



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.

March 14, 2017

Donna Fraiche interviewing Doug Hastings:

Donna: There are a few questions that we probably will go over today. There are things that I think you're going to be more than familiar with discussing. One would be the history of the AHLA, and your relationship to the AHLA. When you first came on board, what was the story behind that? Then maybe we can talk a little bit about the coming of health law as an evolving practice specialty, because you were there then, and you watched it grow, and you saw it divide up into component parts. We can talk a little bit about that. Then what were the milestones in health law, and what was meaningful to you in terms of the career guidance you got from others and that you can give to others? With that background, I guess what we'll do is we'll do a countdown from 5 to 0, and then we'll get started with the real interview. Any questions?

Doug: Okay. No. That sounds good.

Donna: Okay, good. All right, so five, four, three, two, one. Good morning, how are you? I'm so glad to have the opportunity to speak with you, Doug. It's a great privilege to interview as part of the history of the American Health Lawyers Association. How are you doing today? Let's talk a little bit about your involvement with the history of the AHLA.

Doug: Well, thank you Donna, it's always a pleasure to talk to you. I'm honored to be an interviewee. I became interested in healthcare policy and law in the mid-1970s, and I had jobs that involved some academic health responsibilities, and actually for a time, worked for a PSRO, if you remember that term, professional standards of review organization. Then when I went to law school at the University of Virginia, I tracked or sought to learn more about health policy and law. This would have been a period, basically 1977 to 81, and it was very much a new field often talked about more as law and medicine. I got an assignment or developed in assignment to write a paper on PSROs, and confidentiality, and the patchwork quilt of state laws that might affect the ability of one set of physicians to review the work of another.

I wrote that, and it was required that I call some practicing lawyers among the few that were dabbling in these health regulatory issues, and number of firms, including the firm I eventually took a job with where I still am. Epstein Becker, Green, and that lawyer was Bill Kopit who was an early practitioner. At the time, the organization I joined was the National Health Lawyers Association, and I think it formed in the 1970s. I came along fairly early on, and really, my interests coincided with what I perceive as the first step in the development of this field of

American Health Lawyers Association

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

health law. Because in 1972, the PSRO law was passed, really the first time the government sought to oversee quality of care for the Medicare program.

The following year, if I have the dates exactly right, the National Health Maintenance Organization Law was passed to getting the federal government involved in the oversight of the healthcare, insurance, and the provision of care they're under. In 1974, the National Health Planning Act was passed getting the national government involved in the attempt to best allocate and rationalize the delivery of healthcare services. Those three things together by the next few years, the late 1970s, actually meant there was a national body of healthcare related law that went beyond state law that affected the corporate structure, licensure and taxation of hospitals, thus, to me, the genesis of the field of healthcare law. It began to be understood as such slowly in those years, but it picked up steam through the 80s and 90s, and of course, we are where we are today.

I'll make a couple of more comments about the field, then come back to NHLA and AHLA. Its successor organization and the current organization today. As we moved into the 1980s, we had certain significant expansion of healthcare insurance, and notions about healthcare quality, and irrational, federal role given that it paid for a lot of healthcare through Medicare and Medicaid. An oversight role which meant you had then both 50 state laws were related to healthcare, and federal laws were related to healthcare, and in increasingly complex field. In the 90s, we had a major national policy debate around a new potential law, the so-called Clinton Plan, because it was in Bill Clinton's administration, the effort led by Hillary Clinton. It didn't pass, but it created significant further national attention to the issue of the field of healthcare and healthcare law.

That was followed by a period of managed care [inaudible 00:14:29], then there was a pushback to that. We got into the two thousands with the IOM Blockbuster report onto err is human. Ultimately, the Affordable Care Act in 2010, and now we are where we are today with potential amendments to that. That was a very quick overview, but all of that spoke to just this increasing crescendo in attention to what's now a fifth or a sixth of the US economy. Through all of that, the American Academy of Hospital Attorneys, which had started even earlier than NHLA, and in NHLA developed focusing both on state law and hospital issues, and also issues broadening to insurance component and so forth. I became involved, as I said, in the late 1970s. By the 80s as a young lawyer, had the opportunity to make some presentations, and do some writing.

As the field expanded and my involvement increased, and those two organizations merged into AHLA, I had the opportunity to not only be a speaker and writer, but a leader, and ultimately, like you, had a term as president for me which was in 2001, 2002. I remember the current, at the time, executive director of the AHLA, Marilou King, asking me just in advance of my year as president, "You need a theme. In addition to helping to lead the organization, promote that we all, as helpful lawyers at AHLA, think about." I decided it was this new focus. Remember, this was 2001, so just two years after to err is human was written by the Institute of medicine. It was the year that Crossing the Quality Chasm was written. The Bible on healthcare quality as of today.

I thought the theme should be quality, and we had some early presentations on that subject. A lot of AHLA members thought, "Why are we talking about this? We're lawyers, not clinicians." As it evolved, that became the underpinning really to err is human, the intellectual underpinning for the Affordable Care Act, or at least the payment and delivery reform sections of the Affordable Care Act. AHLA allowed me to establish my membership in AHLA, my credibility as an expert in the things I did, healthcare transactions basically. Then to learn leadership skills, and

ultimately be a leader, and ultimately to follow and greatly strengthen my intellectual and policy interest in the development of healthcare policy, and particularly its quality component.

Donna: It seems to me, it's not just serendipity, you were in the right place at the right time, but in addition to that, you picked the right aspect as it were of the whole health law development as it was being developed, and as policy was being passed in order to create this vista from which healthcare would be peered, and you looked at it in terms of your quality chasm. I think that's really, very, very important when we look at the other milestones in health law in the payment side and the like. Maybe you can tell me what you think a young lawyer might want to look toward as a horizon, since pretty much you wrote the geography on this subject. They would be plotting a, I would think their own trail to get to where they need to get to have a successful career as did you. What would you recommend to them?

Doug: Well, several things. Certainly in the first instance, being a member and being part of AHLA allows a young lawyer to learn more about the many complex sub areas within the field of healthcare law and their interconnections. One may have an interest in healthcare law at an early point in one's career, but exposure to that diversity of aspects of that, for me, was extraordinarily helpful. Because I was able to find areas that were of particular interest that I wanted to pursue further. I had some inkling. I had to learn. It allowed me to learn. Besides just broadening my knowledge set and skill set, it helped me make some choices that were important to me, and I would advise lawyers earlier in their career to not just let things fall where they fall, but to chart a clear pathway with AHLA's help, not only in skills, but in subject area. A second point would be that involvement in AHLA, which requires a time commitment.

Firms in varying degrees require other things for a time commitment, as do jobs in-house or in governments, you, to some degree, got to make the personal commitment to do the time to have the benefits of AHLA. It gave me early career credibility as I began to make some choices of areas that interested me, and could write, and then speak. I had to apply. It wasn't automatic, but I pursued, and that gave me early credibility, which then allowed me, and I was in a private practice setting, to begin to do more high-level work for clients, ultimately have my own clients. I attribute much of my ability early on to do work I wanted to do, and for clients I wanted to work for, and to have clients, and therefore be able to chart my own course, even in a midsized law firm. I attribute it to AHLA.

Both what I learned there, the connections I made there, and the credibility it gave me and subject matter expertise. It also exposed me, I had stayed in private practice, but two different career options, whether that's in government, or the in-house as a lawyer, or in a number of settings in more of a policy capacity. All of those things are potentially out there for a health lawyer, and I was able to look, and think, and reflect on why I did what I did. Just a couple other things I will mention, Donna, and this is both advice, but my experience to people who are newer members to AHLA, or are thinking about joining, I built lifelong friendships with peers who were interested in the same things as me.

That's pretty special. Because that can be hard to do in a day to day work setting, compared to how you might do it in college or something. I was able to make those friendships. Even for people I only now see periodically, it's like we've been friends for the 40 years we've been at this. It gave me leadership experience. Again, I had to work toward it and I sought it, but that was very beneficial to me in a number of respects in terms of seven, eight years as the chair of my law firm, but other leadership opportunities I've had over the years to serve on boards, and be chairs of boards. The AHLA leadership was the start in many ways.

Donna: It's good, Doug, that you talk about the AHLA in the context of a broader, holistic experience. I know that your leadership was important to the AHLA when you were its president. Also, with respect to your law firm, I'm sure they supported you in that effort. Not all firms have the same relationship as it were, or respect for health law, and the health law associations like AHLA that allow you to participate on personal basis in order to make a real contribution, both to your practice, your career, and to your world. I think that's something that you might want to talk a little bit more about. I appreciate that holistic approach. Friends that you were able to make, and professionals that you were able to communicate with as though time between the time that you were together makes no difference because of the AHLA bonds that were created.

Doug: Yes, I believe that the field of healthcare law, given that the field, both policy and law, is a combination of dealing with an economic commodity, economic phenomenon, but also a social good that there is a societal overlay. The AHLA helps people understand that. My view is that one necessarily must be somewhat holistic about the area of healthcare law. I'll go so far as to say about life. To be a good health lawyer. AHLA supports that. Yes, from having been both deeply involved in AHLA over the years, as well as being a law firm leader, it's a challenging dynamic. As a law firm leader, you have responsibilities to a whole set of lawyers, and a whole additional set of employees to make sure you have a well-functioning, economically successful, but also serving its mission to serve clients organization.

There are lots of different things that can take up people's time and attention, and we all work really, really hard, and there is a press on one's time. I would, again, advise the lawyer interested in healthcare law, that investment in AHLA is so worth it, and more and more firms are understanding whether they've been long time, deeply involved in healthcare, or even beginning to touch on it, that again, it's 20% of our economy, it touches every person's life, including every member of their family. I think for a lawyer anywhere in any law firm, having the ability to balance firm responsibilities, but to commit additional time to a career pathway that would include AHLA and all it offers is critical, and one ought to be able to do that at any law firm, but particularly where firms are supportive, especially supportive. There are some firms that have been so for a long time, and I happen to have been fortunate enough to be part of one of them. That's particularly advantageous in this field.

Donna: Doug, history is important because it's history, but also, what it means to the future. What can you predict in terms of the future of AHLA, and health lawyers, and the next generation of health lawyers? We've seen lots and lots of changes, not just in policy, but also in technology which has impacted the way that we interact as a society. What do you think is the future of health law, and AHLA, and you?

Doug: We have said this, those of us probably like yourself, a long time in healthcare law and leaders in the field that there is no end in sight to the importance, the challenge, the demand for people who understand this field, both in focused very technically specific ways as lawyers, but also more broadly. It continues to grow in importance, the commitment of our society despite political debates about exactly what to do and how to do it, to balancing healthcare needs and quality with cost efficiency is not slowing down.

There's nothing about societal dynamics, populations, population health, both in its challenges, as well as its successes in terms of, for the most part, at least historically longer lives, and increasing technological capabilities to do amazing things in terms of both medical intervention on the one hand, and life enhancement on the other that would suggest the field is not going to

continue to grow, that AHLA is going to have any less, but indeed will have an even more critical role as really the most central organization in the field of healthcare law to connect the dots.

Moreover, we know from crossing the quality chasm, and all the years since, that there are challenges to both the quality and cost components. There's a lot of different ideas, but it's unclear which are the best, and indeed, we have a new administration that wants to approach those issues quite differently from the prior administration. We have a new secretary of health and human services whose ideas, frankly, about fee for service medicine, versus value-based payment are different from his predecessors. It will require good lawyers with the ability again to master the technical details of whatever client projects they have in front of them. Which AHLA is superb at educating with the depth of the quality of its programs and its publications, but also that more holistic aspect of where this is all headed.

Again, I think the organization, from a pure growth and viability standpoint, meaning AHLA, will be never more so, and only expand, but also, it's important to our country that there is this kind of organization. It's nonpartisan, and educational 501(c)(3) focusing on these issues. There is nothing else like it, and it's very important.

Donna: Well, that's so well said, and I really appreciate your time, and your talents, and what you shared with us today. Let's keep working as hard as we do. Sorry?

Doug: Only one last thing, I was honored to be asked, and we're probably over their time here, I understand, to write a paper on the history of healthcare quality for the Journal of Healthcare and Life Sciences to be published as part of the 50th anniversary. I've written it, it's been reviewed, and it's close. I've titled it, The 50 Year Journal of Healthcare Quality from the Passage of Medicare to the Election of Donald Trump. It gave me the opportunity, interestingly, to do a bit of a look back in history. I even drew on some things I'd written in the 1980s to get there to hear, as well as things more recently. That was [inaudible 00:30:53] microcosm in terms of me in my years with AHLA, and tying it all together.