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October 31, 2016

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Physicians, Pharmacists and Fraudsters Squeezed in Pain Cream Scam

I've seen a lot of healthcare schemes and scams over the course of my career. They seem to come in waves, like passing fashion trends. It's not that skinny ties completely disappear when they go out of fashion, though, so some schemes continue even though fashionista felons wouldn't be caught dead in them.

For example, there was the criminal-run surgery center scam in which patients were recruited for surgeries they didn't need and sometimes didn't get. There were the physician identity theft scams in which the criminals billed on behalf of doctors who didn't actually have any involvement for cases that were never performed.

More recently, I've seen a growing number of pain cream scams in which businessmen (yes, that's my euphemism for criminals) offer tremendous amounts of money to physicians to prescribe a compounded medication (often from a pharmacy they control) over the phone to telemarketed patients across the country.

Those deals are fraught with compliance danger, from federal and state anti-kickback violations, to unlicensed practice of medicine, to DEA violations, just to name a few.

One of those pain cream scams recently hit the fan. The businessmen, pharmacists, marketers, and physicians appear to headed through the blades.

This past week, the U.S. Department of Justice announced the arrest of ten additional defendants - doctors, pharmacy owners, and marketers - charged in connection with an alleged \$100 million compounded pain and scar cream scam on TriCare.

The ten join two other defendants charged in the same scheme earlier this year.

The government alleges that the scheme involved the payment of kickbacks by the owners of a marketing/compounding pharmacy business to TriCare beneficiaries, to prescribing physicians, and to marketers.

The illegal payments to TriCare beneficiaries were said to be disguised as grants for participating in a (nonexistent) medical study. The government reported that the true purpose of the study was to compile a list of TriCare beneficiaries who had filled prescriptions so that the defendants could calculate how much to pay the beneficiaries.

A physician defendant served as the Chief Medical Officer for the marketing company and designed the so-called study. Another physician defendant was alleged to have been paid to prescribe compounded drugs to the TriCare beneficiaries. He wrote thousands of prescriptions for compounded drugs for patients he never met in person and for whom he conducted only a cursory consultation via telephone.

The government alleges that the compounding pharmacies paid kickbacks, disguised as employee wages, to individual defendants involved in the scheme in return for the referral of the pain and scar cream prescriptions.

Each of the defendants is charged with one count of conspiracy to commit health care fraud, which carries a maximum statutory penalty of 10 years in federal prison and a \$250,000 fine.

Two of the defendants were also each charged with 14 counts of payment and/or receipt of illegal remuneration. Most of the remaining defendants were charged with at least one count of payment and/or receipt of illegal remuneration. The maximum statutory penalty, upon conviction for each of those counts is five years in federal prison and a \$250,000 fine.

The court also has the power to order restitution of ill-gained profits, and the government has alleged the right to cause the defendants, upon conviction, to forfeit to the U.S. any property traceable to the offense, including real estate, funds in bank and investment accounts, numerous vehicles, boats and recreational vehicles, firearms, jewelry and artwork.

With lots of money at play (the government claims that more than \$100 million was lost to the scamsters) it's not hard to see how many who might otherwise have legitimate business and medical practice interests become attracted to fast and easy money.

With lots of money at play (it's that same \$100 million) it's not hard to see why the government is motivated to investigate and prosecute in order to obtain huge fines and the benefit of the forfeiture (generally to the investigating agency).

The take-away for you:

There are many legitimate ways for physicians to increase their practice income. They include, depending on state law, investments in compounding pharmacies and the direct dispensing of pharmaceuticals. They include investment in outpatient facilities. They include investment in some hospital deals. They include the expansion to multiple practice sites. And on and on

But any deal must be structured in compliance with the federal Anti-Kickback Statute, Stark, and various state law counterparts and other restrictions. The investment required to do that work up front pales in comparison to the cost of defense counsel when the government comes knocking.

Go ahead, I encourage you, think entrepreneurially. But please be smart about it.

Wisdom. Applied. 94 - 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.

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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 the belief that there's safety in hospital employment. It's becoming evident that physician employment leads to losses and that integrated care delivers neither better nor lower costs. And now, technology is about to moot one of the reasons for a hospital's existence. How can you 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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All Things Personal

We've been packing up the Dallas office for its .6 mile move. A better building. More client-friendly parking. Great location.

By the time you read this, the office will be all set up.

Of course, when we first moved into our prior space, we thought that it was perfect, too. The space was great but the building left much to be desired, and its owner never brought it up to our standards. We didn't expect to move, but, and here's the point I want to make, we prepared for it from the day that we moved into the old location.

I always keep options open. I'm always on the lookout for opportunities. Not because I necessarily want to take them, but because I might later want to take them, or even more important, might have to take them.

What options have you left open for your business, your practice, your group? If the plug were pulled on you today at your hospital, at your job, at your location, what would you do?

Over the decades that I've practiced, I've seen hospital contracts cancelled, I've seen clients fired on the spot, and I've seen leases terminated . . . plus more, a lot more. Not all of those impacted had heeded my advice to develop options, to not be tied down to one deal, to remain flexible and agile.

Your business is not a plant. It's capable of movement. Keep it limber.

Recently Published Blog Posts

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Wednesday, October 26
How to Build A Whistleblower

Tuesday, October 25
Preparing For Single Payor

Monday, October 24
Greasy Kickback Residue Is All That's Left of Pain Cream Fraud

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Physician Talks Out Of His (not)Mouth - Brags of Kickbacks

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Whenever you're ready, here are 3 ways I can help you and your business:

1. Download a copy of the Success or Failure? Book

My book Success or Failure? Strategic Tools For Medical Group Leaders provides you with a framework for thinking about your success. You can buy it on Amazon or, for free, download a copy at the following link - Click Here.

2. Be a guest on Wisdom. Applied. Podcast.

Although most of my podcasts involve me addressing an important point for your success, I'm always looking for guests who'd like to be interviewed about their personal and professional achievements and the lessons learned. Email me if you're interested in participating.

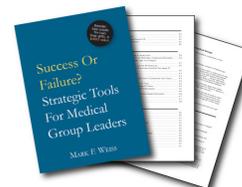
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Success Or Failure? Strategic Tools For Medical Group Leaders



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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 venture Yet at the same time, the future of healthcare offers these 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



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

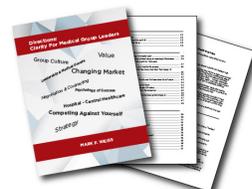
The reality is that some practices can be sold, some can never be sold, and some have nothing to sell.

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



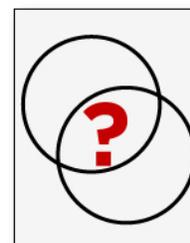
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The healthcare market is changing rapidly, bringing new problems.

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

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

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Mark's article **OIG Advisory Opinion Secrets and Strategies** was published in the Summer 2016 volume of [Communique](#). Read or download [here](#).

Finders keepers, losers weepers. Except in connection with overpayments from Medicare, then it's a violation of federal False Claims Act leading to significant liability is, unless you repay the overpaid sum within 60 days. **R CMS Resets the Clock for Return Of Medicare Overpayments** published on AnesthesiologyNews.com May 2016. Read or download [here](#).

Mark's article **A New Strategy To Profit From Interventional Radiology**, co-authored with Cecilia Kronawitter, was published on AuntMinne.com on May 2016. Read or download [here](#).

Three of Mark's blog posts were republished as column entitled **Practice Challenges** in the Spring 2016 issue of the Pennsylvania Society of Anesthesiologists Newsletter, the [Sentinel](#). Read or download [here](#).

Mark's article **Is There An Interventional Radiology A (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 You 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. Read or download [here](#).