

FOULSTON

ATTORNEYS AT LAW



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PROFILE

Dick Hay is a member of Foulston's healthcare practice group and represents hospitals, physicians, and other healthcare providers across the state. His extensive experience in health law includes transactions, regulatory and licensure issues, legislative strategy, and reimbursement litigation. He devotes a significant part of his practice to medical staff affairs and has represented numerous hospitals and medical staffs in the fair hearing process, drafted many sets of medical staff bylaws, and served as a hearing officer and arbitrator. Dick's practice also encompasses construction matters with particular emphasis on business and organizational issues of architectural and engineering firms, including ESOP's. Dick enjoys Martindale-Hubbell Law Directory's highest "AV" rating for lawyers and has been selected by his peers for inclusion in the *Missouri & Kansas Super Lawyers*[®] list and *The Best Lawyers in America*[®] as a leading healthcare lawyer in the United States.

Education

- University of Kansas (J.D., 1974)
Order of the Coif; *University of Kansas Law Review*
- University of Kansas (B.S.J., 1971)

Admissions

- Kansas (1974)
- U.S. District Court for the District of Kansas (1974)
- Pro hac vice:
 - U.S. District Court for the District of North Dakota

PRACTICE AREAS

- Healthcare

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- Business & Corporate Law
- Employee Benefits & ERISA
- Insurance Regulatory
- Tax-Exempt/Not-for-Profit Organizations
- Construction
- Privacy & Data Security

INDUSTRIES

- Healthcare
- Closely Held Business
- Construction
- Tax-Exempt/Not-for-Profit Organizations

RELEVANT EXPERIENCE

Health Law:

- Many years of experience in advising institutional and individual healthcare providers regarding the requirements of the Medicare and Medicaid Anti-Kickback Statute, Stark I and II, civil monetary penalties, EMTALA, and Medicare Part A and Part B and Medicaid reimbursement rules and requirements.
- Represented institutional and individual healthcare providers in investigations and negotiations with the Department of Justice.
- Designed and served as an educational resource for institutional compliance plans in several institutions and as a member of an institutional compliance committee.
- Represented institutional providers regarding EMTALA investigations conducted by CMS and related proceedings before KFMC.
- Assisted healthcare providers in reviewing billing and reimbursement issues, arranging audits, and determining the necessity and methodology for voluntary self-disclosure to governmental agencies.
- Conducted educational programs as to the requirements and implications of Stark II.
- Represented individual and institutional providers in Kansas administrative proceedings involving Medicaid reimbursement and licensure issues.
- Speaker on various fraud and abuse issues before professional groups.
- Assisted in development of institutional HIPAA policies and served as a member of institutional HIPAA committee.
- Represented institutional providers before the Provider Review Reimbursement Board.
- Advised hospitals as to physician recruitment arrangements.
- Drafted legislation enacted into law by the Kansas legislature.
- Represented hospitals in acquisition/consolidation arrangements.

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- Review/negotiation/preparation of managed care contracts.
- Taught health law at Washburn University School of Law.

Insurance Regulatory Issues:

- Lead counsel on behalf of intervening party in lengthy administrative hearing as to insurance company conversion and merger.
- Incorporated and obtained regulatory approval for new Kansas health insurance company.
- Incorporated and obtained Kansas regulatory approval for new Kansas title insurance company.
- Defended major insurance companies in claims over life insurance and disability insurance policies.
- Assisted in organization and policy forms development of new Kansas professional liability underwriter.
- Appeared before state insurance commissioner as to various regulatory matters.
- Taught insurance law at Washburn Law School.

ERISA AND Employee Benefits:

- Preparation and submission of individually designed and drafted 401(k) plans, ESOP and defined benefit plans to IRS.
- Drafting of SERP and other non-qualified deferred compensation plans.
- Representation of ESOP involved in corporate acquisition.
- Conducted HIPAA privacy training for group health plan personnel of large local company.
- Substantial ERISA litigation experience, primarily focusing on disability benefits.
- Preparation and counseling as to cafeteria and related benefit plans.
- Representation of 403(b) plan in IRS audit in which tax-exempt status of plan sponsor was revoked but ultimately restored after tax court action.
- Development of self-insured health plans.
- Taught employee benefits law at Washburn University School of Law.

PROFESSIONAL MEMBERSHIPS, AFFILIATIONS, AND HONORS

- Selected by peers for inclusion in *The Best Lawyers in America*® in the area of Health Care Law, 1991-2025; and Employment Benefits (ERISA) Law, 2024-2025
- Selected for inclusion in *Missouri & Kansas Super Lawyers*® List, 2005-2009, 2012-2015 (a Thomson Reuters business)
- Kansas Bar Association Outstanding Service Award, 1984; Member, Board of Editors of Journal of Kansas Bar Association (1982-96), KBA Professional Ethics Advisory Committee (Chairman 1988 - 1992), Awards Committee (1984-86), and Planning Committee (1987); Held all offices in Young Lawyers Section of Kansas Bar Association, including President (1983-84) and member of KBA Executive Council (1983-84)
- Topeka Bar Association
- Kansas Bar Foundation Chairman, General Contributions Committee (1984-86)
- American Health Lawyers Association

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- Kansas Association of Hospital Attorneys President (1987-88)

COMMUNITY INVOLVEMENT

- Topeka Hospice (now Midland Hospice), Charter board member and past President
- Board of Directors, American Cancer Society, Shawnee County, (1977-80); residential crusade chairman (1977, 1978)
- Topeka Lions Club, past President
- Youth sports coach; helped organize first Topeka pee wee football league

RECENT PRESENTATIONS

2021

- Legislation, Litigation, and Other Trends (Foulston Siefkin LLP, Health Law Institute Webinar Series)
- Critical Access Hospital Systems (Foulston Siefkin LLP, Health Law Institute Webinar Series)

2018

- A Closer Look at Fair Market Value and Commercial Reasonableness (Foulston Siefkin LLP, Health Law Institute)

2016

- Section 1557 Nondiscrimination Rules (Foulston Siefkin LLP, Kansas Health Law Institute)
- Risk Management Overview (Foulston Siefkin LLP, Kansas City Health Law Institute)
- Risk Management Overview (Foulston Siefkin LLP, Kansas Health Law Institute)

2015

- Issues Hidden in the Weeds for Health Care Providers (Foulston Siefkin LLP, Kansas City Health Law Institute)
- Kansas Law Changes to Medical Records, County Hospital Clinics & More (Foulston Siefkin LLP, Kansas Health Law Institute)
- King v. Burwell (Foulston Siefkin LLP, Kansas Health Law Institute)

RECENT PUBLICATIONS

2020

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- Kansas Retroactively Restricts COVID-19 Lawsuits
-Midwest Employment Law Letter, Vol.1, No. 8

ISSUE ALERTS

2023

- Review Health Professional Overtime Policies In Wake of February Supreme Court Ruling
- FTC's Proposed Ban on Noncompete Agreements and the Impact on Healthcare Organizations

2022

- New Temporary APRN Regulations Take Effect

2021

- Coronavirus: UPDATE: Court Temporarily Blocks CMS Omnibus COVID-19 Healthcare Staff Vaccination Requirements in Kansas, Missouri, and 8 Other States

2020

- Coronavirus: COVID-19 Response and Reopening for Business Liability Protection

2018

- CARE Act Requires Policy Review and Action From Kansas Hospitals Effective July 1