May 31, 2017

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Little Mercy For Mercy Hospital: Government Gets $34 Million Settlement in Whistleblower Case

The dataâ€™s clear. Hospitals lose money on nearly every employed physician.

At least thatâ€™s the case when you compare what youâ€™re supposed to be comparing, which is what the hospitals are supposed to be comparing when setting physician compensation. They can pay a physician for his or her services. But, they canâ€™t pay for the value of the physicianâ€™s referrals to the hospital. Or, wink wink, for nothing.

Hospitals know this. What they sometimes do, is something else.

Just ask Mercy Hospital in Springfield, Missouri.

Earlier this month, Mercy Hospital Springfield (formerly known as St. Johnâ€™s Regional Health Center) and Mercy Clinic Springfield Communities (formerly known as St. Johnâ€™s Clinic) settled a physician compensation related False Claims Act lawsuit, popularly known as a â€œwhistleblower action,â€ for $34,000,000.

While many physicians are familiar with the fact that the Stark Law prohibits them from making referrals to any hospital with which they have a compensation arrangement or in which they have an investment interest, unless the arrangement falls within one of the lawâ€™s exceptions, referred to as â€œsafe harbors.â€

Thereâ€™s another side to the Stark Law violation coin: Claims filed by a hospital as a result of referrals in violation of Stark are false claims.

Additionally, the same fact pattern can trigger violation of other laws, such as the federal Anti-Kickback Statute (â€œAKSâ€) which, roughly speaking, prohibits any remuneration to induce referrals.

At the heart of the Mercy lawsuit were allegations that the Mercy controlled clinic compensated twelve employed physicians in a manner that improperly took into account the volume and value of the physicians' referrals of patients to Mercy Hospital's Mercy Oncology Infusion Center - Chub O'Reilly Cancer Center (the "Infusion Center"), for certain infusion services.

The allegations included the following points:

Initially, the Mercy Clinic ran the â€œInfusion Center." The Clinic also employed the physicians, who practiced in the Clinicâ€™s Cancer Center. At that time, the physicians participated in the profits of the Infusion Center as a part of their collections-based compensation model.

- Subsequently, Mercy Hospital took over ownership of the Infusion Center.
- The physicians became upset that the loss of Infusion Center profits at the Clinic level was going to reduce their compensation. The defendants assured the physicians that they would be â€œmade whole.â€
- Subsequently, the physicians compensation model in the clinic was changed to include â€œwork RVU for drug administration in the hospital department.â€ However, the payment was not calculated based on physician work, clinical expense, or malpractice overhead, but rather was â€œsolved forâ€ by working backwards from a desired level of overall compensation.
- Additionally, Mercy Hospital also paid â€œmanagement feesâ€ to Mercy Clinic on behalf of the physicians. These â€œmanagement feesâ€ were purportedly paid for the physiciansâ€™ management of the Infusion Center; however, those physicians were not responsible for management of the Infusion Center.

The Mercy defendants denied the allegations and the settlement doesnâ€™t include any admission of guilt.

Out of the $34,000,000 received in the settlement, $5,440,000 was paid to the whistleblower, Viran Roger Holden, M.D., Ph.D., a physician employed by Mercy.

Some *essential* takeaways for you:

1. Whistleblowing pays better that most day jobs. And, once again, the whistleblower was an insider. In this case, he was a physician employed by a defendant.

2. False Claims Act suits are civil actions. As such, the settlement agreement does not release the Mercy defendants, or anyone else, from potential criminal liability. Although the Stark Law is a civil statute, the AKS is a criminal statute. It remains to be seen whether the Department of Justice, or a Missouri state prosecutor, will bring criminal charges against the Mercy entities, their executives, and the employed physicians.

3. Among the allegations (again, Mercy did not admit any guilt) were that (a) the compensation plan was reverse engineered to make the performance measurement drive the intended compensation outcome, and (b) Mercy created a sham management arrangement to generate payments to the physicians. How different are those underlying fact patters from the type of â€œmanagement feesâ€ and other payments that referring physicians often demand from referral-receiving physicians? (Spoiler Alert!) Theyâ€™re not.

4. Physician compensation arrangements are under scrutiny. Theyâ€™re fertile ground for both whistleblowers and for prosecutors.

5. Think twice about both the form and substance of physician employment agreements. Competent counsel should be brought in at the earliest stage, both in respect of an initial compensation structure and in respect of any contemplated change.

6. â€œRed teamingâ€ your contracts and relationships, that is, having counsel â€œattackâ€ your deals to discover compliance weaknesses is cheap in comparison to the cost of mounting a civil defense, paying to settle, absorbing the bad publicity, and then, potentially, repeating the process again at the criminal trial stage.

Wisdom. Applied. 102 - Medical Group and Healthcare Facility Comfort Zone Or Continued Existence?

Most of us seek comfort. We want 'the usual' and we tend to hang on too long.

Should we be driving so much energy into preserving the comfortable, well worn path? Hospitals are a prime example of this model. It is akin to riding a 'top of the line' locomotive, on well worn, comfortable - yet ragged tracks. Watch and discover the real model to the ultimate safety - longevity.

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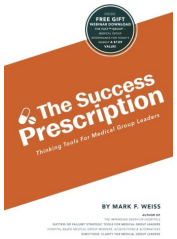

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The Impending Death of Hospitals is available for purch in hard copy or in Kindle format on Amazon or you can download a complimentary PDF version here.

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The Impending Death of Hospitals

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Having fallen for the fallacy that thereâ€™s profit in mar share, hospitals have gorged on acquisitions and on

All Things Personal

I just boarded an American Airlines flight in Phoenix

A few minutes before boarding, I watched a gate agent make a woman unpack and remove clothes from her carry-on luggage because, to get it into the â€œsizingâ€ gauge, she had to push it in.

Perhaps the gate agent didnâ€™t notice the other bulging carry-on items, some the size of small goats, being yanked past her and down the jetway by nearly everyone..

Later the gate agent told me that, â€œif someone doesnâ€™t do what I tell them, they donâ€™t get on the plane.â€

The powerless go mad when given a little slice of authority. Itâ€™s what makes surely cops, rabid airline employees, and nearly all motor vehicle department workers.

Years ago, I had a â€œgate agentâ€ employee working for me. I got rid of her. Left in place, their attitude destroys customer relationships and infects the workplace.

Do you have one working for you?

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employment and alignment of physicians. Many physicia have been willing participants through practice sales an the belief that thereâ€™s safety in hospital employment itâ€™s becoming evident that physician employment le to losses and that integrated care delivers neither better nor lower costs. And now, technology is about to moot n of the reasons for a hospitalâ€™s existence. How can y practice survive and even thrive in the post-hospital wor

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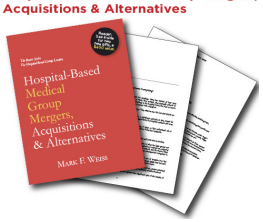
Hospital-Based Medical Group Mergers, Acquisitions & Alternatives



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Some days, it seems as if everyone, from anesthesia gr 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 car 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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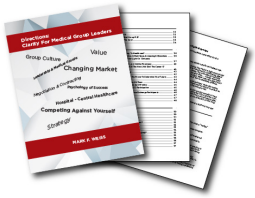
Directions: Clarity For Medical Group Leaders



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

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

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

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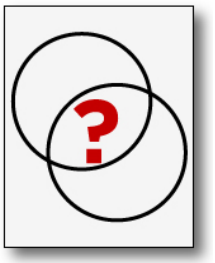

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Finders keepers, losers weepers. Except in connection v overpayments from Medicare, then itâ€™s a violation of federal False Claims Act leading to significant liabilityâ€ is, unless you repay the overpaid sum within 60 days. R **CMS Resets the Clock for Return Of Medicare Overpayments** published on AnesthesiologyNews.com May 2016. Read or download here.

â€¨Mark's article **A New Strategy To Profit From Interventional Radiology**, co-authored with Cecilia Kronawitter, was published on AuntMinne.com on May 2 2016. Read or download here.

â€¨Three of Markâ€™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.

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