



**September 30, 2014**

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## Why Taking Control Is A Smart Contracting Tactic

You've heard that old expression to the effect that it's better to do and then ask for forgiveness than it is to ask for permission in the first place.

I'm not sure if that's always right in a social setting, but in business it often works out in your favor.

After all, there's a lot of conflicting interests, like the need to demonstrate the ability to take independent action.

But in the end, a lot of it is contextual. Eating the pie your mom made for the party tomorrow night at Aunt Sally's isn't one for which your initiative is going to be rewarded.

But there's a related contract negotiating tactic: demonstrating control or dominance.

Lawyers and other negotiators know that controlling the drafting of documents engenders significant control over the outcome. Clients who think that it will save them money to let the other side present the initial draft are very short sighted, indeed. Psychologically, you're now battling uphill - your deal point insertions are changes - you are pushing against the momentum of the printed word. And for some reason about which it makes no difference to attempt to explain, people in our society place an overweighted value on what's in print.

But let's say that you've allowed yourself to get into that position. Now what?

One tactic that can be used to increase your leverage is to express control when making changes to the document. As in the old expression set out above, don't go asking for permission; instead, command that changes be made.

"Please change 90 days to 180 days" is weak and wimpy. "Change 90 to 180 and get the document back to me by noon tomorrow" is strong and dominant. Is it guaranteed to get you 180 days. Heck no. Nothing is. But it's more likely to bear fruit than the wimpy first example.

The same tactic plays itself out in other, more complex ways as well, all based on triggers placed in our minds decades ago.

Those who think this is some sort of testosterone driven notion, some voice and paper equivalent of road rage, have little understanding of human nature. On the other hand, they push to save a few thousand dollars up front — let the other side draft the agreement, or let the other side's lawyers or "consultants" structure the deal — when doing so increases the odds that they'll lose millions later.



## Wisdom. Applied. 69: Termination Notice

"Bob, we've got to give you your two weeks notice. Here's a check for the next two weeks' compensation. Just pack your personal belongings and Jerry, here, will see you to the door."



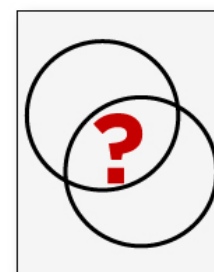
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How can you find a solution, how can you engage in the right development of strategy, and how can you to plan your, or your group's, future without tools to help clarify your thinking?

Directions 2014 is a collection of thoughts as thinking tools, each intended to instruct, inform, and even more so, cause you to give pause to instruct and inform yourself.

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Mark's article *What's Your Anesthesia Group Worth? And Why It Might Not Make Any Difference*, was published in the summer 2014 issue of *Communique*. Read it [here](#).

Mark's article *Anesthesia Group Acquisitions and Alternatives* was published in the June issue of *Anesthesiology News*. Read or download [here](#).

## All Things Personal

I was heading to the airport in Charlotte, driving in a rental car as Google Maps was driving me crazy. Turn left (no road). U-turn now (cement barrier).

There's a strong tendency to believe that reality matches maps which is, of course, patently ridiculous. Sometimes roads are under construction (as in Charlotte). The map, the plan is just a representation, not reality. Reality isn't required to match the map.

We all start with maps, called plans, for our lives. Sometimes we revise those plans, believing that they will revise our lives, professional, personal, or both.

But then, a contract is cancelled, the hospital sends out an RFP, or leadership of the cardiac surgery program is shifted to someone else.

We all need plans. Not as maps from where we are but as maps sketched backward from where we want to be.

Just don't be too upset when those plans fail you. Tell yourself the truth, assess the reality. Then devise a new plan. But never blame it if it turns out to be wrong; it's just a plan, not reality, so just revise again.

In Charlotte, I just kept following the actual road.

Mark's article ***OIG Opinion Adds Clarity to Illegality of Company Model*** was published in the February issue of Anesthesiology News. Read or download [here](#).

Mark's article ***Doctors Rush To Employment as Corporate America Lays off Workers*** was published in the December 2013 issue of General Surgery News and Gastroenterology & Endoscopy News. Read it [here](#).

Mark's article ***Anesthesia Profits Are Off-Limits*** was published on page 32 of the digital edition of Outpatient Surgery. Read it [here](#).

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Monday, September 22

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