An outside counsel with an inside track on healthcare compliance

an interview with Daniel Gospin
Partner, Health Care and Life Sciences Practice, Epstein Becker Green, Houston

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Meet Daniel Gospin

an interview by Gabriel L. Imperato, JD, CHC

SCCE/HCCA Vice President Gabriel L. Imperato (gimperato@broadandcassell.com) Managing Partner, Broad and Cassel, Ft. Lauderdale, Florida conducted this interview with Daniel Gospin (DGospin@ebglaw.com) in March 2014.

GI: Please tell us a little bit about yourself and your background. How did you come to the practice of law and, more importantly, to assisting compliance professionals in their day-to-day activities?

DG: I was born in Austin, Texas. When I was seven years old, my parents (native New Yorkers) moved back to the East Coast, and I grew up in Livingston, New Jersey. I attended Washington University in St. Louis for my undergraduate studies and met the woman whom I would eventually marry. I went to Brooklyn Law School in New York, and my wife went to Georgetown Medical School in Washington DC. At the start of my second year of law school, Brooklyn Law rolled out its health law curriculum and externship opportunities. I was always interested in healthcare policy and access-to-care issues, so I enrolled in the health law primer class. I also started an externship at New York City Health and Hospitals Corporation. It was the combination of exposure to the academic nuances of healthcare law and the practical application of such nuances in the externship setting that cemented my decision to pursue this career.

After my wife and I survived three years of regular Amtrak trips between New York and DC, I knew that my next move was going to be to the nation’s capital to join my wife for
her last year of medical school. I started with the national law firm of Epstein Becker Green (EBG) in January 2005 in its Washington DC office. We later moved back to New York, and I transferred to EBG’s New York office for a year. The firm was interested in growing the health care practice in New Jersey, so I also worked for a year in EBG’s Newark office, as my wife finished her residency. There’s an old cliché that “opposites attract.” That may often be true. However, in my case, my wife’s professional endeavors inform and inspire my commitment to the healthcare industry. Her practical insight into clinical and business challenges facing the healthcare industry helps me to more effectively represent my clients. We knew that we had one more move in us. So, we packed our 700-square foot New York apartment and drove a U-Haul down to Texas, where I joined EBG’s Houston office in the summer of 2008, and my wife pursued her fellowship in pediatric cardiology at Texas Children’s Hospital. Almost five years later, my family is happily settled in the same state where it all began for me—Texas.

My legal career at EBG started with learning the foundational elements of how to analyze and methodically dissect traditional fraud and abuse issues, such as Stark Law, Anti-Kickback Statute, and False Claims Act questions. Over the years, I have utilized this skill set to represent and advise healthcare clients on the structuring of complex financial relationships; the navigation of federal and state government investigations and audits; and the development, implementation, and evaluation of corporate compliance programs.

**GI:** What kinds of clients have you served in the healthcare industry?

**DG:** My practice has evolved over the years to become one that is essentially split between providing health regulatory and compliance counseling directly to health and life science organizations and representing investors and other financial institutions that invest in or support the healthcare industry. In this regard, I represent a range of both national and regional health and life science entities that operate in different sectors of the healthcare industry. My healthcare clients represent a cross section of the industry from the perspective of size and industry focus. My regulatory and compliance client base includes, for example, hospitals, dialysis companies, clinical laboratories, durable medical equipment suppliers, pharmaceutical and medical device manufacturers, and retail and specialty pharmacies. On the investment side of my practice, I represent large and mid-size private equity, venture capital, and other financial institutions that have identified the healthcare space as a source of growth. I have found that the foundational elements of my regulatory and compliance practice translate well into my transactional practice when it comes to assessing potential risk areas in connection with an investment opportunity.

**GI:** What are the typical types of tasks that you have regularly performed for compliance professionals in these healthcare organizations?

**DG:** I see myself as wearing different hats, depending on the issue at hand. In this way,
I adjust my role in order to meet the needs of the client and the particular matter that I am asked to address. Therefore, my relationship with clients—and more specifically, the compliance professionals at the healthcare organizations that I represent—is dynamic. One aspect of my practice and relationship with my clients that I truly appreciate and look forward to is the call to brainstorm about a compliance concern that a client has been grappling with and just needs 15 minutes to think through the issue. These calls don’t necessarily result in the biggest project, and that’s okay, because the call reaffirms for me that I am a trusted advisor and someone that my clients can rely on to give them the advice they need to do their jobs and make their organizations stronger.

If I were to take a snapshot of a week in any given month, you would see me working on multiple projects for a mix of clients, including a compliance program effectiveness review, a government or internal investigation, a RAC or ZPIC audit, a self-disclosure, the development and implementation of a compliance program, a health regulatory due-diligence matter, and a mark-up of a purchase agreement for a healthcare transaction. Oh, and of course, this is all after having breakfast with my wife and three young children (who invariably disagree over whose bowl has more cereal in it) and then taking my twin sons to school. (I’m working on a policy to address the cereal concerns.)

My representation of health care entities can often be characterized as a blend of legal, compliance, and operational advice. Understanding how your advice impacts the business is crucial. Giving advice without thinking critically about how a policy or compliance program can be operationalized or what the impact of a government investigation will be on the business does not provide the client with the full value of your services.

GI: How long have you been involved with the Health Care Compliance Association, and what activities have been most attractive to you?

DG: I have been involved as a member of HCCA for the past five years. I consider myself to be an active participant in the organization as a member, speaker, and regular attendee at regional and national conferences in the capacity of an exhibitor and sponsor through EBG. For the past two years, I have served on the Gulf Coast Regional Conference Planning Committee. In this role, I have had the privilege of getting to know some extraordinary people in the compliance community. HCCA has given me the opportunity to develop a network of professional contacts and friends. I look forward to the continued growth of my relationship with HCCA, its staff, and members.

GI: What has been the value of the Health Care Compliance Association to you and your colleagues at Epstein Becker Green?

DG: HCCA provides access to a network of compliance professionals who are just as committed to their organization as I am to my clients. Through HCCA, I have been exposed to many different compliance professionals who work in vastly different capacities for their respective healthcare organizations. Learning about these experiences makes me a better lawyer and a better advisor to my clients. By attending HCCA conferences, participating in webinars, and reading the regular publications, I am able to augment my practice, which, in turn, allows me to represent my clients in a more comprehensive way. I always take away practical experiences that others have worked through to expand my knowledge base.

As a firm, Epstein Becker Green prides itself on our long-standing relationship with HCCA. We have made an investment as a
firm in the organization, and we continue to support the work that HCCA is doing for compliance professionals across the country. We see HCCA as a natural platform for what we are trying to do as healthcare lawyers. Our involvement in the organization gives us exposure to the compliance professionals on the ground within their respective healthcare organizations, making compliance decisions that will impact how their business is able to operate and succeed in the marketplace. It’s exciting to be a part of that growth.

GI: Why have you chosen to participate in the activities of the Health Care Compliance Association as opposed to other professional organizations for attorneys?

DG: There are many organizations that a healthcare lawyer can choose to devote time to, and I have found myself continually drawn to HCCA, because of the relationships that I have made through the organization and the value that the organization provides to me on multiple levels. These relationships form the basis for a strong professional network of colleagues who are committed to a common goal. Apart from the members of HCCA, I have also developed lasting relationships with HCCA’s staff (to the point where I get emails asking for updated pictures of my three children, which, of course, I don’t mind sharing). I love the fact that people expect and look forward to seeing me at Regional Conferences and the Compliance Institute, and this confirms for me the value of HCCA—the people.

I have fully bought into the notion that compliance is a critical component for any healthcare organization and that one size does not fit all. For me, HCCA provides a perfect springboard for the type of compliance work that I am passionate about and that I actually like doing. I committed myself to becoming more involved in this organization, because I truly believe that my legal practice is enhanced through my participation. I think HCCA’s message to its members regarding the importance of compliance, and the substantive opportunities that HCCA provides to further educate its members, is unparalleled. I have found extraordinary value in my association with HCCA, both on a professional and personal level. HCCA attracts a balanced membership with representation from various levels of an organization’s compliance function.

GI: Has your involvement with HCCA educated you to the challenges and concerns of compliance professionals? If so, has this worked to better serve these clients as an attorney?

DG: Certainly. It is almost impossible for this point to be lost on anyone who has attended just one HCCA conference or webinar. Getting compliance right is not easy. It takes dedication and persistence from people who are committed to their organization’s success. I see compliance as an iterative process that requires the right resources, the right personnel, and the right leadership. We will often hear a common refrain from compliance professionals that a tension exists between the “business” and compliance people of an organization—the value of the compliance...
program is not fully appreciated by certain senior members of the organization or the board of directors.

These are teachable points, however. As an attorney who advises clients in the compliance space, I have found myself using an issue that I helped a client resolve as a tool for helping the Compliance department demonstrate the value of the organization's compliance program. For example, I assisted a client with a self-disclosure to a state Medicaid program. The issue that was central to the self-disclosure was brought to the attention of the compliance officer through a reporting channel that was part of the compliance program. Over the course of a number of weeks, an internal investigation was conducted at the direction of counsel, a self-disclosure was drafted and submitted to the state Medicaid program, discussions ensued with the state, and ultimately, a settlement was reached. At the conclusion of the matter, the chief compliance officer called me and said that he was preparing for a board meeting. He thought that, in connection with his update to the board regarding the status of the self-disclosure, he could use the opportunity to highlight the effectiveness of the compliance program in identifying and resolving the issue. The compliance officer asked me to speculate as to what I thought the potential liability would have been if the self-disclosure issue was first identified by the government instead of the company. He incorporated some of this information into his presentation to the board in order to offer some concrete validation that the compliance resources being invested by the company do, in fact, matter. The feedback from the board was overwhelmingly positive, and not simply because of the end result relative to the settlement, but because the company had processes in place to address the issue in an affirmative way. This exercise helped the board appreciate the value of the compliance program, the day-to-day work being performed by the company’s compliance professionals, and the need to continue supporting those resources from the top down.

GI: What do you believe compliance professionals expect from outside counsel and how would you describe the relationship between outside counsel and compliance professionals?

DG: Compliance professionals expect outside counsel to utilize their legal expertise to help solve problems and think strategically about compliance issues. To do this, we, as outside counsel, must first listen and then react to the information provided. The compliance professionals I work with value and respect the collaborative relationship that I try to nurture and maintain. My philosophy is that outside counsel and the client are trying to achieve a common goal. As such, we shouldn’t think of ourselves as operating in two distinct silos—outside counsel and compliance—but rather as a team that exchanges information and ideas freely.

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Outside counsel will have a more discrete and, perhaps, a more focused role relating to the overall Compliance function of the organization. I believe that outside counsel can materially enhance the effectiveness of a compliance program, if used appropriately. To accomplish this goal, however, there must be transparency and forthrightness when it comes to establishing expectations for a project, including budgets, work plans, and timeframes. Ultimately, outside counsel must be responsive to the needs of compliance professionals who are working on behalf of their respective organizations. We all operate in a fast-paced, high-risk environment, and there is an expectation that outside counsel will be readily available to help a client navigate complex issues in a thoughtful and timely way.

**GI:** How would you describe your particular niche of expertise? Are you a health lawyer, a white collar lawyer, a litigator, a regulatory counsel, or would you describe yourself as something other than these designations?

**DG:** Given the dynamic of my practice and the fact that I represent both providers and suppliers in the healthcare industry, as well as investors and other financial institutions that invest in or support the healthcare industry, I would characterize myself as a health regulatory compliance lawyer and a health regulatory transactional lawyer, depending upon the circumstance. My compliance background informs my regulatory transactional practice, and the issues that I evaluate in connection with due diligence reviews inform my direct representation of providers in similar industries. I’m able to channel my experiences from these two areas of my practice in order to solve problems in a well-rounded and thoughtful way. I really see this as a value-add to all of my clients, whether the representation is in the context of a compliance or transactional matter.

**GI:** Do you have any recommendations for HCCA for further development of programs and activities for assisting attorneys in their efforts to better serve compliance professionals?

**DG:** Many times, compliance attorneys are engaged to conduct compliance effectiveness reviews or board training in connection with an existing compliance program requirement that is either built into the compliance program or related to a government-imposed obligation. Understanding how to interact and communicate with a board—whether in a training environment, with respect to a report on the effectiveness of a compliance program, or otherwise—is an important skill that all compliance attorneys should hone. As professionals who work in the compliance arena, we understand (and have heard on countless occasions) that a culture of compliance must be instilled in an organization from the top down. Naturally then, we, as compliance attorneys and compliance professionals, must be able to communicate effectively to the top layer of the organization in order to extract the most value from these interactions. A properly informed board will result in a stronger compliance program. As compliance attorneys, we are sometimes asked to communicate directly with the board or prepare materials for compliance professionals within the organization to use as part of their presentation. In either event, a program that is directed toward compliance attorneys and focuses on educating attorneys on practical ways to sharpen and tailor communications to board members would be a valuable enterprise for compliance attorneys, compliance professionals, and HCCA.

**GI:** What is the value of outside counsel for compliance professionals and what are some other ways that outside counsel can be most effective in assisting an organization with compliance matters?
DG: Outside counsel can be most effective when working with compliance professionals to organize a comprehensive strategy to address a particular issue based on a collection of experiences gained by assisting other organizations with similar matters. One of the extraordinary advantages of a place like EBG is that we have over 100 healthcare attorneys who have diverse professional backgrounds representing clients across all sectors of the healthcare industry on a wide range of issues. These resources enable us to provide the kind of thought leadership and experience that clients expect, and frankly need, to solve complex compliance issues facing their organizations. Having this bench strength to support my practice makes me a better compliance attorney and, ultimately, puts me in a better position to advise my clients with timely, targeted answers.

To be effective, outside counsel needs to approach a compliance issue with the understanding that there are legal issues, compliance issues, and business issues to consider and balance when formulating a strategy and response. If outside counsel appreciates this dynamic and perhaps the natural tension that exists, to some degree, between these components, then I think we can be more effective in developing answers that meet all the needs of the organization.

GI: Do you have any other advice for healthcare compliance attorneys?

DG: Continue to attend conferences—they will energize you and keep you connected. Regularly read about changes in the healthcare industry—you’ll be more informed and this will give you confidence. Every now and then, call or visit your client instead of sending another email.

GI: Thank you for sharing your background and perspective with us.