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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Healthcare Group Of The Year: Ropes & Gray

By **Gianna Ferrarin**

Law360 (February 22, 2024, 2:02 PM EST) -- Ropes & Gray LLP's recent work facilitating several multibillion-dollar transactions, including the largest healthcare acquisition to date by Amazon.com Inc., has earned the firm a spot as one of Law360's 2023 Healthcare Groups of the Year.

Led by co-chairs Deborah Gersh and Tim McCrystal, the roughly 90 attorneys in the firm's healthcare practice counsel health providers, investors, insurers and companies on regulatory and compliance matters, transactions, litigation, capital finance and enforcement issues.

Its recent accomplishments include representing One Medical in its \$3.9 billion sale to Amazon, serving as lead counsel for Signify Health in its \$8 billion sale to CVS, and advising Atrium Health in its combination with Advocate Aurora Health to form a health system with \$27 billion in combined revenue.

In an interview with Law360, McCrystal said the broad scope of disciplines represented in the practice allow its attorneys to tackle complex challenges facing clients.

"We're not reinventing the wheel every time we see an issue," McCrystal said. "We've done and seen a lot of what's out there."

McCrystal also highlighted the firm's work at the intersection of healthcare and technology, saying the COVID-19 pandemic accelerated the use of technology for care that had previously been under development and triggered a need for assistance on reimbursement matters.

"The pandemic was a proving ground for some of the technologies that are currently in use," McCrystal said. "And it also triggered a very important response for reimbursement because some of the technologies weren't being used because they weren't appropriately and adequately reimbursed at the time."

Last year, Ropes & Gray facilitated Amazon's move into the primary care market, providing counsel to One Medical in its \$3.9 billion sale to Amazon. The deal is the largest healthcare transaction by the technology giant so far, which acquired online pharmacy PillPack for roughly \$750 million in 2018 and subsequently launched Amazon Pharmacy in 2020.



"It's been no secret that Amazon has been trying to get into healthcare more and more, with the idea of putting its consumer-focused, tech-driven mindset to, I think, what it views as the problems of healthcare," said Jennifer Romig, a partner at Ropes & Gray who helped lead the One Medical deal.

One Medical's care model incorporates next-day in-office or remote visits and 24/7 on-demand virtual care services through the company's app, making the company a good fit for Amazon, Romig said. She noted that both companies share a "consumer-driven" mentality and a "core belief that using tech can further enable people's use of primary care in particular."

When it came to ironing out regulatory matters, Romig said her team coordinated with the Federal Trade Commission to address its data privacy concerns. The firm was also "very involved" in the review process by Oregon regulators, Romig said, because the deal triggered notice and review requirements under a healthcare transaction oversight program created by a new state law.

Ropes & Gray also navigated federal and state antitrust concerns to help bring about the December 2022 formation of Advocate Health, a nonprofit health system operating across six states and 67 hospitals. In this transaction, Ropes & Gray represented Atrium Health in its combination with Advocate Aurora Health to form Advocate Health, which had \$27 billion in combined revenue, according to the firm.

Gersh told Law360 that, in talks with regulators, her team pointed to the merger between Illinois-based Advocate and Wisconsin-based Aurora that formed Advocate Aurora in 2018, saying these organizations had already passed "antitrust muster" through that combination.

She also said that the firm's ability to demonstrate that Atrium and Advocate Aurora were "separately concentrated" was a key part of moving the deal forward. Atrium operated in North Carolina, South Carolina, Georgia and Alabama, while Advocate Aurora primarily worked in Wisconsin and Illinois.

"That was a unique argument that we could proffer in that regard," Gersh said. "It wasn't really changing the landscape of the concentrations of those, but putting a combined system together."

"That really was, I would say, one of the linchpins in our discussions," Gersh added.

The firm later advised Advocate Health on compliance matters, aiding it in an inquiry by the U.S. Department of Health and Human Services Office for Civil Rights into online data-tracking technologies.

Gersh said that the OCR began asking questions about these technologies on the heels of a June 2022 report by nonprofit newsroom The Markup, which found that 33 hospitals were using the Meta Pixel on their website and, as a result, sending Facebook data when users scheduled doctor's appointments.

The report led to both the OCR inquiry and a series of class actions against hospitals and health systems in 2022, including Advocate Aurora prior to its merger with Atrium. Ropes & Gray guided Advocate Health through the federal inquiry, and Gersh said this ultimately led the OCR to conclude roughly a year later that Advocate Health did what it could to prevent breaches of patient privacy.

The firm's approach centered on the assessment of risk following an impermissible disclosure of protected health information, according to Gersh. This risk assessment is a four-pronged factor used to determine whether disclosures qualify as "breaches" under the Health Insurance Portability and Accountability Act, or HIPAA.

OCR put out guidance in December 2022 clarifying that the protected health information includes information — such as email addresses and appointment dates — entered by users in patient portals for HIPAA-regulated entities.

But Gersh told Law360 this guidance did not offer direction on how to conduct breach risk assessments in the context of tracking technologies.

"I think there still remains a lot of ongoing discussion there," Gersh added.

--Editing by Andrew Cohen.

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