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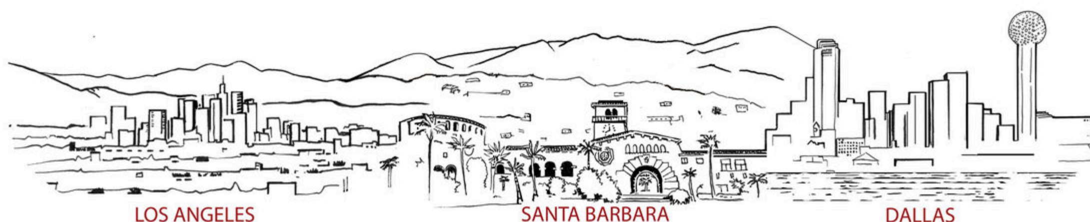


September 26, 2025

In response to requests following last week's post, The FTC Buries Its Ban on Non-Competes, But Sharpens its Aim on Violations, here's some practical advice for medical group leaders on steps to take to protect your group.

As discussed in that prior post, the FTC's nationwide ban on non-competes may be dead, but its attention to "unreasonable" restraints on competition is very much alive.

And therein lies the bind. What's "unreasonable"?

As in "your fair share", it all depends on who's making the determination. In the case of the FTC's reinvigorated hunt, the final judgment belongs to someone outside your organization, whether that's the FTC or a court.

But that doesn't mean you're powerless. Instead, it means that you must be cognizant of the balancing required.

Your group certainly needs to protect its investments, patient relationships, facility relationships, referral streams, specialized training, the stability of call coverage, and so on. On the other side of the balance scale, every agreement between your group and its staff members is now a potential exhibit in the FTC's case file.

This means you have to be intentional.

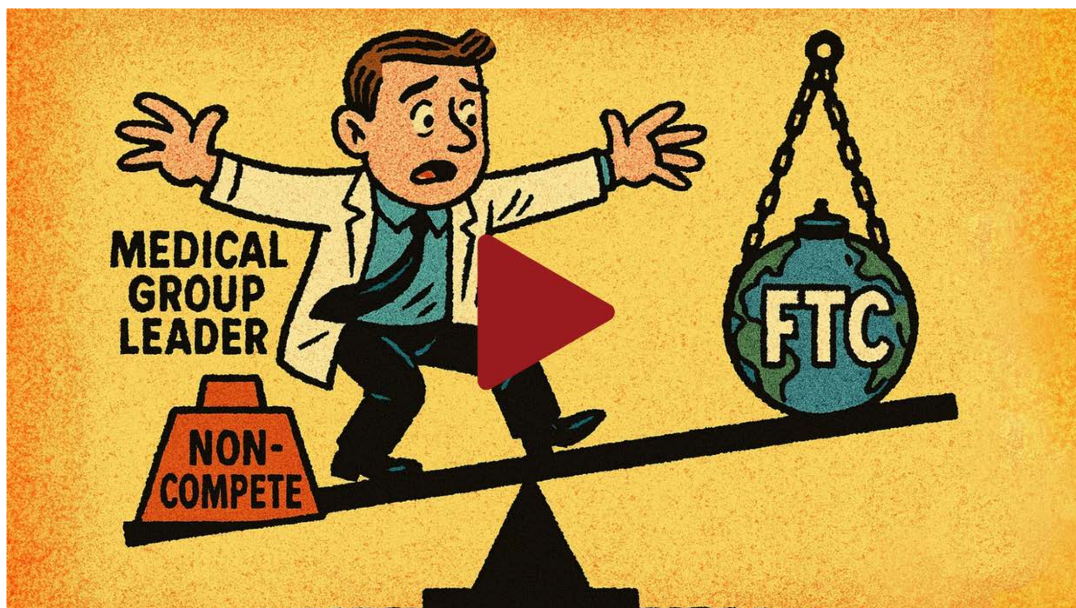
Start with your circumstances. A radiology group covering ten hospitals in a metro area faces different realities than a two-physician GI practice in a rural town. Duration, geography, and scope have to reflect those realities. What looks balanced in one setting could look abusive in another.

Avoid the illusion of one-size-fits-all. The urge to recycle an old contract or let AI crank out “standard” clauses is strong, but that’s not strategy, it’s roulette. Each agreement needs tailoring: to your market, to your practice structure, to your competitors, and to the regulators now circling this issue.

Think beyond the noncompete. Non-solicitation agreements, confidentiality provisions, and narrowly drawn covenants can often achieve many of your goals with far less legal risk. They’re not perfect substitutes, but they can work to keep you out of the FTC’s crosshairs while still protecting much of your interests. In addition, proprietary strategies serving as substitutes for covenants not to compete, important both in the FTC context and, especially, in states with prohibitions on covenants not to compete, may serve to satisfy nearly all of your legitimate interests; these strategies are more complex but might be of interest to you.

Medical groups don’t have to throw up their hands. They have to think like strategic actors: What are we protecting? What can we live without? How do we show that our agreements are fair, not heavy-handed?

The FTC’s ban may be buried, but the scrutiny isn’t. For leaders, the challenge, and opportunity, is to craft agreements that strike the right balance between protecting the group’s future and respecting the realities of today’s regulatory and labor environment.



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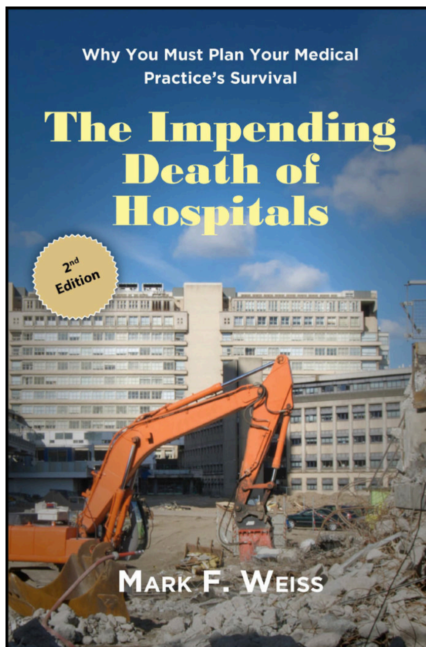

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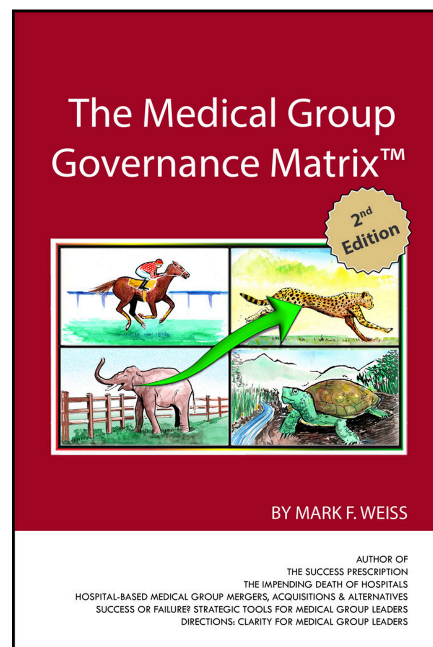

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