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**Subject: March 2019 Issue of Wisdom. Applied. Newsletter**View this email [online](#) if it doesn't display correctly**ADVISORY E-ALERT****WEISS**  
THE MARK F. WEISS LAW FIRM  
A PROFESSIONAL CORPORATION**March 31, 2019****The Double Edged Sword of Government Interference**

Here's an example, yes, only an "alleged" one, of why physicians employed by hospitals have to be very careful when getting what most employees assiduously negotiate for: a raise.

The problem, of course, is the double edge sword of government interference in healthcare. On the one hand, there's that pot of Medicare gold. On the other hand, that pot of gold comes with Stark and the Anti-Kickback Statute, as well as other bits of lead, attached.

Studies have shown that hospitals lose money, sometimes multiple hundreds of thousands of dollars a year on each employed physician when comparing the total cost of employment (salary, benefits, office expenses, medical supplies, staffing, etc.) with the total gross receipts from the physician's practice. So, why have hospitals loaded up on employed physicians? Because of the downstream revenue, that is, the revenue from referrals, diagnostic testing, and so on.

The only problem with this is that it might just all be illegal. Well, not always. But, there are always serious compliance concerns and they cut both ways. In other words, Stark violations impact both the hospital and the physician, and violations of the AKS are crimes for both the payer and the recipient.

In 2017, Louis Longo, previously the Executive Vice President at Wheeling Hospital in Wheeling, West Virginia, filed a qui tam, that is, whistleblower, complaint under the False Claims Act against Wheeling Hospital, R&V Associates, a consulting firm that the hospital retained, and Ronald Violi, an executive of that consulting firm who became the hospital's CEO.

Late this month, on March 25, 2019 to be exact, the United States government took over the prosecution of the case and filed a complaint in intervention.

To be clear, the claims asserted initially by the Relator, Mr. Longo, and now by the United States, are only allegations.

However, the allegations, whether true or not, illustrate a situation in general of which physicians must be aware for their own protection.

Essentially, the allegations against Wheeling Hospital and the other defendant are that:

The hospital was losing big bucks – more than \$50 million from operations between 1998 and 2005.

In late 2005, the hospital entered into a management contract with the consulting firm, R&V Associates, led by Violi, with the hope of a turnaround. As a part of the effort, Violi was named the hospital's CEO in January 2006.

The turnaround was spectacularly successful. by 2016 the hospital was making a large profit, \$35.8 million that year, and a total of over \$100 million of profit from 2014 to 2016.

However, the FCA complaint alleges that the dramatic increase was accomplished by way of the hospital entering into improper compensation arrangements with physicians, arrangements that were well above fair market value, and which took into account the value or volume of services, or which were not commercially reasonable, in order to gain the physicians' referrals.

The complaint states that the hospital carefully tracked referral volume and revenue generation of its employed physicians including specific monthly and other information about

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maintaining excessive salaries/low productivity physician relationships in order to "protect the downstream revenue."

The complaint makes interesting reading and if you'd like a copy, [just let me know](#).

The bottom line for you:

1. Even though the FCA action against Wheeling, et al., is, at this point in time, just a series of allegations, the story it tells illustrates a significant problem for hospital employed physicians.
2. In the FCA complaint, the government focuses on payments that are many times median MGMA survey levels. But if hospitals are losing money in connection with their employed physicians' practices qua practices, then why are hospitals employing physicians at all, if it is not simply for the value of their downstream referrals?
3. As I've written many times, and especially in my book [The Impending Death of Hospitals](#), all procedures that can be performed outside of a hospital will soon be performed outside of a hospital. As their business walks out the door, hospitals are under increasing pressure to pull it back in the door.
4. Physicians must be extremely careful when structuring employment relationships, in fact any compensation or other financial relationship, with hospitals. Those arrangements will continue to be targets, both of disgruntled or simply ignored hospital executives (for example, Mr. Longo, whom, it's alleged, complained to the hospital about the overpayment problem, but was ignored), and of the government on its own accord.



### **Wisdom. Applied. 124: 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**

Costco opens at 10:00 a.m. on Sunday mornings. But go ahead and show up early because you'll find that they open the door as soon as they're ready inside the store, which is always earlier than 10:00. Last week, it was at 9:43.

They promise 10:00 a.m. but exceed your expectations. In fact, when they open the door at Costco, it's common to see one employee spurring another one on to get the door open faster.

Contrast that with the Dallas Arboretum and an event scheduled at 6:00 p.m. I arrived about 20 minutes early to find several hundred people lined up to get in. Employees were in place ready to take tickets, but they waited until exactly 6:00 to let anyone in. We're not even talking about letting someone into a theater or some other closed venue, but into a large multi-hundred acre park.

They promise 6:00 p.m. and deliver 6:00 p.m., well, 6:20, if you count waiting for the line to move.

What message does Costco send? Contrast that with the message that the Arboretum sends.

Do I have high expectations. Yes, admittedly so.

What message are we sending, that is, each of us, in terms of how our clients or patients or customers see us? Are we happy to see them as welcome guests, or do we treat them as annoying pests?

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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/>



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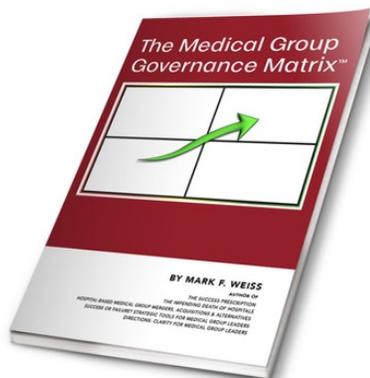
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- [Top Pointers For Successfully Merging Independent Anesthesia Groups](#), December 2018, [Anesthesia News](#)
- [Anesthesia Alert: In or Out of Love with Your Anesthesia Group?](#) October 2018, [Outpatient Surgery](#)

### Books and Publications



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

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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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