

July 31, 2018

FTC Challenges Physician Group Merger: The Lesson For You

Like a bear emerging from its long winter nap, the Federal Trade Commission is hungry to enforce antitrust law in the healthcare sector, including, notably, in connection with monopolization through mergers in the market for physician services.

In 2017, the FTC began its challenge to the proposed merger of the physician group known as Mid Dakota Clinic into Sanford Health, an integrated healthcare system with a large number of aligned physicians.

The government alleged that the deal would violate antitrust law by significantly reducing competition, resulting in higher prices and lower quality of care for adult primary care physician services, pediatric services, obstetrics and gynecology services, and general surgery physician services in the greater Bismarck and Mandan metropolitan area.

In December 2017, the FTC, acting together with North Dakota's Attorney General, won a preliminary injunction in federal District Court blocking the merger. Sanford and Mid Dakota have appealed, and the case is currently winding its way through the appeal process.

Although the FTC has increased its scrutiny of physician group mergers, the merger of independent physician groups, that is, of groups not affiliated with hospital systems, continues to be an attractive alternative in the fight to build market share, especially in face of increasing competition from both integrated systems and national practice aggregators.

These "peer to peer" mergers, that is, mergers of physician groups with one another without the participation of "money partners" (who are generally not partners at all but, rather, acquirers in sense of "house flippers") serve to preserve entrepreneurship, independence, physician control, and the spirit that led many physicians into their careers.

The lesson of increased scrutiny simply means that the parties to potential mergers must take antitrust law, both federal and state, into account at the earliest (that is, pre-planning) stages prior to any discussions with potential merger partners. What's said and done even at the earliest stages of discussions can doom an otherwise pro-competitive arrangement.



Wisdom. Applied. 116: OIG Fraud Alert on Physician Compensation

You must be extremely careful when entering into any physician compensation arrangement, whether you are the payor or the recipient, in order to steer clear of possible AKS violations.

All Things Personal

On the way into the office from a breakfast meeting, I stopped at the Post Office to mail packages to two of my sons.

I walked into the Post Office lobby a few minutes before the counter opened. Finally, the large metal security partition rolled up, and there she was: a woman with a “CLOSED” sign in front of a window wearing a postal worker shirt and a scowl. She immediately began to mutter that it was a terrible day.

I’ll skip ahead because you know most of the rest. She fumbled with the computer. She swore at the postage printer after it jammed. And then she handed me my receipt, circling the information for their online customer service survey and gave me a perfunctory smile, if I could call it that – it was more like an *unfrown*.

Perhaps this is government service at its best. But perhaps it’s incredibly stupid management policies. Who hires these people? Who trains these people? Who (doesn’t) make sure that they’re delivering actual customer service? Who doesn’t fire them?

I’m told that in the Soviet Union there was a saying that went something like this: “They pretend to pay us. We pretend to work.” Well, you don’t have to travel overseas and back in time to see the second sentence of the quotation in practice.

The Post Office has a monopoly, yet last year alone, it lost \$2.7 billion. FedEx made a \$3 billion profit that same year.

A First Class stamp costs 50 cents. Yet put the same letter in a FedEx envelope to send it across town, and it costs you \$15.00. Have you wondered why so many people choose to spend the extra \$14.50? Perhaps because it will actually get there, plus you don’t get depressed when you hand the envelope to a FedEx driver.

There’s a lesson here for all of us and it has nothing in particular to do with mailing a letter. How many “postal workers” does it take to destroy the morale in any business and then to slowly destroy the business itself? Fewer than you think.



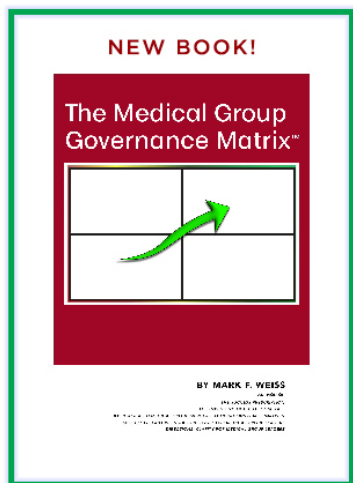
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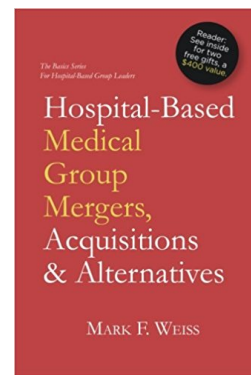
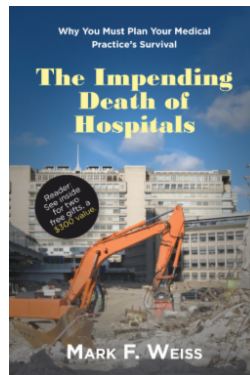
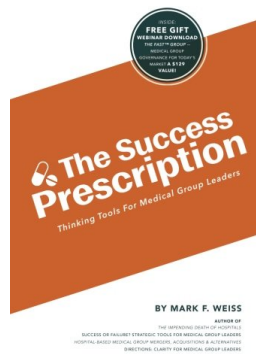
- Quoted in [Becoming a Cheetah and Other Survival Tactics](#), Summer 2018, [Communique](#)
- [Why and How You Must Prepare Your Anesthesia Group for the Future](#), Summer 2018, [Communique](#)
- [Explosive Growth in ASC Codes Fuels Opportunity](#), published on [RadiologyBusiness.com](#), April/May 2018.

Books and Publications



We all hear, and most of us say, that the pace of change in healthcare is quickening. That means that the pace of required decision-making is increasing, too. Unless, that is, you want to take the “default” route. That’s the one in which you let someone else make the decisions that impact you; you’re just along for the ride. Of course, playing a bit part in scripting your own future isn’t the smart route to stardom. But despite your own best intentions, perhaps it’s your medical group’s governance structure that’s holding you back. In fact, it’s very likely that the problem is systemic. The Medical Group Governance Matrix introduces a simple four-quadrant diagnostic tool to help you find out. It then shows you how to use that tool to build your better, more profitable future. [Get your free copy here.](#)

Learning opportunity: Mark will be presenting the key concepts of the Matrix as a part of his presentation at the Advanced Institute for Anesthesia Practice Management, April 28 – 30, 2018 at The Cosmopolitan of Las Vegas. <http://aiapmconference.com>



Whenever you're ready, here are 4 ways I can help you and your business:

1. **Download a copy of *The Success Prescription*.** My book, *The Success Prescription* provides you with a framework for thinking about your success.
2. **Be a guest on “Wisdom. Applied. Podcast.”** Although most of my podcasts involve me addressing an important point for your success, I’m always looking for guests who’d like to be interviewed about their personal and professional achievements and the lessons learned. Email me if you’re interested in participating.
3. **Book me to speak to your group or organization.** I’ve spoken at dozens of medical group, healthcare organization, university-sponsored, and private events on many topics such as *The Impending Death of Hospitals*, the strategic use of OIG Advisory Opinions, medical group governance, and succeeding at negotiations. For more information about a custom presentation for you, [drop us a line](#).
4. **If You’re Not Yet a Client, Engage Me to Represent You.** If you’re interested in increasing your profit and managing your risk of loss, [email me](#) to connect directly.