

# WEISS



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Sipping coffee in a hospital cafeteria, early for a meeting. The guy at the table in front of me, dressed in a white lab coat with a stethoscope shoved into the large right-hand pocket, was talking to his colleague about a contract dispute. I knew it would be interesting.

“If we can predict the time that a comet is going to fly by the Earth 10 years from now, why in hell can't he give me a firm opinion on whether we'll win if we sue?”

Apparently, the fact that astronomy is not in the same domain as the confluence of law, chance, and human behavior was lost on this guy.

But it is, as they say, a teachable moment, one that has a potentially large payout for you.

The law and reality. The law . . . *and* reality. One and the same versus one and something entirely not.

In science, a “law” could be defined as a statement of an observed regularity in nature that reliably describes how elements of the world consistently or regularly behave, without necessarily explaining the underlying mechanisms that cause it.

In a sense, it's a very educated guess, one subject to later modification or falsification.

But in the context of “the law”, that is, the law as relates to the legal system, it's something entirely different. There, it's a system of rules, principles, and standards established by a governing authority to regulate behavior within a society.

As opposed to a description by man of how the world behaves, “the law” is a description by “authority” of how man should behave.

Apart from being the kind of thing I like to think about on a breezy Sunday morning, what are the major business takeaways for medical group and healthcare facility leaders?

1. The universe of law is a series of proscriptions. Some of it relates to morality, but a lot of it relates to lobbying. For example, physicians basically cannot own Medicare participating hospitals, but Medicare participating hospitals can “own” physicians. Unlike scientific laws, which have to make sense, non-moral laws simply have to make dollars.
2. Like the actuarial concept of risk, the application of the law is multifactorial, but even more so. Issues such as what does the law really mean and how have others interpreted it are certainly important. But in its application, so, too, are matters such as what did the judge have for breakfast, whether she had a fight with her spouse before she walked out the door that morning, and whether she hopes to be elevated to the court of appeals.
3. But even then, nearly all disputes are dropped or settled, not resolved by a third-party. This means that despite what the law “says”, that is, the way the statute reads or precedent states, it’s just the starting point. The relative bargaining power of the parties, the lack of cajones or an overdose of testosterone, the preservation of a contractual relationship, and so on, all determine the outcome.
4. The point at which you have most control of the outcome is in the planning stage as to some deal or proposed relationship, and, as regards contracts, at the time of drafting. If you embark blindly, or simply sign what the other side presents, well, don’t complain later. Not spending thirty or forty thousand today could cost you three million tomorrow. Or maybe not. But why risk it?

Remember, there is no promise of justice, just of a day in court. Unless, of course, you’ve agreed to arbitration.



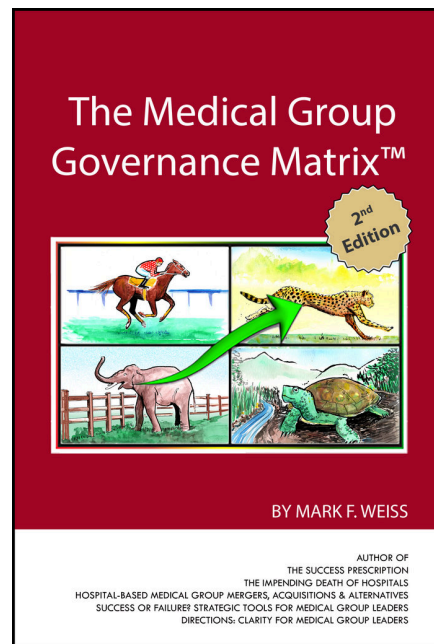
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