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June 30, 2019

How to Reverse Engineer Your Compliance Efforts, Courtesy of Uncle Sam

What if you could have a behind the scenes look into how federal prosecutors take compliance programs into account when analyzing a case?

It would be like a secret road map to make sure that your compliance efforts are in shape, both to make them more effective and . . . just in case . . . to serve to inoculate against a more severe outcome.

Well, you *can* have that peek behind the prosecutorial curtain, thanks to the U.S. Department of Justice Criminal Division's recent release of its internal document for federal prosecutors, "Evaluation of Corporate Compliance Programs."

The document sets out a list of factors to consider in assessing whether to start an investigation, whether to bring charges, and in negotiating plea or other agreements to resolve charges.

If you like to stay awake at night, you can certainly read the whole thing ([contact me for a copy](#)). But here are some of the major prosecutorial factors against which you should reverse engineer your compliance efforts.

1. Your compliance plan must be both adequate (e.g., it must be of substance) and effective, at both the time of an adverse compliance event and at the time charges are brought. In other words, whipping up a plan after the fact is too late.
2. You must continually assess and make remedial efforts to implement and improve your plan.
3. Effective plans involve action, *effective* action, not just documentation.
4. Effective programs are well designed, they are actually applied earnestly and in good faith, and they work in practice as well as in theory.
5. Slapping together a "plan" isn't the point. What's the entity really doing? Is it adopting a plan yet encouraging misconduct or turning a blind eye to it? Compliance means a living and breathing set of efforts. Plans must be designed to be effective and to detect wrongdoing and must be integrated into operations.
6. An effective program must be tailored to the specific entity and designed to detect the particular types of misconduct most likely to occur.
7. Programs must evolve through risk assessment, and periodically update their criteria.
8. All things considered, it's better that plans focus on high-risk areas even at the fault of failing to prevent a lesser, low-risk infraction.
9. Compliance must be made "alive" within the organization. Policies and procedures are required but they must be incorporated into the culture and day-to-day operations.
10. Part of making the plan "alive" is making efforts to assure that training is actually appropriate, not just rote, for the group or facility. Is information disseminated in a manner

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11. An effective plan includes educating your staff on what type of erroneous conduct actually occurs, the group's or entity's position in respect of it, the resources available to the staff to resolve their compliance questions, and the consequences of violations.

12. You must have a retaliation-free mechanism to allow anonymous or confidential reporting of possible breaches.

13. Effective plans include processes to quickly determine which complaints merit further, and how much, investigation.

14. Depending on the specifics of a group's or entity's operations, the plan should extend to assess the qualifications and associations of third-party partners.

15. Leadership must be involved in making certain that the plan is alive and actively implemented. Leaders must give compliance officers the actual ability to conduct compliance efforts.

16. Your track record of communicating and enforcing your compliance program counts.

The real, real bottom line:

Effective compliance is more than a plan, it's a living, breathing program incorporated into group/facility culture and operations.

To discuss customized help shifting your compliance efforts from a binder on the shelf or a folder on your computer into something of actual value to you in terms of improving your operations and escaping prosecution, [contact me](#) at your first opportunity.



Wisdom. Applied. 127 - Hospitals Beg to Be Aligned by Physicians

Over the past decade or so, hospitals have spent countless hundreds of millions of dollars "aligning" physicians. But now it's hospitals that are begging to be aligned.

All Things Personal

I'm in an American Airlines Admirals Club in Dallas, waiting for a flight to L.A.

Across from me, perhaps 7 and a half feet away, is a guy doing a video conference on his iPad. And, he's not wearing any sort of headphones. I can clearly hear both sides of the conversation.

Didn't anyone teach this self-absorbed moron any manners? Does he honestly think anyone else is interested? I'm certainly not.

But wait . . . what if I were?

Years ago, I was having dinner in a small restaurant, just eight or 10 tables or so. In a booth close by was someone, Dr. X, who was on the other side of some major litigation my firm was handling. He was with one other guy and they were clearly drinking too much, so much so that Dr. X began loudly laying out his litigation strategy. I flagged down a waiter, got a pad and pen from him, and took wonderful notes the rest of the evening.

Sure, "Mr. Videoconference" can be seen as the poster boy for poor manners.

But even worse, and here's the lesson for you, sometimes talking out loud in public isn't just annoying, it's giving away tremendously valuable information.

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Published Articles

- Mark was mentioned in [Practice Management 2019: Defining the Future](#), April 2019, [Anesthesiology News](#)
- [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](#)

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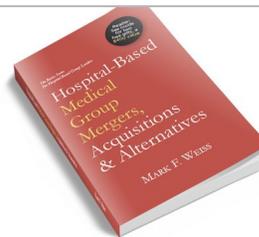
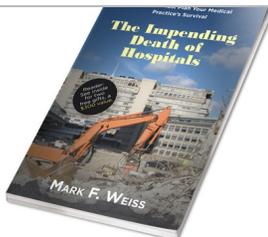
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Whenever you're ready, here are 4 ways I can help you and your business:

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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