

Health law is changing, not fading away

As medical industry consolidates, many lawyer positions move in-house

By Gary Gosselin

As the health industry consolidates, health law attorneys tend to follow the same pattern, moving to in-house positions to service the larger entities.

But, because of the myriad changes that come with the Affordable Care Act (Obamacare), the need for health care law lawyers to sort through it is still strong.

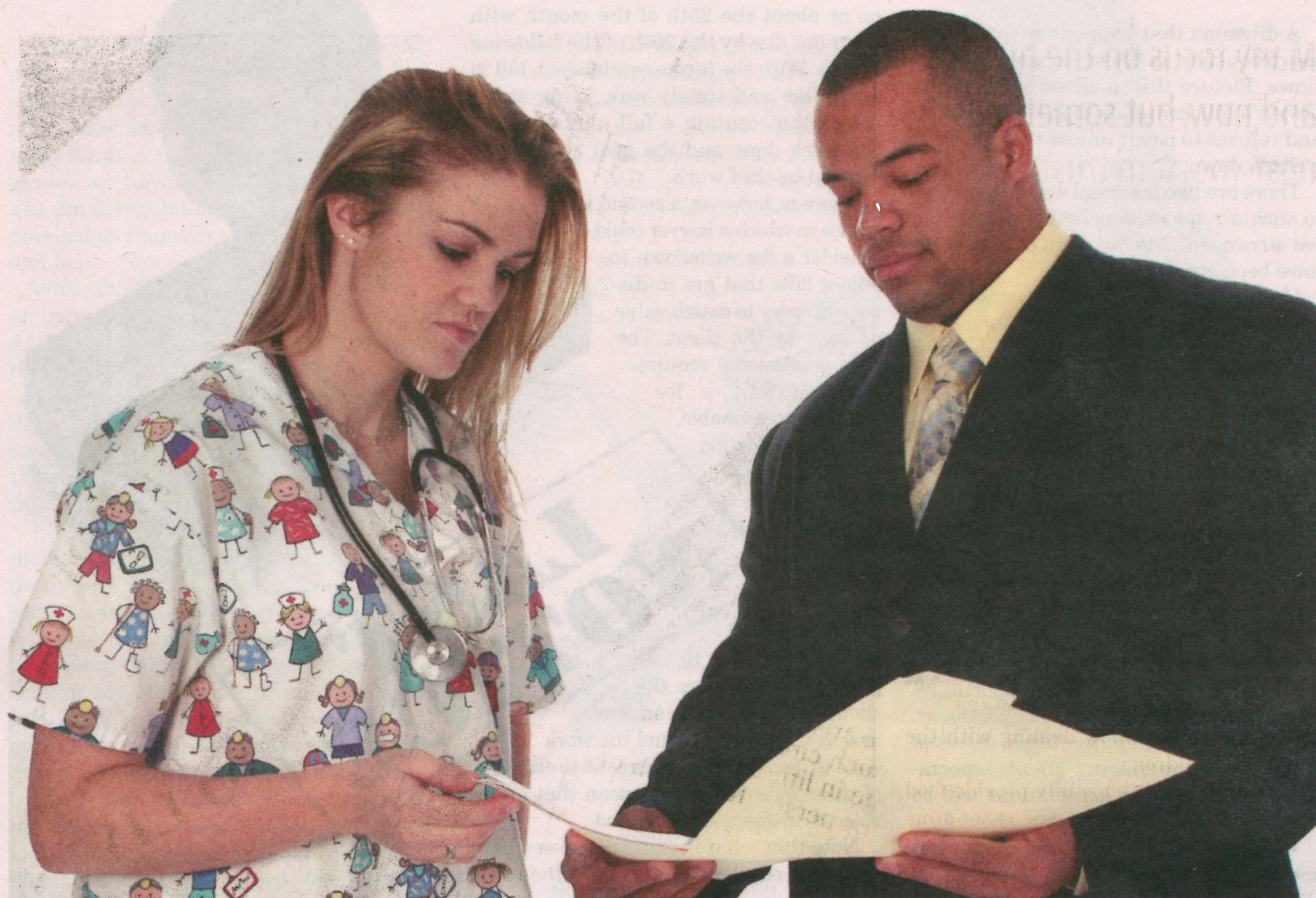


LEZOTTE

"I'm of the belief that with Obamacare there are a lot of changes, some things haven't gone into place yet, they still need a lot of [lawyers]," said Southfield-based health law attorney Robert Iwrey. "I have seen a need for health [law] attorneys because it is a specialty that has become more and more complex."

In 2002, 75 percent of physician practices were physician owned, and 25 percent were hospital owned. In 2009, 55 percent of practices were hospital owned and 45 percent physician owned, and that number is still rising, said Devin Schindler, professor of health care law and constitutional law at The Thomas M Cooley Law School.

"What that does is it creates economies of scale," Schindler said. "Rather than 10 [doctor] practices that each need lawyer, they work with a hospital which has its in-house counsel, so the trend is moving in-house."



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Iwrey said there were numerous regulations before Obamacare and there will be even more regulations after Obamacare is implemented.

"I don't see that there is suddenly a huge need for a lot more health care attorneys, but it is definitely an area for some growth," Iwrey said.

A saving grace

A big move is toward what are called

Accountable Care Organizations, which bring all types of health practices together under one management umbrella.

"The government is paying more to [health care] entities that provide soup to nuts, birth to death care," Schindler said. "So rather than have one doctor refer to another [standalone doctor], they are [affiliated] either through the hospital or through ACOs."

The total amount of work in health care

is increasing, he said, but the focus of where it's done is changing.

"You see the commoditization of [health] law; at first, you get a lot of money and over the years, the system got normalized as more people got into it," Schindler said. "Now 60 to 70 percent is done in-house and often not by attorneys."

But some of the saving grace for those in the field is Obamacare, which promises

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to keep a good number of health law attorneys working for quite some time.

There is some shakeout, but the total number of health law jobs is growing, said Lance Gable, associate professor of law who teaches public health law, bioethics and the law, torts, and other health law subjects at Wayne State University Law School.

“It’s true that some jobs are lost to consolidation, but I don’t think there will be less health law lawyers, there will still be a need. ... As the law keeps changing, you will need the capacity,” Gable said.

“Opportunities might shift a little bit, but more broadly I don’t think there will be less people in health law. I would think that firms that have expertise in health law will continue to find plenty of work in

the years to come, not only from the Affordable Care Act, but just because the system continues to change.

“When I talk to students who are thinking of this field, I think it is unlikely that there will be a shortage of work; the opportunities may change over time, but health is 17 percent of our GDP, it’s a major focus, our population is aging,” Gable added.

Troy health law attorney Mark Lezotte said there is some upheaval in the medical industry, but that shouldn’t be a huge impediment to a good lawyer.

“Even in a consolidating environment there are a lot of opportunities,” Lezotte said. “It’s highly regulated; always has been and always will be and I think that lawyers who understand their clients’ business will be successful.

“But getting from here to there I think there will be some changes, and it’s going to be volatile for a while,” he added. “Its like anything else for a lawyer, you have to

understand your clients’ business well and cater to their needs.”

Shift into health law?

Iwrey said he knows a lot of lawyers in other fields like real estate, corporate or transactions, for instance seeing their business drying up, and they’re trying to get into health care law.

“But I find it dangerous because it is a minefield, so many regulations, and so many gray areas,” Iwrey said. “Also, some of it is interpretation, a consensus of what something means and you will not know that without experience.”

Med mal defense has been a niche itself, Schindler said, and while the client is the doctor, the unspoken client is the insurance company. Now you see med-mal attorneys trying to expand into the regulatory field, and it makes sense because they have clients in the doctors they have served.

“But, you go outside of litigation and the

payor is no longer to insurance company, but the doctor directly — some can make the transition but some go by the previous relationship and that is completely separate from health care law, he said.

“Suddenly you’ve gone from being an expert in med-mal, to essentially being a third year associate” in health law, Schindler said. “They can’t go out there and charge \$300 an hour for something they’re new at. Part of the adjust is resetting, you have to reset rates and adjust accordingly, you have to be candid, say you’ll resolve their issue, but that you’re still learning, and charge less.”

Iwrey said it is a steep curve to learn to get up to speed on medical law, but said it’s like “riding a wave,” in that once you’re up there, you’ve got to keep learning because it’s constantly changing.

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