

WEISS



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Why Sutter Health's Settlement of Antitrust Case Sends Signals Concerning Anti-Kickback Compliance

This month's main article is a reprint of a recent blog post which received thousands of views. It addresses an extremely important topic.

Tenet Healthcare Corporation's most recent quarterly report (for the period ended 9/30/19) indicates that it's reached an agreement in principle with the United States Department of Justice to settle a whistleblower suit involving, among other serious allegations, that it participated in a so-called "company model of anesthesia services" scheme. That's an arrangement in which, roughly speaking, the surgeons working at a facility, usually owners of the facility, and perhaps the facility itself, own the entity providing anesthesia services.

The cost of the settlement? Tenet's 10-Q filing states that it's \$66 million with another \$2 million reserved for the relator's attorneys fees and other costs.

The lawsuit, entitled *U.S. ex rel. Wayne Allison, etc., et al. v. Southwest Orthopaedic Specialists, PLLC, et al.*, centers around numerous Oklahoma orthopedic surgeons, their practice, Southwest Orthopaedic Specialists ("SOS"), the surgical hospital they created, Oklahoma Center for Orthopaedic and Multispecialty Surgery ("OCOM"), and the corporate entities that purchased and/or control the surgical hospital, Tenet Healthcare and its subsidiary, USPI.

Among other things, the lawsuit alleges that SOS and other defendants, including Tenet and USPI, entered into an anesthesia company scheme under which they formed and operated an entity called Anesthesia Partners of Oklahoma, LLC, to which OCOM granted the exclusive anesthesia contract. The complaint alleges that, as a result, anesthesia company profits were distributed to those owners in a manner directly related to the volume and value of referrals by the SOS surgeons.

These allegations are of additional interest because they're not along the traditional line of company model scheme attack. The common attack involves an allegation that there's an inherent, forced kickback in the relationship between the surgeon or facility-controlled anesthesia company and the anesthesiologists and/or CRNAs it employs or engages.

The lawsuit states that Tenet, through USPI and other subsidiaries, owns 22 companies holding interests in anesthesia companies, claimed to be set up via a boilerplate "kit" of documents supplied by the Tenet-related entity.

Although it must be stressed that Tenet is settling the case, certainly without any admission of liability, \$66 million is no small chunk of change.

A similar amount could destroy many facilities, including nearly any ASC that directly, or through their control physicians, that sponsor similar anesthesia company deals.

Here are some additional takeaways for you:

1. Just because a large entity, for example, a hospital or a surgery center management company, tells you that a deal's been vetted by their lawyers and is "legal," don't bet on it. Vet it through your own counsel and assess your own risk. As in carpentry, measure (assess) twice, cut (do the deal) once. Or not do the deal – you get the idea.

2. I've written, many times before (see, for example, [How to Build a Whistleblower](#) and [Hospital Chain Paying More Than a Quarter Billion Dollars to Resolve False Billing and Kickback Allegations](#)), false claims act lawsuits often arise from an insider. In the instant case, the relator, Mr. Allison, was the administrator of SOS, the surgical practice, that is, until he was fired.

3. Last, and quite interesting, is the fact that there are at least several anesthesia companies, some working nationally, and some surgery center management companies, that appear to engage in "cookie cutter" anesthesia company arrangements as a part of their overall business plan. Each of those arrangements is clearly now a target for false claims act action, likely via claims brought by insiders such as administrative personnel or anesthesia providers, or outsiders, such as billing service employees. Only time will tell what transpires.

[Note for readers wishing to view the above-linked documents directly on government sites: You can access the Tenet 10-Q at the SEC's site. If you have a PACER account you can access the case documents (Case No. CIV-16-569-F) via the U.S. District Court for the Western District of Oklahoma's PACER portal.]



Wisdom. Applied. 132 - Disruptive Physicians and Avoiding the Death of Your Medical Group

As humans, we're primed by evolutionary forces to fear the loss of something much more than we value an equivalent gain.

All Things Personal

Years ago, at the then location of our Los Angeles office, there was a café located on the plaza between the two office towers and the adjacent buildings.

Called Vista Café, they served slightly upscale Italian food. I especially enjoyed the smell of pizza baking and pasta sauce simmering.

Then, one day while finishing up a late lunch at approximately 2:45 in the afternoon, the smell of Italian cooking was replaced by the odor of Pine-Sol. Despite the fact that we and other diners were still in the restaurant, they began getting ready to close up, mopping the floor.

More than a decade later, I can still smell the Pine-Sol.

Were the owners crazy? Didn't they know that they were driving customers out? Were they actively running a business prevention program? Although I can't be certain, I, for one, never went back. The restaurant closed within six or seven months.

The customer or client or patient, or whatever you call him or her, is not always right, but treating customers as one's number one priority is the smart way to play things. Telling them that it's more important to mop the floor so you can close up promptly at 3:00 or 3:30 than it is for them to enjoy their meal, isn't a wise move.

Have you inadvertently enacted policies or procedures, or allowed events to unfold, that have similar business prevention effects?

In healthcare, we often say that there are multiple customers. The patient, the referral source, the facility, and so on. Make sure that you're not chasing them away.

You've spent so much time developing your metaphorical smell of Italian cooking to now poison the air with the stench of Pine-Sol.



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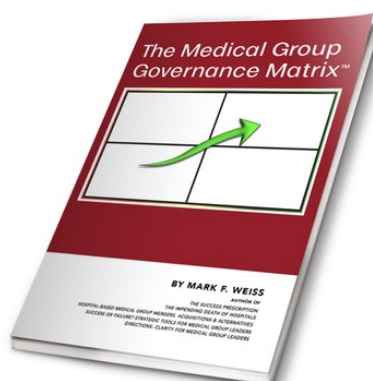
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Published Articles

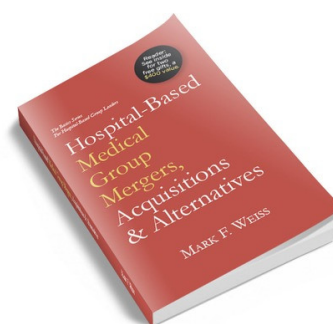
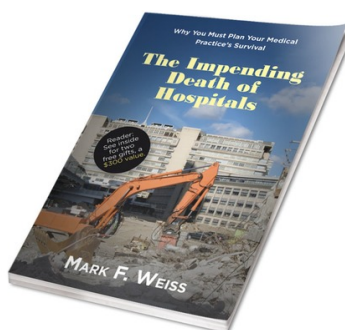
- [The Good, The Bad and The Ugly: Why Some Negotiations Succeed](#), Fall 2019, [Communique](#)
- [Fair and Balanced Views: The Pros and Cons of Selling Your Anesthesia Group](#), Fall 2019, [Sentinel](#).
- [What's the Lifetime Value of a Patient?](#) Published in the July 2019 issue of [Outpatient Surgery](#).

Mark was also quoted in a recent article [Health Care Company Expects to Pay \\$66 million to Settle Whistleblower Case Involving Alleged Kickbacks to OKC Surgeons](#), published on November 26th 2019, in [The Oklahoman](#).

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](#).



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. Download a copy of The Success Prescription [here](#).
- 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.