

Ken Burgess

PARTNER

ROCKY MOUNT, NC

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Ken Burgess is a health care attorney with over 30 years of experience advising clients on a wide range of regulatory, litigation, compliance and operations issues. Ken's practice focuses heavily, but not exclusively, on issues affecting long term care and acute care providers.



OFFICE LOCATIONS

1151 Falls Road, Suite 1000
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JURISDICTIONS LICENSED

California, North Carolina

“Never say 'never.' The law is fluid and the human element in its application means we must search, think, and re-think until we find a creative, ethical, and successful solution to our clients' issues.”

BIOGRAPHY

Ken advises providers on legal issues arising in hospitals, skilled nursing facilities, assisted living communities, hospice, home health and other spheres of health care. He also represents ancillary providers (pharmacy, DME, therapy, etc.). He advises on Certificate of Need, Medicare/Medicaid enrollment and licensure issues, appeals of quality of care issues, and transactional matters. Ken is a frequent national lecturer and author of industry manuals, national trade journal magazine articles and similar training tools and is primary author and editor of Poyner Spruill's international award winning newsletter, *Shorts on Long Term Care*.

Prior to joining Poyner Spruill, Ken was the Senior Director of Legal Services and Facility Operations of the American Health Care Association from 1993 to 1997. Ken also served as the North Carolina Health Care Facilities Associations' General Counsel from 1991 to 1993.

AREAS OF FOCUS

HEALTH CARE

Representative Experience

- Advised skilled nursing facilities, assisted living communities, and related long term care vendors on licensure, certification, survey, fraud and abuse, operations, risk management, certificate of need and business issues.
- Served as Senior Counsel to the national long term care trade association in Washington, D.C., where he was responsible for administering the Association's legal assistance fund litigation, and overseeing all regulatory, facility operations, and clinical staff of the association.
- Served as General Counsel to ALFA, the national assisted living trade association in Washington, D.C.
- Served as regulatory and policy counsel for numerous sales and acquisitions of skilled nursing facilities and assisted living communities in multiple states.
- Represented national assisted living and skilled nursing facility provider in high profile licensure revocation action of multiple facilities in Washington State resulting in a favorable settlement and avoidance of involuntary de-licensure and permanent exclusion of the provider from the state.
- Negotiated a national exclusion from music licensing fee requirements for assisted living communities across the U.S.
- Served as the long term care industry representative on the first Negotiated Rulemaking Committee convened by the U.S. Department of Health and Human Services to create safe harbors from the criminal provisions of the federal Anti-Kickback Statute.
- Negotiated the first global settlement of multiple facility licensure and certification survey citations in California with the state Department of Health Services and the California Attorney General.
- Assisted California provider in defending one of the earliest quality of care fraud actions, including negotiating with the federal Office of the Inspector General to develop the provider's Corporate Compliance Agreement and related settlement documents.
- Represented state and national trade associations, and individual providers, on various issues impacting long term care providers, including negotiations with and representation before OSHA, the federal Office of the Inspector General, the U.S. Department of Health and Human

Services' Center for Medicaid and Medicare Services, and state licensure and survey agencies.

- Developed comprehensive advance directive policy for North Carolina long term care providers after enactment of the Patient Self-Determination Act.
- Worked with state trade association, providers and national accrediting organizations to develop assisted living accreditation standards.

CREDENTIALS

EDUCATION

Campbell University, JD, 1984, *cum laude*

University of North Carolina, BA, 1979

NOTABLE ACCOMPLISHMENTS

Recognized by North Carolina Lawyers Weekly as a 2016 North Carolina Leaders in the Law Honoree Recipient, North Carolina Bar Association's 2016 Health Law Distinguished Service Award, May 2016

Recognized as a Leading Attorney by Chambers USA: America's Leading Lawyers for Business (Healthcare) 2014 – 2021

Recognized in The Best Lawyers in America® (Health Care), 2009-2013, 2015-2018, 2021, Health Care Law Lawyer of the Year 2021

J. F. Richardson Foundation National Volunteer of the Year, 2009

Ranked among Super Lawyers magazine's North Carolina "Super Lawyers," (Health Care) 2013-2019

National Law Journal Health Care Trailblazer award 2019

PROFESSIONAL & COMMUNITY ACTIVITIES

North Carolina Society of Health Care Attorneys, Board Member, 2006 – 2011; President, 2009; Chair, Innovations Committee, 2010; Co-Chair, Law School Grants Committee, 2010-2012

American Health Care Association, Member of National Legal Committee, 2008-present

N.C. Medical Society Ethical and Judicial Affairs Committee, Legal Consultant and Member, 2008 – present

North Carolina Bar Association, Health Law Council, 2010-2011

American Health Lawyers Association

North Carolina Autism Society, Past Member of the Board of Directors, Past Treasurer

Future Care Foundation, Board Member, 2009 – present

Member, National Legal Committee, American Health Care Association 2010

Co-Author, Nursing Facility-Hospice Contracts Under Medicare Conditions of Participation – One of *National Law Review's* Most Read Articles for 2009

North Carolina Bar Association, Advance Directives Project, 2006-present