

Compliance Today – January 2023



Steve Lokensgard
(steve.lokensgard@faegredrinker.com,
[linkedin.com/in/steve-lokensgard-3a50b230/](https://www.linkedin.com/in/steve-lokensgard-3a50b230/)) is Partner at Faegre
Drinker Biddle & Reath, Minneapolis,
MN.



Gerry Zack
(gerry.zack@corporatecompliance.org,
[linkedin.com/in/gerryzack/](https://www.linkedin.com/in/gerryzack/)) is CEO
at Society of Corporate Compliance
and Ethics, Health Care Compliance
Association, Eden Prairie, MN.

Meet Steve Lokensgard: 'Like solving a puzzle'

By Steve Lokensgard and Gerry Zack

GZ: You have great experience as both a compliance officer and, more recently, as outside counsel with a law firm. But your first position after law school was as a judge advocate in the U.S. Army. Tell us how you came to become a judge advocate and how that experience impacted your views on compliance.

SL: Since I was in the eighth grade, I knew I wanted to be an attorney. Maybe it was a love of history and an interest in government. At one time I was interested in politics as well, and I thought being an attorney was an essential stepping stone to understanding how the government worked. I like to tell people I grew up wanting to negotiate arms treaties with the Soviets, and I became a Medicare billing compliance attorney. Such is life!

In addition to my interest in the law, I was also interested in serving in the military. My dad was an officer in the Army Reserve. In college, I participated in ROTC [Reserve Officers' Training Corps], was commissioned as a field artillery officer, went to law school, and then became a judge advocate. I was on active duty for seven years, then in the Minnesota Army National Guard for a total of 25 years of service. Most of my time on active duty was related to military justice. I was a prosecutor, a defense counsel, and a legal adviser to the Criminal Investigation Division command.

One significant experience from my time in the Army was an understanding that the first report was almost always wrong. At least the first report usually lacked the complete picture relevant to making a decision. As much as the Army strives for clarity in communication, the “fog of war,” as they say, sometimes makes it difficult to ascertain the truth as quickly as you’d like. Deliberate and careful investigations take time, and you should not rush to conclusions. Do the work, conduct a thorough investigation, and then report your findings clearly and truthfully.

Another experience had to do with the way the Army trains soldiers. They used a variety of teaching techniques to train soldiers who had different learning styles. In addition to traditional classroom training, there were many practical demonstrations and a lot of hands-on experiences. I even remember seeing books that looked like cartoon magazines used to train soldiers on how to service a vehicle. We can only hope to be as creative in training employees on essential compliance topics.

Finally, I was blessed throughout my Army career by advising leaders who wanted my advice and listened to it. Leaders play such a big role in creating a corporate culture. If you have an ethical and thoughtful leader who seeks out and takes into account advice from their legal and compliance teams, you will likely find an ethical

organization that sees compliance as a core value.

GZ: From there, you went on to work as an assistant attorney general (AG) in Minnesota before then entering the field of healthcare compliance. How did you get involved in healthcare, and what are some key takeaways from your time at the AG's office?

SL: When I interviewed at the Minnesota AG's office, I was asked what I was interested in doing and I said, "Something to do with nursing facilities." The person who was interviewing me had apparently never heard that before. She burst out in laughter and had to call another deputy AG immediately and report this strange answer. For the next seven years, I litigated nursing home cost report rate appeals! I provided advice to several state-run hospitals and represented the Minnesota Department of Human Services in several Medicaid cases. I got to understand cost reporting and the economics of healthcare, but also appreciate the policy considerations underpinning a publicly funded healthcare program.

One key takeaway was that it was relatively easy to identify a noncompliant provider. With many providers who found themselves in trouble, there was frequently no intent to violate the law. But they lacked an infrastructure that would help them operate in a highly complex regulatory environment. Even if you have a sympathetic regulator, it is sometimes difficult for regulators to make concessions because of the way a statute or regulation is written. As Justice Oliver Wendell Holmes once wrote, you must "turn square corners" when you deal with the government. I definitely grew to appreciate the value of operating an effective compliance program.

Another major takeaway is that, at least in Minnesota, there is a wealth of very knowledgeable public servants who are willing to meet with you and answer questions about complex regulations. They want the industry to succeed. Even though many of the friends I worked with have since changed jobs or retired, I still have found the staff in the agency to be very approachable, professional, and willing to help you find the right answer. You should figure out who in your company will be the contact with the agency—compliance, legal, or regulatory affairs. And in any communication with the government, you need to think strategically, but don't be afraid to reach out for help.

GZ: In moving from the AG's office—which is responsible for prosecuting individuals and organizations—to a role as associate general counsel and then chief compliance officer for a healthcare organization, there must have been some interesting challenges with such a significant shift in roles. Can you explain what it was like to experience and manage this type of change in careers?

SL: The transition from advising the Department of Human Services to advising the compliance department was not as difficult as you would think. Litigation experience was helpful in conducting internal investigations and assessing the seriousness of an issue. Experience researching and advising on billing compliance issues was similar, just viewing the world from a provider's lens rather than a regulator's lens. What was new to me were wacky Medicare compliance rules, like the "three-day payment window," the "Anti-Markup Rule," "incident-to billing," and "provider-based status." It took a while to learn about those unique Medicare billing rules, but I had good teachers!

To me, the biggest change was transferring from the law department to the chief compliance officer role. Suddenly I wasn't just providing advice (as important as that is), I was fully enmeshed in operations. You realize that the compliance issues that found their way to the legal department were really just the tip of the iceberg. Managing the compliance hotline, performing excluded provider checks, and putting together compliance education were all tasks that I hadn't been involved in as a legal adviser. I spent a lot of time identifying risks and developing mitigation strategies. The RAC [recovery audit contractor] audits were just starting when I was the compliance officer, so it wasn't hard to identify short stays as a key risk issue for all hospitals. But other than that, there were hundreds of issues identified in the OIG [Office of Inspector General] Work Plan. You appreciate

the need to prioritize and mitigate risk in a variety of different ways.

GZ: Now, as a partner with a law firm, you serve many clients and work with numerous compliance programs. How have your past experiences helped, or challenged, you in this role?

SL: My legal background sometimes causes me to focus on the legal aspects of a particular issue when the real problem may be operational. In other words, the solution needs to be not only legally compliant, but also easy to implement or you are setting your organization up to fail. We should remember that the solution needs to be easy to ensure that the fix sticks.

My experience with a variety of compliance programs helps me assess the effectiveness of compliance programs of all different sizes. You develop a sense of when a company should have a standalone compliance officer, when a company should have an entire compliance department, and when a dual-hatted compliance office is appropriate. The U.S. Sentencing Guidelines note that one size does not fit all. The structure of a compliance program needs to be appropriate for that particular company.

GZ: Now that you've spent 35 years practicing law, you've probably seen and worked with compliance programs of all types and levels of maturity. What are the most common aspects of compliance programs that you find organizations asking you about, and why do you think that is?

SL: Healthcare compliance is still a relatively new profession. Compliance programs began emerging in healthcare in the 1990s and didn't really become mandatory for all providers until the Affordable Care Act in 2010. As a result, perhaps the most frequent question I get is about the scope of a compliance program versus the scope of a law department, and how the general counsel and compliance officer should divvy up the work. Lines get blurred in smaller organizations when the sole attorney in the organization is also the compliance officer (and the risk manager). As the organization grows, it's important to clarify those lines to ensure an effective compliance program focused on mitigating compliance risks.

GZ: What is it about the current state of compliance in healthcare that has changed the most from when you started?

SL: Two developments stand out in my mind. First, 20 years ago many chief compliance officers were attorneys and former federal prosecutors. Today, many compliance officers came up through the ranks, either in compliance or other operational areas and are seen as great operational leaders within their companies rather than a former regulator. Second, compliance staff these days have taken classes on compliance programs, and many are Certified in Healthcare Compliance (CHC). I think compliance has always attracted those who are good problem-solvers, trainers, and operators. But the professionalization of the compliance staff adds a common vocabulary to the compliance department that will really help the organization succeed.

GZ: You also serve on the board of directors of a healthcare organization. With your background in law and as a compliance officer, you could be either the dream board member or a nightmare—which is it? But more seriously, how do you strike the right balance between your extensive and detailed knowledge of healthcare compliance and the need to focus on the oversight role of a board member?

SL: Luckily for St. Mary's Health Clinics, I specialize in billing compliance and the clinic doesn't bill anybody for anything! So, my legal skills are largely, shall we say, underutilized. But it is fun to sit on a board and see an organization from the board member's perspective rather than the legal or compliance perspective. Rather than running the day-to-day operations of the organization, a board member has a fiduciary duty to exercise oversight of the company's operations and ensure that the nonprofit mission is being fulfilled. It requires much more of a strategic focus than an operational or a tactical focus. I can certainly appreciate the challenge presented

to board members who might not be in the healthcare field to understand the risks associated with the healthcare industry and ensure that the risks are adequately addressed by the company.

GZ: You’ve been a member of the Health Care Compliance Association (HCCA) for 15 years and have been active as a speaker at many HCCA events. For someone who is just getting started in their compliance careers, what advice would you have for getting involved as a speaker or author? What are the benefits of volunteering in this manner?

SL: If you think an issue is interesting, chances are many others would think it’s interesting as well. Dig in. It could be an interesting issue that you just researched, or a new rule or CMS [Centers for Medicare & Medicaid Services] guidance that was just published. Dig in. Write about it or give a presentation about it. I guarantee that for every article I ever wrote and every presentation I ever gave, I learned something. It is a great exercise in professional development, and you’re helping others at the same time. Also, a big benefit of speaking at a national HCCA conference is free registration and some reimbursement for travel. As more and more companies tighten their belts and don’t have money to pay for an out-of-state conference, this becomes a crucial way to pay for your trip yourself and benefit from an incredible networking opportunity. The connections you make at national conferences—particularly when you’re a speaker—will pay dividends the rest of your career.

GZ: For the last couple of years, you’ve served as an instructor for HCCA’s Compliance Essentials Virtual Workshops. In addition to your deep knowledge of healthcare compliance, you clearly bring a passion for what you do to these workshops. You clearly enjoy what you do. What is it about your career that keeps that drive and enthusiasm going so strongly?

SL: First, I love teaching about the history of compliance because I think it’s a really fascinating area. History has always been a big interest for me, so talking about how medicine was regulated in the late-1800s and the advent of compliance programs coming out of the “Peace Through Strength” program a hundred years later is just really fun for me. Second, regarding both the practice of law and compliance, you are presented with a wide variety of issues every day. Solving them is like solving a puzzle. It requires a little knowledge, experience, focus, and collaboration to get it done right.

GZ: But everyone needs a break occasionally. What does Steve Lokensgard do to get a breather from compliance?

SL: I think I’m a pretty classic Midwesterner. I love to grill brats and smoke ribs. I love all sports—the Minnesota Vikings, Twins, Timberwolves, and Wild. I love to go on beautiful bike rides with my wife (frequently stopping at a local tap room), play golf and cornhole, and snowmobile in the winter. I like reading historical fiction, especially if it relates to pirates. Like compliance officers, they also lived by a certain code.

GZ: Thanks so much for sharing your history and insights with us, Steve!

This publication is only available to members. To view all documents, please log in or become a member.

[Become a Member Login](#)