OBER | KALER
Attorneys at Law

www.ober.com

Principal
weberlin@ober.com
202.326.5011
202.336.5211 fax

Bar Admissions
District of Columbia

Virginia

Court Admissions
Court of Appeals of the District of Columbia

Supreme Court of Virginia

United States Court of Appeals for the Fourth Circuit

United States Court of Appeals for the Seventh Circuit

United States Court of Appeals for the Sixth Circuit

United States Court of Appeals for the Third Circuit

United States District Court for the District of Columbia

United States District Court for the Eastern District of Virginia

WILLIAM E. BERLIN

Experience

William E. Berlin is a principal and member of Ober|Kaler's Antitrust and Competition, Litigation and Health Law Groups. Based in the firm's Washington, D.C., office, he devotes his practice to antitrust litigation and counseling, representing hospitals, health systems, health insurance plans, physicians, and other health care entities.

Bill's practice focuses primarily on representing clients in private treble-damage litigation, as well as in U.S. Department of Justice Antitrust Division, Federal Trade Commission and state antitrust enforcement agency investigations and actions, involving mergers and acquisitions, including federal (Hart-Scott-Rodino) and state clearance proceedings, exclusionary conduct by dominant firms, and contracting provisions or other collaborative activity between hospitals, physicians and health plans. Bill's private and government agency litigation frequently requires managing complex procedural issues, including large-scale electronic document discovery. Bill also serves as a monitor arbitrator or mediator in antitrust and other disputes between health care entities.

Formerly a trial attorney with the Health Care Task Force and later the Litigation 1 Section of the DOJ's Antitrust Division, Bill has extensive experience leading investigations and litigation of both merger and non-merger civil antitrust cases in healthcare and other market sectors, including the Antitrust Division's successful five-year litigation and trial in *U.S. v. Dentsply International, Inc.* He also managed the Joint DOJ/FTC Hearings on Health Care and Competition Law and Policy in 2003 on behalf of the DOJ and moderated several sessions during the hearings.

Most recently, Bill was appointed Monitoring Trustee by the DOJ and approved by the court in *United States v. Anheuser-Busch InBev SA/NV, et al.* (U.S. District Court for the District of Columbia, October 24, 2013). As Monitoring Trustee, Bill will oversee and report to the court on the defendants' compliance, over a three- to potentially five-year period, with the settlement terms set forth in the court's final judgment which resolved the DOJ's suit challenging the merger of the first and third largest producers of beer sold in the U.S.

Bill was selected by his peers as a 2012 and 2013 Washington DC Super Lawyer in the antitrust litigation area and by *Nightingale's Healthcare News* as one of ten "Outstanding Antitrust Lawyers" for 2008. A frequent guest speaker at health care association conferences and meetings, he has authored numerous papers and articles on topics of interest to medical professionals.

Representative Cases

- Represented a health system in obtaining a precedent-setting consent settlement with the FTC and Nevada Attorney General resolving their investigation of the system's acquisition of two cardiology physician groups. *In the matter of Renown*

United States Supreme Court

Various other federal and state courts pro hac vice

Education

University of Virginia School of Law (J.D., 1988)

- Lile Moot Court Board, 1987-1988
- Criminal Practice Clinic, 1988

Virginia Polytechnic Institute and State University (B.A., *cum laude*, 1985)

- Phi Alpha Theta
- Legal Aid Society of the New River Valley, Inc., Intern, 1984-1985

Health (F.T.C., 2012); *State of Nevada v. Renown Health* (D. Nev. 2012).

- Represented a managed care organization in litigation and trial of suit alleging antitrust claims based on exclusionary broker insurance commissions. *Home Town Health v. Aultman Health Foundation* (*Ohio Ct. Common Pleas, 2011*)

- Successfully obtained dismissal for a general acute-care hospital in a suit alleging antitrust claims based on revoking the privileges of physician-investors in a specialty hospital, and payor contracting. *LRCC v. Baptist Health,* 591 F.3d 591 (8th Cir. 2009), cert.denied (V.S. Supreme Ct., 2010)

- Successfully obtained summary judgment on behalf of a physician-owned specialty hospital in an antitrust suit involving termination of physician's hospital privileges. *Schwartz v. Teuber, (S. Dakota Cir. Ct., 2008)*

- Obtained summary judgment for defendant in antitrust action involving conspiracy and monopolization claims alleging standard-setting to exclude plaintiff's product. *Neotonus, Inc. v. American Medical Association and American Urological Association,* 554 F.Supp.2d 1368 (N.D. Ga., 2007), aff'd per curiam, 270 Fed. Appx 813 (11th Cir. 2008)

- Successfully obtained dismissal for long term care pharmacy provider in a suit alleging claims under the Medicare Secondary Payer statute. *Stalley v. Genesis Healthcare Corp. and Omnicare, Inc. (E.D. Pa. 2007)*

- Successfully obtained summary judgment for HMO in antitrust suit challenging provider contracting. *Open MRI v. HPUOV, Inc., (W.Va. Cir. Ct. 2005; W. Va. Supreme Ct. 2006)*

- As lead counsel for the Antitrust Division, successfully obtained judgment enjoining the use of exclusionary practices by a dominant medical supplies manufacturer. *U.S. v. Dentsply International, Inc. (D. Del. 2003), 399 F.3d 181 (3d. Cir. 2005)*

Professional Memberships

- American Bar Association
  - Antitrust Section, Healthcare Committee
- American Health Lawyers Association
  - Antitrust Practice Group
  - Certified Arbitrator and Mediator, AHLA Alternative Dispute Resolution Service

- District of Columbia Bar
- Virginia State Bar

Community Service

- Arlington Retirement Housing Corp.
  - Member and Secretary, Board of Directors

Honoraries

- Listed in *The Legal 500*, 2013
- Listed in *Washington, DC Super Lawyers*, 2012-2013
- Selected by *Nightingale's Healthcare News* as an "Outstanding Antitrust Lawyer – 2008"

Professional Background

- United States Department of Justice, Health Care Task Force & Litigation 1 Section, Trial Attorney

Publications & Presentations

- Author, "Health Care Antitrust Developments," Chapter, *Health Law and Compliance Update*, Wolters/Kluwer (Aspen), 2014
- Presenter, "Antitrust Compliance in Hospital-Physician Mergers and Acquisitions," Webinar, Strafford Publications, 2013
- Presenter, "The Anatomy of Physician Integration—Part IV: Antitrust," Physician Organizations Bootcamp Webinar and Roundtable Discussion Series, American Health Lawyers Association, 2013 ☐
- Author and Presenter, "Hospital Acquisition of Physician Groups," Hospitals and Health Systems Law Institute, American Health Lawyers Association, 2013 ☐
- Author, "Top Ten Practical Antitrust Compliance Tips for Health Care Providers (and Other Entities)," *Health Law Alert*; republished in RADLAW Bulletin, American College of Radiology, 2013
- Author, "FTC's Norman PHO Advisory Opinion - New Clinical Integration Guidance, Same Antitrust Analysis," Client Alert, Ober|Kaler, 2013 ☐
- Presenter, "Antitrust Investigations of Hospital-Physician Practice Acquisitions: Managing the Risk to Close," D.C. Bar Association, 2012 ☐
- Author, "Renown Health-FTC Antitrust Agreement: Guidance for Hospitals Acquiring and Employing Physicians," *Health Law Alert*, Ober|Kaler, 2012
- Presenter, "Avoiding Antitrust Pitfalls in Hospital Acquisitions of Physician Practices," Webinar, Ober|Kaler, 2012
- Presenter, "Developing a Health Care Antitrust Practice," American Health Lawyers Association, 2012
- Presenter, "Mergers and Acquisitions: Physicians," Antitrust in Healthcare Conference, American Bar Association and American Health Lawyers Association, 2012 ☐
- Author, "Hold Separate Agreements and Remedies in Physician Mergers," Antitrust in Healthcare Conference, American Bar Association and American Health Lawyers Association, 2012
- Presenter, "Merger Mania: Health Care Reform's Impact on Markets," 60th Antitrust Spring Meeting, Section of Antitrust Law, American Bar Association, 2012 ☐
- Author, "Should Responding to Healthcare Reform be a Defense in Hospital and Physician Mergers," 60th Antitrust Spring Meeting, Section of Antitrust Law, American Bar Association, 2012
- Presenter, "Minimizing the Risks of Consolidation, Realignment, Specialized Clauses, and Other Business Maneuvers That Can Violate Antitrust Laws," Second Annual Conference on Managed Care Litigation, American Conference Institute, 2012 ☐
- Author, "Recent Enforcement Actions: Physician Group Mergers," *Health Law Alert*, Ober|Kaler, 2012 ☐
- Author, "Overview: Provider Mergers in Response to Health Care Reform and Changing Market Dynamics," *Health Law Alert*, Ober|Kaler, 2012 ☐
- Author, "Timing and Hold Separate Agreements in Mergers: When to Fold, Hold or Call," *Health Law Alert*, Ober|Kaler, 2012
- Presenter, "Antitrust Risk Rising: Challenges Faced by Health Plans in the Post-Reform Environment," Willis Health Care Practice MCO Roundtable, 2011 ☐
- Co-presenter, "Beyond the Cover Story: A Focused Overview of the Key Provisions of the ACO Regulations," Webinar, Ober|Kaler, 2011 ☐
- Co-author with John J. Miles, "Antitrust Ramifications for ACOs: Clinical Integration, Safety Zone, and Expedited Reviews," Client Alert, Ober|Kaler, 2011
- Author and presenter, "Antitrust Developments, Agency Enforcement and Health

Care Reform," Health Law National CLE Conference, 2011

- Author and presenter, "Exclusionary Practices in Healthcare: Foreclosure or Competition-Enhancing?" *Antitrust in Healthcare*, American Health Lawyers Association and American Bar Association, Antitrust and Health Law Sections, 2010
- Moderator, "Why Don't Health Insurance Markets Work Like Other Markets? Or Do They?" Antitrust and Payers, Plans, and Managed Care Practice Groups & Healthcare Reform Educational Task Force, American Health Lawyers Association, 2010
- Author and presenter, "Antitrust Developments and Enforcement Activities of the Obama Administration," Health Law National CLE Conference, 2010
- Presenter, "Healthcare Antitrust," National Society of Certified Healthcare Business Consultants, Mid-Winter Meeting, 2009
- Moderator, "What to Do When the Antitrust Enforcers Come Calling," Antitrust and In-House Counsel Practice Groups, American Health Lawyers Association, 2009
- Author and presenter, "Antitrust Implications of Competition Between Physician-Owned Facilities and General Hospitals: Competition or Exclusion," American Bar Association, Health Law Section, *Washington Healthcare Summit*, 2007; republished in *The Health Lawyer*, 2008; republished in *Antitrust Health Care Chronicle*, American Bar Association, Antitrust Section, 2008; republished in *Health Law Alert*, 2009
- Contributor, "7 Physician Fee Myths," *DecisionHealth White Paper*, 2008
- Author and presenter, "General Hospitals' Response to Physician-Owned Specialty Facilities: Competition or Exclusion," American Health Lawyers Association and American Bar Association, Antitrust Section, *Antitrust in Healthcare*, 2007
- Presenter, "Antitrust Trends, Threats, and Risk," HRH Managed Care Organization Roundtable, 2006
- Co-author with Christi J. Braun and James B. Wieland, "Two Recent Decisions Regarding Antitrust and IPA Contracting: Further Guidance for Radiology Practices or Further Questions?" *RBMA Bulletin*, 2006; republished in *Health Law Alert*, 2006
- Co-author with Christi J. Braun, "Efficiencies and Justifications for Physician Network Joint Contracting: The FTC's *North Texas Specialty Physicians* Opinion and *Advocate Healthcare* Arbitration Decision," *Health Lawyers News*, American Health Lawyers Association, 2006; republished in *Health Law Alert*, 2006
- Co-author with Christi J. Braun, "Comparing and Contrasting the FTC's *North Texas Specialty Physicians* Opinion with the *Advocate Healthcare* Arbitration Decision," *Antitrust Health Care Chronicle*, American Bar Association, Antitrust Section, Health Care Committee, 2006
- Author and presenter, "Full System Forcing: Business As Usual or Antitrust Time Bomb?" American Health Lawyers Association, Hospitals and Health Systems Institute; republished in American Bar Association, Antitrust Section, Healthcare Industry Committee, *Antitrust Healthcare Chronicle*, 2005; republished in *Health Law Alert*, 2006
- Author, "'Improving Health Care: A Dose of Competition' The July 2004 Joint DOJ/FTC Antitrust in Healthcare Report's Practical Implications for Hospitals and Physicians," *Health Lawyers News* (American Health Lawyers Association); republished in *Health Lawyers Weekly* (American Health Lawyers Association); and *Health Law Alert*, 2005
- Co-author with James B. Wieland, "The Federal Antitrust Enforcers' Latest Report: Implications for Radiology Practices," *RBMA Bulletin*, 2005
- Presenter, "Antitrust Laws: Tightening the Noose on Physicians and Hospitals," 26th Annual Health Law Forum, East Carolina University, Brody School of Medicine, 2004

- Presenter, "Antitrust and Anesthesiology Practices," Anesthesia Billing and Management Seminar, University of Chicago, 2004
- Author, "Member Surveys – Beware of Antitrust Pitfalls," *Nonprofits Legal Update*, 2004
- Co-author with James B. Wieland, "How Can They Do That? Hospitals' Exclusion of Physicians Who Affiliate With Competitors," *RBMA Bulletin*, 2004
- Author and presenter, "Antitrust Issues Affecting Physicians Today," American Health Lawyers Association, Physicians and Physicians Organizations Institute, 2004; republished in *Health Lawyers Weekly*, 2004
- Co-author with James B. Wieland, "Sharing Health Plan Reimbursement Information: Have the Standards Changed," *RBMA Bulletin*, 2004
- Moderator, "Physician Information Sharing," Joint FTC/DOJ Hearings on Health Care and Competition Law and Policy, 2003
- Moderator, "Health Insurance/Providers - Countervailing Market Power," Joint FTC/DOJ Hearings on Health Care and Competition Law and Policy, 2003
- Moderator, "Health Insurance Monopoly Issues - Market Definition," Joint FTC/DOJ Hearings on Health Care and Competition Law and Policy, 2003
- Moderator, "Single Specialty Hospitals," Joint FTC/DOJ Hearings on Health Care and Competition Law and Policy, 2003