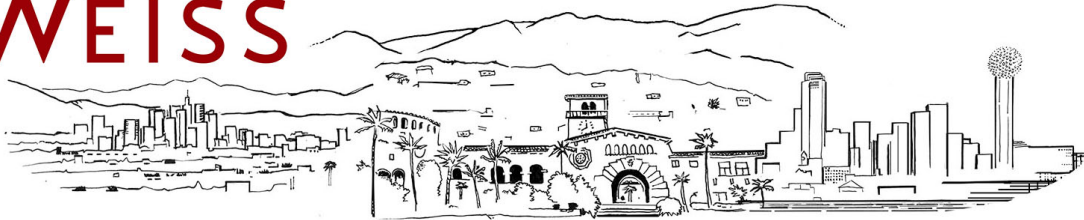


WEISS



May 31, 2021

Lessons from SCA Indictment: Due Diligence Required. Not All Risk Can Be Foreseen, but It's Yours.

In January 2017, Optum, part of insurance giant UnitedHealth Group, announced its agreement to acquire Surgical Care Affiliates ("SCA"), then a publicly traded ASC and surgical hospital company.

Fast forward to January 2021. A federal grand jury indicted SCA and related entities, alleging that at times from 2010 to October 2017, SCA conspired with competitors by agreeing not to solicit each other's executives.

The government alleges that SCA's actions are *per se* violations of the Sherman Act, which can lead to fines of up to \$100 million or more.

In its defense, SCA is arguing, among other things, that "the government seeks to criminally prosecute as a *per se* Sherman Act violation an alleged agreement not to solicit another company's employees, even though no court in history has ever definitively found such an agreement unlawful under any mode of analysis."

Although the prosecution of SCA is highly interesting in its own right, there's an important lesson, a hidden gem of a takeaway for you, in the broader context of an acquisition. Note that the now-Optum-owned SCA is being charged for criminal conduct that allegedly began seven years *before* Optum acquired SCA.

Entities, just like individuals, can be charged with crimes. That's part of the reason why, in the context of acquisitions, the generally preferred form is to acquire the assets of an entity, not the entity itself, in order to leave liabilities, especially unforeseen liabilities, with the seller.

However, in connection with many healthcare industry acquisitions, asset purchases present problems because it is the entity itself that holds valuable rights in the form of licenses, certificates of need, payer agreements, and so on, that cannot easily, or at all, be transferred via an asset deal.

In connection with any acquisition, a potential purchaser must, unless it's completely foolish, engage in substantial due diligence, i.e., deep investigation, to understand exactly what it is buying, and, as the SCA case demonstrates, buying into.

Additionally, purchase agreements must contain well thought out and well drafted representations and warranties and indemnification provisions to allocate risk to the appropriate party.



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 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. 150 - Was the Cure Worse Than the Disease? Surprise Medical Billing and U.S. Anesthesia Partners v. UnitedHealthcare

Over the past several years, so-called patients' rights protestors, and, if anyone were looking, insurance companies, advocated against the claimed evils of "surprise medical billing."

All Things Personal

The dealer's service manager contacted me about my car's annual service.

I made an appointment for the service plus some other fixes and brought the car in as arranged.

Two days later, when they got around to looking at my car (don't laugh, that's fast) they called to tell me that it would be a few more days until they had an oil filter in stock. I kid you not.

I use the dealer because it's hard to get the car serviced anywhere else. That plus the car has a warranty and I've never had a problem with the manufacturer making good on some very expensive parts. But not having an oil filter in stock is still pretty shocking.

In a sense, the oil filter was a bit like not validating parking or being charged for a giant ice cube in a drink.

Neither the \$10 or even \$20 for parking nor the \$2 for ice nor the oddity of waiting a few extra days (with the dealer's loaner car, of course) for the oil filter impacted me in a financial sense. But they're all signals of not caring for the customer, whatever your term for a customer, such as "patient", might be.

What signals might you be sending? Stop sending them.

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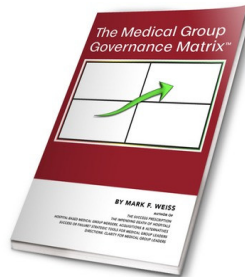
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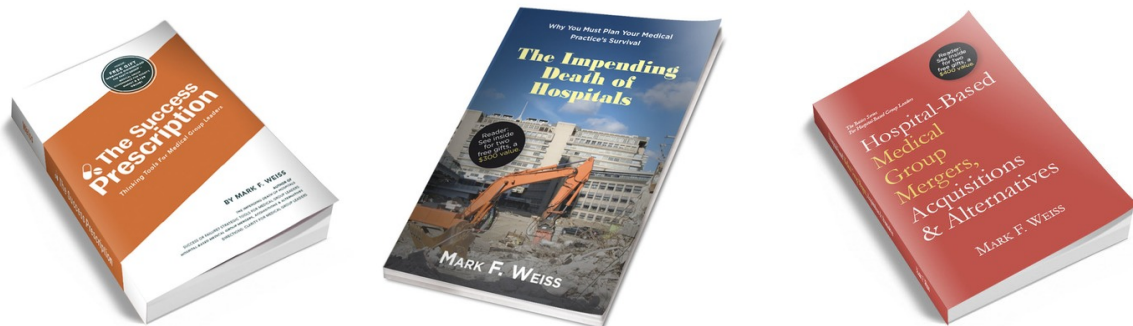
Published Articles

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