (Philadelphia, PA), March 13, 2009

“We PREEMPT Our Regularly Scheduled Program to Bring You This Special Event...Duty To Warn and Preemption,” *15th Annual Health Law Institute* (Philadelphia, PA), March 12, 2009

“Product Classification under the United States Food Drug and Cosmetic Act: Food, Dietary Supplement, Cosmetic, Drug, Medical Device or Combination?” *14th Annual Health Law Institute* (Philadelphia, PA), March 2008

“Hot Topics in FDA Law: Compounding, Duty to Warn, Post Market Risk Issues, and Future Direction,” *14th Annual Health Law Institute* (Philadelphia, PA), March 2008

“Use of Non-FDA Approved Drugs and Off-Label Promotion: Criminal and Civil Risks to a Provider,” *Teleconference, Progressive Business Audio Conferences*, January 8, 2008

“The Criminal and Civil Risks to a Provider of Using Non-FDA Approved Drugs and Devices,” *A Day on Health Law, Pennsylvania Bar Institute* (Philadelphia, PA), October 16, 2007

“Criminal Defense: Pretrial Success,” *National Business Institute* (Philadelphia, PA), August 16, 2007

“The Criminal Defense Trial from Start to Finish,” *National Business Institute* (Philadelphia, PA), April 30, 2007

“The Criminal and Civil Risks to a Provider of Using Non-FDA Approved Drugs and Devices,” *13th Annual Health Law Institute, Pennsylvania Bar Association* (Philadelphia, PA), March 2007

“Off-Label Marketing of Prescription Drugs and Devices, the False Claims Act, and the Impact of Medicare Part D,” *ABA Health Law Section 8th Annual Conference on Emerging Issues in Healthcare Law* (Orlando, FL), February 22, 2007

“The Wolf in the Woods: The Threat of Private Payor Claims During, or After, a False Claims Act Case,” *12th Annual Health Law Institute, Philadelphia Bar Institute* (Philadelphia, PA), March 15, 2006

“To Plea or Not To Plea: Negotiating with the Government,” *For the Experienced: The Ultimate Criminal Law CLE, Pennsylvania Association of Criminal Defense Lawyers* (Philadelphia, PA), October 29, 2005

Representative Matters

State Farm Mutual Automobile Insurance Co. v. Ficchi, Civil Action No. 10-555, 2011 WL 2313203 (E.D. Pa. June 13, 2011)

Sternberg v. Nanticoke Memorial Hosp., Inc., 15 A.3d 1225 (Del. 2011)

American Bd. of Internal Medicine v. Oni, Civil Action No. 10-CV-2679, 2010 WL 3860444 (E.D. Pa. Sept. 30, 2010)

United States et al. v. Christiana Care Health System et al., Civ. No. 05-344 (D. Del., 2010)

Sternberg v. Nanticoke Memorial Hosp., Inc., 2009 WL 3531791 (Del. Super. Ct. 2009)

Division of Alcoholic Beverage Control v. MAG Entertainment, LLC, No. A-2282-07T3 (N.J. App. Div. 2008)

United States v. Burns, 280 F. Supp. 2d 325 (D. Del., 2003)

MAG Enter. Inc. v. Pa. Liquor Control Bd., 806 A.2d 521 (Pa. Commw. Ct., 2002)

United States v. Brodie, 174 F. Supp. 2d 294 (E.D. Pa., 2001)

United States v. Brodie, No. Crim. 00-CR-629, 2001 WL 1159756 (E.D. Pa., Aug. 11, 2001)

Bar Admissions

Pennsylvania