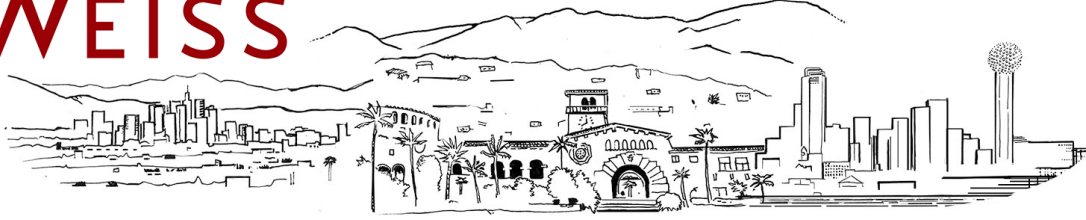


WEISS



June 30, 2020

What Some Will Do For The Love Of Barbecue – Opioids, Fires, Family, And Fraud

In many parts of the country there's a raging debate over what's the best barbecue.

Nowhere is this more true than in the Dallas-Fort Worth area, home to our Texas office.

Brisket is considered king, but chicken and ribs are close in popularity. But did you know about barbecued mansions? And, did you know that some forego the most popular cooking wood in these parts, oak, for paper medical records and bills?

And, of course, barbecue often involves family.

Front and center in the story are Mark Kuper, D.O., and his wife and errant barbecue pitmaster, Melissa Kuper.

Dr. Kuper, trained as an orthopedic surgeon, initially practiced in that medical specialty, but, apparently as a result of medical malpractice lawsuits, gave up his surgical practice. Instead, in 2014, he began operating a pain management practice, the Texas Center for Orthopedic and Spinal Disorders ("TCOSD"), from two clinic locations. Mrs. Kuper served as TCOSD's office manager.

As if malpractice issues weren't enough, the fire was just getting started.

The Back Story

It's now known that in 2016, a TCOSD employee, Richard Brown, filed an original, sealed whistleblower complaint against Dr. Kuper, alleging a host of False Claims Act violations.

As a result, in spring and summer 2017, the U.S. Department of Health and Human Services and the Texas Attorney General's Medicaid fraud unit issued subpoenas to Kuper and TCOSD seeking medical and billing records related to federally funded healthcare programs.

It's reported that, after receiving the subpoenas, Dr. Kuper paid his staff overtime to put the practice's records into cardboard boxes which were then taken by Dr. and Mrs. Kuper to their approximately 7,800 sq. ft. home outside of Fort Worth.

You're Invited to a Barbecue!

Then, according to the allegations, on what was probably a breezy day in October 2017, Mrs. Kuper decided to warm herself up with some flaming medical records in their home's outdoor fireplace, in a misguided (on multiple levels) attempt to destroy evidence. Apparently forgetting one of the basic rules of starting a fire, she left it unattended. Before long, their mansion was in flames. In no time at all, it burned to the ground.

The party was over, no food left for anyone. But some of the fuel, that is, the medical records, didn't burn completely — firefighters found a recognizable pile of medical records and medical bills in the fireplace.

Just Deserts

We now know far more about the allegations against the Kupers.

At the end of May 2020, the U.S. Government intervened in the whistleblower suit brought by Mr. Brown; its complaint in intervention is public. Additionally, on June 17, 2020, both of the Kupers as well as a physical therapist associated with TCOSD practice, Travis Couey, were criminally indicted for conspiracy to commit health care fraud, for health care fraud itself, and for unlawful distribution of controlled substances.

As an important note, bear in mind that the civil allegations in the whistleblower suit and the criminal allegations of the indictment are just that, allegations only. To date, none of the defendants have been found civilly liable or criminally liable.

The allegations include the following:

- The Kupers and Couey submitted over \$10 million in claims to Medicare, Medicaid and Tricare for services that weren't rendered.
- To get patients to return and to the TCOSD practice locations, they provided patients with prescriptions for highly-addictive medications, including oxycodone, Norco, and other controlled substances.
- Patients were required to attend appointments for office visits, outpatient physical therapy and psychotherapy services in order to obtain prescriptions for controlled substances. And, even then, those services were not actually rendered.
- At times, despite billing federal healthcare programs for one-on-one physical therapy sessions purportedly rendered by Dr. Kuper or Mr. Couey, the patients actually met in groups with an athletic trainer or other unqualified professional for short periods of non-reimbursable activities.
- In similar fashion, an assembly line of patients presented for 15 - 20 minute psychotherapy sessions which were billed at 60 minutes each. The sessions were billed as if performed by Dr. Kuper but they were not; in many cases, he wasn't even at the clinic during the sessions.
- Dr. Kuper submitted claims for additional evaluation and management visits coinciding with outpatient psychotherapy visits, even if no E/M visit occurred.
- On some occasions, Dr. Kuper billed as if he performed over 24 hours worth of medical care in a single day — several times over 100 hours worth in a day, and, on at least one occasion, 140 hours worth in a day.

- TCOSD's employee, Couey, helped create and maintain false medical records, including some detailing services that were never rendered.
- Mrs. Kuper, not a licensed medical provider, signed and authorized prescriptions for controlled substances.

The Clean Up

The Kupers were arrested on June 22nd and have plead not guilty to the criminal charges. It's unclear whether Mr. Couey had been apprehended.

Only time will tell whether they are found guilty of the criminal charges and whether they are liable for the civil allegations underlying the whistleblower suit.

In the meantime, the notion of family presents another interesting twist:

In December 2019, after a two-month long trial, Dr. Kuper's brother, Bernard, a pharmacist, was found not guilty of conspiracy to commit health care fraud and of multiple counts of violating the federal Anti-Kickback Statute in an alleged \$100 million Tricare scheme.

In May 2020, Dr. Kuper's uncle, dentist Richard Malouf, was ordered in a Texas state law whistleblower lawsuit to pay approximately \$12 million for Medicaid fraud relating to cases for which he billed, but which were performed by a different doctor.

Take Home Treats For You

The goings on at TCOSD began to unravel when practice employee Richard Brown filed the original False Claims Act complaint against Dr. Kuper. Do you have a whistleblower among your ranks? Are you inadvertently creating one by ignoring an employee's reports that something "isn't right"?

What's going on inside of your practice? You might not be engaging in anything as illegal as what Dr. Kuper is accused of having done, but there's liability, if not criminal then civil, in fraudulent and improper behavior of a far less egregious sort.

Is your compliance program active, not just a "plan" in a binder on a shelf?

There's more to consider, but my eyes are sensitive to the smoke. So, let's talk not-so-publicly about your situation. Contact my assistant, Jessa Lamoureux, [here](#), to set up a call.



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Others, leaders like you, know that *crisis means opportunity*.

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- Flat line negotiation is fatal: Understand its myths and limitations.
- Negotiation reality: Learn to identify and deploy on multiple planes to affect the outcome.
- Maneuver: Harness the power of maneuver, both in overall strategy and in specific negotiation strategy.

Others see a crisis and freeze in fear. Learn how to see the opportunities and obtain the tools to increase your odds of obtaining them.

The price to attend is \$479. The cost of not attending is astronomical.

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Newsflash: Business Life In the Time of Coronavirus - The Way Out

The coronavirus crisis, especially as it's become politicized, raises a number of business issues and, quite frankly, business opportunities in regard to future disruptive events.

Check out our [mini-series](#), with actionable business lessons for medical group leaders.

Sooner or later this crisis will end. You can't allow yourself to be too busy, too occupied, too concerned with current events, to devote time and effort to strategizing for your future.



Wisdom. Applied. 139 - Two Frauds Aren't Better Than One: Second of the NextHealth & Forest Park Fraud Twins Sentenced

Double your felony,
Double your sums.
Oops we got caught,
Now we're jailhouse bums.

All Things Personal

Tracy, the salesman, showed me the car, which glistened like a dark emerald on the showroom floor.

As Tracy and I chatted, I asked him about his history as a car salesman. I told him the story of Joe Girard, one of, if not the, most successful car salespeople of all time. His secret was tremendous follow up contact with everyone he sold to.

After a little bit of negotiation over the price of the car, it was . . . sold! Off I drove.

That was 6 years and two cars ago.

And in those 6 years I never once heard from Tracy again.

So when it came time to buy a new car, Tracy wasn't on my mind at all. Tracy who?

What's your personal system for following up? With whom, you ask?

Depending on your medical speciality, it's with patients (yes, even if you're a radiologist), referral sources, facilities (yours and others), just to name the minimum.

You might not consider them "buyers" but that's what they all are, in one form or another. And if you're not selling yourself to them, even if selling is limited to creating the atmosphere in which a third party will approach you to, in essence, buy, at some point in time, you'll end up like Tracy.

Overall sales of the brand that Tracy sold have gone up year after year since he sold one to me. But Tracy faded away.

He's now a stockbroker. He calls me at least once a month.

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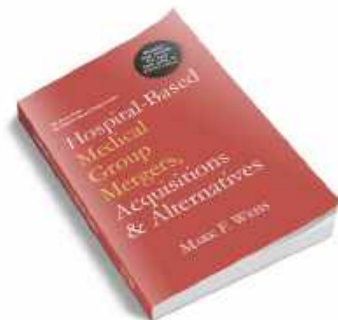
Published Articles

- [The Practical Essentials of the False Claims Act](#), March 2020, on [AnesthesiologyNews.com](#) and in the May 2020 issue of [Gastroenterology & Endoscopy News](#).
- [New Cases, New Tools in the Fight Against the "Company Model" Kickback Scheme](#), Winter 2020, [Communique](#).
- [The Good, The Bad and The Ugly: Why Some Negotiations Succeed](#), Fall 2019, [Communique](#).

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](#).



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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