

Nathaniel M. Lacktman

Partner

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Nathaniel (Nate) Lacktman is a partner and chair of the firm’s national Telemedicine & Digital Health Industry Team, and member of the Board of Directors of the American Telemedicine Association. He advises entrepreneurial health care providers and technology companies on business arrangements, compliance, and corporate matters in telemedicine, digital health, remote patient monitoring, and click-and-mortar services. Working with hospitals, health systems, providers, and start-ups to build telemedicine arrangements across the United States, his practice emphasizes strategic counseling, creative business modeling, and fresh approaches to realize clients’ ambitious and innovative goals. For years, his skills have been recognized by Chambers USA: America’s Leading Business Lawyers (2013 – 2023):

“He is undoubtedly the foremost authority on telemedicine and direct-to-consumer issues in the country.” “He can problem-solve creatively, and cares about his clients as people.” (2022)

“He has complete knowledge of a very complicated area of the law. He has an excellent understanding of the law, and tremendous business sense.” (2021)

“A tireless champion for the advancement of the field.” (2019)

“First of all he’s brilliant.” “He knows the law inside and out and he’s extremely well connected.” (2017)

Foley’s Approach to Working with Telemedicine Companies

Representative Experience

Telemedicine, Telehealth, Virtual Care, Digital Health

- **Asynch Direct to Consumer.** Worked with entrepreneurs to create a company that offers direct-to-consumer, medical services using asynchronous (store & forward) telemedicine. The work involved a broad scope of issues including advice on corporate practice of medicine and development of a national medical group structure, licensing, FDA and pharmacy law, privacy and security, strategic models for care delivery and revenue streams, state-by-state telemedicine modalities and practice standards, contracting with pharmacies, and e-commerce.
- **Telemedicine M&A.** Represented a telestroke and teleneurology company in connection with its acquisition by a large acute care telemedicine provider. The mutually-beneficial arrangement enabled the companies to flourish and expand their geographic footprint of patient services in the telestroke space.
- **Online Second Opinions.** Health regulatory counseling, transactional advice, and contracts for a leading Academic Medical Center in connection with the AMC's creation and implementation of a nationwide online medical second opinion program. The program allows patients from across the country to directly obtain second opinions from the AMC's specialist physicians.
- **Direct-to-Consumer Telemental Health.** Advised a direct-to-consumer telemental health company in launching operations in multiple states throughout the country, enabling the company to offer mental health services to patients remotely through the use of telemedicine. The work involved the full spectrum of regulatory and transactional issues, including entity creation and governance, cross-state business and professional licensure requirements, privacy and security, telemedicine prescribing, professional corporation affiliations, corporate practice of medicine. Drafted virtual care terms of service, provider terms of use, notice of privacy practices, consent forms, patient authorization forms, patient authentication and verification documents, e-signatures, payment acknowledgements, employment agreements, independent contractor agreements, and the multitude of operational documents associated with telehealth practices.
- **Legislative Drafting.** Assisted a professional association in drafting state legislation to allow telemedicine prescribing of controlled substances.
- **Remote Patient Monitoring (RPM).** Advised a start-up company on legal and regulatory requirements to provide and bill for RPM services under Medicare and commercial health insurance.
- **Telemedicine Marketplace.** Assisted an entrepreneurial start-up company to create an online marketplace for telemedicine services. The marketplace allows independent, third party healthcare providers to create "pop-up" shops and deliver telemedicine services directly to patients. The work involved advice on corporate practice of medicine, fee splitting and anti-kickback considerations, e-commerce, privacy and cybersecurity, and ensuring regulatory compliance while maintaining a high user experience (UX).
- **Asynch Direct-to-Consumer Ocular Telehealth.** Represented an emerging company to create a direct-to-consumer vision care service using asynchronous telemedicine technologies. The work involved legal advice on provider-patient relationships, supervision of vision techs, valid prescriptions

for lenses, terms of use, privacy, and patient-facing e-commerce considerations.

- **Venture Capital Raise for Telepsychiatry Company.** Represented an emerging telepsychiatry company in connection with its first round raise from a venture capital firm. The company uses a business-to-business model and offers high-quality telepsychiatry services to hospitals, clinics, and inpatient psychiatric hospitals across multiple states. The collaborative investment allowed the company to accelerate its growth nationally.
- **Direct to Consumer Hormone Replacement Therapy.** Assisted an emerging start-up company to develop a direct-to-consumer testosterone replacement therapy service for men with hypogonadism using telemedicine technologies. The work involved legal advice on doctor-patient relationships, telemedicine prescribing of controlled substances under state law and the federal Ryan Haight Act, contractual arrangements with labs and compound pharmacies, and patient-facing e-commerce considerations. Drafted the suite of contracts and documents required for the clinic to successfully launch the telemedicine service.
- **Telemedicine and Long Term Care.** Represented a telemedicine company specializing in delivering telemedicine services to residents at skilled nursing facilities and other senior living residences. Advised on regulatory compliance, billing and reimbursement, and drafted the company's professional services agreements to allow for scaled growth of its footprint.
- **Telehealth and Medicare Compliance.** Extensive experience advising clients on telehealth payment and reimbursement issues under the Medicare program, including billing requirements and coverage, modifiers, conditions for payment, conditions of participation, teleradiology overreads and second reads, billing patients for noncovered services, reassignment, credentialing, and offshoring of providers, among other issues.
- **Telemedicine and Women's Health.** Represented a research organization in connection with its development and launch of a first-of-its-kind service for women's health access. The participating clinics offered telemedicine-only consults with patients seeking medication-assisted abortion services with no in-person contact. If suitable, the patient received the medications (mifiprex) via direct mail delivery. In connection with this project, Foley obtained a waiver from the FDA allowing the drug to be delivered via direct mail, instead of the required in-person delivery. The work was published in JAMA and paved the way for new access to medical care for patients in extremely rural areas.
- **Telehealth Overpayments, Self-Disclosures, and False Claims Act.** Advised clients in connection with conducting self-audits of potential overpayments for telehealth services under Medicare and Medicaid, self-disclosures and refunds under the federal "60 Day Rule," and representing providers to defend False Claims Act whistleblower lawsuits in connection with virtual care services.
- **Chronic Care Management (CCM).** Helped an emerging start-up create a new company to deliver CCM services to patients under the Medicare program. The work involved regulatory advice on the various reimbursement and fraud and abuse issues, creation of the company's corporate entities and organizational structure, and drafting of the company's CCM services contracts.
- **Telemedicine Software Company.** Represented a telemedicine software platform to provide regulatory and privacy/security advice on all aspects of its service. Drafted the software contract, online privacy policy, terms of use, EULA, Telephone Consumer Protection Act documents, patient consents,

and other e-commerce materials. Advised on sales representative agreements and marketing arrangements under state and federal Anti-Kickback Statutes.

- **Telestroke Network.** Assisted a health system in connection with the assessment and modeling of its statewide telestroke network. The work involved regulatory analysis, fraud and abuse compliance, and drafting the contract set used by hospitals and clinics participating in the statewide telestroke network. The successful network allows the participating originating site hospitals to enjoy the expertise and immediacy of telestroke consults from the neurologists at the distant site hospital, as well as an avenue to safely transfer the stabilized patients to the most appropriate site of care.
- **Virtual ICU.** Advised a national virtual care provider on all facets of regulatory and legal issues, including development of virtual ICU contracts, negotiations with hospital partners, reimbursement and revenue opportunities, physician staffing, Stark Law, and other fraud and abuse compliance considerations.
- **Credentialing by Proxy.** Provided counseling, operational advice, and drafted revised medical staff bylaws for a multi-hospital health system seeking to implement credentialing by proxy for its telemedicine service arrangements. The work allowed the system to use a streamlined credentialing process for its physicians, materially lessened the workload of its medical staff office, and facilitated rapid “go live” dates for new telemedicine service lines and physicians.
- **Distant Site Telemedicine Entity.** Provided legal advice and contract drafting for a non-hospital physician organization seeking to become a Distant Site Telemedicine Entity (DSTE) and use credentialing by proxy with its originating site clients, primarily hospitals and Critical Access Hospitals. The work enabled the physician organization to understand and apply both the Medicare regulations and Joint Commission standards for DSTEs, facilitating an expedited launch date for the organization’s telemedicine contracts with its hospital partners.
- **Telemedicine Managed Care Contracting.** Assisted a large telehealth company in the United States in connection with its contract negotiations with numerous Medicaid managed care organizations across multiple states. The work enabled the company to successfully become an in-network provider of covered telehealth services, delivering care to the members of the various health plans.
- **Telehealth Medicaid Managed Care Compliance.** Regulatory counseling and practical advice on out-of-state Medicaid enrollment and coverage issues for a telehealth-only medical group seeking to contract with various Medicaid managed care plans across the country. The work allowed the group to enroll its physicians and to deliver covered (reimbursed) services to Medicaid fee-for-service patients across more than 25 states.
- **Telehealth Command Center and Risk-Based Contracting.** Advised a large provider of emergency medical services with its provider-owned telemedicine command center. Structured and drafted risk-bearing contracts between the provider and Medicare Advantage plans for the command center to use telemedicine and remote patient monitoring technologies to coordinate care for the health plan’s member populations across multiple markets.
- **Telehealth Physical Therapy.** Helped a physical therapy technology company successfully create a national platform for delivering professional physical therapy services via telehealth. The work involved advice on corporate practice of physical therapy, creation of a multistate professional corporation

model, and the various requirements to create a valid therapist-patient relationship via telehealth.

- **Facility-Based Ocular Telehealth.** Advised an entrepreneurial company delivering B2B remote interpretive studies via telemedicine. Prepared company structure and suite of contracts and documents for corporate practice of medicine, professional service agreements, technology agreements, and patient-facing materials.
- **Tele-Genetic Counseling.** Assisted a provider of genetic counseling services to create and launch its platform to deliver its services via telehealth. The work involved advice on corporate practice of medicine and genetic counseling, physician supervision, billing and coding for genetic counseling services, research on licensing and practice standards across 50 states, and creating the corporate entities required. Represented the company in connection with successful negotiations with managed care plans to cover the telehealth-based genetic counseling services.
- **Telemedicine Commercial Health Plan Contracting.** Assisted a hospital in connection with its contract negotiations with a commercial health plan to obtain telehealth coverage under the hospital's existing participation agreement. The hospital was located in a state without a telehealth commercial coverage law, and the successful negotiations resulted in an amended participation agreement under which the hospital enjoyed reimbursement of its telehealth services to the health plan's members.
- **International Telemedicine.** Worked with leading Academic Medical Center on strategy, legal advice, and contract drafting for international telemedicine arrangements with clinics and hospital partners in various countries across the Globe, with particular attention to Asia, Middle East, and Central and South America.
- **U.S. to China Telemedicine.** Extensive experience representing U.S. based hospitals and healthcare providers in developing and contracting with China medical institutions to deliver telemedicine services to China patients. Work involved compliance counseling, contracting, fraud and abuse guidance, Foreign Corrupt Practices Act (FCPA) advice, cross-border data privacy and security, trademark and intellectual property, medical licensure, and China telemedicine rules.
- **Board of Medicine.** Represented a provider group before Florida Department of Health on a petition for declaratory statement regarding telemedicine arrangement.
- **Remote Patient Monitoring and Clinical Staff.** Foley worked with several digital health companies offering remote patient monitoring services develop their corporate structure in various states. The work included advising on billing considerations along with nurse practitioner, nurse, certified nurse assistant, licensed vocational nurse, and medical assistant scope of practice and supervision requirements. The work allowed the company to comply with regulatory requirements while providing a scalable, affordable staffing model for RPM.
- **School-Based Telehealth and Medicaid Enrollment.** Foley advised a school-based telemedicine program offering telehealth services across multiple states, without any brick and mortar locations, on the requirements for enrolling in Medicaid programs. The work allowed the company to create a corporate structure that fit within its strategic growth plan and adhered to state laws and payer requirements.

Awards and Recognition

- *Best Lawyers*, Health Care Law “Lawyer of the Year” in Tampa (2022)
- *Chambers USA: America’s Leading Business Lawyers* (2013 – 2023)
- *The Best Lawyers in America: Health Care Law* (2018 – 2024)
- Southwest Telehealth Resource Center, for his thought leadership and contributions to telemedicine policy (2018)
- *Florida Super Lawyers* (2013 – 2018, 2022 – 2023)
- Florida Trend: Legal Elite “Up and Comer” list (2017)
- Two-time winner of the JDSupra Readers’ Choice Award for his articles and blogs on telemedicine and digital health law (2016, 2018)

Affiliations

- Member, American Telemedicine Association
- Member, American Health Lawyers Association
- Member, Health Law Section of the Florida Bar

Community Involvement

- Volunteers with pro bono clients that use virtual care technologies to expand medical access to underserved communities

Thought Leadership and Policy

“Foley is the premier firm for telehealth counsel.”

“A market leader in telemedicine issues. This is the Dream Team.”

– Chambers USA: America’s Leading Business Lawyers (2020, 2021)

Nate is a recipient of the American Telemedicine Association’s Champion Award, which recognizes an individual who has made significant contributions to advocate for public policy changes that open payment support and provide regulatory pathways for telemedicine and digital health. Given to one person a year, recipients must have a demonstrated track record of leadership in educating the public about telehealth services and working with federal and state government officials to expand reimbursement of, and eliminate barriers to, telemedicine and digital health.

He has held several leadership positions with the industry, including a seat on the ATA’s Policy Council and former Chair of the ATA’s Business & Policy Special Interest Group. Nate was a member of the American Board of Telehealth’s inaugural advisory board. He speaks and writes frequently on issues at the forefront of telehealth and is often quoted for his insight about legal and business developments in this area. He has written telehealth legislation, regulations, comments and policy input to lawmakers, the Drug Enforcement Agency, the Congressional Research Service, state Medicaid Agencies, and state boards of medicine across several states. He has helped write telemedicine policy letters and position statements with such

organizations as the ATA and the American Heart Association. He has appeared in publications such as the *Wall Street Journal*, *NPR*, *CNBC*, *Fox News*, *Bloomberg*, *POLITICO*, *the Associated Press*, *Reuters*, *Modern Healthcare*, *Forbes*, *Huffington Post*, *MobiHealthNews*, *Wired*, *Inside Counsel*, *Buzzfeed*, *mHealthIntelligence*, and *Information Week*, among others.

For a representative list of his publications and presentations, please [click here](#).

Sectors

- [Health Care & Life Sciences](#)
- [Telemedicine & Digital Health](#)

Practice Areas

- [Behavioral Health](#)
- [Corporate](#)
- [False Claims Act](#)
- [Government Enforcement Defense & Investigations](#)
- [Health Care](#)
- [Health Care Regulatory](#)
- [Health Care Transactions](#)

Education

- University of Southern California School of Law (J.D.)
 - Editor, Hale Moot Court Honors Program
 - Judicial extern for Judge Ronald S.W. Lew of the U.S. District Court for the Central District of California
- University of Florida (B.A., with honors)
 - University of Florida Scholar
 - Member of Golden Key National Honor Society

Admissions

- Florida
- California
- 9th U.S. Circuit Court of Appeals
- 11th U.S. Circuit Court of Appeals