

WEISS



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Can inducement to use a form that makes it easier to refer be a kickback?

That was the subject of Monday's blog post, **Nudge Triggers a \$17 Million False Claims Act Settlement**. You can follow the link to read the post online, or just keep reading.

A fraud by any other name would smell as bad.

Yes, I'm talking about the Bard . . . C.R. Bard, Inc., that is, the medical device company owned by BD, which together with its affiliates agreed to a \$17 million settlement with the feds and multiple states.

The settlement resolved allegations that Bard violated the False Claims Act and state statutes soon after it acquired Rochester Medical Corporation, a developer and supplier of intermittent catheters. It was said that Bard sales reps began leveraging discounts on, and free samples of, in-office urological products to convince urologists to make Bard's so-called "Link" prescription form – on which were listed various Bard intermittent catheters – the standard catheter prescription form for their group. The patients would then take the Link prescription to a DME supplier to purchase the catheters.

Two years later, Bard acquired Liberator Medical and Liberator Holdings, DME suppliers. The government alleged that after the acquisition, Bard used the Link prescription form to encourage urologists to prescribe intermittent catheters through Liberator rather than other DME suppliers.

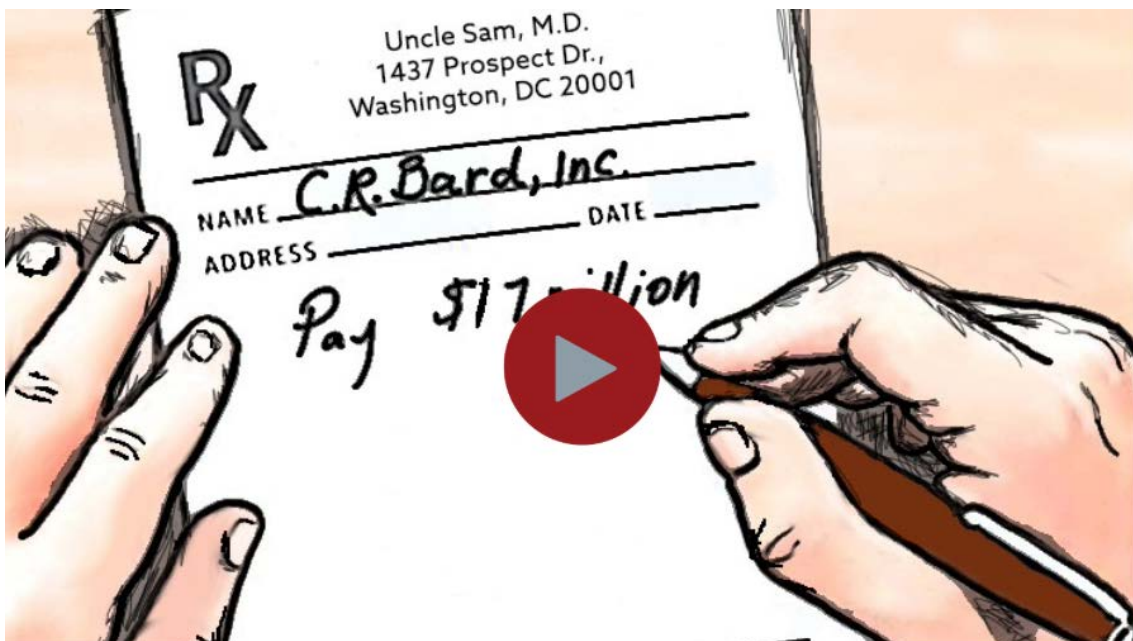
Just as a settlement is a settlement and not a finding by any court, it's easy to see that compliance issues can sometimes be hard to see in the massive universe of healthcare interactions.

It's not as if Bard was alleged to have given anything of value for an actual referral; rather, it's alleged that they gave something of value to set up a situation in which it would be **more likely that a referral would occur** – it's easier to check a box to prescribe a Bard catheter than to write or type more information. Was it actually a kickback that resulted in False Claims Act violations? Perhaps. But it cost Bard \$17 million to avoid finding out in court.

Where else in the millions of interactions between providers, facilities, and vendors might other “nudges” exist. I'd expect many.

Just like they say about lunch, “free” in the healthcare context is seldom actually “free”.

Here it cost Bard \$17 million to, well, eat their own pre-printed words.



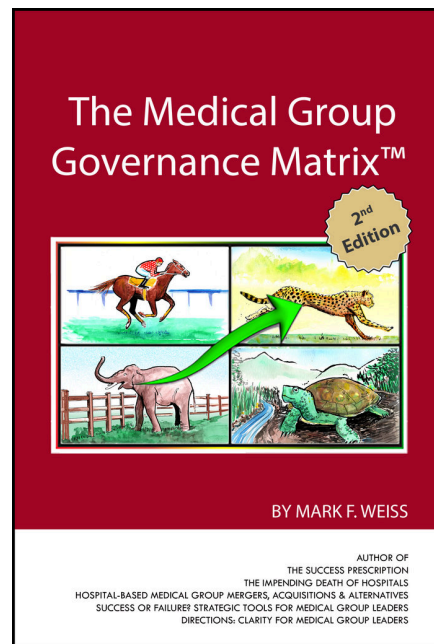
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