WISDOM. APPLIED.

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The Good, The Bad and The Ugly: Why Some Negotiations Succeed

It was a Tuesday. 3:27 pm to be exact. I was in the conference room. That's when the negotiation walked in.

Negotiations are not events. Metaphorically speaking, they are living, breathing things. They may be relationships, but at a minimum, they are processes. There are no exact rules for negotiation no matter what I or the authors of the over 20,000 books on the subject available from Amazon might tell you, no more than reading 20,000 diet books alone will actually make you lose weight.

There are, however, some core principles, some art and some psychology that I've observed, collected and utilized over the course of the past 30+ years in negotiating deals with opposites as diverse as nuns in black habits to executives from multibillion-dollar public companies in pinstripe suits. I'll share a few of them with you. As they say, take my comments "for checking".

A few more things before you dig in.

This is not an article on specific negotiation tactics. Neither is it an article on a specific type of negotiation, say for an exclusive contract with a six-hospital system, or for the sale of your medical group, or for flipping on its head the company model arrangement those gastroenterologists are imposing on you if you want to extend your relationship with their ASC. Instead, it's an article on a few of the overriding principles for you to take into account in connection with any negotiation. And, it's written from the perspective of helping you understand why some negotiations succeed, but others fail.

Let's get started.

Principle No. 1 — The Good, the Bad and the Ugly

No baseball player bats a thousand (i.e., 1.000 in baseball parlance). In fact, the player with the highest career batting average, Ty Cobb, batted .366 over a 24- season career. In other words, he didn't get a hit approximately 2/3 of the time.

In similar fashion, over time, no medical group successfully closes every deal they approach. The cold hard fact is that in some negotiations, "the good" succeed, others, "the bad", fail for reasons that may or may not have been preventable, and others, "the ugly", were set up so that they were never going to be permitted to succeed.

For some readers, this may appear to be a strange place to start. But, if you think about it, it's the only place to start because it drives home a point that is essential for your overall success: although the good and the bad start off the same and take time to understand, the ugly are easier to spot, that is, if you keep your eyes and ears open, and perhaps, also, your nose.

The poster child for the ugly is the hospital administrator who drags out discussions of the renewal of an exclusive contract, perhaps mentioning an RFP, perhaps telling you that administration needs more time to think about it, but all the while dragging you out. Other plans are likely being made, plans that don't include you.

Does the process itself smell bad, even before any terms are discussed? If so, you have a very short time period in which to use whatever leverage you have. Which, obviously, means being able to realistically threaten that you will walk, now.

Understand that sometimes things are set up so that you will fail.

Principle No. 2 — Always Have an Alternative

If your contracting opposite knows that you need, really need the deal, you have ceded power. Sure, you might close the deal, but on what terms?

Think, for example, of the situation in which a medical group contracts with one hospital only. When the contract comes up for renewal, the hospital administrator knows that your group's very existence turns on the renewal of the contract. Many CEOs will use that to the hospital's advantage. Few medical group leaders are willing to call their bluff.

Spread your wings. No matter what you are negotiating, always have alternatives, not just because it's a good thing to do on its own, but because it will give you negotiating strength. As in the story of the chicken and the pig who plan what to make for breakfast and decide on ham and eggs, you want to be like the chicken, that is, involved in the process, and not like the pig, who's forced to be fully committed, to its detriment.

Yes, it might take time to develop alternatives. If you didn't start three years ago or three weeks ago, start now. You will be behind, but waiting until three years from now will only make things worse.

Principle No. 3 — Begin Early and Don't Fool Yourself

Start strategizing early, way before any formal negotiation takes place.

As the physicist Richard Feynman quipped, "the first principle is that you must not fool yourself—and you are the easiest person to fool."

So, begin with telling the truth. The truth of your situation. The truth of your strengths. The truth of your weaknesses. The truth of your alternatives. The truth of everything. Then fix what you can and understand that the rest might be used against you and be ready for it.

Just don't fool yourself.

Principle No. 4 — Know What Class of Deal Are You Negotiating

Deals often go afoul as a result of misunderstanding what class of deal is being negotiated. I divide contracts into two major classes, Transactional Contracts™ and Relationship Contracts™.

Transactional Contracts™ are ones in which the parties negotiate for a deal which, essentially, terminates as of the closing. For example, think about the purchase of a car or the purchase of a house. The parties trade consideration and part ways.

But many of the deals that medical groups negotiate are Relationship Contracts™, situations in which the closing of the deal is the start, not the end, of the relationship.

Each class of agreement requires a different strategy. Know what you are negotiating.

Principle No. 5 — Understand What Negotiation is

It's easiest to understand this point in the context of negotiation for the renewal of an exclusive contract.

Physicians inexperienced in business often mistakenly regard hospital negotiation as a formal process separate from day-to-day activities at the facility. When at the facility, they are on their way to render patient care or are headed back to the department office or out the door.

Hallways are not negotiation tables. For many physicians, location is a factor in negotiation—the physical context controls the question of whether or not there is intended content.

To a hospital administrator, someone who regularly negotiates as a part of his or her job, all discussions with contracting parties, whenever and wherever, are part of the negotiation process. The administrator's office, the board room, the washroom or the hallway, even the check-out line at the local market, are all simply locations—and to him or her, location is not important; it is content, not physical context, that controls.

Because you can count on the fact that hospital administrators are not going to change their perception of the immateriality of physical location to negotiation, it's incumbent on physicians to learn this lesson and learn it well.

Any communication with, or within earshot of, an administrator is a part of the negotiation process. Plan what you and any member of your group is going to do and say, not just reactively, but proactively, as well.

Stick to the plan. Everywhere.

Principle No. 6 — Be Detached

Negotiation requires detachment from the outcome. It is next to impossible for you to be detached from your own deal. Bring in experts to conduct the negotiation.

If you are not detached, fear of losing the deal and the ease of confusing the deal with an attack on your own ego often destroy the ability to come to terms. That's the case whether it's your own fear and your own ego or that of other members of the group.

I'm not telling you not to be involved as part of the team in a combined effort, but you should not be the face of your own negotiation.

Principle No. 7 — Understand Yourself

What do you actually want?

In other words, what is the specific goal of the negotiation? Why?

How realistic are those goals? What are your alternatives, both in terms of satisfying your actual needs and in terms of less satisfactory but still acceptable outcomes? What is your fallback position and what is your bottom line? What is the market? How well do you understand it?
In addition to addressing this issue from the 50,000-foot level, that is, in connection with the entire negotiation, you need to do similar thinking in connection with each meeting and conversation with the other side.

Lack of understanding of what you want and why you want it cuts off potential routes for solving impasses, can lead to selling yourself short, and to bad and blown deals. You have complete control over this aspect of negotiation. Use it to your advantage.

Principle No. 8 — Understand The Other Side

What does the other side want? And, even more so, why do they want it? And, as to "why," remember that there's the reason . . . and then there's the real reason. The more you work on this, the more likely you are to see other opportunities and strategies to bridge impasses.

Understanding the other side plays out on multiple levels. There's the level of the entity that's involved on the other side of the negotiation, the hospital, for example. And, there's the level of the individuals representing that other side, such as the hospital CEO.

Build deep profiles of both levels. Embarrassingly deep. To be fully prepared, you need to spend hours and hours, sometimes even weeks, to ferret out the details that underlie the incentives that drive both the opposite party and the people negotiating for it.

And remember that the incentives of the people on the other side often differ from that of their employer or principal.

Incentives are often at the root of what appears to be wacky positions and wacky decisions. It explains why a CEO will scuttle a favorable deal for her employer when it's at odds with the metrics behind her bonus. It explains deals based on a short-term world view versus a long-term one. It explains borderline (and over-the-borderline) illegal behavior.

Principle No. 9 — Be Prepared. Then Prepare Some More.

Let's revisit baseball and batting champ Ty Cobb, mentioned above.

In baseball, there's spring training, and there's also practice, practice and more practice in between, and prior to, games. How many thousands of hours of practice does a star batter devote to his handful of minutes at bat each game? It makes all the difference in his career.

Why do you think that negotiating a deal for your medical group is any different? It's not.

There are hours, days, weeks and even months or years of preparation that go into negotiating a successful deal.

Even if you don't spend the time, the chances are high that the other side will. So, how do you think things are going to work out for you?

Never wing it. You can't just show up at bat, swing and hit a home run. No one can.

Not even Ty Cobb was that lucky.

Wisdom. Applied. 173: A Naive Anti-Kickback Question Answered

There's an expression in carpentry, "measure twice, cut once." We should have the same expression in terms of healthcare deals...

All Things Personal

Delivery was confirmed for Thursday. Until it wasn't.

Let's put this in the category of broken promises and incompetent management, subcategory Home Depot.

According to Home Depot's order tracker, the truckload of palletized mulch was on its way last Thursday. So, I worked from home, checking web updates every hour or so to learn that my order was "on its way for delivery today". That is, until around noon when the up-to-then helpful website showed that it wasn't.

I called customer service and spoke with a representative who called the store; no, my order wasn't coming – it had been cancelled. Cancelled by whom? Well, by them, because they didn't have the mulch.

Why sell me mulch they didn't have? Why tell me from 6:00 am to noon that the order was on its way?

In the end, the order was sent to another Home Depot store for delivery, and it arrived two days late.

As experts in behavioral economics will tell you, customers (you might call them patients) hate waiting, but the wait can be made much more palatable by providing them with updates related to their expected service. Think tracking your driver on the Uber app or the boarding time countdown at an airport gate.

What do you do to keep your patients, your customers, your clients informed? What other opportunities do you have to update others, such as to the time, or day, on which something will occur or be delivered?

I'm not sure if behavioral economists have studied what happens when you keep someone updated as to progress and then cancel on them. Perhaps they've figured out that conducting that study would be a waste of time. After all, they'd just confirm that it really pisses people off.

Oh, one more thing: As the folks at Home Depot have taught me, the best place to buy a truckload of mulch is Lowes.

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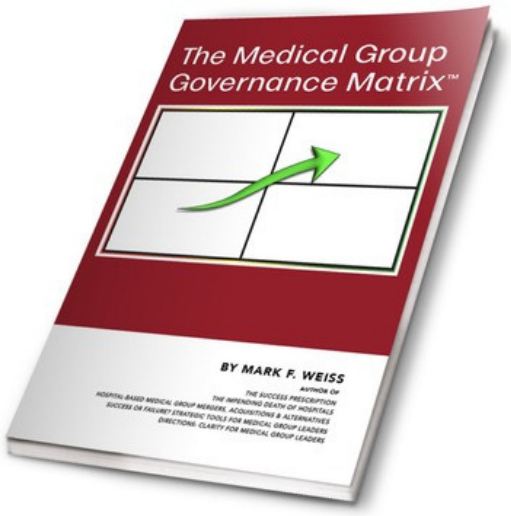
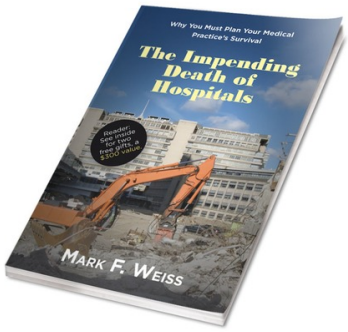
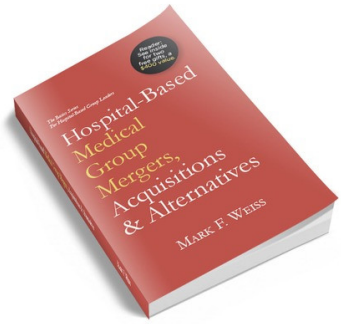


We all hear, and most of us say, that the pace of change in healthcare is quickening. That means that the pace of required decision-making is increasing, too. Unless, that is, you want to take the "default" route. That's the one is which you let someone else make the decisions that impact you; you're 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.





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