

## Mark Hardiman

Founder & Partner

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A serial triathlete and marathon runner, Mark Hardiman brings the same rigor and determination in crossing the finish line to successfully resolve the most difficult cases facing his clients. Mark has more than 15 years of experience representing healthcare providers in complex litigation matters, including federal and state criminal investigations, false claims and other civil lawsuits, and administrative proceedings before federal and state agencies. He also regularly advises clients on regulatory compliance issues, including with respect to internal investigations, voluntary disclosures of overpayments, and possible violations of the False Claims Act ("FCA"), federal anti-kickback statute and the Stark Law.

### **Powerful Defense of Healthcare Providers in Criminal and Civil Fraud Actions**

As a veteran trial lawyer and litigator, Mark's experience includes 22 jury trials, eight appeals before the Federal Circuit Courts of Appeals, and three appeals before the California Court of Appeal. Mark spent more than eight years as a federal prosecutor with the United States Attorney's Office in Los Angeles, where he prosecuted major fraud and other criminal cases. Before co-founding Nelson Hardiman, Mark was a partner at a law firm dedicated solely to the representation of healthcare providers and suppliers, where he focused on the defense of healthcare criminal and civil fraud actions and investigations.

### **National Reputation Defending False Claims Act Lawsuits**

Mark has established our national reputation for work on behalf of hospitals and other healthcare providers that are sued by whistleblowers and/or the federal government for submitting false claims for medical services and items to Medicare and other federal health care programs in violation of the FCA. He has particular expertise in FCA cases involving alleged lack of medical necessity based on physician decision-making and standard of care violations, kickback and Stark Law violations, and upcoding.

### **A Broad Range of Healthcare Litigation Experience**

Mark has represented hospitals, skilled nursing home facilities, home health agencies, clinical laboratories, physician medical groups, pharmacies, ambulance companies, IDTFs, management companies, and individual providers in federal and state criminal and civil investigations and cases filed throughout the United States:

- His criminal experience includes defending providers against charges of conspiracy, healthcare and insurance fraud, false statements, kickbacks, unlawful prescribing, elder abuse, and manslaughter, and representing providers who are the targets or subjects of a criminal investigation.
- His FCA experience includes defending providers against alleged claims involving unnecessary services and non-reimbursable costs, kickbacks and Stark Law violations, improper coding, and services that did not otherwise comply with regulatory payment conditions.

- His civil litigation experience includes representing providers in payment disputes with managed care plans, and in business disputes involving breach of contract, unfair competition and other claims, both in court and in arbitrations.
- His administrative litigation experience includes representing providers in Medicare or Medi-Cal administrative proceedings and related court proceedings, including coverage appeals and program exclusion actions, and in voluntary disclosures of possible FCA violations under the U.S. Department of Health & Human Services Office of Inspector General's Provider Self-Disclosure Protocol and Stark Law violations under the Center for Medicare and Medicaid Services' Voluntary Self-Referral Disclosure Protocol.

## Accolades

*Benchmark Litigation* named Mark a Litigation Star in 2018. In 2019, *The Legal 500*, one of the premier legal research, ranking, and publishing firms in the world, [singled](#) out Mark for leading the firm's FCA litigation practice. *The Best Lawyers in America* (2021 Edition) [recognized](#) Mark for the sixth straight year while Southern California *Super Lawyers* [named](#) him to its list for the sixth consecutive year. Before entering private practice, Mark was the recipient of Attorney General Janet Reno's John Marshall Award, the United States Chief Postal Inspector's Special Award, and twice received the United States Department of Justice Special Achievement Award.

## Life Outside the Firm

Similarly at ease with daunting challenges outside the courtroom, Mark has completed the Los Angeles Marathon twice, the San Diego Marathon twice, the ChesapeakeMan ultra-distance triathlon and the Florida Ironman triathlon. After college, Mark served as an infantry officer in the United States Army Reserve for six years.

## Practice Areas

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- [Government Investigations](#)
  - [Litigation](#)
  - [Regulatory Compliance](#)
  - [Transactions](#)

## Credentials

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### Education

Boston University School of Law, J.D., *cum laude*

Princeton University, A.B.

### Admissions

State Bar of California

U.S. Court of Appeals for the Ninth Circuit

.S. District Courts for the Central, Eastern, Northern and Southern Districts of California

### Affiliations

American Health Lawyers Association

California Society for Healthcare Attorneys

## Experience

### Healthcare Crimes

- In a federal criminal case charging a respiratory therapist with healthcare fraud relating to sleep studies, settled the case with a guilty plea to a misdemeanor tax charge and the dismissal of all fraud charges.
- In a federal case charging a physician with healthcare fraud at various clinics, obtained a dismissal of all charges.
- In a state criminal case charging a skilled nursing facility with elder abuse after a resident committed suicide, obtained a dismissal of all charges.
- In a federal criminal case charging a physician with illegal distribution of controlled appetite suppressants over the Internet, obtained a dismissal of all charges after a two-month trial ended with the jury deadlocked 10-2 in favor of not guilty.
- In a state criminal case charging a skilled nursing facility with involuntary manslaughter and elder abuse after a patient died from respiratory failure, obtained a dismissal of all charges.

### False Claims Act

- In a non-intervened FCA case against a hospital alleging false claims for unnecessary and duplicative laboratory testing, obtained summary judgment in the hospital's favor which was not appealed.
- In an FCA case against a hospital that allegedly paid kickbacks to a partial hospitalization program, obtained a dismissal of the case which was not appealed.
- In a non-intervened FCA case alleging a hospital's submission of false claims for clinic office visits, obtained summary judgment in the system's favor which was affirmed on appeal.
- In an FCA investigation of a medical group for allegedly submitting false claims for oncology drugs, obtained a favorable government decision not to file a case.
- Favorably settled whistleblower lawsuits on behalf of one of the largest health systems in the country.

### Constitutional Right of Privacy

- Successfully petitioned the California Supreme Court for review of psychotherapists' challenge to the invasion of patients' privacy rights in psychotherapeutic communications.

Mark's representative cases include the following published opinions:

- **False Claims Act:** *Zeman ex rel. U.S. v. USC University Hosp.*, 664 Fed. Appx. 641 (9th Cir. 2016)
- **False Claims Act:** *S. ex rel. Hockett v. Columbia/HCA*, 498 F.Supp.2d 25 (D.D.C. 2007)
- **Medicare Act:** *Alvarado Hospital, LLC v. Price*, 868 F.3d 983 (Fed. Cir. 2017)
- **Medicare Fraud:** *S. v. SDI Future Health, Inc.*, 568 F.3d 684 (9th Cir. 2009)
- **Medicare Overpayment:** *Palomar Medical Center v. Sebelius*, 693 F.3d 1151 (9th Cir. 2012)
- **Prescription Fraud:** *S. v. Jackson*, 167 F.3d 128 (9th Cir. 1999)
- **Privacy Rights:** *Mathews v. Harris*, 7 Cal. App.5th 334 (2017), review granted