

## Andrew H. Selesnick

Los Angeles, California  
Shareholder

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### Areas of Practice & Industry Specialties

Dispute Resolution; Litigation; Health Care Law; White Collar & Investigations; Health Care/Life Sciences



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Andrew Selesnick is a Shareholder in Buchalter's Los Angeles office, and is a member of the Firm's Litigation and Health Care Practice Groups. With more than 20 years of experience as a health care and commercial litigator, Mr. Selesnick represents health care providers in numerous areas of litigation, such as seeking reimbursement from insurance companies or defending government investigations. He also advises management on how to successfully navigate a complex regulatory environment to take advantage of business opportunities while minimizing risk. Mr. Selesnick has taken approximately 15 jury trials (to verdict), multiple bench trials, and more than 75 arbitrations.

### Recognition Highlights

- Selected as a Finalist at *The Los Angeles Business Journal's* Health Care Leadership Forum & Awards in 2019 & 2020 and nominated again in 2022 & 2023
- Named as one of the "Leaders of Influence: Litigators & Trial Lawyers" by the *Los Angeles Business Journal* in 2021
- Selected as a 2020 Top Health Care Lawyer by the *Daily Journal*
- Named the "California Lawyer of the Year" in Health Care by *California Lawyer* in 2017
- Selected for inclusion in the *Best Lawyers in AmericaUSA Guide* (Health Care Law) from 2015 – 2022
- Recognized as a Southern California "Super Lawyer" by *Super Lawyers* from 2010 – 2021
- Recognized in the *Best Lawyers in America*, Health Care Law, 2023 & 2024.

### Representative Matters

- Merger: Represented VEP Healthcare Inc. in Its Merger with US Acute Care Solutions
- Acquisition: Advised large medical groups on multi-million-dollar, multi-state acquisitions.\*
- Addiction Treatment Facility Compliance: Developed policies and procedures for substance abuse providers relating to marketing, referrals, and payor relationships to ensure compliance with federal and state regulations.\*
- Claim Underpayment: Obtained a favorable result on behalf of a provider against a county-organized health system that systematically down-coded and underpaid thousands of claims. The case led to a string of newspaper articles and the resignation of several individuals.\*
- Coding Dispute: Served as co-counsel in Florida to a nationwide group of radiologists against major health plans concerning a significant coding dispute.\*
- Hospital Provider Dispute: Represented a pathologist who staffed a pathology department at a hospital in

Portland, Oregon. The doctor had a contract with the hospital, which was supposed to give him data so he could bill for a certain type of service. They repeatedly delayed providing the data and, once they did, shut it off without warning due to alleged patient complaints. Shortly after we instituted arbitration, we mediated the case and the hospital offered \$50,000. One week before arbitration, they conceded liability but only offered \$300,000. Mr. Selesnick aggressively arbitrated the case in Portland and received an award that will total nearly \$1.3 million with attorneys' fees and costs.\*

- **Managed Care Liability:** In *Centinela-Freeman Emergency Medical Associates v. Health Net of California*, our clients – a large medical group – staffed the emergency room at multiple hospitals. La Vida, an Independent Physician Association (IPA), sent many patients to the ER, but was struggling financially and failed to reimburse the ER doctors before going out of business. Mr. Selesnick and his team sued every major HMO in California, alleging that they knew that La Vida could not pay its bills. The trial court sustained the HMOs' demurrer to the ER doctors' complaint without leave to amend, finding that the HMOs could delegate their responsibility to IPAs with immunity. In a unanimous published decision, the Court of Appeals reversed the trial court and held in favor of the ER doctors. Finding the HMOs' conduct demonstrated negligence and showed a degree of "callousness," the court ruled that negligent delegation is a viable cause of action in California. This case is currently pending before the California Supreme Court.\*
- **Managed Care Liability:** In *Prospect Medical Group v. Northridge Emergency Medical Group, et al.* (2009), 45 Cal.4th 497, one of California's most controversial decisions, we convinced the California Supreme Court to hold that patients cannot be billed when their HMOs fail to pay, and affirmed the provider's right to seek reasonable reimbursement.\*
- **Nationwide Physicians' Claim:** Represented a health care company on behalf of approximately 50,000 physicians in a \$94 million nationwide claim against a major payor.\*
- **OIG Investigation:** Represented a large provider in an Office of Inspector General (OIG) coding investigation, obtaining a total dismissal for his client.\*
- **Provider Reimbursement:** In *Centinela-Freeman Emergency Medical Associates, et al., v. Hispanic Physicians IPA Medical Corporation*, Mr. Selesnick represented an emergency physician group against a managed care organization. The IPA systematically underpaid or completely denied payment for emergency services provided by our client to its members. On the eve of trial, the judge ordered the parties to participate in a mandatory settlement conference. The parties were able to settle a portion of the claims. However, to provide our clients with a business solution going forward, settlement of a portion of the claims became contingent on arbitrating a case rate for all services. In arbitration, each party was to propose a rate to be paid for each patient visit by any member of the IPA to any of the 10 hospitals in which our clients provide emergency services. The arbitrator found in favor of the emergency providers.\*
- **Provider Reimbursement:** In this seminal case (one of the health care industry's most significant decisions), *Bell v. Blue Cross of California* (2005), 131 Cal.App.4th 211, we successfully argued that health plans are responsible for reimbursing a reasonable portion of out-of-network emergency service providers' costs.\*
- **Recoupment Requests and Audits:** Represented numerous substance abuse treatment facilities in recoupment requests and audits from major payors.\*
- **Regulatory Dispute:** Defended the American College of Emergency Physicians, State Chapter of California, Inc., against an action brought by payor advocacy groups to change the reimbursement procedure when handling non-contracted emergency service providers.\*
- **Seven-figure Recoupment Request:** Represented a urinalysis laboratory in a seven-figure recoupment request, and resolved the matter favorably without litigation.\*
- **Substance Abuse Treatment Litigation:** Represented a provider in an action brought by a major insurer alleging illegal kickbacks in exchange for the referral of specimens to a toxicology laboratory.\*
- **Unfair Business Practice:** As amicus curiae, successfully defended the government's right to seek legal remedies against health plans for unlawful behavior. The rehearing in *People v. Wellpoint* (2010), 180 Cal.App.4th 138, denied 2010 Cal.App.LEXIS 86 as well as 2010 Cal. LEXIS 3215, a suit in which the California Court of Appeal upheld the City Attorney of Los Angeles's right to sue health plans for unfair

business practices.\*

\* Represents experience from a previous law firm.

## Publications

- DMHC Reverses Course – No Surprises Act Does Not Apply to Out-of-Network Emergency Services Governed by the Knox-Keene Act, *Buchalter Client Alert*, March 24, 2022
- An Unanticipated and Significant Victory for Providers: HHS Withdraws Unfavorable Rule that Favored Payers Over Emergency Providers Under the No Surprises Act, *Buchalter Client Alert*, March 2, 2022
- A Big Win for Providers: Federal Court Strikes Unfavorable Rule on Provider-Payor Disputes Under the No Surprises Act, *Buchalter Client Alert*, February 25, 2022
- Buchalter Client Alert COVID-19: Did you receive a deposit from HHS? Before you spend it, read this., *Buchalter Client Alert*, May 8, 2020
- Buchalter Client Alert COVID-19: CMS Temporarily Expands Advanced Payment Program Eligibility, *Buchalter Client Alert*, April 3, 2020
- The Bottom Line, *Inside Healthcare*, June 20, 2019
- Ruling Ends Physician Termination Sans Peer Review Process, *The Daily Journal*, May 13, 2019
- California Appellate Court Decision Impacts Ability to Terminate Hospital-Based Physicians, *Buchalter Client Alert*, April 17, 2019
- Optimizing Analytics for Hospitals in a Value-Based Era, March 5, 2019
- Missed appointments and late arrivals: Who to bill and when, *Medical Economics*, Vol. 96, Issue 11, June 14, 2018
- Physician and Lawyer Fight Health Insurers for Fair Reimbursement of Emergency Physicians, *ACEP Now*, April 11, 2017
- The Buck Stops Here: CA Supreme Court to Rule on Health Plans' Negligent Delegation of Payment Responsibilities, *California ACEP, Lifeline Magazine*, October 1, 2016
- Think Before You Jump: The Many Benefits of a Group Practice Agreement, *American Medical Group Association, Group Practice Journal*, September 1, 2016
- Don't Lose Sleep Over Medicare Billing Intricacies of Sleep Apnea Treatments, *Healthcare Business Monthly*, February 1, 2016
- Continuity of Care and Provider Rights, *Becker's Hospital Review*, July 22, 2015
- Tenet Wants to Maximize Profits at the Expense of Good Care, *IEPC Monthly Newsletter*, March 1, 2015

## Presentations

- Speakers, "Post NSA: It's a Brave New World," EDPMA Solutions Summit, April 19, 2023
- Speaker, "Reimbursement Updates," Independent Emergency Physicians Consortium, November 28, 2022
- Speaker, "Ask a Lawyer - Discussion Group," UCAOA Fall Conference, October 28, 2017
- Speaker, "Ignorance is NOT bliss - The Risks and Rewards of Compliance," UCAOA Fall Conference, October 27, 2017
- Speaker, "Andrew Selesnick, Speaker at Orange County Bar Association," June 8, 2017
- Speaker, "The Trouble with ERISA: Navigating the Claims and Appeals Process," Emergency Department Practice Management Association (EDPMA) Out of Network Workshop, January 2, 2017
- Speaker, "Litigation and Pre-Litigation Strategies for Emergency Providers," Emergency Department

Practice Management Association (EDPMA) Out of Network, Workshop, January 1, 2017

- Speaker, "Andrew Selesnick, Speaker at California Medical Association (CMA) Webinar," Webinar, May 3, 2016
- Speaker, "'Navigating the Hornet's Nest of Reimbursement'," California Society for Healthcare Attorneys (CSHA) Spring Seminar, April 1, 2016
- Speaker, "Contract Negotiations," CMA/MGMA Western Healthcare Leadership Academy, May 1, 2015
- Speaker, "'Tactics for Combating Unfair Claims Settlement Practices'," Emergency Department Practice Management Association (EDPMA) State Regulatory Insurance Committee, April 2, 2015
- Speaker, "'Payer Litigation: What Do We Do Now?'," Orange County Bar Association, March 1, 2015
- Speaker, "'Trends Affecting Emergency Physician Groups'," Independent Emergency Physicians Consortium (IEPC), January 1, 2015

### **Education**

Mr. Selesnick earned his J.D. at the University of San Diego School of Law, and his B.A. in Political Science at the University of California, Santa Barbara.

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### **Bar Admissions**

- California

### **Community**

- California Society for Healthcare Attorneys
- Los Angeles County Bar Association, Health Care Law Section
- American Cancer Society Race for the Cure