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## Subject: April 2019 Issue of Wisdom. Applied. Newsletter

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### ADVISORY E-ALERT

**WEISS**

THE MARK F. WEISS LAW FIRM  
A PROFESSIONAL CORPORATION

**April 30, 2019**

### **Preparing for a Medical Practice Sale or Simply Preparing: Why You Must Start Now And What You Must Start Doing**

Whether you're interested in selling your medical practice soon, selling it several years from now, or never selling it at all, it's important that you engage in the same process of preparation.

Following the process will lead you to increased value, whether in respect of a sale, a non-M&A combination such as a peer-to-peer merger or joint venture, or in respect of simply having more money in your pocket from ongoing operations under your ownership.

Among the steps we recommend are the following, presented here in no particular order:

1. Conducting a business performance analysis. This 360° process includes items such as analyzing coding, collections, expenses, payroll, right-hiring, among other elements.
2. Marshaling copies of all contracts, from those with vendors, payors, personnel, etc.
3. Entity documentation review. For example, is your corporation properly formed? Are all board and shareholder actions documented? You have time to correct deficiencies. Do it now.
4. Tune up your governance. This is the time to shift your practice from a club to a true business. Not to say the least, have you established a situation in which one shareholder out of even 100 can veto an entire M&A deal? Find out where you stand and how you can correct this now before you waste several hundred thousand dollars.
5. Conduct a red team compliance review. If there are problems with your practice, it's best to discover them now and then correct them yourself. Waiting for a buyer or other deal partner to find them and then attack you for breach of representations and warranties could cost you countless millions. And, even if you never sell or merge, discovering shortcomings yourself today is always better than having them brought to your attention, especially by a third party such as the OIG, tomorrow.
6. IP asset analysis: lock down all intellectual property. This includes trade secrets, copyrights, trademarks, and patents. Depending on the practice, there can be significant value in those items, both in terms of their sale and their licensing.
7. Expand your practice into ownership of a captive facility, for example a surgery center or imaging facility or clinical lab. An example of this would be our work with radiology group clients that have expanded to own dedicated imaging facilities and irASCs, interventional radiology surgery centers.

Again, the above are simply a few among the many actions that all medical practices should

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## **Wisdom. Applied. 125: Anesthesia Company Model Arrangement Fuels \$1.718 Million Dollar FCA Settlement by a Surgeon and a Separate Guilty Plea By Another Doctor Defendant**

In a recent set of go-rounds with the DOJ, the so-called company model of anesthesia services took a hit: Jonathan Daitch, M.D., agreed to a 1.718 million civil settlement and Michael Frey, M.D., plead guilty in a criminal prosecution.

### **All Things Personal**

In the scene reminiscent of Atlas Shrugged, state legislators and "community activists" are working hard to make sure that no one ever buys or opens a hospital in the state of Illinois. Oops, that's not what they claim they want. Instead, they are arguing that a hospital company that is losing money hand over fist can't close a hospital.

You see, in Illinois, you not only need permission from bureaucrats and, effectively, "community activists," to open a hospital, you need it to close it. No matter how much money you are losing. Welcome to hell.

The story centers around Pipeline Health's purchase of Westlake Hospital in Melrose Park, Illinois, one of three hospitals it purchased from Tenet Healthcare earlier this year. Activists filed suit to prevent the closure of the facility and the trial court judge ruled that, under penalty of fines of up to \$200,000 a day for contempt of court, the facility cannot close until lawsuits over its closure are resolved.

In a game of legal ping-pong, an appeals court reversed the trial court judge's ruling that the hospital must stay open, but then the state Supreme Court reinstated the restraining order preventing the hospital's closure.

Fighting for its life and, I would suppose, sanity, the hospital company offered to transfer ownership of the facility to the local municipality, Melrose Park. But according to Chicago news station WGN, Melrose Park's mayor has refused, saying that it's just an attempt to deflect responsibility for running the hospital the company bought. Huh?

Yes, only in an Ayn Rand novel can someone invest hundreds of millions of dollars in a business, find out that it's losing money, and then be forced by the state to continue losing money because it's somehow its duty to lose money for the "community."

Who, if anyone, will invest in a facility in the state of Illinois if you can't close it without a bureaucrat's permission to do so?

One way or another, Melrose Park will soon be down one hospital no matter how much they protest. Finding another sucker to come in to buy a facility that loses money and that even the city doesn't want is going to be nearly impossible.

**Podcast Compilation Greatest Hits - Strategy Edition 1.0**

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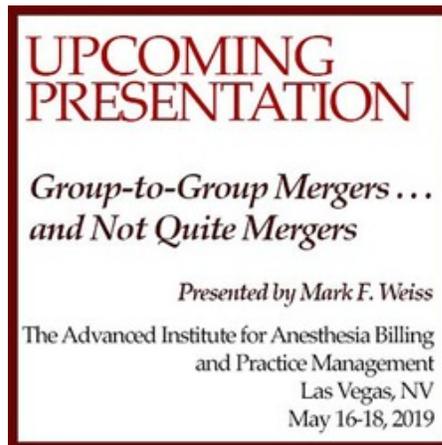
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strategy into our first compilation album.

Sit back, enjoy, and think about your future.

Listen [here](#).



### Advanced Institute for Anesthesia Billing and Practice Management Conference

Come listen to Mark speak in sunny Las Vegas at the Advanced Institute for Anesthesia Billing and Practice Management Conference. Celebrating its 20th year, the AIABPM conference is the recognized leader in preparing physician and nurse leaders, practice managers, coders and attorneys to secure the future of anesthesia practices. <https://aiabpm.com/>

### Recent Posts

- [Tesla, Elon Musk, And Medical Groups: Turning Lemons Into Lemonade](#)
- [Why You Need to Adopt the Contingency Mindset](#)
- [Another Hospital System Settles Whistleblower Allegations That Outpatients Were "Turned Into" Inpatients](#)

### Published Articles

- [An Update on the 'Company Model' and Other Anesthesia Kickback Schemes](#), Winter 2019, [Communique](#)
- [Top Pointers For Successfully Merging Independent Anesthesia Groups](#), December 2018, [Anesthesia News](#)
- [Anesthesia Alert: In or Out of Love with Your Anesthesia Group?](#) October 2018, [Outpatient Surgery](#)

### Books and Publications

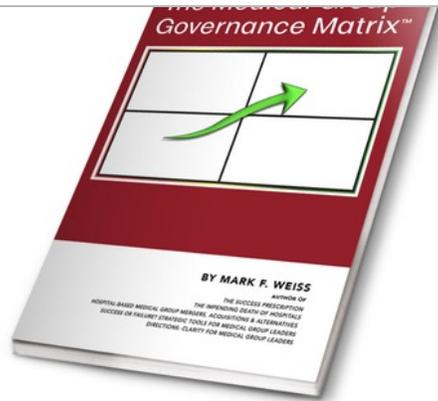
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We all hear, and most of us say, that the pace of change in healthcare is quickening. That means that the pace of required decision-making is increasing, too. Unless, that is, you want to take the “default” route. That’s the one in which you let someone else make the decisions that impact you; you’re just along for the ride. Of course, playing a bit part in scripting your own future isn’t the smart route to stardom. But despite your own best intentions, perhaps it’s your medical group’s governance structure that’s holding you back. In fact, it’s very likely that the problem is systemic. The Medical Group Governance Matrix introduces a simple four-quadrant diagnostic tool to help you find out. It then shows you how to use that tool to build your better, more profitable future. Get your free copy [here](#).



**Whenever you're ready, here are 4 ways I can help you and your business:**

**1. Download a copy of The Success Prescription.** My book, The Success Prescription provides you with a framework for thinking about your success. Download a copy of The Success Prescription [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.

**3. Book me to speak to your group or organization.** I’ve spoken at dozens of medical group, healthcare organization, university-sponsored, and private events on many topics such as The Impending Death of Hospitals, the strategic use of OIG Advisory Opinions, medical group governance, and succeeding at negotiations. For more information about a custom presentation for you, [drop us a line](#).

**4. If You’re Not Yet a Client, Engage Me to Represent You.** If you’re interested in increasing your profit and managing your risk of loss, [email me](#) to connect directly.

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