From Outsider to Team Member: The Evolution of the Healthcare Legal Counsel

There was a time, just a decade ago, when most hospitals and health systems sought legal advice from outside law firms. Typically, advice was requested only after a problem was encountered, and the CEO, other executives, and board would be advised as to the best course of action via lengthy memo.

This kind of ad hoc out-of-house approach has mostly faded in recent years. As the healthcare landscape dramatically changes, so have the legal needs of the industry. An increasing number of hospitals and health systems have created robust in-house counsel teams. Attorneys are frequently asked to serve in senior executive positions, provide long-term planning and strategy expertise, and even assist in public policy and community outreach efforts.

Establishing a more proactive, inclusive legal process is exciting for both health systems and legal counsel, but it requires flexibility and forethought by healthcare lawyers and their industry employers.

The Shift to a More Proactive General Counsel

Werner Boel remembers when the approach to legal services began to shift. As Witt/Kieffer’s Legal Services practice leader, Boel has spent two decades recruiting health law general counsel, deputy general counsel, chief legal officers, chief compliance officers and chief risk officers. About 10 years ago, Boel began assisting academic medical centers in creating some of that sector’s first in-house counsel teams.

“AMCs are very complex organizations that have to interact with many different stakeholders, including schools of medicine, healthcare providers, researchers, and the public,” Boel says. “They were dealing with legal matters that were pushing the boundaries in which they could operate.” Thus they turned to in-house counsel.
In recent years, hospitals and health systems have become similarly complex. Industry reforms have shifted the healthcare landscape from volume-based models to value-based service, and complex regulatory demands have increased the need for legal services. CEOs began to consider different, sometimes untested, approaches to everything from patient care to partnerships. They needed advice from executives who could think creatively about the possible outcomes of these new ideas, including the legal ramifications.

As academic medical centers switched to in-house counsel, they found it was not only more efficient, it was often more affordable. Health systems took note, bringing in one or even a team of attorneys to not only solve current legal issues but to think proactively about future ones.

“We’ve seen an evolution, from the time when legal got called in after the fact, to now, when there’s a need to get legal involved much earlier in the discussion,” Boel recalls. “Health systems are being very careful moving forward, rather than going down a particular path and realizing, ‘Oh we can’t do it,’ and then having legal counsel clean it up.”

**Finding the Best Fit for an Organization’s Future**

Healthcare law is one of the most rapidly growing areas of specialization, but the field of candidates with a unique mix of health law expertise, business savvy, and visionary skills is small. That’s why Boel spends much of his time helping healthcare executives carefully think through the many ways to structure legal counsel offices. While some health systems create one general counsel position, others have established something similar to a boutique law office.

“They have lawyers with specific expertise, such as transactional matters, real estate, fraud and abuse matters, and physician employment contracts. They have become quite sophisticated,” Boel says. Having a lone general counsel can be tricky, particularly when it comes to compliance issues. In the past, legal counsel and compliance matters may have been handled by the same attorney. But the U.S. Office of Inspector General warned that this could create a conflict of interest for attorneys who must both act on compliance violations while simultaneously advising CEOs and governing boards on how to address those violations.

As accountability and regulatory scrutiny increase, some health systems opt to have one attorney serve as a compliance officer and another who serves the CEO and board. But even this can be challenging, Boel notes, as some general counsel find they must walk a fine line between serving the sometimes conflicting needs of the board and the CEO.

Still, health systems are finding the benefits of in-house counsel far outweigh the logistical challenges. For example, CEOs are engaging legal counsel to serve as liaisons with elected officials, to share expertise, and help influence the wording of new regulations.

“CEOs are increasingly in charge of their own destinies,” Boel says. “A lot of CEOs have said, ‘If we can get our general counsel to talk about legislative issues with elected officials, we can have a greater say in healthcare reforms.’”

The more creative and broad-minded the legal counsel team, the more effective they can be in helping CEOs and governing boards navigate these unchartered healthcare waters. Boel gives the example of one recent Chief Legal Officer (CLO) search he conducted for a major health system. The new placement quickly realized there was a need for her expertise on the senior management team as it considered partnerships and reorganization. As the CLO, she had the business expertise and creative flexibility to provide big-picture advice, while the person who held the title of General Counsel managed day-to-day legal matters.
Although many healthcare systems now understand the benefits of restructuring legal counsel, the task of creating that new approach can feel daunting. Witt/Kieffer’s Legal Services team provides the detailed guidance necessary to design an ideal legal structure to meet the unique needs of organizations.

“We help our clients think very carefully about their situation and craft a role for legal counsel that will serve them the best,” Boel says. “And we really focus on how to create positions that will attract the strongest candidates.”

Even if the future of healthcare remains unpredictable, Boel notes, one thing is certain: Organizations boasting legal counsel that is flexible, multi-disciplined, and creative will be better prepared for whatever the future holds.

There is no better time to be a healthcare legal counsel. While still a relatively new practice area, healthcare law is one of the few legal specialties that has seen significant growth in recent years. According to the American Health Lawyers Association, salaries have steadily increased over the past decade as hospitals and health systems boost their legal teams to manage healthcare reform, mergers and acquisitions, public policy issues, and integration of physician practices, to name just a few.

As hospitals and health systems re-envision their approach to patient care, so too must attorneys revise their approach to providing legal services. Today’s healthcare attorney must have a skill set beyond what was once expected, according to Witt/Kieffer Consultant Werner Boel. Counsel must exhibit leadership skills, such as the ability to manage a team, communicate effectively with internal and external audiences, and stay abreast of changes in healthcare law. Whether their position is general counsel, deputy general counsel, or chief legal counsel, attorneys should also feel comfortable working in collaboration.

“General counsel are no longer tucked away in their ivory towers,” Boel says. “They need to be comfortable in an external role, negotiating deals with third parties, for example, as well as helping CEOs be strategic in their planning.”

Law schools are responding to these new expectations by creating health law programs that include business and managerial courses, Boel says. Some practicing attorneys are returning to school for their MBAs or signing up for specialized courses in, for example, compliance or governance issues.

Even seasoned attorneys can take steps to boost the skill set they need to be leaders in health law. Boel recommends the following career steps:

• Improve collaborative and managerial skills by volunteering for team projects in your community, or serving on the board of a health-related, non-profit organization.
• Enhance your communication skills and familiarize yourself with healthcare policy issues by joining a state or local organization that has a healthcare task force.
• Learn more about a particular niche in health law by keeping abreast of the latest news and happenings in that area.
• Join the American Health Lawyers Association and enroll in a practice group.

Today’s healthcare law is more challenging than ever before, Boel believes. Embracing the expanding operational and strategic role of legal executives while working comfortably within a rapidly changing field isn’t easy for some.

“Lawyers, by definition, don’t handle change really well,” Boel says. “They want to know what the future will look like. But in healthcare it’s a different, unpredictable environment now. Some see it as challenging, but others wisely see it as an exciting opportunity to help shape the industry’s future.”
Werner Boel, Legal Services practice leader, brings two decades of experience in international law, health law, business venture consulting, and leadership recruitment to his executive search practice at Witt/Kieffer. His practice has special emphasis on recruiting top executives to build the scope and influence of in-house legal departments on behalf of healthcare, higher education, and not-for-profit organizations.

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