

Pills, Capsules, and Kickbacks: Drug Manufacturer Pays \$125 Million. Execs Plead Out, Another to Be Tried

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Pills, Capsules, and Kickbacks: Drug Manufacturer Pays \$125 Million. Execs Plead Out, Another to Be Tried

Last November, the U.S. sales arm of pharmaceutical manufacturer Warner Chilcott plead guilty to felony charges of health care fraud including violation of the federal Anti-Kickback Statute (the "AKS"). The criminal and civil penalty paid: \$125 million.

Underlying Warner Chilcott's guilty plea was a scheme of paying kickbacks to doctors to encourage them to prescribe its medications. Those payments were in connection with "medical education events" and speaker programs. Held at expensive restaurants, the programs involved little or no actual education. Paid speakers often didn't speak about any clinical or scientific topics, but were awarded from \$600 to \$1,200 for each presentation. According to the government's allegations, the company told some speakers they would not be paid for additional events unless they prescribed more medication.

And now, the trial of the W. Carl Reichel, the entity's former president, is about to commence. He's charged with directing the company's employees to engage in those illegal sales tactics.

Several other individual defendants have already plead out. They face significant jail time.

It's far too soon to know Reichel's fate. But it goes without saying that it's highly likely that other individuals targeted in the prosecution will testify against him.

Two major lessons for you:

1. Individual Culpability For Corporate Behavior

The Justice Department's current policy, as outlined in a September 2015 memo, is to combat corporate misconduct by seeking accountability from the *individuals* who perpetrated the wrongdoing as well as from the company.

Under that policy, in order for a company to receive "cooperation credit" in respect of its prosecution, the entity must completely disclose *all* relevant facts about *individual* misconduct. Consistent with that policy, both criminal and civil investigations focus on the *individuals* involved, as well as the entity, from start of the investigation. And, as Mr. Reichel is experiencing, a company's resolution of its civil and criminal liability does not provide protection for the individuals involved.

Accordingly, a physician or other healthcare provider, or an executive with a healthcare entity, from a physician practice to a pharmaceutical mega-giant, is as much a target under the AKS and other federal prosecution as is his or her employer. Not only are other individuals involved potential witnesses for the prosecution, so, too, essentially, is the company.

2. Think Twice

If you were plumbers, not physicians or pharmacists or physical therapists, there'd be nothing wrong with a plumbing fixture manufacturer taking you out to dinner at Chez Milliard Euros or paying you \$600 to speak for five minutes at a meeting.

But you're not plumbers and we're talking healthcare not hot tubs, so it could mean jail.

And, as I supposed Mr. Reichel would testify, the same risks appear on the flip side, the payment side.

The time to analyze your "business opportunity" is not when you're waiting for the bail bondsman or when you're planning your defense. It's upfront.

Sure, you might be out \$1,200 for a speech consisting of "thank you very much," or still hankering for a bottle of Chateau Lafitte 1982. But you won't have to be worrying about doing jail time, paying astronomical fines, or losing your medical license.



Wisdom. Applied. 89 - Your Exclusive Contract Is About To Be Non Exclusive

What good is an exclusive contract if the facility demands that it become non-exclusive?

May 31, 2016

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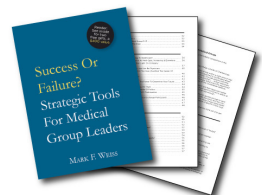
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Having fallen for the fallacy that there's profit in market share, hospitals have gorged on acquisitions and on employment and alignment of physicians. Many physicians have been willing participants through practice sales and in the belief that there's safety in hospital employment. But it's becoming evident that physician employment leads to losses and that integrated care delivers neither better care nor lower costs. And now, technology is about to moot many of the reasons for a hospital's existence. How can your practice survive and even thrive in the post-hospital world?

The Impending Death of Hospitals is available for purchase in hard copy or in Kindle format on Amazon or you can download a complimentary PDF version [here](#).

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This small book is a collection of essays, of thoughts as thinking tools for your success. Read. Think. Succeed. Repeat.

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All Things Personal

As I travel, I noticed more small-format markets opening up, as opposed to the large, full size markets that dominated in the past.

These stores are in no small part a response to the tech-based fresh food delivery businesses now making inroads in major cities, for example, Instacart, Amazon Fresh, and Google Express.

we're all seeing the same thing happening in the hospital industry as well. For example, the just announced replacement of New York City's 865-bed Mount Sinai Beth Israel hospital with a 70-bed facility.

Technology and the drive for customer (patient) convenience are reshaping healthcare just as they're reshaping food shopping.

The bad news for the traditional food market is still good news for the farmer and for those who can take action to own the elements of the new delivery system, from home delivery to super-convenience fresh food stores.

In like manner, the bad news for the traditional acute care general hospital is still good news for those who own the independent outpatient facilities that will capture the huge volume of cases that used to be performed in a hospital.

To help you further your place in this future, we've implemented a strategic partnership with one of the most successful facility development companies in the country, HDA Enterprises.

If you'd like to learn more about outpatient facilities, contact me.

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3. Book me to speak to your group or organization.

I've spoken at dozens of medical group events, healthcare organization events, large corporate events, university-sponsored events, and private, invitation-only events on 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, [email](#) my Santa Barbara office staff.

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Hospital-Based Medical Group Mergers, Acquisitions & Alternatives



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Some days, it seems as if everyone, from anesthesia groups to vascular surgery practices, is talking about selling their practice to a larger group, to private equity investors, or to a hospital.

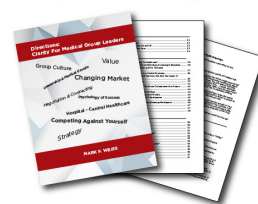
The reality is that some practices can be sold, some can never be sold, and some have nothing to sell.

The reality also is that there are a number of strategic alternatives to a practice sale.

A perfect storm of factors is accelerating the market for hospital-based medical group mergers and acquisitions.

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Directions: Clarity For Medical Group Leaders



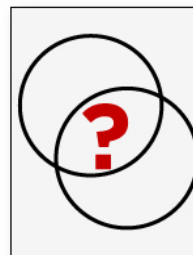
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The healthcare market is changing rapidly, bringing new sets of problems.

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

Directions 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 **A New Strategy To Profit From Interventional Radiology**, co-authored with Cecilia Kronawitter, was published on AuntMinnie.com on May 23, 2016. Read or download [here](#).

Three of Mark's blog posts were republished as a column entitled **Practice Challenges** in the Spring 2016 issue of the Pennsylvania Society of Anesthesiologists Newsletter, the Sentinel. Read or download [here](#).

Mark's article **Is There An Interventional Radiology ASC (irASC) In Your Future?** was published in the April/May 2016 volume of Radiology Business Journal. Read or download [here](#).