



# Healthcare **Law** & Compliance Institute

**The Evolving Role of General Counsel: Navigating Transformation, Building Partnerships,  
Engaging Providers & Mitigating Risk**

**March 6<sup>th</sup> – 8<sup>th</sup>, 2016**  
**The Four Seasons Westlake Village, CA**

**Program Agenda**

Sunday, March 6<sup>th</sup>, 2016

11:00 – 1:00 Registration

1:00 – 1:15 Welcome Address and Chairperson's Opening Remarks

1:15 – 2:00 The Integration that Broke Apart: Why and What Came of the Separation



Christine Neuhoff, VP, CLO, St Luke's Health System (ID)

*St Luke's Health System had the unique experience of living through the break-up of a physician integration following an intense antitrust case. Christine Neuhoff will share her experience managing the legal department and ethics for their system during and after the fall out. The discussion will include:*

- Reasons an integration might be unwound
- Role of the legal team in supporting the unwinding process
- Organizational considerations for ongoing relationships

2:00 – 2:45 Leveling the Playing Field: Trends in Healthcare Fraud & Abuse



John Kelly, Member, Bass, Berry & Sims  
Steven Skwara, SVP, Chief Compliance Officer, Omnicare (OH)

*The panel will identify and assess trends in healthcare fraud and abuse enforcement to help providers of healthcare services and products minimize risk and enhance compliance operations. More specifically, this panel will:*

- Discuss recent fraud and abuse trends across the health care industry
- Identify DOJ and OIG priorities including individual liability and the increased use of parallel proceedings
- Analyze recent False Claims Act cases and areas of focus by whistleblowers
- Share best practices for minimizing risk through an effective compliance program

2:45 – 3:30 Cutting Edge Antitrust Issues Raised By New Hospital Relationships



Robert Leibenluft, Partner, Hogan Lovells  
Leigh Oliver, Partner, Hogan Lovells

*Hospitals are engaging in a broad array of relationships with each other, physicians, and payers, as they try to address the demands of the Affordable Care Act and other market dynamics for greater integration and efficiencies. Antitrust enforcers are very interested in how these arrangements impact health care competition. The presentation*

will discuss antitrust issues that are implicated in a range of arrangements, including the following:

- Hospital acquisitions of physician practices and ancillary providers
- Hospital mergers
- Hospital collaborations, affiliations and other arrangements short of a merger
- Relationships with health plans (e.g. narrow networks, exclusives, and MFNs)
- Provider sponsored health plans

The speakers will cover the latest actions from the FTC and other antitrust enforcers, and provide practical advice on how to identify, and address, "high-risk" antitrust scenarios.

**3:30 – 5:30 Business Meetings**

**3:30 – 4:15 Think Tank Session: Mega Impact - Why it's Time to Pay Closer Attention to the 340B Drug Discount Program**



**Lidia Rodriguez, 340B Compliance Officer & SVP, Sentry Data Systems**  
**William Sandler, EVP Sales, Sentry Data Systems**

Over the last few years, as the C-suite has recognized the financial impact of the federal 340B program, there has been more focus on program oversight and self-auditing. It is no longer enough to simply meet program requirements. You need to stay one step ahead of program changes that may result from continuing legislative and legal actions. In this session, you will:

- Receive an overview of 340B basics for the non-pharmacy professional
- Advance your 340B program through auditing best practices
- Analyze recent program developments and what's next for the 340B program

**4:30 – 5:15 Think Tank: Patient Safety Organizations: Compliance Requirements and How to Maximize Confidentiality and Privilege Protections**



**Michael Callahan, Partner, Katten Munchin Rosenman**

The Affordable Care Act requires all hospitals with more than 50 beds to participate in a PSO by January, 2017 as set forth under the Patient Safety and Quality Improvement Act of 2005. Despite the significant legal and other benefits that such participation can provide to all licensed providers, clinically integrated networks and ACOs, many are still sitting on the sidelines due to a lack of case law development and general confusion about compliance requirements. This round table discussion, led by a nationally recognized health care attorney who has been involved in all of the key PSO appellate court cases including *Tibbs v. Bunnell* which is before the U.S. Supreme Court, will cover the following topics:

- Identification of key statutory requirements to achieve compliance
- Review of example patient safety evaluation system policies designed to maximize confidentiality and privilege protections of patient safety activities
- Litigation lessons learned in anticipation of discovery challenges in state and federal courts

- How to respond to a CMS, State Department of Health, and Joint Commission demand for protected patient safety work product
- Practical application of the protections to real world adverse event scenarios

## 5:15 – 6:30 Hospital Prices and Contract Rates: Variability, Risks, and Opportunities



Michael Heil, Principal, HealthWorks

*In 2009, commercial health insurance plans accounted for 31% of hospital admissions. Medicare and Medicaid accounted for nearly all the rest at 58%. In 2012, under non-negotiable federal and state regulatory systems, Medicare and Medicaid paid in the aggregate only 87% of average cost. Because they pay significantly less than cost, these programs make no contribution to the operating surpluses that are vital to the financial health of hospitals. Therefore, hospitals must arrange for rates with commercial health insurance plans that compensate for the shortfalls from Medicare and Medicaid and serve as the sole source of operating margin.*

*How effective are hospitals in making these necessary arrangements with commercial health plans? Can some hospitals do better? If so, how?*

*The objectives of the session are to:*

- Help participants appreciate the extraordinary variability in three economic metrics in contracts between hospitals and commercial health insurance plans: standard charge, in-network payment rate and out-of-network payment rate
- Provide tools to help hospitals discover whether they are being as successful as they want to be and could be
- Share successful strategies to improve performance while addressing the skeptical views of a poorly informed public and media, and addressing important legal considerations

*The material is largely drawn from case studies, with actual (blinded) data and interesting market dynamics from regions across the U.S. Key Points and Takeaways include:*

- Many hospitals do not recognize that their standard charges are sub-competitive
- Some hospitals do not optimize their market strength in negotiating network rates and terms
- Multi-hospital systems sometimes have local variations in the unintended interplay between system-wide contract terms and locally determined charge description masters
- Some hospitals fail to recognize underpayments, particularly in non-contract, emergency and specialized niche services
- Some hospitals can win significant recovery of underpayments with smart adjudication and, sometimes, smart litigation
- It is possible to avoid litigation with a more proactive approach to contract development based on a better appreciation of how health plans work

## 6:30 – 7:15 Leadership Roundtables



**Kori Chambers, AGC, Litigation, Indiana University Health (IN)**  
**Rich Korman, SVP & GC, Avera Health (SD)**  
**Elizabeth Brody Gluck, VP, GC, Vinfen Corporation (MA)**

*These interactive roundtable-style sessions are designed to provide attendees the opportunity to “huddle up” and talk through issues surrounding their top priorities, with an eye to uncovering best practices.*

*Attendees will have had the opportunity to select which roundtable they would like to participate in, ask questions and discuss with their peers their opinions and strategies employed.*

*The topics being discussed and their facilitators are:*

### **1. Deciphering the Evolving Role of the General Counsel**

*The General Counsel role has been evolving at an accelerated pace over the past several years, driven by healthcare reform initiatives which have spawned rapid consolidation, new care models, reduced reimbursement, physician employment and compensation challenges, and privacy concerns brought on by new technologies and population health management initiatives.*

*Many General Counsel find themselves thrust into bigger roles – those of strategic advisor or partner to their senior executive administrators and boards of directors, demanding different skill sets to be successful. This interactive roundtable will discuss:*

- Legal department leadership technique development
- Sharpening General Counsel legal and business advice opportunities
- Strategy session participation and counseling skills

**Facilitator:** Rich Korman, SVP & GC, Avera Health (SD)

### **2. Deal or No Deal: Navigating Contract Provisions**

*Meeting the needs of today’s complex healthcare businesses often requires moving beyond the boilerplate contract provisions to achieve transactional objectives. Drafting, reviewing and negotiating contracts often requires a delicate balancing of risks and benefits for our clients.*

*Learn some tips and traps of contracting from Elizabeth Brody Gluck, a current GC at a large nonprofit human services provider and a veteran of the contract wars for over two decades. This roundtable session will delve into:*

- Indemnification provisions – those hold harmless clauses that are anything but harmless
- Liquidated damages and limitation on liability provisions
- Termination Provisions – including the new and confusing termination –for-convenience clauses
- Choice of Law provisions – a seemingly simple contract clause that can be tremendously troublesome

**Facilitator:** Elizabeth Brody Gluck, VP, GC, Vinfen Corporation (MA)

### **3. Mitigating Incidents & Medical Malpractice Claims through Integrated Management Systems**

*Wouldn't it be nice if there was a crystal ball to tell us which patients will file medical negligence claims against our facilities and our physicians? While some lawsuits may present an understandable dispute warranting the time and expense of the legal process, there are other lawsuits which may have less merit. These cases still require substantial resources and expense from both in-house counsel and outside counsel to defend. This session will explore what, if any, mechanisms can be implemented to minimize the volume of medical negligence suits by resolving potential conflicts before incurring expensive litigation costs. In this roundtable session we will address:*

- How in-house counsel can play an active role in determining potential litigation in real time
- The importance of every team member's role in reducing the likelihood of litigation
- Attributes of a successful daily leadership brief with an eye toward reducing litigation
- Methods for resolving potential claims before lawsuits are filed

**Facilitator:** Kori Chambers, AGC, Litigation, Indiana University Health (IN)

**7:15 – 9:30** Cocktails & Dinner

Monday, March 7<sup>th</sup>, 2016

7:30 – 8:15 Breakfast

8:15 – 9:00 In-House Lawyer Life Hacks: Developing an Innovative Legal Department



**Moderator: Patricia Williams, Former SVP & GC, SSM Health (MO)**  
**Joshua Murphy, CLO, Mayo Clinic (MN)**  
**Christopher Wintrode, AGC, Contracts, Governance & Policy, SSM Health (MO)**

*The legal profession has been notoriously cautious and skeptical of change but, in today's rapidly evolving healthcare landscape, General Counsel have been called to the plate to make the most of resources available while reducing inefficiencies and mitigating risk.*

*Wouldn't it be nice to implement change in your legal department instantaneously? Can you imagine developing an in-house legal department from scratch? Can you foresee engagement and innovation growing from your physician groups and employees? In this interactive panel, leaders will discuss their experience transforming their organization's legal department and share practice pointers.*

*These departments have found innovative ways of dealing with issues such as managing outside counsel, providing business value to the patient, using technology to boost efficiency, handling a public relations crisis, optimizing a budget, and/or training and empowering staff. Join this interactive discussion addressing:*

- Best practices employed by today's leading hospital in-house counsel
- Lessons learned "In the Trenches" and strategies employed
- The SSM "Contracts Division" and "Policy Division"
- A Mayo Clinic Case Study

9:00 – 9:45 The Future of Employment and Labor Law: Critical Developments and Future Challenges



**Sherry Travers, Shareholder, Littler Mendelson**  
**David Goldstein, Co-Chair, Government Contractors Industry Group & Shareholder, Littler Mendelson**  
**Jorge Lopez, Chair, Global Mobility and Immigration Practice Group & Shareholder, Littler Mendelson**

*This session will provide a unique opportunity to understand the latest court cases, legislative and regulatory activity and crucial developments that will affect your workplace and responsibilities in the coming year and beyond.*

*During the past few years, changes in employment and labor law have been remarkable in both scale and scope. From unprecedented efforts by the EEOC, OFCCP and NLRB to expand their jurisdiction and enforcement powers, to the rapid escalation of local efforts to increase the minimum wage and expand employee benefits, the coming year may be one of historic change for the employer community. This session will address some of the most significant threats employers face today – whether workplace privacy, contingent workers, wage and hour class actions filed by aggressive plaintiff's lawyers or overzealous federal agencies seeking to leave their mark on regulations before the next election to state legislators looking to fill the legislative vacuum on Capitol Hill.*

Attendees will learn about:

- Current legal developments and emerging trends facing employers to help you prepare your organization for future legal requirements and challenges
- Strategic best practices for servicing corporate constituents and dealing with government agencies and regulators
- Practical solutions to enhance your organization's essential compliance efforts
- Potential legal and technological changes that may impact workplace realities

## 9:00 – 9:45 The Race to Consolidate: Navigating Strategic Transactions and Risk-Sharing Ventures



**Laura Martin, Partner, Katten Munchin Rosenman**  
**Kenneth Davis, Partner, Katten Munchin Rosenman**

*A variety of factors continue to fuel health care industry consolidation, including new reimbursement methodologies, the increased focus on quality/outcomes, ongoing cost pressures, competitive imperatives and the growing premium on specialty expertise. This session will focus on vertical and horizontal consolidation strategies and risk sharing ventures that can help health care providers accomplish their business objectives, as well as the pitfalls to avoid. In particular, this session will address:*

- Alternative transaction structures for hospital consolidations—when a full merger is not an option
- Service line specific horizontal strategies
- Vertical strategies with physicians, post-acute care providers and ambulatory care companies (including publicly traded and private equity backed companies)
- Network strategies with payors and providers
- Pros, cons, pointers and pitfalls associated with each type of transaction structure

## 9:45 – 10:00 Morning Break

## 10:00 – 12:00 Business Meetings

## 10:00 – 10:45 Think Tank: Aggressive Playing Field: Trends in Healthcare Fraud & Abuse Enforcement



**Brian Bewley, Shareholder, Polsinelli**

*There is no doubt that health care is one of the highest regulated industries by both federal and state governments. Every year the Department of Health and Human Services and Department of Justice hold press conferences announcing record recoveries from the prior year's enforcement efforts. The return on the government's investment is so high, currently 7:1 ratio, that congress has appropriated more money for fighting alleged health care fraud, waste, and abuse. As a result, all providers must be aware of current enforcement priorities so as to avoid becoming part of the government's annual statistics. Specific Topics to be discussed:*

- Current priorities for OIG and DOJ
- Recent trends in settlements
- Current litigated cases to watch



11:00 – 11:45

## Think Tank: What Have You Done for Me Lately? Recent Developments in Law Department Reporting to Management



**Cole Morgan, Director of Client Solutions, Serengeti Law, a Thomson Reuters business**

*Giving management or the board a realistic view into your company's legal landscape is a cumbersome, if not daunting task. Growing trends indicate law departments must now regularly report the value they provide to their companies alongside traditional business units. However, most law departments face significant reporting challenges: collecting data from many business units and outside counsel regarding the company's legal activities and exposure, keeping information current and using this information to generate effective and meaningful reports.*

*This session will discuss:*

- The latest reports law departments are producing to demonstrate how they have been effective stewards of their companies' legal work
- The myriad of metrics legal departments are collecting and consuming
- How recent developments in technology provide general counsel previously unavailable reports and benchmarks to assess their law departments' performance

12:00 – 1:00

Lunch

1:00 – 1:45

## How to Choose Among Strategic Transactions - and What to Bear in Mind



**Cliff Stromberg, Partner, Hogan Lovells**  
**Torrey McClary, Partner, Hogan Lovells**

*Leaders of health systems and healthcare companies today are often bewildered by the pace of market changes and the array of strategic "alliances", "partnerships", and "combinations" that they and their competitors could engage in. They worry about the peril of "being left behind" as the market consolidates—and also about the risks of unwise deals. The barriers are breaking down between providers and payers, for-profit and non-profit systems, and local and national players. The options are a three-dimensional chess game. In this session, Cliff Stromberg and Torrey McClary will provide a guide to first, how to evaluate strategic transaction opportunities rigorously, and second, how to effectively manage a transaction—and avoid the most common pitfalls.*

*This will include practical, experience-based discussion of:*

- How to assess realistically what is possible in your market
- How to get the Board and management on the same page about a transaction
- Creatively envisioning transaction possibilities
- The pros and cons of common deal structures
- What issues should be evaluated with special care at the start because they can "blow up" a deal?
- Common pitfalls—and how you can avoid them!

1:45 – 2:30

## Money and Data in Risk-Bearing Provider Networks: Fraud and Abuse, Privacy, and How to Have Your Cake and Eat it Too



Michael Lampert, Partner, Ropes & Gray  
Ira Parghi, Counsel, Ropes & Gray

*Hospitals, health systems, physician groups, emerging new entrants to the provider space (or newly energized old players), and payors all have a common focus on provider networks. And why not?! At its most promising, a provider network is a way to have one's cake and eat it too. On the provider side, a network provides a path for expansion without acquisition: achieve alignment and integration and critical mass, but avoid tying up capital, changing governance structures, and creating a high-cost balance sheet that cannot be right-sized if fortunes change. On the payor side, a network provides an approach for better alignment of provider and payor interests, and a unique product offering in the market. But affiliation without acquisition and payor-provider alignment present questions, too.*

*At a basic level, there are two key ingredients to making a network work: money and data. While not as capital-intensive as a large-scale acquisition, building a network is not free, and incentivizing the types of efficiency- and quality-focused behavior that a network needs to survive requires a supportive funds flow. And without extensive and sophisticated sharing and use of data, a network is unlikely to achieve what it sets out to do.*

*This presentation will focus on fraud and abuse considerations and data sharing and privacy considerations that organizations using the ingredients of money and data to bake that cake—to have it and eat it too—must bear in mind.*

2:30 – 4:30

## Business Meetings

4:30 – 5:15

## How Strategic Policy Management and Standardizing Compliance Operations Can Deliver Real Results for Your Stakeholders



Jonathan Aquino, Corporate Chief Quality and Vice Compliance Officer, AHMC Health System (CA)

*Hospitals and health systems often struggle with the pace of regulatory activity, understanding best practice and implementing change. They often worry more about the internal operation and ensuring procedures and operations are at a minimum, compliant with accreditation and regulatory requirements. The barriers within a multi-hospital system to building a robust document control and workflow management process are relatable to an individual facility, but there ways to avoid the common pitfalls.*

*This session will provide a strategic discussion on AHMC Healthcare's policy management enterprise-wide deployment process and implementation lessons learned:*

- How to develop a system-wide approach to policy review, approval and on-going review
- Lessons Learned from policy management, document control and meeting accreditation/compliance requirements
- Understanding barriers to change management and establishing measures for sustainable success
- Leveraging strategic policy management to engage top leadership and staff

## 4:30 – 5:15 In-house Perspectives on Top Employment Law Challenges



Currie Higgs, VP, GC, West Tennessee Health Care Foundation (TN)  
Charelyn Revire, Senior Assistant Counsel, West Tennessee Health Care Foundation (TN)

*With traditional workplace and human resource principles evolving rapidly and increased government efforts to regulate the health care sector, questions and concerns regarding employment law has become prevalent in the day-to-day responsibilities of in-house counsel. Focusing on issues that have garnered national attention in the past year, Currie and Charleyn from West Tennessee Healthcare will provide practical and helpful information that in-house counsel can use in their daily work.*

*This interactive session will explore some of the employment law challenges in-house counsel may encounter and offer best practice suggestions to help avoid legal missteps:*

- Performance Reviews: The good, the bad and the ugly
- New DOL classification requirements, including best practices for transitioning and classifying employees under the new guidelines
- Update on current status of this FLSA Lunch Break Cases: lessons learned and best practices for those who use the automatic lunch deduction in their hospital organizations
- Classifying independent contractors and employees, and the implications of DOL's increase in enforcement activity
- Challenges of accommodating healthcare employees under ADA

## 5:15 – 6:00 Fraud & Abuse: What To Do if the Government Comes a Knockin'



Emilie Rayman, VP Legal & Chief Compliance Officer, Community Memorial Health System (CA)  
Scott Richardson, VP AGC, LifePoint (TN)  
Beong Kim, VP & AGC, Kaiser Foundation Health Plan (CA)  
Deborah Hodys, VP, Legal Services & GC, Greenwich Hospital, Deputy GC, Yale New Haven Health System (NY)

*This panel of experts will discuss best practices for responding to a government healthcare fraud investigation. They will expose tangible steps for structuring and implementing an emergency response plan, methods for data preservation and techniques for interface with officials.*

*What can one do when good providers end up with "bad apples"? How can you operate effectively under a siege of regulators and pursue strategies to minimize penalties or altogether avoid being a target?*

- What is the provider responsibility?
- What are the possible provider outcomes?
- How do you protect yourself?
- Case studies and stories

## 6:00 – 6:45 Free Time

## 6:45 – 10:00 Cocktails & Dinner

Tuesday, March 8<sup>th</sup>, 2016

7:30 – 8:15 Breakfast

8:15 – 9:00 Healthcare Law & Compliance Roundtables



Brett Denton, VP & Deputy GC, Carolinas Healthcare (NC)  
Michelle Frazier, SVP, Chief Compliance Officer, Aurora Health Care (WI)  
Rachelle Hart, SVP & GC, Aurora Health Care (WI)  
Nathaniel Weiner, VP & Deputy GC, Acadia Healthcare (TN)

*This interactive roundtable style session is designed to provide attendees the opportunity to talk through issues in the health care space and associated risks and opportunities, with an eye for uncovering best practices. Attendees will have the opportunities to ask questions and discuss with their peers their opinions and strategies employed.*

*Attendees will have had the opportunity to select which roundtable they would like to participate in, ask questions and discuss with their peers their opinions and strategies employed.*

*The topics being discussed and their facilitators are:*

**1. How to Operationalize the Expansion of your System and Provide Legal Services Thereafter**

**Facilitator:** Brett Denton, VP & Deputy GC, Carolinas Healthcare (NC)

**2. Overcoming Legal and Compliance Challenges related to Clinically Integrated Networks**

**Facilitators:** Michelle Frazier, SVP, Chief Compliance Officer, Aurora Health Care (WI) & Rachelle Hart, SVP & GC, Aurora Health Care (WI)

**3. General Counsel as the 'Go-To' Advisor for M&A and Joint Venture Transactions**

**Facilitator:** Nathaniel Weiner, VP & Deputy GC, Acadia Healthcare (TN)

9:00 – 10:00 Business Meetings

10:00 – 10:45 Non-Profit Strategies for Preserving Tax Exempt Status: Public Perception and Legal Challenges In Moving To Shared Risk/Accountability



Doug Hammer, VP & GC, Intermountain Healthcare (UT)

*Intermountain Healthcare has a unique history with respect to tax exemption challenges including two Utah Supreme Court cases, a State constitutional amendment, two years of hearings before the Utah State Tax Commission to develop exemption standards, annual hearings before 13 county boards of equalization including the annual submission of "charity care plans", several extended challenges before the Utah Legislature, and a Federal Tenth Circuit Court of Appeals opinion related to Intermountain's wholly owned nonprofit health plan.*

*Douglas Hammer will review Intermountain's approach as an integrated health system in preserving its exempt status including:*

- The historical significance
- Intermountain's ongoing legal preparation and public response
- Best practices and strategies to preserve tax exempt status
- Preparing for and responding to the movement to shared risk/accountability

**10:45 – 11:45 Maintaining Compliance in a Data Breach: How to Successfully Navigate the Legal Issues of Cyber Security**



**Kristen Ahearn, AGC, Director & Privacy Officer, Memorial Sloan-Kettering Cancer Center (NY)**  
**Patrick Downes, GC, Franciscan Alliance (IN)**  
**Margaret Marchak, SVP, CLO & Corporate Secretary, Hartford HealthCare (CT)**

*In this day and age, data breaches are amongst the most common and costly security failures to hospitals and health systems. Healthcare in particular has become a focus of consumer data breaches in the past few years: the sheer size of the industry makes it vulnerable, and with the addition of HIEs adding seven million people into the healthcare system, and over 1 million outpatients, it is clear this topic should be top of mind for general counsel today.*

*Join this interactive panel as they discuss:*

- Lessons learned and precedents set by major breaches in 2015
- Mitigating a breach: knowing vulnerabilities of your hospital/system, communicating the legal and ethical implications of a breach to all stakeholders and reinforcing your policies and workflows
- In the event of an attack: Best practices in managing the legal aspects, curbing damages, and harm reduction under your legal and system constraints

**11:45 – 12:00 Closing Remarks**

**12:00 – 1:00 Closing Lunch**