

Higher Education and Academic Medical Centers

Pillsbury serves a wide variety of public and private educational institutions by understanding and meeting their complex legal needs. Those needs can range from tenure disputes to the licensing of intellectual property to the myriad responsibilities associated with running the equivalent of a small city—from hospital regulatory requirements and construction and land use issues to payroll taxes and legislative activities.

Pillsbury's Education team has a particular focus on post-secondary education, representing public and private colleges and universities and academic medical centers. Our team is composed of attorneys from a broad array of practice disciplines who advise our clients in all aspects of their academic affairs, including litigation, employment and tenure, privacy and data protection, hospital regulatory compliance, insurance recovery and coverage, construction and land use, public private partnerships, tax and corporate transactions, and the licensing, acquisition, transfer and defense of intellectual property assets. We also have advised professional associations, counseled on the ownership and regulation of noncommercial broadcast operations, and served as advocates in matters involving exchange students and related visa issues.

Our team helps clients navigate challenges by staying ahead of the trends in academia and looking for innovative solutions to complex problems. By keeping an eye on education on our own time and by using an interdisciplinary team model, we deliver high quality, cost-effective service.

Academic Medical Centers

We have deep experience counseling academic medical centers, which occupy a complex intersection of education, patient care and innovative medical research. Our lawyers regularly advise academic medical centers on novel legal and financial issues that can run the gamut from whistleblower allegations involving kickbacks to the increasing risks surrounding “big data”, cloud computing and HIPAA.

Our attorneys have managed a variety of matters for academic medical centers, including:

- Advising on medical staff appointment, peer review and termination issues
- Structuring relationships among hospitals, faculty practices and medical schools
- Advising on medical research (including conflicts of interest and protecting confidentiality), privacy and technology transfer
- Representing hospitals in mergers, acquisitions and joint ventures

- Assisting in structuring and implementing clinically integrated networks
- Providing representation in connection with physician practice acquisitions
- Advising on federal HIPAA compliance and state privacy requirements and managing investigations and lawsuits related to privacy breaches
- Counseling on Medicare and Medicaid reimbursement, Emergency Medical Treatment and Active Labor Act (“patient dumping”), provider-based compliance and insurance issues
- Providing advice and representation in dealing with federal and state agencies in fraud and abuse, false claims, and related compliance matters including Anti-Kickback Act and Stark Law regulations
- Supporting managed care contracting, ACO and provider networking initiatives
- Negotiating Affiliation Agreements between academic medical centers, hospitals and health care districts
- Assisting in matters relating to relations with Congress and government agencies, including assistance in obtaining and administering grants, health care reform and the Affordable Care Act

Antitrust

Universities and colleges are increasingly under antitrust scrutiny by the government and civil plaintiffs, which seek to apply the antitrust laws despite schools’ non-profit status or philanthropic purposes. Admissions matters, hiring decisions, intellectual property licensing, hospital consolidations and athletic activities have all been challenged just as they would be if engaged in by private corporations. Pillsbury regularly provides clients with antitrust advice on the wide range of issues universities face, represents clients before federal and state antitrust enforcement agencies, and defends them in courts throughout the country.

Appellate Proceedings

Pillsbury’s appellate team has briefed and argued hundreds of cases in state and federal courts across the country, including precedent-setting cases with a major impact on our clients’ enterprises. Pillsbury has successfully represented universities on appeal in cases spanning a diverse range of subject matter, including student discipline, employment and qui tam actions.

We often file amicus briefs presenting the views of our clients on critical issues, including issues of importance to educational institutions. In a recent case directing the dismissal of claims against a health care provider alleging negligent maintenance of medical information, the California Court of Appeal’s published opinion specifically noted several amicus briefs, including a brief filed by Pillsbury on behalf of university hospital clients.

Communication

With one of the most prominent communications practices in the United States, Pillsbury advises numerous noncommercial radio and television stations on music licensing and on the application of a variety of Federal Communications Commission regulations and policies, such as underwriting, sponsorship, Equal Employment Opportunity concerns and ownership changes. In addition, with many educational institutions now delivering radio-style programming and other services over the Internet.

Construction Counseling & Dispute Resolution

Developers, engineers, contractors and owners rely on Pillsbury’s construction lawyers for their unrivaled experience helping clients avoid litigation—through drafting and negotiating contracts that anticipate friction points and through troubled project counseling that resolves disputes before they cause delays. Our reputation for putting troubled projects back on track led Chambers USA to call the team’s lawyers “preeminent” in the field. When litigation cannot be avoided, our team has won some of the most complex construction cases to appear in state and federal courts, as well as in administrative and arbitral bodies around the world.

Our construction team has represented contractors and owners in the planning and construction of campus housing, academic buildings and health care facilities. Our lawyers have also represented a university in connection with multiple disputes and litigation arising from the design and construction of a \$2 billion hospital project.

Employment & Tenure

Diverse and highly experienced, Pillsbury’s employment team assists colleges and universities with a full range of legal solutions to issues affecting the campus workplace. Our employment litigation attorneys provide representation from the early stages of administrative investigations through jury trial and appeals. In both state and federal

courts, we have defended colleges and universities in complex wage and hour actions, as well as in discrimination, retaliation, wrongful discharge, Family and Medical Leave Act, and sexual harassment claims. We have handled all stages of OFCCP audits and complaint investigations. We regularly counsel administrators on complex tenure proceedings, employment disputes, reductions in force, personnel policies, employment agreements, and affirmative action programs involving both academic and non-academic personnel.

Export & Technology Transfer Controls

Our international trade practice is nationally ranked by *Chambers USA* as one of the leading practices in the United States in the areas of export controls, foreign investment and international disputes. We combine a sophisticated knowledge of domestic and extraterritorial trade measures with an understanding of the political, policy and diplomatic context in which these measures are implemented. Our international trade practice includes counseling, regulatory compliance and enforcement, transactions, litigation and arbitration. We have advised several universities on export control compliance. Our experience also includes advising companies on export control issues arising out of hiring university professors as consultants.

Global Sourcing

Many businesses that colleges and universities retain to upgrade their information technology systems are global organizations, which imposes a number of challenging contractual and regulatory demands. Pillsbury assists clients worldwide with the planning, execution and management of these complex sourcing arrangements. We deliver these services using integrated teams of lawyers and consultants, who cover the full lifecycle of sourcing activities with the necessary business, technical, financial and legal skills. We provide counsel in licensing and implementation, have negotiated aggressive financial holdback provisions should the vendor fail to remain on schedule, and have helped negotiate strong extended-warranty rights.

Government Contracts & Disputes

Pillsbury's award-winning government contracts and disputes team adroitly handles all issues and challenges that arise in the life cycle of a government contract. Our team includes highly experienced lawyers in California, Texas and the Washington, DC area. Our practitioners have worked in-house at government contractors, served as prosecutors and Department of Defense and civilian

agency officials as well as General Counsel at two university systems in Texas. We have advised colleges and universities at every stage of the government contracting process, from solicitation through to the final audit. We file and defend bid protests, resolve disputes, negotiate government contractor transactions, evaluate government contract opportunities, provide regulatory and strategic counsel, litigate claims, defend actions under the False Claims Act, conduct internal investigations, and consult on emerging regulations and compliance strategies.

Insolvency/Bankruptcy

Pillsbury has experience advising educational institutions with respect to insolvency and bankruptcy matters. We have provided advice to schools whose students, families, tenants or vendors have encountered financial difficulties. We have advised on efforts by various university hospitals to acquire and operate other hospitals that are in Chapter 11. In addition, we have provided restructuring advice to schools suffering from financial difficulties.

Insurance Recovery & Advisory

Pillsbury's market-leading insurance recovery and advisory practice is focused exclusively on representing insurance policyholders against insurance companies. From major disasters like Superstorm Sandy, where we represent a university and medical center in litigation against their insurers for over \$2 billion in losses, to complex D&O liability disputes, to devastating cyber-attacks like the Sony Pictures Entertainment hack, the group has represented institutions in a wide array of industries on virtually every kind of coverage issue.

This dedicated team of more than 50 lawyers in New York, Washington D.C., Houston, Los Angeles and San Francisco has recovered more than \$1 billion in insurance proceeds for clients every year since 2013. It is consistently lauded by *Chambers USA*, *Legal 500* and *Best Lawyers in America* and was recognized by *Law360* as Insurance Practice Group of the Year in 2015 and 2016.

Land Use

Pillsbury's land use team is experienced in all aspects of zoning and subdivision; site plan approval; historic preservation and tax incentives; transferable development rights; environmental approvals and "takings" law; building permits and code interpretation; certificates of occupancy; government affairs and legislative services; litigation and related development approval processes.

Through a results-oriented team approach, we work closely with our clients as they expand facilities and develop new programs. We analyze a property's entitlements and development requirements, prepare all necessary applications, and present these applications in meetings and public hearings. We also work with local government officials to develop long-term plans that recognize the value educational institutions provide to their communities. Our clients benefit from our extensive government and civic contacts, our experience in creating and helping to implement a wide variety of land use regulatory plans, and our leadership roles in creating public-private transactions.

Licensing & Technology Transfer

Pillsbury's lawyers help our university clients protect their intellectual property and create successful global licensing programs. We develop licensing programs that provide copyright, trademark and patent owners a maximum return on their intellectual property and minimize the financial risks associated with research and development and associations with commercial collaborators and partners. Technology transfer and distribution involves the exploitation of technology to maximize funding revenues by identifying and implementing the most strategic distribution structures, including licensing and sublicensing, electronic publishing, OEM/remarketing, value-added reseller (VAR), strategic alliance or joint venture. We help our higher education clients choose the best options, and in implementing them we work to protect our clients' intellectual property rights and ensure compliance with technology export controls and other regulatory requirements.

Pillsbury has extensive experience addressing the intellectual property issues that can develop in a variety of transactions. We assist clients with portfolio management, licensing, outsourcing agreements, due diligence investigations, patent procurement and opinion work. We oversee compliance obligations under licenses, prepare due diligence materials, and write and prosecute patent applications. Pillsbury lawyers assist universities in developing policies and procedures related to their intellectual property, as well as guidance in implementing established policies. We help to provide the university with strategic focus for intellectual property portfolios, mindful of university policies and obligations.

Litigation

Drawing on a practice that includes over 200 litigators on both coasts as well as in Texas, Florida and abroad, Pillsbury litigators have handled everything from lawsuits about student disciplinary actions, employment and tenure decisions, and vendor disputes to constitutional challenges involving free speech, religious freedom and a minimum standard of public education. The firm's litigators appear in federal and state courts at every level from trial to appellate, and before a wide variety of administrative agencies and alternative dispute resolution organizations. We have worked on many of the most significant regulatory issues that colleges and universities face today and have successfully challenged regulations on both constitutional and state law grounds. We have defended universities in government investigations in a variety of areas, including Title IX, privacy protection and tenure practices. We fully understand the special sensitivities required when representing universities and colleges in such matters. We also have handled litigation on behalf of teaching hospitals affiliated with universities and understand as well the unique issues raised by the intersection of health care and education.

We recognize our clients' challenges and priorities and can respond quickly when they become involved in litigation, developing an effective strategy and team in consultation with them. We have on numerous occasions worked with lawyers from the schools as active members of the litigation team. Our goal is to have an efficient litigation team whose qualifications and experience meet the specific needs of the case. We well understand that cost control is a major element of all litigation matters, whether large or small, and we deliver this through effective communication, alternative fee arrangements, budgets and practice resources.

Nonprofit Organizations

Pillsbury's nonprofit organizations practice provides counseling and advocacy in areas of governance, tax exemption, transactions, real estate and human resources to over 100 national nonprofits. Pillsbury's professionals are skilled at all stages of an exempt organization's life, including formation, obtaining and maintaining exempt status, ongoing compliance reporting and significant events such as reorganizations, audits or dissolutions. Matters of governance that have been addressed include public charity status, application of unrelated business income tax on certain operations, rules regarding self-dealing transactions, and administration of and reporting on endowments.

“Pillsbury is a great partner for our university. The attorneys there are not just highly skilled and practical; they also understand the unique challenges of higher education and therefore are better able to help us achieve our goals. They have produced excellent results for us both in litigation and in counseling on complex issues and transactions.”

Debra Zumwalt
Vice President and General Counsel
Stanford University

Online Education

Many educational institutions are utilizing online education to set up virtual classrooms and campuses, various training simulations and virtual field trips, enhancing the educational experience and bringing opportunities to a wider student audience. The explosive growth in the number and use of virtual worlds in education has created a more urgent need to understand and address the legal issues associated with the growing industry. Online courses continue to attract interest from both the public and private sector, yet what has been heralded as the next great technological advance in education is still exhibiting growing pains. Pillsbury has a multidisciplinary team of attorneys who are at the forefront of these issues and, coupled with the firm’s institutional knowledge and experience in the education industry, can assist educational institutions in navigating various intellectual property, privacy and data protection, litigation, tax and state and federal regulations.

Patent Prosecution & Litigation

Universities play a critical role in the innovation process and have a strong interest in understanding how our

patent system protects the results of their research and development. The landmark 1980 Bayh-Dole Act, which authorized universities to retain patent and licensing rights to inventions resulting from federally funded research, spurred universities to strengthen the protection of their intellectual property in a way that is equitable to all parties involved.

Our work in this area includes a case involving Velcade®, a proteasome inhibitor drug used in cancer treatments. Since 2002, at least 160,000 patients have been treated with Velcade, which reportedly now generates \$2 billion in annual sales. Two University of Kansas researchers working under contract with the National Institutes of Health (NIH) developed aspects of the critical drug delivery formulation, but were denied inventorship credit on NIH patents—until Pillsbury litigators stepped in. Pillsbury filed suit against the NIH, a litigation challenge that expanded when two drug companies that had licensed Velcade intervened on behalf of the NIH. The parties submitted the case to binding arbitration and a three-arbitrator panel ultimately ruled that both researchers deserved to be added as co-inventors on Velcade formulation patents.

Planned Giving & Governance

Pillsbury provides guidance regarding a variety of development concerns, including grant applications and reports, fundraising campaigns and financial disclosure and accountability. Our work often supports an organization’s development or planned giving office in assisting major donors, offering resources and technical advice that enhance the benefits of contributions for the donor. With Pillsbury’s assistance in the early stages of a planned major gift, complex issues such as waiver of spousal interest, income and transfer tax deductibility of donated property, and enforceability of a pledge under relevant state law can be handled with skill.

Planned giving matters addressed by Pillsbury include everything from simple bequests to gifts of real property, marketable securities, insurance and retirement plan assets, and a host of structured gifts, including charitable lead and remainder trusts, donor-advised funds, pooled income funds, gift annuities and grants from private foundations. Pillsbury represents colleges and universities on issues including donor restrictions and contested gifts, including in litigation.

Privacy & Data Protection

Recognized by Chambers as one of the world's foremost privacy and information law practices, Pillsbury's privacy lawyers work with our education clients to address privacy requirements in a way that balances compliance with the flexibility to accomplish their institutional mission. As new technological capabilities continue to emerge, collisions between technology and privacy have become commonplace. In response to this phenomenon, our clients rely on Pillsbury to develop, augment and update data protection and security policies and procedures in response to the exponential growth of data from both digital and analog sources. We advise colleges and universities on compliance with the Family Educational Rights and Privacy Act (FERPA). We also counsel medical centers on HIPAA, HiTech and state law privacy requirements and assist in responding to breaches involving protected health information. Compliance with these laws has become even more challenging with the advent of "big data" and cloud computing.

Pillsbury also works with clients on privacy issues related to data security breach preparedness and response, and provides legal advice associated with information disclosure and discovery orders in litigation proceedings and government regulatory investigations. We have helped clients investigate, assess and address security breaches in which information on millions of individuals was at risk. We also have handled penalty actions pursued by government agencies.

Public Policy & Political Law

Our public policy attorneys and professionals practice before the executive and legislative branches of the federal, state and local governments. They are well versed in the substance of laws and the process by which the regulations affecting our clients' businesses are initiated, defeated or passed, and then implemented. Our team has deep professional experience working in and around government at the highest levels and includes former members and staff of the U.S. Congress, the White House, and executive branch departments and agencies. They have substantial experience in the field of education.

Public-Private Partnerships

Pillsbury has been a leader for more than 25 years in helping the public and private sectors collaborate on infrastructure and other projects. Our extensive experience with public-private ventures (PPVs), as they are generally known in the federal arena, and public-private partnerships (PPPs or P3s) covers many types of projects. An example of our work in this area involves the University of Kansas. Pillsbury worked with the university on the Central District Development project, which involved the development and long-term operation of various improvements including academic facilities, student housing, utilities and parking.

Real Estate

Pillsbury's real estate lawyers advise universities and academic medical centers on a variety of transactions and development projects including campus master planning, building and property rights, development of research centers as well as faculty and student housing. Experienced in all aspects of real estate law, our team takes a 360-degree view of every deal, evaluating how it should be structured, financed, developed, operated and divested. Equipped with decades of experience and an established reputation for delivering creative and effective solutions, we work with clients to anticipate issues, overcome hurdles, and minimize costs and risks to close deals efficiently.

Our work in this area includes institutions in California, New York and Texas. As an example, we represent a preeminent New York-based university and its affiliated academic medical center in real estate transactions, including the acquisition, development or master lease of dormitories, office facilities, ambulatory care centers, physician offices and other facilities essential for their academic mission, and the lease of office premises for those purposes. In one instance we represented a client in the development of a biotechnology center and in the reorganization of a medical center into a commercial medical condominium. We also represent and counsel clients when applying for government grants and special designations. Working with our not-for-profit law and tax law experts, we counsel these clients in structuring transactions to comply with legal requirements and effect tax efficient structures.

Tax

Pillsbury regularly advises educational institutions on federal, state and local tax laws that apply to their operations and investments. In the federal area, Pillsbury helps nonprofit institutions structure their operations to maintain tax-exempt status while maximizing resources. We also provide tax planning advice for a broad array of investment activities. We advise clients on issues such as unrelated business income; charitable giving; employment taxes; employee compensation and benefits; political campaign prohibitions; legislative activities; tax audits and controversies; foreign and cross-border operations. Pillsbury also helps nonprofit educational institutions qualify for exemptions from state and local sales taxes, property taxes, and excise taxes, as well as minimize the state and local tax burden on any non-exempt activities. This work includes audits, controversy and litigation work, and legislative activities.

Title IX

Government agencies and the media are focusing more on Title IX and sexual misconduct issues on campuses. It is imperative that university leaders have experienced counsel who can assist them respond to such allegations appropriately. Pillsbury has handled several investigations initiated by the Office for Civil Rights (OCR) and has conducted internal investigations involving high profile matters, including allegations of sexual assault or harassment and other types of misconduct. These investigations call for independent counsel who can get to the bottom of the facts and present credible findings to the university and government authorities. Pillsbury has that experience. Pillsbury has also handled student lawsuits related to the institutions' handling of allegations of sexual misconduct.

About Pillsbury

Pillsbury Winthrop Shaw Pittman LLP is an international law firm with offices around the world, and a particular focus on the technology, energy & natural resources, financial services, real estate & construction, and travel & hospitality sectors. Recognized by legal research firm BTI as one of the top 20 firms for client service, Pillsbury and its lawyers are highly regarded for their forward-thinking approach, their enthusiasm for collaborating across disciplines and their unsurpassed commercial awareness.

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