Roy Snell Health Care Regulatory & Compliance Writing Competition

2025 Competition Problem

# Although inspired by actual cases, this problem is fictional and prepared solely for educational purposes.

# Introduction

It was a late January Friday evening when Timothy Hutton, the CEO of Viking Health Systems, returned to his penthouse condominium at the Carlyle. As he sipped his favorite bourbon on the rocks, Hutton took a few minutes to gaze out over the snowy Minneapolis cityscape with twinkling streetlights. What had started as a good day quickly turned sour after Hutton met with Justin Lynch, who was both Viking’s Chief Financial and Chief Legal Officer. As he turned away from the picture windows, Hutton pondered what Lynch had told him as he threw a log on the fire.

# Promise of a Bright Future

Until today, Hutton was confident that Viking had a bright future in 2025. Founded in 2006, VHS was considered one of the area’s premier mid-sized health systems, with three hospitals and four outpatient clinics in the Minneapolis-St. Paul area.

Recognizing the opportunity for expansion, Viking acquired four additional hospitals and a network of outpatient clinics from Shelburne Health Systems six months ago. Shelburne was a small, rural, community-based health system serving the communities of St. Cloud, Princeton, Cambridge, and North Branch, all located north of the Minneapolis metro area. Unfortunately, like many other rural health systems post-COVID, Shelburne was in severe financial distress as the pandemic relief funds dried up.

Hutton smiled as he remembered how Viking swooped in and acquired Shelburne’s most profitable hospitals and clinics at bargain prices by outmaneuvering other potential purchasers. Despite the cash infusion from Viking’s purchases six months ago, Shelburne no longer existed as an organization, having declared Chapter 7 bankruptcy as it could not find a willing buyer for its remaining assets.

At the same time, Viking had emerged from its 2021 settlement agreement with the U.S. Department of Justice (DOJ). The settlement, which resolved allegations that some of Viking’s hospitals had overbilled Medicare, required Viking to implement an effective corporate compliance program. Hutton recalled how, in December 2024, Lynch had represented to the Board that Viking had met its corporate compliance program obligation to the DOJ. However, after today, Viking’s future did not look so bright.

# The Squall Line

During their usual Friday afternoon one-on-one meeting, Lynch told Hutton that he had uncovered a significant problem threatening Viking’s future. Although the Shelburne acquisition had closed six months ago, Lynch had discovered problems with Shelburne’s contracts with and payments to three prominent hospital physicians, Drs. Roger Thomas, Chelsea Barrett, and Janice Simpson. In addition to serving as Shelburne's medical directors, the three owned and operated a Group Practice Organization called the Three Friends Group (TFG).

Shelburne’s contract with each physician included a 25% referral bonus for any TFG patients referred to Shelburne for in- or out-patient treatment beyond their base salary. Separately, Shelburne had established an arrangement for TFG to lease large diagnostic medical equipment from Shelburne for TFG to use to support referrals to Shelburne. Shelburne also rented office space to TFG at a price below market value. Moreover, as the number of referrals from TFG grew, Shelburne instituted a process of forgiving the rental payments.

Upon hearing this, Hutton responded, “Why didn’t you highlight this during our due diligence? Didn’t you have copies of the contracts to review?”

Lynch stated that Shelburne had provided the contracts to Viking, but “we were moving so fast per your orders that we did not have time to review them thoroughly before the due diligence period closed.”

After the meeting, Hutton sent a follow-up email to Lynch:

January 24, 2025

To: Justin Lynch

From: Timothy Hutton

**Subject: CONFIDENTIAL – Shelburne Due Diligence**

Justin,

Where was our Chief Compliance Officer, Joshua Turley, in all this? After all, you recommended we engage him, and he worked for you.

Lynch responded by email:

January 24, 2025

To: Timothy Hutton

From: Justin Lynch

**Subject: RE: CONFIDENTIAL – Shelburne Due Diligence**

As you know, Turley is an outside consultant who only works part-time. He was fully engaged in addressing the overbilling issues covered by the DOJ settlement. He was already costing us a fortune, and I didn’t think he needed to be involved with the acquisition process. Besides, our outside M&A counsel (Thatcher, High, and Low) was already involved in the transaction.

# Going Outside

Not satisfied with Lynch’s answers, Hutton contacted Marjory Kohler, a partner with the firm Schwartz, Meyer, and Kohler. Kohler was a former Assistant U.S. Attorney in Minnesota and a prominent healthcare attorney. Since 2021, she and her firm worked with Viking on the DOJ settlement and its subsequent compliance efforts.

Based on her knowledge of Viking’s compliance program, she knew that Turley had limited compliance experience and expertise. However, he was hired as Viking’s compliance officer partly because of his connection with Lynch, who had no previous compliance experience. Moreover, despite his low hourly rate, Kohler knew that Lynch, always focused on costs, allowed him to bill no more than 20 hours per week.

In addition, Lynch limited the scope of Turley’s role. Thus, Viking had only established policies and procedures addressing federal healthcare billing and required only that its employees read and understand them. Given Turley’s limited hours, there was no evidence that it had established any compliance auditing or monitoring.

Regarding the Viking-Shelburne deal, Kohler’s firm was not involved in the acquisition. Thatcher, High, and Low, a prominent Minnesota M&A firm with no experience with healthcare, handled the acquisition.

Reviewing the due diligence materials, Kohler noted that Shelburne had provided a PowerPoint deck to its Board in 2023 outlining plans to establish a compliance program. However, despite Shelburne’s representations to the contrary that Shelburne had an effective compliance program, there was no evidence in the materials that such a program existed. She also noted that the final agreement specified that the three doctors (Thomas, Barrett, and Simpson) would join the Viking Board as independent directors. Roles that they still held.

Concerned about what she had uncovered, Kohler spoke with some of her former U.S. Attorney’s Office colleagues. Off the record, she learned that Jane Doe, one of Shelburne’s former company officers, had raised concerns about what Shelburne had disclosed in the due diligence process in a whistleblower complaint. According to her DOJ source, Shelburne knew about the Doe’s concerns but did nothing to correct the situation.

# The Ask

To respond to Hutton’s concerns about Viking’s situation, Kohler has asked you, her senior healthcare law and compliance associate, to prepare a legal memorandum and slide deck.

## **Legal Memorandum**

For the legal memorandum, she directed that you focus on:

* What areas of potential healthcare law liability is Viking facing?
* How can leveraging the DOJ’s 2023 M&A Safe Harbor Policy reduce or avoid that potential liability?

## **Slide Deck**

For the slide deck, she requested that you develop a high-level plan for Viking to improve its compliance program by applying the HHS-OIG’s General Compliance Program Guidance published in November 2023. Specifically, she requested that you focus on improvements that can be quickly and easily implemented.