

David M. Humiston
Partner, Los Angeles, California

Healthcare
 Managed Care
 Class Action and Complex Litigation



Current Scope of Practice

Selected as one of 12 “Outstanding Healthcare Litigators” in the nation for 2005 and 2007 by *Nightingale’s Healthcare News*, David M. Humiston is a partner in the Los Angeles office and chairs the firm’s Healthcare Practice Group. Mr. Humiston represents health plans and managed care organizations in liability matters. Many of the liability issues involve utilization review, benefits and claims determinations, ERISA, MediCare, bad faith, quality assurance, risk pool, IBNR, reimbursement, RICO, wrongful termination, behavioral health, breach of contract and unlawful, unfair, or fraudulent business and advertising practices.

Litigation Matters

Mr. Humiston is an experienced trial lawyer who has successfully tried matters in Southern and Northern California. Examples of recent representative matters successfully defended by Mr. Humiston include the following:

- Obtained a nonsuit defense victory after a lengthy two month jury trial victory in Orange County Superior Court in which plaintiffs brought a wrongful death action against a health plan, the sole defendant, alleging breach of contract and bad faith theories of liability seeking compensatory and punitive damages.
- As lead class counsel on behalf of a national health plan, successfully obtained a defense summary judgment against a certified class of physician plaintiffs. The plaintiffs were alleging unfair business practice claims and violations of Health and Safety Code provisions pertaining to reductions in their level of compensation based on exclusivity provisions contained in the physicians’ contracts with a co-defendant medical group. The multimillion-dollar action presented matters of first impression for the San Diego Superior Court, including issues of delegability and duties to ensure and monitor compliance by the medical group.

- As lead counsel, successfully obtained a defense jury verdict in a seven-month trial on behalf of an independent practice association. The action raised a myriad of causes of action, including negligence, willful misconduct, intentional misrepresentation, false promise, constructive fraud, fraud (concealment), elder abuse, wrongful death, and unfair business practices in violation of Business and Professions Code section 17200. Plaintiffs attempted to put our managed care system of capitation and risk pool sharing arrangements on trial, contending care was denied to a paralyzed patient dying of multiple myeloma because of financial incentives. The duration of the case through most of 2007 allowed the movie “Sicko”, Michael Moore’s antimanaged care/U.S. healthcare system film, to play a part in the court’s rulings as covered by the *Daily Journal*, CNN, and other news media. This was the longest jury trial in Southern California in 2007.
- Successfully obtained a summary judgment in a wrongful death, bad faith, unfair business practices action brought against one of his health plan clients in Los Angeles Superior Court.
- Obtained a defense trial verdict for our managed care client in an action brought by four specialty physicians alleging breach of express and implied contract, violation of Business and Professions Code Section 17200 (unlawful business practices), quantum meruit, and violation of Health & Safety Code §1371 (prompt pay). Plaintiff healthcare providers were compensated under a capitated contract arrangement in which they received a set monthly payment per enrollee assigned to them. Plaintiffs terminated their contracts with our client, then alleged that they were entitled to additional payments and challenged the compensation system as unfair and unlawful. A defense judgment was rendered in favor of Sedgwick’s client on all of plaintiff’s claims and awarded our client recovery of its costs and fees.
- Secured dismissal of a putative class action on behalf of our health plan client. Targeting numerous health insurers, plaintiffs claimed defendants failed to protect plan enrollees from overly aggressive healthcare providers by refusing to enforce contractual provisions contained with their Provider Agreements. They also alleged that the health plans failed to protect enrollees by refusing to comply or enforce applicable coordination of benefit provisions and by ignoring reimbursement limitations placed on them by statute. Our early challenges to the pleadings secured our client’s dismissal.
- Obtained dismissal of a purported class action seeking restitution of sums our client allegedly recovered from plaintiffs and an injunction prohibiting enforcement of their health plan’s reimbursement provision. Sedgwick successfully brought a motion to dismiss for failure to state a claim under ERISA. We then obtained a dismissal of a second putative class action, raising very similar claims, brought against this client.
- Obtained summary judgment, upheld on appeal, in a wrongful death case against a managed care entity. Allegations involved claims of alleged delay and denial of covered healthcare benefits resulting in the death of the member.
- Successfully obtained early court ordered dismissals of several actions brought by prominent HMO liability plaintiff lawyers alleging bad faith, misrepresentation, fraud, breach of contract and unfair business practices against defendant Medicare Advantage plans on the grounds of preemption by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

- Obtained voluntary dismissal on behalf of our client, the nation’s leading provider of healthcare, disability, life and accident insurance benefits, in a putative class-action brought by owners of retail pharmacies for alleged statutory violations and unfair competition regarding “prescription drug claims processors.”
- Served as lead defense counsel in coordinating hundreds of lawsuits filed in federal and state courts in approximately 40 states against a manufacturer/distributor of hair products. Class action involved mass tort claims of 30,000 claimants and included RICO, fraud, unfair business practice theories. Pursuant to an MDL petition, we were able to consolidate all of the federal actions into one venue before the Eastern District of Michigan. Case was resolved with no opt outs.

Affiliations, Activities and Accomplishments

Mr. Humiston has several published appellate opinions and articles, which have contributed to the jurisprudence of California. Mr. Humiston is the Editor-in-Chief of the authoritative book, *Managed Care Litigation* published by BNA Books. Mr. Humiston is also a coauthor of the book’s chapter “State Law Challenges in Managed Care.”

Mr. Humiston is a member of several bar associations, including the ABA - Health Law Section; the American Health Lawyers Association, the California Society of Healthcare Attorneys, and the California Association of Physician Organizations. Mr. Humiston served as the ABA Health Law Section’s Chair of the Managed Care & Insurance Interest Group for the 2004-2005, and 2005-2006 terms. He is recognized as a Fellow of the American Bar Association, an honor limited to only one third of one percent of lawyers in his jurisdiction.

He is admitted to practice in all of the courts of the State of California, the United States District Courts for the Central, Eastern, Northern and Southern Districts of California, the Eastern District of Michigan, the Ninth Circuit Court of Appeals and the United States Supreme Court.

Mr. Humiston has been annually honored as a “Southern California Super Lawyer” since its inception in 2004 by the publishers of *Los Angeles Magazine* and the *Journal for Law & Politics*. *Southern California Super Lawyers* published the top vote getting attorneys after totaling 65,000 ballots from attorneys practicing in Southern California.

He was also named one of 12 “Outstanding Healthcare Litigators” in the nation for 2005 and 2007, by *Nightingale’s Healthcare News*. Mr. Humiston is recognized in *Who’s Who in American Law and Who’s Who in California*. Mr. Humiston is an elected member of the Federation of Defense & Corporate Counsel organization.

Mr. Humiston has annually received an “AV” rating, the highest ranking for legal ability and general ethical standards as reported in the Martindale-Hubbell Law Directory. Mr. Humiston served as President of the Board of Governors for U.C. Hastings College of the Law.

Publications and Presentations

- Editor-in-Chief, “2011 Managed Care Litigation Book, Cumulative Supplement,” published by the Bureau of National Affairs, Inc. (coauthored with members of Sedgwick’s Healthcare Practice Group) (2005, 2007, 2009, 2010, 2011);
- Presenter, “Anatomy of a Managed Care Trial,” Sedgwick Annual Healthcare Seminar Series, Los Angeles, Orange County and San Francisco (May 24-25, 2010), and Hartford, CT (September 22, 2010).
- Co-author: “Digital Health Liability: We Are Not In Kansas Anymore!” Health Law360 (May 19, 2010).
- Moderator, “Is the Marketplace Real? (And is it Now?),” Burrill Consumer Digital Health Meeting, Burlingame, CA (March 22, 2010);
- “State Law Challenges in Managed Care,” Chapter 4 of *Managed Care Litigation*, published by the Bureau of National Affairs, Inc. (coauthored with members of Sedgwick’s Healthcare Practice Group) (May 2009);
- Moderator, “Sedgwick West Coast Healthcare Seminar Series,” Westlake Village, Los Angeles, San Francisco (March 10-12, 2009);
- “Managed Care Litigation Trends,” 2008 Marsh Annual Healthcare Summit, Colorado Springs, CO (May 2008);
- “Universal Healthcare: Through the Looking Glass,” FDCC Annual Winter Meeting, Grand Bahamas (February 2008);
- “The Class Action Fairness Act of 2005,” LA County Bar Association (January 19, 2006);
- Panelist, “Healthcare ADR: The Tidal Wave Arrives,” American Bar Association 2005 Annual Meeting, Chicago, IL (August 7, 2005);
- “The Prognosis for the Managed Care Liability Act After Davila,” *Los Angeles Lawyer Magazine* (March 2005);
- Presenter, “Fundamentals of Managed Care,” American Bar Association Health Law Section 6th Annual Emerging Issues Conference, Orlando, Florida (February 23-25, 2005);
- “Prognosis: Privacy? Medical Data Confidentiality Regulations Under HIPAA,” National CLE Conference, Law Education Institute (January 2003);
- “The Challenges for Managed Care: A Mass Assault,” ABA Health Law Section’s 4th Annual Mid-Year Conference on Emerging Issues in HealthCare Law 2003 (February 20, 2003);
- “How Can HMOs Protect Themselves Against the New Liability Posed by *Cicio*?” American Conference Institute: Reducing the Risk of Managed Care Liability (September 29, 2003);
- “Presentation on Advanced Deposition Techniques,” LA County Bar Association – 2003 Nuts & Bolts – Basic Litigation Skills: Essential Tools for Lawyers (December 5, 2003);

- “*Cicio v. Does: The New ERISA Preemption Paradigm?*” American Conference Institute (September 2003);
- “Vendor and Supplier ‘Business Associate’ Contracts – How Must They Be Monitored Under HIPAA?” Professional Liability Underwriting Society (August 2002);
- “Medical Privacy Lawsuits: Will HIPAA Bring More of Them?” *The Self-Insurer Journal* (Volume 19 May 2002);
- “Will Your State’s Privacy Law Be Superseded by HIPAA?”, *Managed Care Magazine* (May 2002);
- “Navigating the Shoals of ERISA: The Effect of ERISA Preemption on New State Laws Creating Tort Liability Against Managed Care Entities,” *The Health Lawyer Journal of the American Bar Association* (2002);
- “Treatment Options,” a review of the enforceability of new Civil Code Section 3428, *Los Angeles Lawyer* (2001); and
- Presenter, State Bar of California Annual Meeting, “Class Actions: A Federal and State Court Comparison” (September 2000).

Education

Mr. Humiston received his B.A. (1976), *magna cum laude*, in economics, from the University of California at Los Angeles. He received his J.D. (1979) from the University of California, Hastings College of the Law.