

FOULSTON

ATTORNEYS AT LAW



GARY L. AYERS

PARTNER

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PROFILE

Mr. Ayers has represented clients in state and federal lawsuits involving a wide variety of contract disputes, government investigations (Medicare, Medicaid and Department of Defense), white collar crime, trade secrets, restrictive covenants, trademark and trade dress, and the corporate practice of medicine. Mr. Ayers enjoys Martindale-Hubbell Law Directory's highest "AV" rating for lawyers and is listed in *Missouri & Kansas Super Lawyers*®, Guide to The Leading U.S. Healthcare Lawyers, *The Best Lawyers in America*®, and *Chambers USA* as a leading health care and commercial litigation attorney in the United States. In 2016 and 2020, he was named by *Best Lawyers*® the Wichita Health Care "Lawyer of the Year." His peer memberships include the Kansas Association of Hospital Attorneys and the American Association of Health Lawyers. He is also a Fellow of the Kansas Bar Foundation.

Education

- University of Kansas (J.D., 1979)
Order of the Coif; Editor - *Kansas Law Review*
- University of Kansas (B.A., 1974)

Admissions

- U.S. Supreme Court (2014)
- U.S. Court of Appeals for the Tenth Circuit
- U.S. District Court for the District of Kansas
- Kansas (1979)

PRACTICE AREAS

- Healthcare
- Litigation & Disputes
- Intellectual Property

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- Appellate Law
- Government Investigations & White Collar Crime
- Mediation/Dispute Resolution
- Trade Secret & Noncompete Litigation

INDUSTRIES

- Healthcare

RELEVANT EXPERIENCE

Reported Cases

- *CrateTech, Inc. v. StockBox Logistics, LLC*, 2015 U.S. Dist. LEXIS 50042 (D. Kan. April 16, 2015) (*trade secret case*)
- *Value Place Franchise Servs., LLC v. Hugh Black-St. Mary Enters.*, 2015 U.S. Dist. LEXIS 5541 (D. Kan. January 16, 2015) (*breach of contract*)
- *United States ex rel. Minge v. Tect Aero., Inc.*, 2012 U.S. Dist. LEXIS 64129 (D. Kan. May 8, 2012) and 2012 U.S. Dist. LEXIS 46360 (D. Kan. April 3, 2012) (*qui tam case*)
- *Totonelly v. Galichia Med. Group, P.A.*, 2012 U.S. Dist. LEXIS 24202 (D. Kan. February 27, 2012) (*breach of contract*)
- *Braun v. Promise Reg'l Med. Center-Hutchinson, Inc.*, 2011 U.S. Dist. LEXIS 145018 (D. Kan. December 16, 2011) (*breach of contract*)
- *Planned Parenthood of Kan. & Mid-Missouri v. Moser*, 2011 U.S. Dist. LEXIS 117526 (D. Kan. October 11, 2011); and *Planned Parenthood of Kan. & Mid-Missouri v. Brownback*, 799 F. Supp. 2d 1218 (D. Kan. 2011); Reversed by, Vacated by, Remanded by *Planned Parenthood of Kan. & Mid-Mo. v. Moser*, 2014 U.S. App. LEXIS 5467 (10th Cir. Mar. 25, 2014) (*Title X/Supremacy Clause/1st Amendment*)
- *Karraker v. Rent-A-Center, Inc.*, 411 F.3d 831 (7th Cir. 2005) (*gender preference discrimination*)
- *United States ex rel. Sikkenga v. Regence Bluecross Blueshield*, 472 F.3d 702 (10th Cir. 2006) (*qui tam case*)
- *Randles v. Galichia Med. Group, P.A.*, 2006 U.S. Dist. LEXIS 92428 (December 18, 2006) (*dismissal of ERISA benefit plan action*)
- *United States ex rel. Wynne v. Blue Cross Blue Shield*, 2006 U.S. Dist. LEXIS 95103 (D. Kan. December 8, 2006) (*qui tam case*)
- *Endotech USA v. Biocompatibles Int'l PLC*, 2000 U.S. Dist. LEXIS 18623 (E.D. La. October 24, 2000)
- *Maximus, Inc. v. Thompson*, 78 F. Supp. 2d 1182 (D. Kan. 1999) (*noncompete/trade secret/breach of contract*)
- *United States ex rel. Hafter v. Specter Emergency Care*, 9 F. Supp. 2d 1273 (D. Kan. 1998); affirmed *United States ex rel. Hafter v. Spectrum Emergency Care, Inc.*, 190 F.3d 1156 (10th Cir. 1999) (*qui tam case*)
- *Paul's Beauty College v. United States*, 885 F. Supp. 1468 (D. Kan. 1995)
- *Curtis 1000 v. Pierce*, 905 F. Supp. 898 (D. Kan. 1995); and 1994 U.S. Dist. LEXIS 15942 (October

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- 25, 1994); and 1994 U.S. Dist. LEXIS 12410 (D. Kan. August 24, 1994)
- *City of Wichita v. Southwestern Bell Tel. Co.*, 24 F.3d 1282; 1994 (10th Cir. 1994); 24 F.3d 1282 (D. Kan. 1994) (*telephone franchise fees*)
 - *Woodmont Corp. v. Rockwood Ctr. Partnership*, 858 F. Supp. 158 (D. Kan. 1994); 852 F. Supp. 948 (D. Kan. 1994); and 811 F. Supp. 1478 (D. Kan. 1993) (*breach of contract and defamation*)
 - *Executive Aircraft Consulting, Inc. v. Towers Financial Corp.*, 1992 U.S. Dist. LEXIS 20238 (D. Kan. December 1, 1992) (*personal jurisdiction*)
 - *Peoples Nat'l Bank v. Darling*, 1992 U.S. Dist. LEXIS 4056 (D. Kan. March 18, 1992)
 - *Koch Oil Co. v. Shaw*, 1992 U.S. Dist. LEXIS 1344 (D. Kan. January 6, 1992)
 - *Executive Aircraft Consulting, Inc. v. Towers Financial Corp.*, 1992 U.S. Dist. LEXIS 20238 (December 1, 1992)
 - *Lodgistix, Inc. v. Tollman-Hundley Hotels Corp.*, 1991 U.S. Dist. LEXIS 16025 (D. Kan. October 31, 1991)
 - *Peoples Nat'l Bank v. Darling*, 1991 U.S. Dist. LEXIS 4230 (D. Kan. April 1, 1991) and 1992 U.S. Dist. LEXIS 4056 (March 18, 1992)
 - *Wright v. United States*, 1991 U.S. Dist. LEXIS 19479 (D. Kan. January 27, 1991)
 - *Data Prods. v. Reppart*, 1990 U.S. Dist. LEXIS 16330 (D. Kan. 1990) (*copyright infringement*)
 - *St. Mary of Plains College v. Higher Education Loan Program, Inc.*, 1989 U.S. Dist. LEXIS 15721 (D. Kan. December 15, 1989)
 - *Peoples' Sav. & Loan Asso. v. First Federal Sav. & Loan Asso.*, 677 F. Supp. 1104 (D. Kan. 1988)
 - *Baker v. Penn Mut. Life Ins. Co.*, 788 F.2d 650 (10th Cir. 1986) (*breach of contract*)
 - *Mearis v. Webber*, 342 P.3d 2; 2015 Kan. App. Unpub. LEXIS 52 (January 23, 2015) (*farm lease*)
 - *Traster v. Traster*, 301 Kan. 88; 339 P.3d 778 (2014); and 48 Kan. App. 2d 356 (2012)
 - *Hill v. Kan. Dep't of Labor*, 292 Kan. 17; 248 P.3d 1287 (2011); and 42 Kan. App. 2d 215 (2009)
 - *Idbeis v. Wichita Surgical Specialists, P.A.*, 279 Kan. 755 (2005) (*heart surgeon restrictive covenants*) (*counsel for defendant*) and *Idbeis v. Wichita Surgical Specialists, P.A.*, 285 Kan. 485 (2007)
 - *Welch v. Via Christi Health Partners*, 281 Kan. 732 (2006) (*minority rights in LP/LLC merger*) (*counsel for defendant*)
 - *Grace v. Grace*, 117 P.3d 907, 2005 Kan. App. Unpub. LEXIS 163 (August 19, 2005)
 - *South Central Kansas Health Ins. Group v. Harden & Co. Ins. Servs.*, 278 Kan. 347 (2004) (*school district self-insurance pool*)
 - *In re Estate of Robinson*, 231 Kan. 300; 644 P.2d 420 (1982)
 - *Wichita Clinic, P.A. v. Louis*, 185 P.3d 946 (Kan. App.2008) (*family practice physician restrictive covenant*) (*counsel for plaintiff*)
 - *Yordy v. Osterman*, 37 Kan. App. 2d 132 (Kan. App. 2007) (*best interests test in selecting school for minor child*) (*counsel for petitioner*)
 - *Briggs v. Briggs*, 1997 Kan. App. Unpub. LEXIS 1089 (February 7, 1997) (*defamation case*)
 - *Groves v. Mut. Benefit Life Ins. Co.*, 1996 Kan. App. Unpub. LEXIS 1217 (February 16, 1996) and 1994 Kan. App. Unpub. LEXIS 502 (January 7, 1994)
 - *Tilcock v. Westfahl*, 1994 Kan. App. Unpub. LEXIS 626 (November 10, 1994)
 - *Wichita Wire, Inc. v. Lenox*, 11 Kan. App.2d 459 (1986) (*injunction to protect purchased good will, which established the standards in Kansas for the granting of temporary injunctive relief*)
 - *Rettiger v. Clark*, 1985 Kan. App. LEXIS 816 (June 13, 1985)

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Qui Tam Litigation

Mr. Ayers has successfully defended qui tam (whistleblower) cases, such as *Wynne v. Blue Cross Blue Shield*, 2006 U.S. Dist. LEXIS 95103 (December 8, 2006) and 2006 U.S. Dist. LEXIS 27832 (April 21, 2006)(dismissal of False Claims Act case); *U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah, et al.*, 472 F.3d 702 (10th Cir. 2006) (amicus curiae in False Claims Act case). Mr. Ayers served as Relators' counsel in recently settled *U.S. of America ex rel. Barnes, et al. v. Akal Security, Inc.*, Case No. 04-1325—MLB (D. Kan. 2008)(Dept. of Defense security guard contract), resulting in judgment for the United States in the amount of \$18 million; and successfully resolved a three-year investigation of an aerospace contractor with no finding of fault and no payment of money by the contractor client.

Healthcare Litigation

In the last several years, Mr. Ayers brought to successful resolution, without any admission of liability, a qui tam case arising out of the False Claims Act; successfully mediated the termination of agreements that allegedly violated the prohibition against the corporate practice of medicine; successfully enforced a number of restrictive covenants imposed on members of medical practices; and assisted in the separation of several physician practices from larger physician groups.

Commercial and Complex Litigation

Mr. Ayers has appeared in well-over 40 injunction lawsuits in state and federal court where the issues arose out of trade secrets, restrictive covenants, or unfair competition. As a young lawyer, he second-chaired and briefed Kansas' leading trade secret case, *Koch Engineering Company, Inc. v. Faulconer* (1980). He also tried and defended the appeal in Kansas' leading irreparable harm case, *Wichita Wire v. Lennox* (1986). In his injunction practice, Mr. Ayers tries most of his cases to the court, but he has also tried cases to juries where the issues included fraud, breach of contract, or business defamation. For example, in May 2008 Mr. Ayers obtained a jury verdict of \$250,000 plus punitive damages in a trade secret/breach of fiduciary duty case. *David T. Webb & Co. et al. v. Gorges et al.*, Case No. 05 CV 1887 (Kan. 18th Jud. Dist. 2008).

Prior Legal Experience

Attorney, IBM Corporation (1980-1981), Armonk, New York

PROFESSIONAL MEMBERSHIPS, AFFILIATIONS, AND HONORS

- Wesley E. Brown American Inn of Court
- Kansas Association of Hospital Attorneys
- American Association of Health Lawyers
- American Bar Associations Health Law, Intellectual Property Law, and Litigation Sections
- Kansas Bar Association Health Law, Intellectual Property Law, and Litigation Sections
- Kansas Bar Association Board of Governors, District 7
- Kansas Bar Foundation, Fellow
- Recognized by *Best Lawyers®* as the 2016 & 2020 Wichita Health Care "Lawyer of the Year"
- Selected by peers for inclusion in *The Best Lawyers in America®* in the areas of Bet-the-Company Litigation, Commercial Litigation, Health Care Law, and Trade Secrets Law, 2005-2020

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- Selected for inclusion in *Missouri and Kansas Super Lawyers®*, 2006-2018 (a Thomson Reuters business)
- Selected for inclusion in *Guide to the Leading U.S. Healthcare Lawyers®* 2014 (Legal Media Group: Euromoney Institutional Investor PLC)
- Identified in Chambers USA America's Leading Lawyers in the area of Litigation: General Commercial, 2008-2019

PRESENTATIONS

Mr. Ayers has presented at seminars for the Kansas and Wichita Bar Associations and various trade associations on a wide variety of topics including Medicare investigations, business litigation, enforcing covenants not to compete, unfair competition, trade secret litigation, director and officer liability, marital dissolutions and employment law.

2019

- The DOJ, FCA, and ACA, Oh My! Healthcare Just Got Scarier, but There Might be a Rainbow Out There Somewhere (Foulston Health Law Institute)

2018

- The Top Ten Things We Just Don't Say in Healthcare (Foulston Siefkin Health Law Institute)
- Conscientious Refusal of Care vs. Access to Care: The Role of Religion in Healthcare (Foulston Siefkin Health Law Institute)

2017

- The 2017 National Health Care Fraud Takedown – Lessons and Response (Foulston Siefkin LLP, Kansas Health Law Institute)

2016

- Enforcement Initiatives (Foulston Siefkin LLP, Kansas City Health Law Institute)
- Enforcement Initiatives (Foulston Siefkin LLP, Kansas Health Law Institute)
- Ethics Minefields Created by the Yates Memo (Foulston Siefkin LLP, Ethics Seminar for Corporate Counsel)

2015

- Documentation Reminder for Split/Shared Visits, Incident to Services, and Scribes (Foulston Siefkin LLP, Kansas Health Law Institute)
- Freedom to Practice the Healing Arts: Antitrust and Scrutiny of State Health Care Boards (Foulston Siefkin LLP, Kansas Health Law Institute)

2014

- Anti-Kickback Compliance: Anatomy of a False Claims Act Case (Foulston Siefkin LLP, Kansas Health

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- Documentation Reminder for Split/ Shared visits, Incident to Services, and Scribes (Foulston Siefkin LLP, Kansas Health Law Institute)
- Living in the Real World: Case Studies on How to Handle Potential Overpayments and False Claims (Foulston Siefkin LLP, Kansas Health Law Institute)

2013

- Dealing with Difficult Physicians (Foulston Siefkin LLP, Health Law Institute)
- Antitrust Law in Kansas After SB 124 (Wichita Bar Association)
- Overpayments: Risks, Reporting, and Returning (Great Plains, Great Plains Health Alliance Annual Meeting)
- Top Ten Reasons to Love the ACA (Foulston Siefkin LLP, Health Law Institute)
- Antitrust Law in Kansas after SB 124 (KADC, KADC Annual Conference)
- Who's to Know? Reporting & Repaying Overpayments (Foulston Siefkin, Health Law Institute)
- Ethics Minefields: Whistleblowers, Internal Investigations, and Responding to the Government ((Foulston Siefkin Ethics Seminar for Corporate Counsel)

2012

- Ethics Minefields: Whistleblowers, Internal Investigations, and Responding to the Government (Foulston Siefkin Ethics Seminar for Corporate Counsel)
- Top Developments in Health Law in 2012 (Foulston Siefkin Kansas Health Law Institute)
- Update of State and Federal Enforcement Initiatives (Foulston Siefkin Kansas Health Law Institute)

2011

- Top Developments in Health Law in 2011 (Foulston Siefkin LLP, Kansas Health Law Institute)
- Recent Developments in Medicare and Medicaid Fraud Litigation (Foulston Siefkin LLP, Kansas Health Law Institute)

2010

- Overview of the New Health Care Reform Act: Patient Protection and Affordable Care and Health Care and Education Reconciliation Acts of 2010 ("PPACH") (Wichita Bar Association)
- Top 10 Things You Need to Know About Health Care Reform (Foulston Siefkin Kansas Health Law Institute)
- Updates of Enforcement Activity from RACs, the Kansas Board of Healing Arts, the Kansas Attorney General, and the U.S. Department of Justice (Foulston Siefkin Kansas Health Law Institute)

2009

- Top 10 Developments in Health Law in 2009 (Foulston Siefkin LLP, Kansas Health Law Institute)
- CMS Enforcement Update: RAC Audits and Medicaid Investigations (Foulston Siefkin LLP, Kansas Health Law Institute)
- Obama Care - Point Counterpoint (Foulston Siefkin LLP, Kansas Health Law Institute)

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- Fraud and Abuse, and the Stark Law in the Real World (Foulston Siefkin LLP, Kansas Health Law Institute)

2008

- Kansas Health Care-Governmental Structure & Control (Foulston Siefkin Kansas Health Law Basics Conference)
- 2008 Health Care Case Law Update (Chapter Healthcare Financial Management Association Quarterly Meeting)
- Incident To Billing and Reimbursement (Health Law Institute)
- Top 10 Developments in Health Law in 2008 (Foulston Siefkin LLP, Kansas Health Law Institute)

2007

- Top 10 Developments in Health Law since September 2006 (Foulston Siefkin LLP, Kansas Health Law Institute)
- Medicaid: The New Enforcement Focus (Foulston Siefkin LLP, Kansas Health Law Institute)

2006

- Delivering Health Care Services to the uninsured and Underinsured: Consumer Protection Act and Tax Exemption Issues (Foulston Siefkin LLP, Kansas Health Law Institute)

2005

- Just Say No: Dealing with Drug Reps and Other Vendors (Foulston Siefkin LLP, Kansas Health Law Institute)
- Restrictive Covenants for Healthcare Providers (Foulston Siefkin LLP, Kansas Health Law Institute)

2004

- Dealing with the Threat of Government Enforcement (Foulston Siefkin LLP, Kansas Health Law Institute)
- Hospitals and Physicians: Can This Marriage Be Saved? (Foulston Siefkin LLP, Kansas Health Law Institute)

2003

- Government Investigations of Health Care Providers - How to Handle the Uninvited Guest or What Do We Do When the Government Comes to Call? (Foulston Siefkin LLP, Kansas Health Law Institute)
- Lawsuits Waiting to Happen (Foulston Siefkin LLP, Kansas Health Law Institute)

PUBLICATIONS

2005

- Court Breaks Heart Surgeons' Hearts
-Kansas Employment Law Letter

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2002

- Best Practices for Medical Record Documentation
-Health Law Update - Quarter 2

ISSUE ALERTS

2005

- Kansas Supreme Court Enforces Heart Surgeon Noncompete Agreement

2004

- OIG 2005 Work Plan Identifies Enforcement Priorities

COMMUNITY INVOLVEMENT

- Youth Horizons – Past Board Member
- Rotary Club International – East Wichita Member and Past President
- Music Theatre of Wichita – Past Board Member
- Stage One – Past Board Member
- Leadership Wichita
- First Baptist Church, Wichita