

Business Acumen And Regulatory Experience Enrich Healthcare Practice

The Editor interviews Douglas A. Grimm, Partner, Stradley Ronon Stevens & Young, LLP.

Editor: You served as chief operating officer of multiple acute-care hospitals throughout the United States. What prompted you to make the change to work for a law firm?

Grimm: Running hospitals is very challenging and rewarding work and requires balancing the needs and goals of multiple stakeholders, including doctors, nurses, other employees and, most importantly, patients. Usually, I was called to assist ailing hospitals, often working with lawyers, and stayed only long enough to fix the problem before moving on to the next assignment.

After ten years, the geographic instability became onerous, and by then I realized how much I loved the law and decided to change gears. Earning a master's in healthcare administration involved a small component of healthcare law and introduced me to the legal concepts that govern how hospitals, providers and payers work. My decision to enter the law was not so much a choice away from healthcare administration as it was an affirmative decision to practice healthcare law. Now, instead of being a hospital administrator who works with lawyers, I am a lawyer who brings both perspectives to my practice with healthcare organizations.

I've worked with many healthcare lawyers who provided accurate, complete and "overly packaged" legal advice but who had no experience with their clients' culture, market position or financial status; with the condition of the medical staff; or with the institution's reputation in the community. I can offer this additional experience, which may not change the legal advice itself, but can provide valuable insight and a more informed process.

Editor: What do you mean by "overly packaged" advice?

Grimm: One of my major frustrations as an administrator involved getting very long answers to what I intended as "yes-or-no" questions. My view was that I did not need to see the 55-page legal analysis, though I understood the attorney's potential need to create such a document and that I might well ask to see it at some point. When I provide advice to my clients, my first priority is to answer the fundamental questions in a straightforward manner, and if the answer is "maybe," then I address the details to provide comfort that the client's resulting action complies with federal and state law.

Editor: How does your background as a healthcare institution executive influence your practice?

Grimm: Put simply, I can be both a business advisor and a legal advisor. I have walked in their shoes and bring a profound understanding of their issues and concerns to my legal practice. As a general rule, lawyers don't have experience, for example, in dealing with charting the



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strategic direction of a healthcare provider or payor; medical staff politics; understanding how for-profit and not-for-profit institutions cohabit in the healthcare community; or applying an administrator's perspective to negotiations with organized labor.

Lawyers know the law, but as an administrator, I carried a heavy burden in trying to interpret legal advice and ensure it served the organization's needs. So I can take that step for my clients who sit in the CEO's chair – advise them regarding the law and demonstrate to them how they can use in practice what the law demands.

Sometimes I'm delighted to be able to say, "I've faced this problem; here's what I did and here's how it worked out." Lawyers serve in a consultative role and provide legal solutions, but, then it's largely up to the client to manage. My usual process involves circling back – days, months, or even years later – to say, "How is this working for you? Do we need to take a fresh look at it?"

Editor: Why did you decide to join Stradley? Tell us about Stradley's Health Care Practice Group.

Grimm: Joining Stradley is the most positive move I have made in my career. Initially, I wasn't familiar with Stradley's presence in Washington DC, though I was aware of the firm's huge presence in Pennsylvania. My initial meetings with senior partners confirmed that Stradley understood the healthcare culture and had a solid commitment to the DC market.

Stradley functions as a true partnership with excellent support structures. The firm welcomed me to the healthcare practice and recognizes the value of my background, particularly as it expands the regulatory side of the firm's capabilities. My charge is to integrate the practice, which includes 20 attorneys led by our chairman, William R. Sasso, who has very deep contacts in healthcare institutions throughout Pennsylvania, New Jersey and Washington.

We handle mergers and acquisitions for healthcare companies as well as litigation, general corporate matters, bankruptcy, employment matters, ERISA and tax issues. Adding the regulatory piece completes our commitment to representing healthcare clients.

Editor: You remain active as a Fellow of the American College of Healthcare Executives (FACHE), the premier credential in healthcare management. Talk to us a little about that.

Grimm: I am proud of my FACHE credential. Earning it involved successful passage of a knowledge-based examination, demonstration of positive community participation, excellent references from current Fellows, and surviving a rigorous selection process. I am among only a handful of attorneys who share this credential, and I join an even smaller group who work within the law firm structure – the vast majority of Fellows work in-house.

To keep the credential, Fellows must maintain their skills and recertify. The certification exam and references are designed to measure the depth and breadth of our dedication to healthcare administration issues, as a provider or as an advisor, by testing our skills and knowledge base. The recertification process is biennial, so it is never far from my mind.

Editor: Has your assessment of False Claims Act (FCA) liability risk parameters changed?

Grimm: Yes, parameters to consider in a comprehensive assessment of FCA risk have become broader and more complex, encompassing a greater number of business issues than ever before. Further, addressing alleged violations and associated requests for information from the government may not be possible within the required time frame because an institution's internal discovery process simply takes longer. The stakes are very high because once you're in FCA territory, you face the catastrophic prospect of treble damages.

Editor: This broadening of the regulatory scope is a common theme – not only with the PPACA and the FCA – and organizations that have to manage broad-spectrum regulation may be reaching the point of saturation. Do you see that happening in the healthcare area?

Grimm: I do. Take HIPAA as an example: the scope of HIPAA has just been completely expanded. It now requires double the number of full-time positions just to maintain compliance. It's hard not to think of Sisyphus when you're looking at medical device manufacturers, pharmaceutical companies and healthcare providers. There is a siege of regulations, and if they don't pay attention, the rock at the top of the hill will roll back down on them. So I find myself spending more and more time preemptively anticipating my clients' needs and providing conflict-avoidance strategies. While many regulations are appropriate, others suggest a "gotcha" culture and, I believe, serve more as a revenue stream generator for the federal government. I try to protect my clients by discussing any new laws that affect them and developing a plan to deal with regulations proactively.

Editor: What are some of the key compliance issues facing directors and trustees of healthcare companies?

Grimm: The concept of directors' and officers' liability continues to expand alongside the broadening of regulations. Significantly, these new rules and regulations are not easily understood: they are often unclear and/or contradictory. More than ever, directors and officers must now understand the operations of their institutions. Gone are the days when board members could show up once a month for a nice dinner and rubberstamp the hospital administration's agenda. Now more than ever, officers and directors are focused with laser-like intensity on the operations and strategic position of their institutions. True, directors and officers can be insured against monetary liabilities, but they cannot be insured against exclusion from the Medicare program. So, the compliance officer shares the spotlight with officers and directors and must be strong, intelligent, sophisticated and independent.

Also gone are the days when the CFO doubled as the compliance officer (CO). Sophisticated organizations are moving away from that construct, and the CO is functioning as a sort of real-time external auditor – somebody separate who has a charge to report directly to the board. If there is wrongdoing, the CO should focus on how to respond. The response should be quick, it should follow the compliance plan, and, in certain circumstances, it may involve disclosure of behavior or a situation to the government. The next step for the CO is to implement a system to ensure it never happens again.

Life is often not rational, but chaotic occurrences can be put in perspective by placing them within an analytical framework and then dissecting them. The goal is to mitigate the harm, address the wrongdoing, and then update an organization's compliance systems to avoid future problems. When I wear my compliance hat, I use that three-step process to deal with the issues confronting my clients.

Editor: Tell our readers about some of your key initiatives for the coming year.

Grimm: My first initiative is to marshal the firm's forces to provide optimal service to our healthcare clients, ensuring that they understand and leverage the breadth of our capabilities, including regulatory compliance. Stradley has very sophisticated healthcare clients, including Johns Hopkins, Fox Chase Cancer Center and Holy Redeemer Health System – to which I will add my own stable of clients.

I also plan to focus on spreading the news about Stradley's presence in Washington as well as in Philadelphia. We've added prominent attorneys to an already extremely impressive group of talented practitioners and support staff, and I plan to grow the healthcare practice further. The industry is booming, and the best way to meet the needs of our healthcare clients is to provide a total package of services.

Please email the interviewee at dgrimm@stradley.com with questions about this interview.