

WEISS



August 22, 2025

Fail fast! The “Peter principal”; rising upward in an organization to the level of your incompetence. Clever clichés though they may be, they aren’t so clever if failure and incompetence lead to your indictment.

Take “medical director” for example.

In the 1980s, “medical director” was often used as the smokescreen for kickbacks from a hospital. I said “often” not always.

Today, as more physicians face financial pressure and seek additional opportunities, the medical director position poses multiple and ethically varied concerns.

One example is the failure to actually perform the supervisory function inherent in the position. That sort of failure leads to medical board discipline, claims of negligence that might not be insured against, and, possibly, prosecution based upon intent that will be inferred from the facts.

At the other end, the end of tangible intent, we see criminal charges like those recently brought by the DOJ against a Connecticut physician who served as the medical director of a clinical lab located in New York. Note that at this point, i.e., the physician’s indictment and arrest, the government’s claims are, legally, mere allegations; neither the subject physician, Dr. Martin Perlin, nor his alleged co-conspirator, have been convicted of anything.

Whether or not any conviction results, the underlying story told by the DOJ is illustrative:

1. Dr. Perlin, of Fairfield, CT, and Cemhan “Jimmy” Biricik, of Boca Raton, FL, were charged with more than 50 substantive counts of health care fraud as well as with the separate crime of conspiring to commit health care fraud.
2. Biricik was the sole member and CEO of New York-based Fast Lab Technologies, LLC (“Fast Lab”). Dr. Perlin was Fast Lab’s Medical Director and the provider responsible for ordering the majority of the tests submitted to the lab.
3. According to the indictment, during the Covid-19 pandemic, New York-based Fast Lab operated a website offering “free” covid tests. When individuals went to the website to order tests, they were asked to provide their insurance information. Fast Lab then used this insurance information to fraudulently bill Medicare, Medicaid, TRICARE and numerous private insurances for both antigen (“rapid”) and PCR (“laboratory) tests, across multiple dates for each beneficiary.
4. The indictment alleges that Fast Lab’s claims represented that (1) the antigen tests had been observed by medical professionals, (2) saliva samples were collected by medical professionals, and (3) PCR testing was performed on those samples.
5. However, the government asserts, the truth is that the vast majority of antigen tests, if taken at all, were taken at home and not observed by medical professionals; saliva samples were never collected nor returned to Fast Lab; and PCR testing was never performed. Dr. Perlin was the ordering physician for these tests, despite not having a treating relationship with the beneficiaries.
6. The prosecution states that Fast Lab would regularly submit insurance claims before the test kits were even delivered to the beneficiaries.
7. In total, more than \$500 million in claims were submitted and more than \$50 million was actually paid to Fast Lab.

So, what’s an honest doctor like you to do?

Every medical director issue that I’ve seen in my career, save for those involving complete identity theft (yes, I’ve seen those, too) involved tea leaves that could easily be read in advance by those trained to read them.

On the most prevalent, non-criminal end, for example services as a medical director pursuant to an anesthesia exclusive contract, carefully negotiating the scope of the duties, the obligations, and the indemnities are all required.

Far more diligence is required as you head, unwittingly or not, toward the danger zone, starting with arrangements in which you are the “medical director” of a clinic or facility, especially one at which you are not practicing on a full-time basis. What do you really know about the other individuals involved, their past and present activities? How carefully have you vetted the structure of the deal and of your role or roles?

I’ve seen the impact of everything from stupidity to the belief that the world is all rainbows and unicorns, to scams in which the other participants were involved with organized crime. I’ve seen sweetheart physicians charged with felonies.

Yes, sometimes we can be fooled.

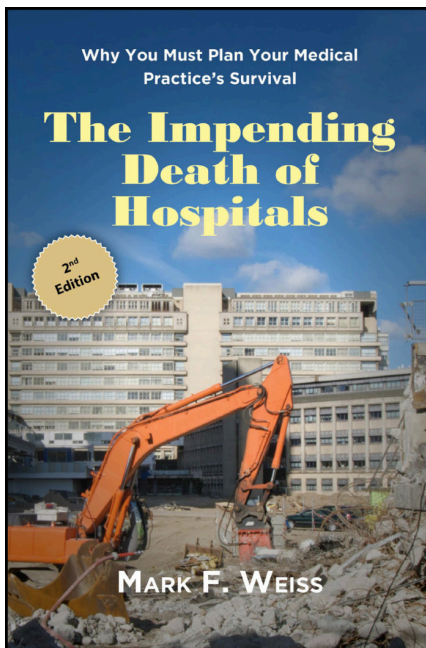
A rose by any other name might smell as sweet, but to a trained nose, a shitty arrangement really smells like crap.

Whether you’re first considering, or already deep into, a medical director arrangement, make sure that it’s vetted by someone who can smell the difference.



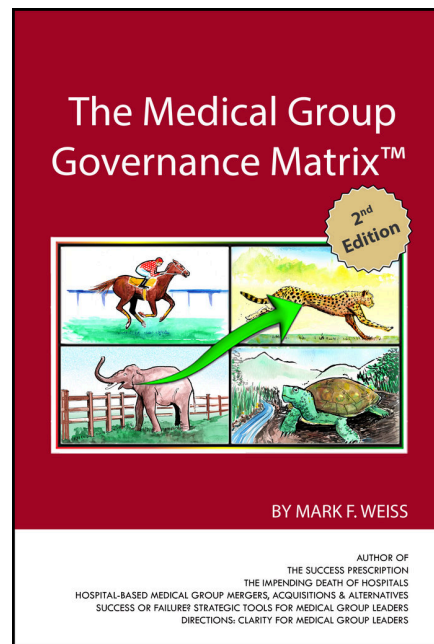
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