Volunteer interviewers needed for our second Member Spotlight – Medical Malpractice!

The members of the Healthcare Litigation and Risk Management IG collectively have a wealth of experience and knowledge in many different areas of practice. In an effort to highlight our members and to provide an additional opportunity for networking, the “Member Spotlight” section will highlight one or more members in a written interview-style format. Each Member Spotlight will focus on a different practice area within our IG. We are pleased to include our first Member Spotlight in July’s Newsletter. Our featured topic area is the False Claims Act.

We are currently searching for younger members who are interested in serving as interviewers for our second Member Spotlight. This is a great opportunity to network and publish something. If you are interested in this opportunity, please contact Michael Morton at michael.morton@lc.b.state.nv.us.

On July 1, 2017, California's Surprise Billing Protection Law AB-72 goes into effect. Like other states, including Florida and New York, California is seeking to curb surprise billing of patients who receive non-emergent services in in-network facilities by out of network providers. AB-72 includes numerous patient notification requirements that providers must adhere to. If those notification requirements are not met, provider reimbursement may be substantially impacted. Attorneys who have out of network provider clients providing services in in-network hospital and ambulatory surgical facilities should carefully review AB-72 and be prepared to advise their clients on their respective rights and obligations thereunder.

✓ Our “Tip of the Month” was provided by Ardith Bronson, Of Counsel at DLA Piper.

Volunteer Writers Needed! We are always searching for members of the IG who are interested in writing for this section. Entries do not have to be long – 50 to 1500 words (not a limit, just a guide). This is a great way to share helpful information with your IG colleagues. If you are interested in writing for this section please contact Ardith Bronson at ardith.bronson@dlapiper.com.

Save the Date!

UPCOMING CLES
(1) July 19, 2017
“Private Enforcement of Anti-Kickback Laws”

(2) July 26, 2017
“Fundamentals of HCQIA”
Why fireworks on the Fourth of July? Fireworks have been used to celebrate special occasions for some time, even before the American Revolution. Our founding fathers even believed in celebrating our independence with fireworks. In a famous letter John Adams wrote to his wife, he states how the holiday deserves to be celebrated with “illuminations” or fireworks. “The day will be most memorable in the history of America. I am apt to believe that it will be celebrated by succeeding generations as the great anniversary festival. It ought to be solemnized with pomp and parade, bonfires and illuminations (fireworks) from one end of this continent to the other, from this time forward forever more.”

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

- The Declaration of Independence 4 of July, 1776.
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As evidenced by the many civil and criminal enforcement actions in 2016, the commitment to holding providers accountable for health care fraud and abuse continues to be a priority of the Department of Justice (“DOJ”) and the Department of Health and Human Services (“HHS”). To this end, the False Claims Act (“FCA”), 31 U.S.C. § 3729, et seq., remains the federal government’s chief fraud fighting tool. Since January 2009 through the end of 2015, the Department of Justice has recovered approximately $26.4 billion dollars through FCA actions. In light of the federal FCA’s success, thirty-two (32) states have now passed their own state false claims acts.

**Featured IG Members:**
- **Lesley Ann Skillen** (Relator’s Counsel);
- **David Douglass** (Defense Counsel);
- **Candice M. Deisher** (Assistant Attorney General /Lead Attorney – Virginia)

**Lesley Ann Skillen**

**What inspired you to attend law school and practice law?**

I made the decision to enter law school in the early 1970s because I relished the intellectual challenge of law. I really liked the discipline of logic and applying legal precedents and tenets to day to day fact scenarios. Generally, just the creativity of law drew me to the profession.

The 1970s in Australia was a different time, so attending law school was how I rebelled against the prevailing wisdom that women should take on more traditional roles like teachers and occupational therapists. Those are great professions, but they were not for me. When I entered law school the women’s movement was just gathering steam and I felt a need to make a statement for myself.

**How did you choose your first job out of law school and what position do you currently hold?**

I initially thought I wanted to be an academic so I went back to the law school and worked as a teacher and a researcher for several years. I then took a position with a law reform commissioner doing research on various...
legal reforms. After a few years I decided to transition from academia and applied for an entry level position with the Director of Public Prosecutions (the Federal prosecutor in Australia) and I started working on criminal law. My practice eventually transitioned into major fraud prosecutions and organized crime. I began to research the law in the United States which was much more sophisticated, particularly in the area of RICO. This research led to a series of research fellowships in the United States. I fell in love with New York and moved to the United States in 1992 and got a job at my current firm, Getnick & Getnick, LLP, which was pioneering the area of civil prosecution of business crimes at the time.

Was there a defining moment in your career that made you want to focus on health law?

In the early 1990s, when I moved the United States, the False Claims Act was still relatively new and coming into its own. Healthcare was one of the first areas of focus and we brought a case on behalf of a doctor against a medical laboratory alleging fraud in laboratory testing. This claim led to a large government investigation targeting many clinical laboratories and ultimately spring boarded my career in healthcare fraud.

What about health law interests you?

I am fascinated by the healthcare industry and there seem to be a number of different ways to “game the system” due to the complexity of government regulations. Every case is different and every case is a challenge, I really enjoy the work and find it is a privilege to work with whistleblowers.

Who was your first mentor?

I never had a mentor as those did not really exist in Australia in the 1980s. If I had a problem I would hide in the bathroom! Looking back I think it would have been great to have a female mentor, especially since I had very few female colleagues.

Do you serve as a mentor?

Our firm is smaller so we do not have a formal mentorship program, but I find I am most interested in recognizing talent in younger lawyers and teaming up with such lawyers as equals. I think this approach allows all parties to learn so much from each other. Also, if you find someone who you can brainstorm with, you can do work that is twice as good.

What do you consider your best mentoring tip?

My tip when teaming up with or finding a mentor is to seek out someone who is on your intellectual wavelength. This allows not only for great work, but makes a mentee indispensable because the mentor will eventually come to the mentee for advice. Any mentor/mentee relationship should be a two way street; the mentor can gain just as much as the mentee.

What is the biggest highlight in your career?

In the early 2000s I represented George Cuoto, a marketing manager for a pharmaceutical company, in an action involving a fraudulent drug pricing scheme. I found him to be an amazing person and working with him was incredible. I then met Cheryl Eckard, a quality assurance manager, who we represented in a qui tam case against another pharmaceutical company involving adulterated drugs. The case was a six and a half year journey but we achieved a great result. Cheryl Eckard is an amazing person and continues to do great things.

How do you balance work and life demands?

The answer to this question is technology. I find that the ability to work wherever and whenever is incredibly liberating. Technology has completely changed the way I practice. For example, I found it incredibly easy to go paperless, and the benefits are just tremendous.

What kind of pro bono do you do, if any?

I spend a lot of time talking to whistleblowers, even if they do not have a case. A lot of the whistleblowers just need someone to talk to and listen to their claims. It can be very rewarding to know that you were sympathetic, even though there is no lawsuit to be filed at the end of the day. I am also involved with Taxpayers Against Fraud, a public interest group that advocates for whistleblowers.

What are your interests outside of law?

I love spending time with my husband and dog. I am also really interested in design. If I had not chosen the profession of a lawyer I think I might have been an architect or a designer… But then maybe not, I really like being a lawyer!
*Interviewer – Catherine S. Silas. Ms. Silas is currently an Associate with Polsinelli PC in the Health Care Services practice where she focuses on transactional and regulatory health care law.

DAVID DOUGLASS

What inspired you to attend law school?

My father inspired me to attend law school as he was a lawyer and judge for most of my life. I grew up in the 1960’s during the time when the Civil Rights Movement was in America engaging in a broad constitutional law debate. I was inspired and engaged in those issues. I remember my dad telling me whenever society is engaged in tough problems, everyone looks to lawyers to solve those problems. My family and the time in which I grew up really encouraged me to attend law school.

How did you get interested in health care law?

After I left the DOJ Civil Rights Division, I started with a law firm and this was right around the time that healthcare fraud became a national topic. The expense of healthcare services was a growing issue. The government became involved in evaluating how its money was being spent. Once this happened, we got a new whole new set of regulations, especially in fraud and abuse. Suddenly, healthcare fraud was a topic of national discussion. Around this time, a qui tam lawsuit emerged with SmithKline Beecham Labs which resulted in a large settlement, including a large award to the whistleblower. I’m really a litigator and white collar lawyer but my practice started to drift into healthcare and the life sciences arena. I attended a conference and Tony Patterson, former Chair of the Health Law Section, asked me to substitute for a speaker at a conference and I was thankful for the opportunity. After that experience, he tapped me to help out more with the healthcare fraud and abuse group. I got active and really grew up as a healthcare lawyer in the Section. Over time, I have become a healthcare lawyer.

Describe your career path after law school.

I spent three years at a law firm and then I became an Assistant United States Attorney in Boston. I returned to private practice after four years as an AUSA. Currently, I’m a Partner at Sheppard Mullin in the Government Contracts, Investigations and International Trade Practice Group. I’m the co-Managing Partner of Sheppard Mullin’s Washington, D.C. office.

Do you believe your experience working for the government enhanced your practice?

Absolutely, it gave me a lot of trial experience which is hard to come by these days. I also have an understanding of how prosecutors try cases, which is obviously very helpful in representing companies and individuals under investigation.

Have you had mentors that helped you in your career? How did you find such mentors?

I’ve had a lot of mentors during my years in practice but if I had to single out two individual mentors, they would be David Johnson and David Hilgers. They are both past chairs of the Section. They really made it a point to look out for me and encourage me both in the ABA Health Law Section but also in my career. They provided great career advice and I always felt that I could call them up and ask questions about a case because they would always share their knowledge freely. These are just two of the many ABA Health Law Section mentors I’ve had. This is one of the great aspects about the ABA Health Law Section that you can find a lot of great people to help mentor you in your career. There is great camaraderie in the section.

What do you consider your best mentoring tip?

You need to get active and engaged. To have a good mentoring relationship, you need to have a good connection with your mentors, and this can be achieved by getting involved with your firm or organizations outside of where you work such as the ABA Health Law Section. It’s important to remember that as attorneys we don’t have a lot of free time on our hands so someone needs to feel it is worth it to invest their time in
mentoring you. You can do that by showing your commitment to becoming as good a lawyer as you can be. Once you do that, people will take the time to help you. There are many opportunities for young attorneys to get involved with the Section whether it be for writing a publication, speaking in a webinar, or helping coordinate a conference. It doesn’t matter how you get involved as long as you’re getting involved.

In my path to becoming Chair of the Section, I volunteered for various projects and took on opportunities as they arose. I was Vice-Chair and Chair of Fraud and Abuse Interest Group. I worked on the planning committees for EMI and the Washington Health Law Summit. I served on the Health Law Council prior to becoming Chair. There really is a wealth of opportunity in the Section.

What do you find most rewarding about your work?

Some of my most rewarding work is the type of work that I cannot really discuss. It’s the type of work where the government is coming after your client because the government believes it has a viable case against your client but you ultimately convince the government it doesn’t have a case. This is particularly satisfying when representing individuals. People don’t always appreciate how difficult it can be to come under investigation or face the threat of litigation. Ultimately, my goal is to persuade the government that the regulations are ambiguous or my client’s conduct doesn’t rise to a level of misconduct that warrants prosecution. This is particularly satisfying when representing individuals. People don’t always appreciate how difficult it can be to come under investigation or face the threat of litigation. Ultimately, my goal is to persuade the government that the regulations are ambiguous or my client’s conduct doesn’t rise to a level of misconduct that warrants prosecution. I’ve had several cases like this and when you get the call that there won’t be any further investigation or litigation, it is a huge relief. Needless to say the clients are very grateful.

One current project that I’m most proud of outside of health law is serving on the team that is monitoring the New Orleans Police Department for the DOJ’s consent decree that called for the New Orleans Police Department to overhaul their policies and procedures, training, supervision, and operations. In the three years I’ve been on the team, we’ve seen an incredible transformation in New Orleans. As a former civil rights prosecutor, seeing constitutional change occur in real time is rewarding.

What are the greatest challenges you face with respect to your work?

Navigating the boundaries between administrative law and criminal law, including civil statutes that are punitive in nature such as the False Claims Act. Administrative law typically focuses on regulating conduct and is characterized by imprecise and often shifting standards because we recognize that we can’t precisely describe every step that goes into providing care for a patient, running a hospital, or any of the activities that go into delivering healthcare services or products. On the other hand, criminal law and to a lesser extent civil law are judgmental and impose absolute standards, because it is unfair to punish people for conduct that is not clearly defined. Healthcare providers and companies get caught in the middle because they are regulated by standards that are fluid and permit judgement but can then be judged, often many years later, by standards that are harsh and inflexible. Further, administrative law is developed and applied by individuals with specialized knowledge but criminal and civil law is judged by prosecutors, judges and juries who do not share the same experience and perspective. They can judge a provider’s conduct by very different standards. It can be a challenge to negotiate that intersection because the government regulatory attorneys have one view, the healthcare provider can have a different view and the government attorney prosecuting the case can have a third-view. Compounding the problem is that there is relatively little case law to provide precise guidance. The challenge is often how to unpack the regulations and understand what all the participants were thinking at the time in order to reconstruct what the agencies knew or understood and put the conduct at issue into the right context. If you can’t do that, then it becomes an argument between the two sides about who is right, which is not very productive. My job is to get the other side to see how my client interpreted its obligations or, at the very least, to convince them that a judge or jury is likely to understand what my client thought. It can take very precise, careful and meticulous work.

What advice would you give young healthcare attorneys who aim to follow your career path?

The same advice I give to all young attorneys: learn everything you can about everything you can. In particular, you need to understand the business of your clients to become good lawyers. You need to walk in your client’s shoes and take every opportunity to learn more than just the law but understand the business they operate as well. The more you can understand your client’s world the better lawyer you are going to be.

What kind of pro bono work do you do, if any?

Over the years, I have taken on a range of cases with some in healthcare. Recently, I’ve devoted a lot of my...
time to the DOJ monitoring team providing oversight to the New Orleans Police Department. This work isn’t pure pro bono but more a public service.

**What are your interests outside of law?**

I have a range of interests but little time to pursue them. I love to fish and ski. I also love to listen to music and getting to hear local music has been one of the treats of my work in New Orleans.

*Interviewer – Ashley L. Thomas. Ms. Thomas is currently an Associate in the Raleigh office of Nelson Mullins Riley & Scarborough LLP. She practices in the area of healthcare law with a focus on hospital and health system matters, regulatory and compliance issues, and hospital/physician alignment. Ms. Thomas will serve as Vice-Chair of the Health Law Section’s Web & Technology Committee during the 2017-2018 program year.*

**CANDICE M. DEISHER**

**What inspired you to attend law school and practice law?**

While attending James Madison University, I minored in criminal justice. I completed several law classes as part of my minor requirements and I found that I enjoyed the subject matter a great deal. It was because of those undergraduate law classes that I decided to research and ultimately attend law school.

**Was there a defining moment in your career that made you want to focus on health law?**

I do not recall a specific moment in my career that made me want to practice health law. Location was one of the most important factors I considered when searching for my first job out of law school. I knew when I graduated law school that I was primarily interested in civil litigation so I looked for positions that would allow me to gain court experience. I also considered what kinds of professional growth opportunities each position provided. After I had been with the Virginia Attorney General’s Office for a couple years, I realized how much health law, specifically health care fraud, interested me. I have now served in the Virginia Attorney General’s office for approximately eight (8) years investigating and prosecuting civil health care fraud *qui tam* cases on behalf of the Commonwealth. I am also a member of the management team in the Civil Litigation Section of the Medicaid Fraud Control Unit. I continue to find health law interesting and challenging.

**What about health law interests you?**

Health law is a complex and ever changing area of law. My specific practice area is healthcare fraud, primarily investigating and prosecuting *Qui Tam* cases. I enjoy the complex and challenging nature of the work. There is always new case law being developed and I appreciate the ability to have a national practice.

**Who was your first mentor? How did you pick him or her?**

As a new attorney, my firm’s managing partner in the Richmond office served as my first mentor because we worked closely together on cases. Therefore, I would say that I didn’t necessarily pick him as a mentor so much as he was my first mentor by default. However, he was a great mentor and I learned much from him in my time working for the firm. After joining the Virginia Attorney General’s Office, I have been extremely fortunate to work with a variety of attorneys across the country, many of whom have mentored me in some way over the course of my career to date.

**Do you serve as a mentor? What do you consider your best mentoring tip?**

Yes, I do serve as a mentor. As an alumna, I participate in my law school’s mentor program. They generally assign me an incoming 1L each year. I also serve as a mentor to the other attorneys in my office that I work with and/or supervise and often to our interns.

The best advice I have for young lawyers is to be proactive about your career growth and also in finding a
mentor. Most seasoned attorneys are happy to help young lawyers but they are also busy people. Do not be afraid to reach out and connect with more experienced attorneys that you respect and would like to learn from. A little initiative on your part goes a long way. In the end, you are ultimately responsible for your professional growth.

How do you balance work and life demands?

Time management is important in all careers, but especially as an attorney. I work many long hours and often work weekends depending on what is happening in my cases. It is easy to work all the time if I do not pay attention. The downside to working all the time and not having a proper work-life balance is that attorneys often experience burn-out. I make it a point to exercise regularly and I also dance with a dance company part-time so that provides me with a good creativity outlet. Additionally, I have very supportive friends and family that I make sure I spend time with as well. While my career is very important to me, I strive to balance it with other things in my life that are important to me as well. In the end, I find that a healthy work-life balance makes me a more effective attorney.

What kind of pro bono do you do, if any?

When I worked for the firm, I used to participate in the Wills for Heroes program. As a government attorney, there is a restriction on practicing law outside of one’s official capacity. When I move back to private practice again, I will certainly resume pro bono work of some kind as I think it is important to give back.

What are your interests outside of law?

I have many interests outside of the law. A few of these are dance, yoga, music, travel, and most anything outdoors. Currently, I spend much of my time outside of work rehearsing and performing with the dance company.

What is your favorite thing about your job?

My favorite thing about my job is that the work is complex and intellectually challenging and that there is always something new to tackle. It is also rewarding to know that the cases I spend time on help to combat fraud.

If there is anything you would have done differently as a new attorney, if you could do it over again, what would it be?

I am generally satisfied with my current career trajectory. However, if I could do one thing differently, it would be to write and publish sooner in my career.

*Interviewer – Jennifer Taveras, JD, CHC. Ms. Taveras is a Compliance Program Manager for Memorial Hermann Health System in Houston, Texas. Prior to joining Memorial Hermann, she worked as an associate at William J. Sharp & Associates, a health law defense firm. Taveras loves the multifaceted and evolving nature of health law, and the opportunities to foster understanding and compliance. Away from work, she can usually be found chasing behind her three fantastic children and their silver lab, Oliver.

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