



Linda Clark

Partner

Albany

P: 518.429.4241

lclark@barclaydamon.com

Education

- Albany Law School, *Cum Laude*, JD
- Siena College, *Magna Cum Laude*, BA

Practices & Industries

- Cannabis
- Commercial Litigation
- Health Care
- Health Care Controversies
- Mass & Toxic Torts
- White Collar & Government Investigations

Admitted to Practice

- New York
- Massachusetts

Court Admissions

- US District Court for the District of Massachusetts
- US District Court for the Northern District of New York
- US District Court for the Southern District of New York
- US District Court for the Western District of New York
- US Supreme Court

Biography

Linda is co-leader of Barclay Damon's Health Care Controversies Team. A nationally recognized litigator and health care lawyer with over 30 years of experience, she serves as lead counsel as well as national, regional, and local counsel in regulatory and compliance matters and the prosecution and defense of claims brought in state and federal courts on behalf of large groups of businesses and institutional clients in various settings and venues.

Linda is a trusted advisor to health care providers, pharmaceutical companies, and pharmacies nationwide in resolving high-stakes disputes and government investigations and regulatory proceedings. She represents health care professionals and entities in all types of civil, criminal, and administrative proceedings, hearings, and appeals before various federal and state regulatory agencies, including the NYS Office of the Medicaid Inspector General (OMIG), the NYS Attorney General's Office (OAG), the NYS Department of Health (DOH), and their federal counterparts, including the Office of Inspector General (OIG) and the United States Department of Justice (DOJ), among others.

In addition to her role at Barclay Damon, for over 20 years, Linda served as court-appointed defense liaison counsel for three jurisdictions in New York State in asbestos litigation, working with hundreds of defense firms and the judiciary in the administration of these cases. She currently serves as a court appointee to several high-profile administrative committees for the New York State and federal court systems. Linda also serves as a judicial hearing officer, hearing cases involving alleged judicial misconduct by the judiciary.

Bar Associations

- New York State Bar Association, Commercial & Federal Litigation Section Executive Committee, Member; Health Law Section Litigation Committee, Chair
- Capital District Women's Bar Association, Former President and Board Member

Selected Memberships & Affiliations

- American Society for Pharmacy Law, Member
- National Association for Specialty Pharmacy Legal Committee, Co-Chair
- New York State Judicial Conduct Commission, Hearing Officer
- New York State Conference of Bar Leaders, Former Chair
- State and Federal Judicial Advisory Council, Advisory Panel Appointee for the State of New York Supreme Court, Appellate Division, Third Judicial Department

Representative Experience

- Served as lead counsel in the representation of a group of pharmaceutical distributors in federal litigation (in district court and on appeal), asserting state and federal claims challenging the validity of exclusionary pharmacy benefit manager (PBM) accreditation schemes.
- Successfully handled the audit and subsequent appeal of a home care provider's \$6 million audit finding, which was overturned on appeal due to the utilization of improper extrapolation methodologies.
- Acted as lead health care litigation partner in the diverse Supreme Court Article 78 actions challenging state policies and actions by the NYS OMIG, NYS DOH, NYS OPWDD, and other agencies against providers, including the imposition of withholds, improper provider termination, and failure to admit qualified providers to the Medicaid program.
- Represented a state pharmacist's society against the NYS DOH in a landmark case challenging mandatory mail-order requirements for Medicaid that resulted in curative legislation restoring and protecting community pharmacies and the rights of their patients.
- Represented a physician in a landmark lawsuit against insurers for failing to protect the physician's confidential credentialing information from fraud and abuse by third parties resulting in improper prosecution of the provider.
- Represented a national chain pharmacy seeking millions of dollars in recoveries and challenging state extrapolation

methodologies in dozens of audits commenced by the NYS OMIG.

- Successfully defended a major Manhattan-based pharmacy from significant PBM termination proceedings.
- Served as hearing counsel to a national pharmacy chain in a series of successful Medicaid audit hearings, challenging the state's extrapolation and findings.
- Represented community and specialty pharmacies, home care agencies, transportation providers, and other health care providers in audits and investigations initiated by payors, PBMs, and the NYS OMIG.
- Successfully recovered millions of dollars on behalf of pharmacy clients and other health care providers in improper recoupments and chargebacks.
- Negotiated settlements of fee dispute and claims reimbursement issues, including generic effective rate (GER), on behalf of pharmacies and other providers.
- Defended a large New York City-based substance abuse provider from criminal and civil charges brought by the NYS OPWDD and NYS OAG (Medicaid Fraud Control Unit) and the US DOJ alleging fraud and kickbacks and seeking damages and receivership.
- Successfully secured a preliminary injunction barring the NYS DOH from implementing dramatic cuts in Medicaid reimbursement for incontinence supplies.
- Served as counsel to a home health care agency and provided representation in multiple audits by OMIG, resulting in significant reductions in overpayment amounts. Also negotiated settlement agreements with OMIG, resulting in agreements for even lower overpayment amounts.
- Successfully represented an OPWDD provider in rate challenge proceedings in NYS Supreme Court, resulting in a favorable decision directing rate change.
- Successfully advocated for a physician's enrollment in Medicaid following a wrongful exclusion, and successfully negotiated the physician's return into numerous health care provider networks.
- Handled a high-profile federal civil rights case alleging the NYS OMIG and the NYS DOH overstepped the state's legitimate auditing authority and took unauthorized and improper actions, including disparaging a client to customers.
- Represented over 150 health care, manufacturing, and other business and institutional clients in mass and class-action litigation arising out of the failure of various self-insured trusts, involving over \$500 million in claims in state, federal, bankruptcy, and Article 78 litigation.
- Successfully obtained injunctive relief during the COVID-19 shutdown on behalf of an OPWDD provider enjoining the determination of DOH and OPWDD not to recalculate the provider's recently issued group day habilitation Medicaid

reimbursement rate. The matter was ultimately remanded for a recalculation of the rate.

- Successfully represented several NYS fiscal intermediaries before OPWDD, resulting in the cessation of withholding 20 percent of non-Medicaid local assistance payments.

Prior Experience

- Hiscock & Barclay, LLP, Partner
- Iseman, Cunningham, Riester & Hyde, LLP, Partner

Selected Honors

- *The Best Lawyers in America*®: Mass Tort Litigation/Class Actions – Defendants, 2013–2024
- Selected to *Super Lawyers* Upstate New York: Business Litigation, 2010–2021; Health Care, 2010–2023
- New York State Bar Association Commercial & Federal Litigation Section, Hon. Shira A Scheindlin Award for Excellence in the Courtroom, 2017
- Selected to *Super Lawyers* Upstate New York: Top 25 Women Lawyers, 2017
- Selected to *Super Lawyers* New York: Top 100 Health Care Lawyers

Selected Speaking Engagements

- Perrin Conferences, “Hot Topics in Pharmacy Benefit Manager Disputes and Litigation” CLE
- Presentation to NYS Office of the Attorney General, “Laws Impacting Fraud and Abuse 101”
- National Community Pharmacists Association, “A Tale of Two Courts: How Opioid Cases, Evolving During the COVID-19 Crisis, May Shape Pharmacist Liability and Best Practices” CPE
- National Association of Specialty Pharmacy Annual Meeting & Expo, “Kickbacks, Inducements, False Claims, and Other Fraud Landmines to Avoid”
- New York State Bar Association Health Law Section Annual Meeting, “Data and Technology Driven Issues in Health Care Litigation”

Selected Media

- *New York Law Journal*, "NY Proposes New Rules to Rein In Pharmacy Benefit Managers"
- *The Pharmacy Insider*, "Pharmacies Beware: PBM 'Concerns' and 'Suspensions' Lead to Network Terminations in Lead Up to SCOTUS Showdown"
- National Community Pharmacists Association's *America's Pharmacist*, "A Tale of Two Courts: How Opioid Cases, Evolving During the COVID-19 Crisis, May Shape Pharmacist Liability and Best Practices"
- *Bloomberg Law*, "NJ Nursing Homes Face COVID-19 Death Claims in State Court"
- *NYSBA Health Law Journal*, "Withhold Now and Ask Questions Later: Withholds and Recoveries of Medicaid Overpayments by OMIG"

Selected Alerts & Blog Posts

- Lab Providers Under Increased Scrutiny From Civil and Criminal Agencies for OTC COVID-19 Test Claims
- The New York FY 2025 Budget – CDPAP FIs Under Threat
- New Regulations Proposed in New York State: DFS Renews Efforts to Enact PBM Reforms to Level the Playing Field for Independent Pharmacies
- The New York Fiscal Year 2025 Executive Budget Takes Aim at Long-Term Care
- New Year, New Initiatives: OMIG Releases Its 2024 Work Plan