MedCity News

Newly United Arnold & Porter Kaye Scholer Surveys Changed Life Sciences Deal Environment

By Jon Shazar - Dealbreaker

Last year proved a slow one for dealmaking in the life sciences space. But that didn't stop two of the major legal players in it from consummating one themselves: In November, Arnold & Porter and Kaye Scholer agreed to merge, bringing together two formidable healthcare practices.

The firms formally joined forces at the beginning of the year. The combined Arnold & Porter Kaye Scholer was named one of the top deal firms in the latest update to the Life Sciences Law Firm Index by Lake Whillans, Above the Law and MedCity News.

The merger comes at a crucial time. The uncertainty surrounding last year's presidential election — which came just two days before the firms announced the combination — has been replaced by the uncertainty surrounding the new administration.

Daniel Kracov and Allison Shuren, the co-chairs of A&PKS' life sciences and healthcare regulation practice in Washington, D.C., and Aaron Gardner, a life sciences transactional partner based in New York, offer their takes on the developing dealmaking environment in the early days of the Trump administration.

Daniel Kracov

Allison Shuren

Aaron Gardner

What makes merged Arnold & Porter Kaye Scholer life sciences practice unique?

Daniel Kracov: Certainly post-combination, we have one of the largest practices in the world in life sciences, whether it is regulatory, transactions, product liability litigation, government investigations, IP, etc. Virtually every practice in the firm is deep into this area. In fact, it was one of the drivers of the combination of the two firms. We work in an integrated way, both here and in Europe, to service life sciences clients. It's very much a coordinated and integrated practice, which is very different from the way other firms approach this area.

Aaron Gardner: The transactional practice, and particularly the mergers and acquisitions practice, is an area where the integrated approach is really evident. Life sciences is a pillar of the firm and lawyers in virtually every discipline at A&PKS are working with life sciences clients every day. Our transactions involve legal issues in a wide range of areas and our colleagues throughout the life sciences practice have a deep well of experience both inside and outside of the transactional context that allows them to provide advice that is practical and business-oriented.

Last year was a quiet one for life sciences dealmaking, with M&A activity relatively flat and IPO activity dropping dramatically. What was behind that slowdown, and what is the outlook going forward?

Gardner: The overall buzzword for 2016 was "uncertainty." Campaign rhetoric regarding drug pricing, tax inversions and drug manufacturing, taken together with pricing pressure being applied by payers, really drove down valuations for life sciences companies. There was also a trend toward increased scrutiny of the industry by competition authorities. This all had a dampening effect on transactional activity.

Allison Shuren: On the flip side, the changes in the healthcare delivery system toward value-based purchasing and the shifting of more risk to providers for the quality and effectiveness of care is leading to consolidation in the marketplace, which is ultimately going to impact life sciences companies, because their customer base is changing.

This is particularly true among small providers, trying to scale up for a larger foundation to position themselves to take on greater risk contracting. They also are looking for access to capital to bring in new technology. We have been doing a consistent amount of deal work with private equity, investing in ophthalmology, dermatology and other entrepreneurial medical specialties.

What will be the impact of the Trump administration on the life sciences industry?

Kracov: It is extremely difficult to know. We have a secretary of Health and Human Services just getting behind his desk; the Food and Drug Administration commissioner nominee is an open question. We're probably going to see much more modest changes than some of the proposals that have been thrown around, but it is clear there will be focus on expediting FDA's drug and devices review processes. One of the big signals will be what happens with the user-fee agreements that need to be reauthorized within the next six months for the FDA review process.

However, there is also a lot of populist rhetoric around drug pricing that will be difficult to managed in a way that keeps us with the status quo. It's going to be a rough road over the next couple of years, and the industry is going to make a concerted effort to communicate the value of new treatments.

Shuren: Trumpcare likely will drive more beneficiaries and enrollees in government-funded health care programs into commercial insurer run federal plans. This will add to the drive toward consolidation across providers. I would expect that if the federal share of the Medicaid program becomes a block grant, as the President has proposed, the vast majority of Medicaid enrollees will be in some form of managed, commercial plan, with a much narrower benefit base. There also has been a steady increase of the numbers of Medicare beneficiaries in the Medicare Advantage program plans. Both of these shifts will put pressure on new technology and new products, in terms of the speed at which these commercial plans make these products available to their enrollees. I don't think we're going to have a clear picture of the impact for some time. Finally, repeal and replace of Obamacare is not going to happen; it's clear that it's going to be repeal and fix. But even implementing "fixes" is going to a complex arduous task.

If uncertainty was such a drag on transactional activity in 2016, will the same be true of the new uncertainty under Trump?

Gardner: There is lingering uncertainty. One-party control isn't necessarily definitive here, because some of the populist rhetoric we heard from Trump during the campaign isn't in line with Republican orthodoxy. Now that the election has concluded, there is perhaps less uncertainty dragging down M&A activity than before, and as appointments are completed and legislative priorities become clearer, some of that uncertainty may begin to dissipate.

If you look at some of the things pharmaceutical executives have been saying in earnings calls, there's still a desire for M&A in the life sciences industry. Companies will continue to look to bolt-on acquisitions to replenish research and development pipelines and to drive growth. Because of pricing pressures and intensifying competition, we'll are likely to continue to see the trend of consolidation in the generics industry. There have also been signals that some of the bigger pharmaceutical companies will continue to sell off mature brands and engage in divestment transactions to raise capital and to focus on core business lines.

Kracov: One of the big drivers is going to be tax policy, in particular the ability of companies to bring offshore money into the U.S. without catastrophic tax consequences. If that happens, there's going to be an enormous amount of money looking for deals.