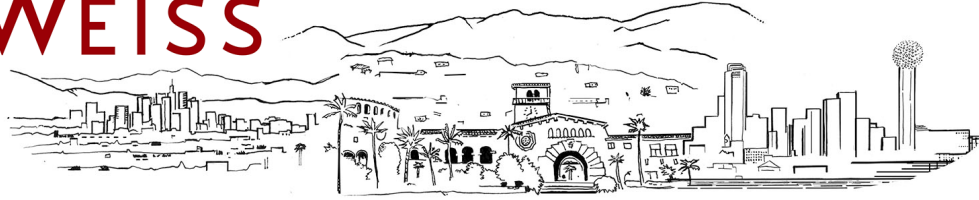


WEISS



February 28, 2021

Free \$10.6 Million Dollar Lesson on How Not to Fire Physicians

Here, courtesy of Tenet Healthcare and two terminated cardiologists, is a lesson about firing physicians . . . and, when not to.

In 2018, cardiologists Amir Kaki, M.D. and Mahir Elder, M.D. were terminated from leadership positions at Detroit Medical Center hospitals and, as a result lost their medical staff privileges. In an award that became public in January, an arbitrator agreed with the physicians' claims that Tenet Healthcare, DMC's parent, acted with malice in terminating them and discontinuing their medical staff privileges as retaliation for Drs. Kaki and Elder raising quality of care and improper billing concerns. The arbitrator awarded \$10.6 million in damages and ordered that their medical staff privileges be reinstated. In addition, the award included \$624,000 in attorneys' fees as well as discovery abuse sanctions of \$110,000 against Tenet.

Although Tenet sought to vacate the arbitrator's ruling in federal court, the court upheld the arbitrator's decision.

Although the story is certainly interesting on its own accord, it presents lessons for employers, whether they be facilities or medical groups.

It is certainly not unheard of for healthcare employers to terminate physicians as a result of their advocacy for patient care or their other compliance/quality of care complaints. And, it's certainly not unheard of for fired physicians to claim that their termination resulted from such advocacy when it actually didn't, or even that there was advocacy when there wasn't.

Here are some takeaways:

1. Employers must be diligent in implementing their compliance programs and in their overall efforts to take seriously any complaint concerning unsafe medical practices. Complaints and demands must be documented and they must be investigated to the level appropriate under the circumstances. Depending on the circumstances, for example a complaint by a physician that new equipment or supplies are required, the physician making the complaint should be kept apprised of the process and, even included in it. Fully vetting complaints and demands takes some, even if not all, of the sting out of a later claim that the complaining physician was fired to hide the complaint.
2. I thought about not including this because of obviousness, but I changed my mind: Don't fire the messenger. And, even if that is not the reason for the termination,

3. Disruptive physicians are wont to claim that their termination for cause was actually termination in retaliation for valid patient advocacy or as a result of some other improper motive. Employers must carefully screen out potentially disruptive job candidates. If it is too late and they are already employed, don't bend over backwards to "fix" them, allowing them time to "fix" you.
4. Be careful to preserve corporate or other entity structure. Although it is unclear from the story reporting the award against Tenet, I assume that there are multiple entities in-between the parent company and the facilities that employed, and granted staff privileges to, the two doctors. Follow required entity formalities in order to compartmentalize liability.



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.
- 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. 147 - Ghost of Eliot Ness Busts 345 Defendants in Nation's Largest Opioid-Fueled Healthcare Fraud Extravaganza – \$6 Billion In Alleged False Claims

In a move reminiscent of prohibition-era crime fighter Eliot Ness, the U.S. Department of Justice recently announced a coordinated enforcement action against 345 alleged healthcare criminals, including over 100

physicians and other licensed (for now) healthcare professionals, in 51 judicial districts.

All Things Personal

I was dialing the insurance company for the 15th time and, what do you know, just like clockwork, their obviously designed to frustrate you into hanging up phone system played the usual recording, "This call may be recorded for quality and training purposes."

How many times have you heard that recording or another of its ilk? 1,000 times? 5,000 times? More?

So let me ask you this, has service ever improved? No. Nope. Never.

Then what's up with those messages about recording the call?

Perhaps they're lying to us; the recording is not for better service, but simply to preserve what we say to (gasp!), as regards the insurance company, deny our claim. They simply dressed up attempting to obtain our consent, or, depending on one's state's law, letting you know of theirs, in connection with recording the call.

Or, perhaps their notion of quality and training has nothing to do with anything related to customer service but to employee efficiency (not necessary efficacy), *i.e.*, to make sure that their employees process 700 calls a day as opposed to 170. It is still a lie.

But whatever the reason, I don't believe I've ever met anyone who thinks that the recording has anything to do with better customer service.

Perhaps the companies that play these messages don't think that anyone is listening to them; that we've become so immune that our ears simply shut the sound out, or our brains just process the sound as white noise.

But isn't the real message that they don't give a shit?

Your office, or whoever answers your phone, an outsourced service, perhaps, might not use the same message, but there's still a chance that whatever they are saying, or whatever their initial greeting, it has the same effect.

And, it's not simply a matter of telephony, the same notion of a first impression absolutely carries over to meetings in person. Take for example, the internist who walks into the exam room and then keeps one hand on the inside door knob while talking with you.

What message are you sending?

Help Us Help You With Helpful Content

What tailored content would you most like to see during this time?
How can we focus on solutions to your most pressing strategic concerns?

Please **fill out our confidential survey** to ensure we best serve your needs!





Podcast Compilation Greatest Hits - Strategy Edition 1.0

We've curated our most popular podcasts on strategy into our first compilation album.

Sit back, enjoy, and think about your future.

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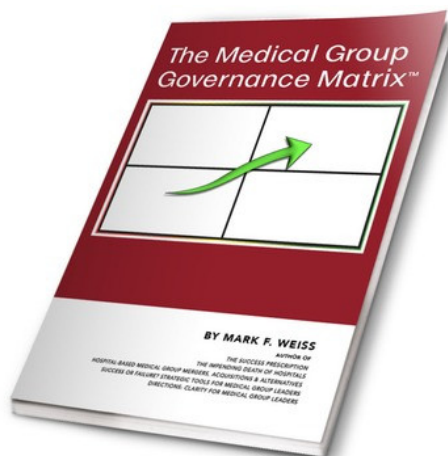
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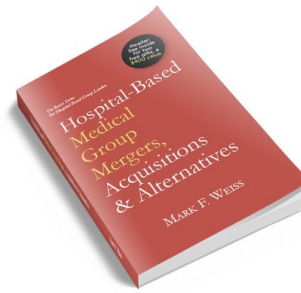
Published Articles

- [You Have Enough Problems. Why Buy Compliance Risk?](#), Summer 2020 Issue of [MiraMed Focus](#)
- [Who Really Owns Your Medical 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](#).
- 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.