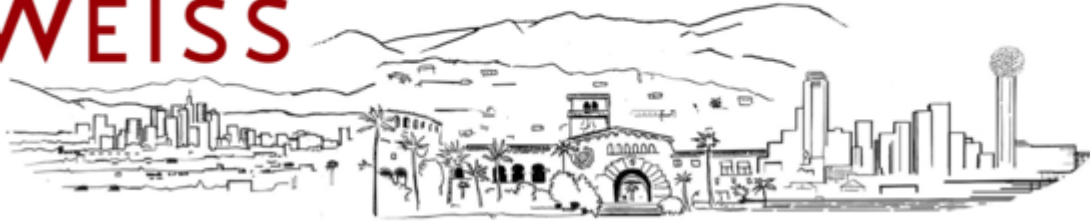


WEISS



August 31, 2021

Why You Must Know How Covenants Not To Compete Destroyed A Group's Exclusive Contracts

Covenants not to compete and other restrictive covenants are creatures of state law, which varies widely. Although one might divide states' laws into two major categories, those that permit covenants not to compete and those that do not, that would be a very shortsighted analysis. As they say, the Devil's in the details.

At the same time, many mistakenly believe that antitrust law is something enforced at the federal level only. Wrong. Antitrust law exists at the state level as well.

And, tying them together, covenants not to compete and other restrictive covenants can and do implicate antitrust concerns. Just ask Anesthesia Associates of Bellingham, Washington.

Earlier this month, the State of Washington made public an antitrust consent decree entered into with Anesthesia Associates. As of publication, it awaits a judge's signature.

The issue? The state alleged that the 50-physician group combined illegal covenants not to compete with exclusive facility contracts to create a monopoly within multiple counties in violation of Washington's Consumer Protection Act.

The consent decree, essentially a settlement agreement, sets out the state's position that the anesthesia group violated state law via a monopoly limiting patient options as well as the choices that surgeons and medical facilities could make. That, alleged the state, meant that Anesthesia Associates didn't have to compete by providing more or improved services, or by reducing its price.

In addition to containing an agreement by the group to trim non-competes from 3 years to 1 year for shareholders, and from 18 months to 9 months for non-shareholders, the consent decree requires the group to make a six figure payment to the state *and to cancel its exclusive contracts with facilities that do not require emergency coverage*, such as ASCs.

It's one thing to protect your business using enforceable covenants not to compete. And, in many cases, there are other types of approaches to control competition, whether or not actually structured as such.

However, it's quite another thing to impose what you thought was a covenant restricting someone else's competition, only to have it morph into a club used against you to disrupt your own ability to compete.



How to Deploy the Secret Sauce of *Opportunistic* Strategy - Webinar On Demand

They say that COVID-19 has changed the world, creating the "new normal." Many of your colleagues and many hospital administrators are running scared.

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

Let me provide you with the strategic tools and insights that you need in order to seize opportunities, whether they're in the context of your current business relationships, the expansion of your business activities, or the creation of new ventures.

You will learn:

- Defense as a defective default: It's necessary, but not sufficient.
- Exploiting weakness: Drop the guilt and identify opportunity.
- Flat line negotiation is fatal: Understand its myths and limitations.
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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 has 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. 153 - UnitedHealth Pushing Business to ASCs and Outpatient Imaging

Laugh about it or cry about it, the bottom line is the same: they are cutting costs by moving all cases that can be moved out of the hospital out of the hospital. Where does that leave you?

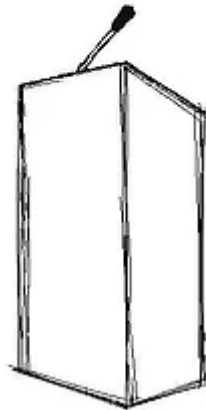
UPCOMING PRESENTATIONS

December 10, 2021

*The ASC Ophthalmic Surgery
Landscape: Opportunities*

December 11, 2021

*How to Structure and Operate Your
ASC to Maximize a Potential Sale*



Presented by Mark F. Weiss

American College of
Perioperative Medicine

December 10 & 11, 2021

JW Marriott Orlando,
Grande Lakes, FL

All Things Personal

It was going to be a tight connection between flights.

Of course, American Airlines knew that when they sent me the email about their new personalized "Five Star" on ground services. Someone would meet me at the gate and whisk me to my next flight.

I might not need it (I walk very quickly), but it might be an interesting experience. So, I ordered it up.

The only problem is that it is very difficult to actually arrange to pay for the service. In fact, it is work to get more service to alleviate the need for work.

There's no "click this link to reserve and pay" – one must email or call in. For anyone put on interminable hold by an airline, email is easier. But the response to the email was basically, "thanks for signing up, now you have to call in to pay."

What are you doing to make it easy for your patients to pay?

Beyond that, what are those to whom you refer doing to make it easy for your referred patients to pay? After all, their screwed-up business practices will come back to bite you.

It once took me close to a half hour to pay a pathology group using the only option other than mailing a physical check, a moronic dial-in and entry by phone button system. Heck, it probably only took them a minute to misdiagnose me, so why so long to pay?

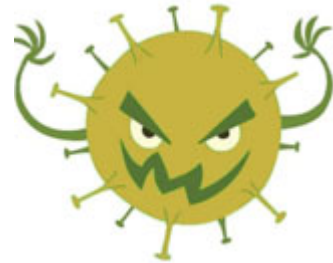
In the end, American's Five Star service was fantastic. Yet, I mostly remember how hard it was to pay for it.

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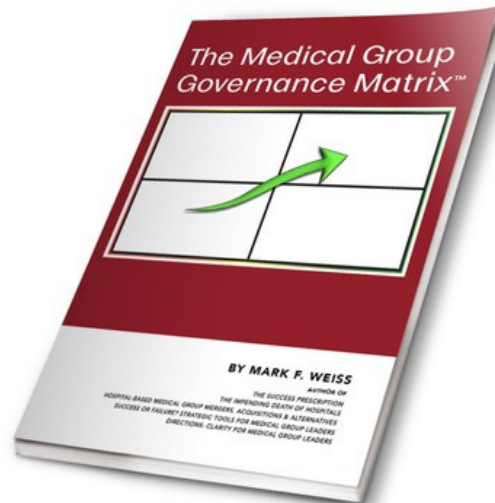
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- [UnitedHealth Pushing Business to ASCs and Outpatient Imaging](#)
- [What Every Physician Needs to Know About a California Anesthesia Group's Bankruptcy](#)
- [Pharmacies Poised to Disrupt Primary Care Medicine \(and Referrals from There?\)](#)

Published Articles

- [You Have Enough Problems. Why Buy Compliance Risk?](#), Summer 2020 Issue of [MiraMed Focus](#)
- [Who Really Owns Your Anesthesia Group?](#), Summer 2020, [Communique](#)
- [The Practical Essentials of the False Claims Act](#), March 2020, on [AnesthesiologyNews.com](#) and in the May 2020 issue of [Gastroenterology & Endoscopy 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 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](#).

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