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Congratulations, John!

Winner of the Compliance Institute's
"#HCCAcI" Twitter contest for 2014

an interview with John H. Fisher, II
Health Care Attorney, Ruder Ware

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John H. Fisher, II, JD, CHC, CCEP
 Health Care Attorney, Ruder Ware
 Wausau, WI

an interview by Lori Strauss, RN, MSA, CPC, CPC-H, CHPC, CCEP

Meet John Fisher

This interview with **John H. Fisher** (jfisher@ruderware.com) was conducted in May 2014 by **Lori Strauss** (ljs6n@virginia.edu), Chief Corporate Compliance & Privacy Officer, University of Virginia Health System in Charlottesville, VA.

LS: Congratulations, John, on being the winner of the 2014 Compliance Institute Twitter contest. You had to Tweet by March 30, 2014 using [#HCCAcI](#) for a chance to win, so what did you Tweet, and why did you submit that Tweet?

JF: First of all, I want to thank HCCA for giving me the opportunity to be featured in *Compliance Today*. The first Tweet that I submitted with the [#HCCAcI](#) tag was quite simple: "In San Diego for HCCA." Had I been aware that my Tweet might lead to an interview in *CT*, I might have come up

with something a bit more insightful, a special message about compliance or at least something entertaining.

My plan for the Compliance Institute was to use Twitter to take notes from the conference and to also do some live conference blogging. I posted a handful of live blogs during the conference and maintained a Twitter flow for part of the conference. I was using an iPad, and my thumbs were just not fast enough to capture all of my thoughts. I was partially successful and learned a great deal that will help me integrate my social media strategy going forward.

LS: Can you tell us a little about your background, what resulted in you being a healthcare attorney?

JF: I have been a healthcare attorney since the time that the *Greber* decision was issued under the Anti-Kickback Statute. I just completely dated myself for anyone who is familiar with the pre-safe harbor kickback decisions. My interest in health law started while clerking for a law firm after my first year in law school. One of the partners in that firm told me that health law was going to be a growing area of the law. I became completely focused on healthcare law as it emerged as a distinct legal specialty. The practice has expanded over the years as the regulatory requirements have grown and become more complex. Things really took off for me during the healthcare reform initiatives of the 1990s. That is when I became involved in the development of integrated healthcare delivery systems, which is an area that remains a large part of my practice through today as there is a new focus on clinical integration.

LS: You have both the CHC and CCEP credentials through the Compliance Certification Board. These certifications are quite an achievement. You are one of a handful of other practicing attorneys in the country to hold these dual compliance certifications. What was your motivation to seek these certifications?

JF: My decision to seek certification is a reflection of how the focus of the health law practice has changed over the years. A formal compliance process is now industry standard for healthcare providers. Compliance as a systematic process for the most part did not exist when I started practicing and was largely an

outgrowth of changes in the Federal Sentencing Guidelines in the late 1990s. I felt that the slightly different perspective and framework of a compliance officer would be a good element for me to supplement my background as a healthcare lawyer. For me personally, certification did not require gaining additional substantive knowledge of the legal areas applicable to healthcare operations. Fitting that knowledge into a formal compliance process in a systematic

manner was a new perspective and gave me a slightly different view of the world.

Although I focus my practice on health law and healthcare compliance, I also get involved with the general compliance activities of some of the international clients that are represented by my law firm. This made it a natural

step for me to obtain the CCEP certification once I had the CHC certification.

LS: How have your CHC and CCEP certifications helped you as a healthcare attorney?

JF: My dual certification has added a slightly different perspective to the way I analyze legal issues. It has also provided me with in-depth knowledge of the compliance process. Together with my long time exposure to substantive legal issues, the compliance perspective leads to much more “on target” legal advice that incorporates a risk mitigation approach. I believe that this makes me a much better healthcare lawyer. The certifications also provide me with an additional element of “instant credibility” on compliance related issues. HCCA has become “industry standard” in healthcare compliance. Certification adds

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a great deal of professional credibility and indicates that I have a depth of knowledge in compliance and healthcare regulatory issues. This helps me be a stronger advocate for my clients, particularly in situations where communicating the need to adhere to compliance standards becomes an issue.

LS: How has being a member of the Health Care Compliance Association contributed to your professional career?

JF: Being a member of HCCA has enriched both my personal and professional lives. It has added a new dimension to my career and has expanded the scope of services I can provide to my clients. I have made contacts through HCCA that have provided me with resources that have enabled me to better represent my clients. HCCA does a terrific job of bringing compliance professionals together into an atmosphere where they can share ideas, knowledge, and resources. The leaders of the organization seem to be very in tune with the needs of membership and have created an organization that gives credibility to compliance as a distinct profession.

LS: You are an active blogger on health law regulatory issues, what inspired you to be so active in social media networking?

JF: I grasped the potential power of social media fairly early on in its development. I have integrated social media into my daily practice routine. Once integrated, it is a highly efficient way to project your ideas to existing clients

and business acquaintances. If used together with search engine optimization, it can also greatly expand the range of professional contacts. In my case, social media has been responsible for greatly expanding my health law practice. It may not work for everyone, but I have certainly realized significant benefits.

The challenge has been developing systems and processes that enable me to be actively involved in social media in an efficient manner that does not significantly detract from the operation of my practice. I attempt to integrate social media into my normal practice routine so that I do not utilize additional time, but rather refocus time I am already spending to leverage social media. A healthcare attorney already spends a significant amount of time keeping up with regulatory changes. I attempt to turn this time into opportunities to enhance social media presence through blogging and creating content, rather than simple passive reading.

LS: Are there other forms of social media that you use? How do you decide what social network you'll use?

JF: I currently blog on a number of blog sites, use Twitter, and have a presence on LinkedIn. All of these activities are performed with an eye toward search engine optimization and leveraging core activities in a transparent way to other platforms. My law firm has a great Marketing department that helps me keep up with the process and maximize the time that I spend on social

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networking. Social media is developing and changing at an astronomical rate. It is very difficult to keep up with these changes, let alone integrate them into my practice in an efficient manner. For that reason, I try to keep focused on the process that I have developed and has proven to work for me.

LS: What are the pros and cons that you see with social media in healthcare today?

JF: That depends on who you are, and how you are using social media. There are certainly risks inherent in healthcare providers using social media. There is an obligation that attaches to a social media program that is particularly acute in the highly regulated healthcare industry. If a provider implements social media and does not monitor it, they are looking for problems. Social media sites provide an open forum for employees and patients to discuss aspects of operations. This can be good or it can be bad depending on the situation. It is important that the risks of social media be understood and that appropriate mechanisms be put in place to mitigate any potential risk.

Social media can also be a tool for a provider to identify and address compliance risks. Monitoring social media can help providers identify patients who may have had bad experiences, employees complaining about potentially unethical conduct, or possible disclosure of healthcare patient information. Information posted about the organization might be incorrect or it could be the first indication of a possible compliance or risk management problem. Either way, a healthcare

organization should know what people are saying on social media sites and should take steps to address any issues that are raised. The last thing a provider wants is to have a compliance problem come to their attention through a whistleblower suit or other less than desirable process and find out that there was information out there on social media that could have helped the problem be identified and more appropriately addressed long before. A year ago, this was a “cutting edge” issue but has now become more or less “industry standard” in larger healthcare organizations.

LS: You have extensive healthcare experience providing counsel to a wide variety of healthcare providers. What area of healthcare compliance inspires you the most?

JF: Any area that I am currently focused on tends to be the most inspiring for me. Healthcare lawyers get the difficult situations or the cases where the answer may not be obvious. Digging deeply into a specific

issue and learning about that area in detail inspires me and is probably the single biggest factor that keeps me coming back for more after all of these years in practice. Weaving through complex and often conflicting analysis and then stepping back to come up with a solution or strategy is highly inspiring to me. If you want a practice that is the same every day and has a high degree of certainty, you don't want to be a healthcare attorney. If you enjoy weeding through mountains of regulatory comments only to be more confused than when you started out, health law might just be the area for you.

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LS: What areas of healthcare compliance do you see to be the greatest risks for healthcare providers in the next year?

JF: Healthcare attorneys see firsthand all of the bad situations that can arise in the healthcare industry. Our telephones do not tend to ring as much when everything is going really well for our clients. This makes it hard not to have a slightly paranoid view of the broad scope of risks that are out there. If I step back and try to identify one risk area, I would have to say that the intersection between the False Claims Act, the obligation to monitor for compliance risks, the 60-day repayment rule, and the rise of the “whistleblower” bar have all come together to create a “perfect storm” for healthcare providers.

There are attorneys out there who are actually running television advertisements looking for possible whistleblower claims. This is because federal law permits private actions by

whistleblowers and puts a huge “pot of gold” at the end of the rainbow for them through False Claims Act damages.

The False Claims Act was originally directed at war profiteers during the Civil War. Penalties were enhanced as a result of the military supplier scandals of the 1980s. When you apply the potential penalties to the healthcare industry, where a single provider might make hundreds of claims per day, the potential damages become ridiculously astronomical. There may be some recognition of this fact within the government enforcement agencies, but whistleblowers and their attorneys are looking for that proverbial pot of gold. Once the “whistleblower bar” gets a hold of a case, they don’t let go; regardless of how disproportionate the remedy they are seeking might be to the actual wrongdoing that is alleged.

This situation forces providers to direct even more resources toward compliance than

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may be appropriate given the nature of their business. It also drains the system because whistleblowers might obtain recovery for a relatively minor event, but the provider may be forced to pay a huge settlement amount. Keep in mind that these are not necessarily intentional fraud cases. The False Claims Act can apply when there is a “reckless disregard.” It is important for providers to actively operate a compliance program that focuses on the risk areas that are specific to their business in order to defend against these potential claims.

LS: What should healthcare providers be doing to keep up with the growing number of compliance risks and challenges we face in healthcare?

JF: The answer to this question is probably pretty obvious to individuals who are involved in HCCA. Providers need to be developing appropriately scaled compliance programs to identify and proactively address the risks that are unique to the nature of their specific business. Large organizations need to have robust and extremely broad ranging compliance programs in place. Smaller organizations will not have the resources to develop robust, all-encompassing programs. It is important that smaller organizations be more targeted on the risk areas that are applicable to their specific operations. The last thing you want to do is create a robust program that is never put into effect because appropriate resources are not available. This just creates a roadmap for a clever whistleblower attorney to

make a case against you based on your failure to follow your own policies. Smaller organizations need to be proactive, but more surgical and concise in identifying the risk areas that apply to them.

LS: One final question John, actually three; what was the title of the last good book you read, why did you select that book, and what made the book good?

JF: A wonderful opportunity to point out how boring I am. I am currently reading the three-volume diary of Gideon Welles, who was the Secretary of Navy under President Lincoln. Welles was a personal friend of my third great-grandfather, and I am studying his works and comparing it to personal correspondence. It is very slow going, and I have been working on it for about six months now. The most interesting part of this so far relates to some of the war profiteering that occurred in the acquisition of ships for the

“blockade.” Of course this all eventually led to the passage of “Lincoln’s Law,” the Federal False Claims Act, which healthcare compliance officers are fully aware of today.

LS: Thank you John for taking the time to share your compliance thoughts and experiences with *Compliance Today*. Congratulations again on being the 2014 Compliance Institute Twitter winner.

JF: Thank you, Lori. I greatly appreciate the opportunity and hope the photographer is talented at the art of airbrushing. ☺

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