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**April 29, 2016**

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**Payers Conducting War Against Out of Network Facilities**

There's a war going on, one that includes using the press as a part of warfighting strategy: The war by payors against out of network facilities.

Two recent battles, one in California and another in Texas, are highly instructive for physicians and facilities across the country.

**Aetna v. Bay Area Surgical Management, LLC**

I touched on this case in a slightly different context in my April 18 blog post, [Aetna Obtains \\$37-plus Million Judgment Against ASC Manager](#).

In the larger context, Aetna alleged as a part of its attack on out of network surgery centers managed by Bay Area, that the facilities charged exorbitant prices for out of network procedures.

In a brilliant piece of framing (control the frame to control the context to control the conclusion) Aetna argued, apparently with a straight face, that the fact that the ASCs' out of network charges were significantly higher than the in-network prices that Aetna agrees to pay to other, contracted providers, was proof that the Bay Area surgery centers charged unreasonable fees.

Aetna then argued that the unreasonable fees led to unreasonable profits that permitted unreasonable distributions to ASC investor physicians, and that unreasonable distributions are kickbacks for those physicians' referral of patients.

There was more to the suit than simply those allegations, including the fact that Bay Area's ASCs routinely waived the patients' copayments and deductibles, resulting in fraud on the Aetna.

However, despite the illogic of an argument that uses a payor's in-network rates as the yardstick to demonstrate unreasonableness, it played well in the press and, one can only assume, with the jury. After all, it awarded Aetna more than \$37 million.

**Forest Park Hospitals Go Bankrupt**

The other skirmish in the out of network war concerns the Forest Park chain of hospitals in Texas.

Forest Park's business plan was for a chain of hospitals, each with very high end patient amenities. They eventually built a main campus in Dallas as well as smaller hospitals in the Dallas suburbs of Frisco and Southlake, in addition to facilities in Fort Worth and San Antonio.

The Forest Park system's management made a number of mistakes, but major among them was that their revenue was based on out of network status.

The payors had other plans and began pushing back on reimbursement and steering cases to other area hospitals that had agreed to lower, in-network rates.

Eventually, all of the Forest Park hospitals either closed outright or filed for bankruptcy. A planned Forest Park Austin filed bankruptcy before it ever opened.

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Lest you think that the war against out of network providers is a facility phenomenon only, note that payors are also battling out of network physicians.

For years, payors have been lobbying states, using the guise of consumer protection, to prevent out of networks physicians from so called "balance billing" their insureds. For example, California law prevents out of network providers treating patients in emergency cases from billing in excess of what the payor pays.

If you believe that payors won't continue to push for prohibitions on all "balance billing" (once again, the term demonstrates the power of framing) you're fooling yourself. After all, isn't every physician who refuses to accept what, for example, Aetna, is willing to pay engaging in "balance billing" in the payor's, and populist politicians' eyes?

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The takeaways for you:

1. Business models based on being out of network, whether you're operating a facility or a professional practice, are not long for the healthcare world.
2. The battle for public perception is being lost through payors' better use of language and persuasion. We're living in strange times when insurance companies can succeed in painting themselves as victims.

**Wisdom. Applied. 87 - A Clear Picture Of The Future of Medical Practice**

Kodak was once the country's leader in photography. Then along came both Fujifilm and digital photography. And bankruptcy. And a lesson for medical group leaders.

**NEW BOOK OFFER**

**The Impending Death of Hospitals**



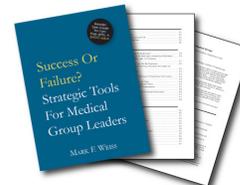
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Having fallen for the fallacy that there's profit in market share, hospitals have gorged on acquisitions and on employment and alignment of physicians. Many physicians have been willing participants through practice sales and in the belief that there's safety in hospital employment. But it's becoming evident that physician employment leads to losses and that integrated care delivers neither better care nor lower costs. And now, technology is about to moot many of the reasons for a hospital's existence. How can your practice survive and even thrive in the post-hospital world?

The Impending Death of Hospitals is available for purchase in hard copy or in Kindle format on Amazon or you can download a complimentary PDF version here.

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**Success Or Failure? Strategic Tools For Medical Group Leaders**



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Today's medical groups must confront multiple challenges: The impact of Obamacare. Increasing commoditization. More competition, not just from other physicians and medical professionals, but also from hospitals, investor-owned groups, and disruptive ventures. Yet at the same time, the future of healthcare offers medical groups tremendous opportunity.

This small book is a collection of essays, of thoughts as thinking tools for your success. Read. Think. Succeed. Repeat.

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**Hospital-Based Medical Group Mergers, Acquisitions & Alternatives**





### All Things Personal

A few years ago, an attorney from another state, someone that I didn't know (let's call him Bob), emailed asking for a recommendation for a person to serve as an expert witness in a healthcare business lawsuit.

I made a few calls and then sent a reply email to Bob with some names and contact info. In my email, I asked Bob to tell me about his practice because I have significant business in his state.

What was his reply? I can't share it with you because there never was one. No information as to his practice. Not even a thank you for my expert witness recommendations.

A few months later, I needed local counsel for one of my clients in Bob's area. I did a search of local area firms, and discovered that dear old Bob and his partners were indeed candidates for the project.

Did I refer the work to him? I'm not that stupid.

How are you treating the people from whom you ask favors? All take and no give is not the way to maintain or develop a relationship, let alone any real business.

### Recently Published Blog Posts

Thursday, April 28  
[Growth For What Sake?](#)

Wednesday, April 27  
[No, It's Impossible!](#)

Tuesday, April 26  
[Hospitals' Medical Staff Grab](#)

Monday, April 25  
[Why You Must Understand Personal Incentives In Entity Negotiation](#)

Thursday, April 21  
[Flying First Class Medical Care](#)

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### COMPLIMENTARY BOOK DOWNLOAD

Some days, it seems as if everyone, from anesthesia groups to vascular surgery practices, is talking about selling their practice to a larger group, to private equity investors, or to a hospital.

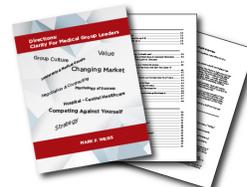
The reality is that some practices can be sold, some can never be sold, and some have nothing to sell.

The reality also is that there are a number of strategic alternatives to a practice sale.

A perfect storm of factors is accelerating the market for hospital-based medical group mergers and acquisitions.

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### Directions: Clarity For Medical Group Leaders



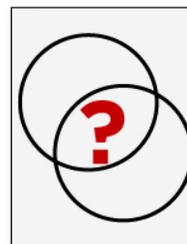
### COMPLIMENTARY BOOK DOWNLOAD

The healthcare market is changing rapidly, bringing new sets of problems.

How can you find a solution, how can you engage in the right development of strategy, and how can you to plan your, or your group's, future without tools to help clarify your thinking?

Directions is a collection of thoughts as thinking tools, each intended to instruct, inform, and even more so, cause you to give pause to instruct and inform yourself.

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### MFW Knowledge Products

If you're an independent learner or need a refresher on a current topic, click [here](#) to find out about our growing list of Knowledge Products.

### Recent Interviews and Published Articles

Three of Mark's blog posts were republished as a column entitled **Practice Challenges** in the Spring 2015 issue of the Pennsylvania Society of Anesthesiologists Newsletter, the [Sentinel](#). Read or download [here](#).

Mark's article **Is There An Interventional Radiology ASC (irASC) In Your Future?** was published in the April/May 2016 volume of [Radiology Business Journal](#). Read or download [here](#).

Mark's article **Impending Death of Hospitals: Will Your Anesthesia Practice Survive?** was published in the winter 2016 volume of [Communique](#). Read or download [here](#).

Mark was quoted in the article **Practice Patterns Change While Outcomes Remain Steady Among Older Anesthesiologists**, published in the December 2015 issue of [Anesthesiology News](#). Read or download [here](#).

Mark's article **Anesthesia Group Mergers, Acquisitions and (Importantly) Alternatives** was published in the summer 2015 volume of [Communique](#). Read or download [here](#).

Mark was quoted in the article **Anesthesiology Acquisition Rate Still at Fevered Pace**, published in the July 2015 issue of [Anesthesiology News](#). Read or download [here](#).

Mark's article **Seeking Certainty In Radiology: Mergers, Acquisitions and Alternatives** was published in June 2015 on [imagingbiz.com](http://imagingbiz.com). Read or download [here](#).

Mark's article **Give Disruptive Docs the Boot** was published in the April 2015 issue of [Outpatient Surgery](#).

Read or download [here](#).

Mark's article **Do You Make This Mistake Concerning Customer Value?** was published in the April 2015 issue of [Anesthesiology News](#). Read or download [here](#).

Mark's article **Do You Make This Mistake Concerning Customer Value?** was published in the March 2015 issue of [General Surgery News](#). Read or download [here](#).

Mark's article **McDonald's and Delivering Anesthesia Group Value** was published on [AnesthesiologyNews.com](#) on December 30, 2014. Read or download [here](#).

Mark was quoted in the article **Top 5 financial challenges facing physicians in 2015**, published in the December 2014 issue of Medical Economics. Read or download [here](#).

Mark was quoted in the article **Top 15 challenges facing physicians in 2015**, published in the December 2014 issue of Medical Economics. Read or download [here](#).

Mark's article **Bundled Billing or Bungled Billing?** was published in the October 2014 issue of Pain Medicine News. Read or download [here](#).

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