



Thanks to the extraordinary commitment and expertise of AHLA leaders, the American Health Lawyers Association continues to thrive and serve as the essential health law resource in the nation. The Association's strong foundation reflects a history that is vibrant, meaningful and worth sharing. Finding a way to preserve AHLA's history was especially relevant in light of the Association's 50th Anniversary, which was celebrated throughout 2017.

This transcript reflects a conversation between AHLA leaders that was conducted via audio interview as part of the Association's History Project. More than 60 of AHLA's Fellows and Past Presidents were interviewed. A video documentary was also prepared and debuted on June 26 during AHLA's 2017 Annual Meeting in San Francisco, CA.

February 24, 2017

Bob Leibenluft interviewing Gary Eiland:

Bob: This is Bob Leibenluft and I'm speaking now with Gary Eiland, who's at King & Spalding, and Gary has some unique perspective on both the early days of health law and as you will hear also from his role as the last president of the Academy of Health Lawyers in 1996-1997 time period. So he was very much involved in the combination between AHA and what was then NHLA.

So Gary, maybe I'd like to start by maybe asking you a bit to give us some background on how you first got into health law and where you first practiced.

Gary: Well thank you very much Bob, I'd be pleased to do that. I attended the University of Texas at Austin, both undergraduate and law school. And while I was in the Business School at the University of Texas took a business law class and tax classes and became very interested in tax laws. So at the University of Texas law school, interested in tax and after my first year, large firms did not accept first year students into their clerkship programs at the time. So since I was from Houston I went back to Houston, interviewed with some mid-level and smaller firms and ended up somewhat gratuitous, working with a tax attorney by the name of Tom Lucksinger, who was with a law firm called Wood, Lucksinger & Holland, at the time, in the Summer of 1974. That law firm would add J.D. Epstein to its roster the following year when he was recruited from Blue Cross Association in Chicago and became the national health law boutique firm Wood Lucksinger and Epstein.

So I began practicing law with a tax attorney who did a lot of tax exempt financing and other works for healthcare industry clients and quickly evolved over to doing more tradition Medicare regulatory work and contract and transaction work, working with both Jack Wood and J.D. Epstein. And over time [inaudible 00:11:07] became, Jack Wood became my mentor.

That firm was an early health law boutique firm. It gained a lot of its national reputation by its involvement with trade associations and also giving presentations across the country. And I began giving presentations very early in my career. It so happened that in 1982 the Healthcare Financing Administration published the provider-based physician Rules at the time that were a hot topic and I became an early expert dealing with the provider-based physician rules and received multiple requests for presentations from both the Academy and from the National Health Lawyers Association, as well as other trade associations that were involved with healthcare industry clients at the time.

American Health Lawyers Association

1620 Eye Street, NW, 6th Floor • Washington, DC 20006-4010
(202) 833-1100 • Fax (202) 833-1105 • www.healthlawyers.org

Jack Wood not only was began a past president ... president of and [inaudible 00:12:16] past president of the Academy, as did J.D. Epstein, but Jack Wood was a close friend of David Greenberg, from the time David worked in developing what was the American Society of Hospital Attorneys that became the American Academy of Healthcare Attorneys. Then David left there and began the development of the National Health Lawyers.

So David asked me to speak and I still have some memorabilias from my presentations, back in 1984,1985 at the National Health Lawyers Association, health law updates. But from that experience the work I did was broad ranging across all aspects of the health law practice. As the Wood, Lucksinger & Epstein firm grew from ... I was actually, when I graduated from law school in '76, the seventh full time attorney ... ended up over 180 attorneys at one time with offices across the country.

I was there counting my clerkship days for 17 years and we moved the Houston and D.C. offices of Wood, Luchsinger, & Epstein to Vinson & Elkins in 1991. Now during that time period I became ... not only gave presentations to the Academy and NHLA ... became active in the Academy leadership roles, going through various committee assignments, ultimately being asked to be on the board. Then moved into the officer queue or rotation toward president.

During both that time and also because Jack Wood and J.D. Epstein had been previously presidents of the Academy, I was very familiar with the relationship between the Academy and the American Hospital Association, of which the Academy was just considered a personal membership group. As a personal membership group it was obviously not the primary area of focus for the American Hospital Association, but just a support organization that they would accommodate as long as it was total self-supporting and spun off of financial resources that the AHA could use in [inaudible 00:14:39] other activities.

Over time, there were some issues with respect to inability to propose new programs and the like because of financial resource limitations. Ultimately, there was the opportunity broached between some of the leader of both the NHLA and the Academy to consider a combination of the organizations. Well, some of those discussions began shortly before my term of office as president of the Academy that began in July 1, 1996. My year was the year in which the merger was fully vetted and ultimately consummated to become effective on July 1, 1997.

[inaudible 00:15:33] might just indicate that at least as the president during that year I viewed it extremely important from the Academy perspective that I maintain a neutral position in order to facilitate all board members to be heard and to become comfortable with the process that we were moving toward. We appointed Glen Reed to take the lead from the Academy standpoint and doing the major negotiations and also drafting documents that were ultimately signed. I believe Eugene Tillman was a president at the NHLA. In regard as the process moved forward it appeared that we would have the makings of a successful combination and successful transaction. And so the serious discussion began, including meetings with the American Hospital Association in order to make sure that we would be able to leave as gracefully as possible.

In the final days of discussions, I guess I might just mention, that it was extremely important for the Academy that some of the culture of the Academy be maintained in the new organization and that includes some of the social activities associated with the annual meeting. Also, we thought it was important that some of our individual practice groups that we called by a god awful acronym called "SISLS," Special Interest in Specialty Law Society, would be maintained.

In the ... interesting a guess, a negotiating strategy that we ended up doing at the 11th hour, is ultimately both parties were interested, obviously, in what the name of the new organization would be. They were interested in who would be the first AHLA president and various other features. The Academy, as a negotiating strategy, deferred on the first president to allow the NHLA president-elect to become the first president, and for who would have been the Academy president-elect to become the first president-elect of the AHLA. And part of the culture at the Academy the president-elect was responsible to head the planning committee for the annual meeting, and Glen Reed was that designated first president-elect and so was extremely instrumental in the planning for the first AHLA annual meeting and was successful in preserving many of the cultural activities of the Academy, including having some social interaction at the annual meeting as opposed to just pure MCLA activities.

But the real goal of the negotiations were to end up with a merger of equals and it's my belief that that did occur and that the AHLA is the beneficiary of that. That included the early days of AHLA having to combine the two leadership groups of the entities and kind of queue toward the becoming president of the new AHLA. That produced a very sizeable queue and possibly, in hindsight, may have created a roadblock for advancement that may have precipitated some of our more junior but important young leaders to go to other health law trade associations at the time.

But nevertheless, the Academy has and the NHLA have prospered by the combination of the two organization into the American Health Lawyers Association.

Bob: So Gary you mentioned a few things, that from the Academy standpoint, were important to it, the social aspects of the annual meeting, the SISLS, maybe issues around the name and succession. What were ... how would you describe the "negotiations". Were these hard-nosed, tough negotiations or were people worried about something going in from ... folks were pretty used to their own association, what they did ... how hard was it to reach whatever gaps there were?

Gary: Well Bob, I would say that the negotiations between the NHLA leadership and the Academy leadership were very amicable and usually very productive and without a lot of significant incidents and controversies. What complicated it was that the Academy had to go through its simultaneous negotiations with the American Hospital Association, on its exit from its role as a American Hospital Association membership group and preserving access to its intellectual property rights and programs, publications and the like and also an effort to preserve some of its financial reserves. Those were probably more contentious than the negotiations with NHLA leadership.

Bob: Uh-huh (affirmative). And just in terms of the chronology, was the impetus to get together, did that come from the Academy side? Do you recall?

Gary: Well, I'm not certain I can define precisely which side may have first fostered it, but at least, as I understand, that Mr. Hall from NHLA and Bob Johnson, who was the Academy president the year before I was, first entertained some discussions about whether the parties would be interested and ultimately that produced more significant discussions and ultimately the successful merger in 1997.

- Bob: Mm-hmm (affirmative). So since then what's your view ... you've been active obviously since the combination. How would you characterize the way things are now compared they were 20 years ago when this happened or going further back?
- Gary: [crosstalk 00:22:52] I would characterize that it was a very successful merger and that one can never predict with great accuracy where the organizations will evolve. I think it has evolved as we intended, which was to expand the scope of membership within the American Health Lawyers Association. Even in the early days of the Academy, it was first known as the Academy of Hospital Attorneys then changed its name to the Academy of Healthcare Attorneys. The NHLA was health lawyers, so we had the situations where, on the Academy standpoint, early days mostly hospital provider representatives over at NHLA there were not only health plans and HMO's and legal council involved, but also physicians and other medical advice companies and life sciences.
- A lot of it has been to make sure that the American Health Lawyers Association was open to all participants in representation of, what I would say more broadly, health care industry clients of all types. And that had been successful if also to make sure that the in house attorneys of healthcare industry clients are welcome and that certainly is reflected in the in house counsel annual program the day before the AHLA annual meeting is due. So those had been helpful.
- The other is to continue to ensure that the AHLA is a member-driven organization and is responsive to member needs. And part of that is to provide opportunities for participation by members in the activities of AHLA and ultimately opportunities to move into leadership if that is a desired objective or movers. So I think each of those things had occurred and I think will continue to occur in the future.
- Bob: Yeah. Something we haven't talked about that I imagine the health lawyer bar in terms of, certainly, diversity back [inaudible 00:25:23] 1970s at least with respect to women lawyers is pretty different from what you'd see now, I suspect.
- Gary: Well it's certainly different in numbers and in percentage of participants, but even in the early days of the American Society of Hospital Attorneys that became the Academy, there were a number of women actively involved. Kay Felt is one that comes to mind on the Academy side as an early leader and a early president of there. Virginia Hackney and others have followed. Certainly the number and involvement of women, generally, in the practice of health law has increased and I think as is appropriate. Frankly, early on in my career at Wood, Lucksinger & Epstein, J.D. Epstein and I were on our recruiting committee and we found that many times we had a larger number of applicants from law school that were women than men, many of those were, for example, former nurses who were now looking for a second career. And we hired a number of those and they became significant leaders in our law firms and that has continued across the board with respect to all segments of the healthcare industry and all segments of the health law bar.
- Bob: Yeah. No I think that's a really good point because I suspect ... obviously there were fewer women back then than there are now coming out of law schools, but even then I think as you say, it was a feel that was perhaps more open to women than some other areas of law and certainly to this day I know now in the practices I'm familiar with women seem to be, in many respects, actually the majority of lawyers ...often I see different setting and ...

Gary: And female attorneys were just the first step in diversity, but obviously diversity is much broader than that today. And the AHA continues to be open to diversity and it makes sure, as I said, member-driven, and that includes being a place where diverse individuals can participate.

Bob: Yep. So let me ask you any other thoughts you have on the evolution of health law since when you started back in the days when Wood Lucksinger was a real brand and leader nationwide by having a number of offices and that was new back then. How do you see things having evolved over the years?

Gary: What we have seen is that both the increase in the number of very large mega law firms that have significant health law practices, and I emphasize that many times that's referred to not only as their healthcare section but their life sciences and healthcare sections. And those have evolved and some of those are very large sections of major mega law firms. But by the same token, there are many, many small firms, mid-size firms, and even solo practitioner firms that are very important participants, especially in their local communities, with respect to representation of healthcare industry clients, hospitals, physicians, medical device companies, durable medical equipment companies, you name it. And that I think will continue.

It'll be interesting over the next few years as the evolution of some of the mega firms continue and their focus on the high dollar practice areas is whether some of the practices that now are fundamental parts of health law practice, especially some of the provider representation, can survive some of the evolutions law firms and the very high billing rates that might result. But on the other hand, every time there is a dark cloud for one segment there is a bright cloud, bright sunshine for the other that will just greater opportunities for medium size and smaller law firms to take up that opportunity and expand their practice.

Bob: That's right. So any thoughts for more junior lawyers who are entering the field? You've been at it for quite a while.

Gary: Well, what I have said and what I continue to say during the recruiting process, in the past many times some of the students were not fully familiar with the health law practices and most of them are much better informed today than previously. But used to just comment that the practice of health law is somewhat like, as broad as life itself. It's from right to life to right to die and everything else that may fall in between and that continues, both whether you're dealing with a health revelatory practice, a business transactions practice, a mergers and acquisitions practice, a life sciences practice in the FDA considerations of new technology, new drugs.

It's just continuing to expand exponentially, but that is also part of what I have found and I think young attorneys will find as being the interest in the challenge of the health law practice. It's very much a dynamic practice. There are advances, there are changes, and those occur many times routinely. Since I grew up both the combination with regulatory attorneys and a healthcare transactions attorney, I many times say that the health law is dynamic. Sometimes it changes too rapidly, but what we do know is that it is such a significant portion of our national economy that it will continue to be the focus of health regulation regardless of what party sits in the White House, whether it's Democratic or Republican, they both must [inaudible 00:32:05] the focus on healthcare because of its importance to not only our population but to the overall economy.

I will observe, however, that from my experience that sometimes while the degree of health regulatory work is the same regardless of what administration's in power, that many times,

historically, the Democrats have thrown more money at the problem and the Republicans have typically taken money away. So many times it's easier to deal with your clients when they have more money to look at new projects than when they're considering what has to be done because less money is available.

Bob: Yeah, certainly though there's a change in administration nothing more will give us, as we're about to see, a whole new set of laws and a whole new set of regulations to have to learn about and to advise clients about. So it [inaudible 00:33:04].

Gary: Continuing employment for health law attorneys, so ...

Bob: Absolutely. Well, we should be wrapping up. Is there anything more you'd like to say?

Gary: Well, that's been a very helpful discussion. Hopefully the comments concerning the merger process will be of interest to those that might want to look back at that sometime. But I certainly appreciate that opportunity to participate in the interviews and your role in that, Bob.

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