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ADVISORY E-ALERT

February 28, 2019

Hospitals Beg To Be Aligned By Physicians . . . And One Settles Whistleblower Allegations That It Paid To Become Aligned

Over the past decade or so, hospitals have spent countless hundreds of millions of dollars “aligning” physicians.

This so-called alignment has included acquiring physician practices, employing physicians in states without corporate practice of medicine restrictions, and, in states where hospitals can't directly employ, employment through captive medical groups or foundations.

Hospitals claim that the idea is to “coordinate care.” But the actual goal is to control cash.

More recently, though, there's been an increasing tide of procedures flowing out of the hospital to outpatient facilities, chiefly to ambulatory surgery centers (ASCs). [If you haven't already read my book *The Impending Death of Hospitals*, you should pick up a copy. You can get in on [Amazon](#) or you can download a [PDF version](#) for free on my website at [advisorylawgroup.com](#).]

The notion is that as technology advances and as the safety of procedures in the ASC setting increases, more and more procedures are being added to Medicare's list of approved outpatient surgery center procedures.

Because many, if not all, private payers follow Medicare's lead on this, private payers are also pushing procedures out to ASCs because reimbursement is much lower and because outcomes are much greater: less chance of infection, more efficiency, happier patients paying lower copays and having much better patient care experiences.

Hospitals understand that soon they will no longer be able to compete for many procedures that had been done on an inpatient basis and now and forevermore will be done on outpatient basis. They can no longer compete on the basis of having those cases performed in hospital outpatient departments (HOPDs) because reimbursement for the same procedure is up to 80% higher in HOPDs than in ASCs.

As a result, we're seeing something very interesting. In connection with my facility development work – my physician clients forming physician-owned ASCs and imaging centers – we're seeing hospitals chasing physician-owned facility deals, asking, and sometimes begging, to be included as investors in the deal: ***In other words, they want physicians to “align” the hospital!***

In fact, to show just how desperate hospitals are not to be cut out of the picture, earlier this year, a hospital settled allegations that, in essence, it paid physicians to align the hospital into their outpatient imaging center deal.

According to a report in the Bozeman (MT) Daily Chronicle, Bozeman Health Deaconess Hospital paid \$10 million to settle False Claims Act allegations that it entered into a sham joint venture with a radiology group that planned to open its own outpatient imaging center that would have competed with the hospital. Two whistleblower physicians, radiologists Frank Rembert, M.D. and Michael Paradise, M.D., filed the action against the hospital and the joint venture, alleging, in basic terms that:

- A radiology group had an exclusive contract at the hospital.
- The radiology group wanted to open its own outpatient imaging center in Bozeman, at which it would have provided MRI, CT and ultrasound services. The independent facility would compete with the hospital and would offer a more convenient and comfortable facility, with lower prices.

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hospital campus.

- That the hospital induced the radiology group to allow it into the joint venture by guaranteeing patient referrals, in return for which the hospital obtained a majority interest in the imaging facility joint venture, large cash distributions from it, and non-compete agreements from the radiologists who would provide professional services at the imaging center.

It's important to note that the hospital's settlement of the whistleblower action does not contain or imply any admission that the allegations are true.

The takeaways for you:

1. Hospitals want to burrow their way into your facility deals. But why would you want them to align with you? They're simply after the control, and the profit, that they're losing on the "hospital" side.

Many would answer that with, "Well, I want money from the hospital to help seed the facility."

But the bottom line is that if you vet the decision and the numbers in connection with whether it makes sense to form the facility venture – and it does – why do you need even a million dollars from a hospital when in a year or two you could potentially be pumping out two million a year in facility fee profits without them?

Yes, it might be a short-term gain. But "hospital as co-owner" is usually long-term pain.

2. The two whistleblowers in the Bozeman case, Drs. Rembert and Paradise, are radiologists who were fired by the radiology group. The two physicians are still prosecuting an independent civil action against the group for wrongful termination.

Don't create your own whistleblowers.

And, if you're a physician or administrator in a group and notice what appears to be a violation of the False Claims Act, for example, fraudulent billing or violations of the federal Anti-Kickback Statute or Stark, consider whether you should become a whistleblower. Drs. Rembert and Paradise were reported to have received 28% of the settlement as their reward. We've established a new whistleblower task force; [contact me](#) for more information.



Wisdom. Applied. 123: Medical Group Mergers - Making 1 + 1 = 3

When I was a kid, there was a new method of teaching math that was heavily marketed to our parents. It was called the "new math." It was supposed to make it a way for math to be more easily understood by students.

All Things Personal

They offered free assembly.

Let's put this in the category of completely incompetent management, subcategory Home Depot.

Earlier this month, I purchased a new gas grill from Home Depot and opted to pay the fee for them to assemble it at my home. According to their website, they'd deliver it and then, once delivered, their assemblers would contact me to come put the thing together.

The large box arrived on the 20th and as I'm writing this on the 27th, no assemblers.

I've chatted with a customer service representative who told me that it's not actually their assemblers; they subcontract out to an assembly service. According to her, my best option was to contact the assemblers myself. No. That's not what I paid for. I told her to take care of it.

But still no call from the assemblers.

A few days later I texted with their customer service representative who told me that the first

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told him to take care of it. He texted back, telling me that the assemblers were unable to locate the work order, that they'd update their system and then call me first thing tomorrow.

But still no call from the assemblers a few days later.

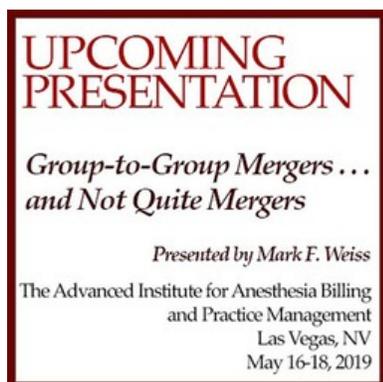
Now, I know that you're not running a hardware store, but there are lessons in this directly applicable to your practice or business (and one applicable to you, personally: don't do business with Home Depot).

The first is that the money you spend marketing to and getting customers, which in Home Depot's case must be hundreds of millions of dollars a year, isn't worth a penny when you can't actually deliver on your promise.

The second is that you have to be very wary of putting your reputation in the hands of a subcontractor, at least a completely independent subcontractor, as Home Depot has done with their assemblers.

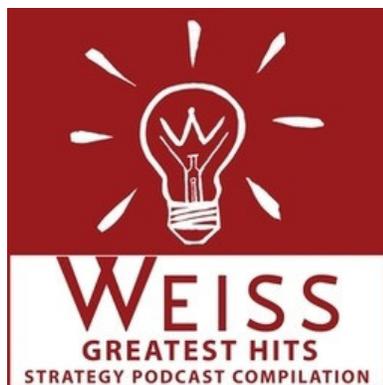
It may be trite, but a chain is only as strong as its weakest link. And that applies whether we're talking about a chain of hardware stores, a chain of practice locations, or a chain of healthcare facilities.

Oh, and if I have to buy some actual chain, I'm getting it at the local hardware store, not at Home Depot.



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Books and Publications



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.



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