

WEISS



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The time is right to stop insurers from stealing physicians' services.

That was the subject of Monday's blog post, **Lesson from McKinsey -- Avoiding Consultants from Hell**. You can follow the link to read the post online, or just keep reading.

Are you sure those consultants are helping to improve your business? Or are they potentially sending you to jail?

In December 2023, the consulting firm McKinsey agreed to pay \$78 million to settle claims by health insurers and benefit plans that the consulting firm's work with drug companies served to fuel the opioid crisis.

Earlier this month, December 2024, McKinsey agreed to settle claims against it relating to a federal investigation of the firm in connection with the work it performed increasing opioid sales for Purdue Pharma. That settlement, which includes a \$650 million payment to the government and a deferred prosecution agreement, resolves criminal charges including conspiring to misbrand prescription drugs. It's also been reported that a former senior partner of the firm agreed to plead guilty to obstruction of justice.

Of course, it has to be stressed that those settlements by McKenzie are just that, settlements. Although there were allegations of wrongdoing, none of those allegations were proven in court.

I've addressed other issues relating to consultants in the healthcare space, often in the context of the danger of engaging valuation consultants and

other compliance consultants directly as opposed to through legal counsel. For example, see **7 Key Steps to Successful Hospital-Based Group Stipend Negotiations**.

The McKinsey story illustrates a different, significant “consulting” risk to healthcare providers. It can impact any provider, from solo physicians to large physician practices, facilities and others: not properly vetting both consultants and their advice.

It’s extremely common for providers to engage healthcare consultants for business advice. For example, Purdue engaged McKenzie to help increase the sales of its drugs.

By analogy, many medical groups engage consultants to help them improve their topline revenue. For example, medical groups often engage consultants to help with their coding of procedures, with bringing on, and maximizing collections from, the provision of ancillary services, and so on.

Yet, how sure are they that the consultants understand the licensing, other regulatory, civil, and criminal risks inherent in the complex realm of healthcare compliance that overlay the business goals they are tasked to achieve?

Might the consultants’ recommendations have crossed from sound business advice into the realm of creating civil liability? Might it have crossed even further, into the realm of criminal conduct? Has your professional license been compromised?

Here are some key takeaways for you to consider:

What experience does the consulting firm have in connection with the subject matter for which they might be engaged?

Who within the consulting firm will be assigned to work on the project and to oversee it? What do you know about their background, education, and experience? Are there red flags?

What errors and omissions insurance do they carry? Have there been prior claims against them? If so, for what? Consider that although insurance might help alleviate monetary damages, much of the fallout from advice that later results in allegations of compliance wrongdoing by your practice or business is of the reputational sort -- weeks or months of bad press might destroy your business even if you did nothing wrong.

And, in regard to consultants’ advice and recommendations, what steps do you take to vet it before acting on it? Due to the complexities of the

healthcare regulatory environment, even fantastic general business advice can constitute criminal activity. Unbundling plumbing charges is different from unbundling CPT codes. Paying a finder's fee to someone who refers customers to a shipping company is not the same as paying for the referral of patients.

As in many instances of life, some of the simplest rules can serve you best. In this case, it's "measure twice, cut once." In fact, if I were you, I'd measure *thrice*.



BREAKING NEWS

Subsequent to last week's Alert, a different panel of the U.S. Court of Appeals for the Fifth Circuit issued an order vacating the Court's December 23, 2024, order granting a stay of the preliminary injunction in regard to the Corporate Transparency Act.

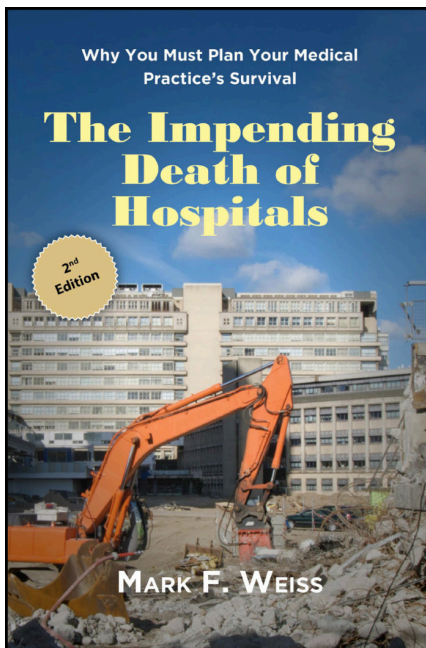
Translation: The injunction blocking enforcement of the CTA and the mandatory filing of beneficial ownership information reports, which was issued by the district court in *Texas Top Cop Shop, Inc. v. Garland* is in effect.

Therefore, reporting companies are not currently required to file BOIRs with FinCEN.

However, the government has filed with the U.S. Supreme Court in an attempt to overturn the most recent order and again put the CTA and BOI reporting back into play. We'll send updates as the situation changes.

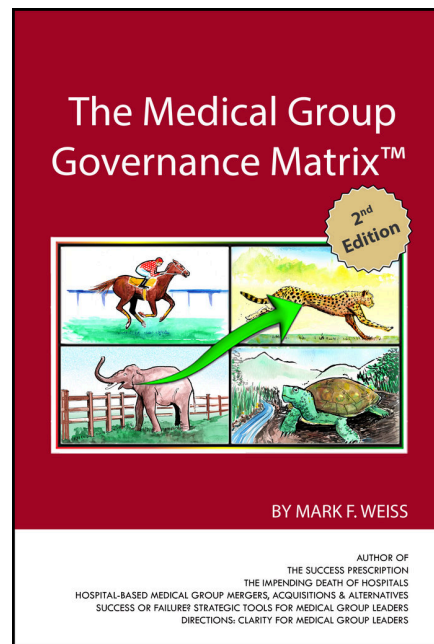
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