

Published in Anesthesiology News

January 2008

ANESTHESIA GROUP (un)GOVERNANCE

BY: MARK F. WEISS, J.D.

Democracy is fine for government; it just doesn't work for anesthesia groups of more than a few members, at least not on any level past the election of a leader.

You may have heard the expression, "money likes speed," the notion being that you have to move quickly to take advantage of a profitable opportunity. The fact is that success in business in general requires the ability to quickly analyze a situation and come to a decision.

Anesthesia groups face many challenges in the marketplace. Many of those challenges are external, such as the decrepit level of payment from Medicare and the overall commoditization of the profession. It's simply stupid to further hinder your group's business by making it difficult or

even impossible to make business decisions on a timely basis. Yet this is what many groups do through their processes of participatory decision making.

Following a speech at a national conference, an anesthesiologist approached me. He told me that his group faced major challenges in terms of competition, which resulted in lowered per-physician income. However, the group's board had been unable for over a year to come to a decision about what to do. The point had come that some members were threatening to leave for what they perceived as better opportunities.

I asked him how many anesthesiologists there were in the group, and he responded, "Thirty-six." I then asked how many of the thirty-six were shareholders, and he responded, "Thirty-six." Finally, I asked how many sat on the board of directors, and he responded, "Thirty-six."

Is there any wonder why they couldn't come to a decision? Can you imagine how long a board meeting must last?

The unfortunate fact is that this poor group is by no means an anomaly. I don't mean to profess that I've conducted a scientific study, but over the course of decades, I've come across far too many anesthesia groups that have painted themselves into a corner in terms of being able to make decisions because they allow far too many to participate in the decision making process.

Perhaps this results from the collegial nature of most physicians. I often hear from clients that everyone on the “team” is equal because everyone is an anesthesiologist. That philosophy doesn’t work for baseball teams – and it doesn’t work for anesthesia groups, either.

I recently concluded the negotiation of a two-year exclusive contract relationship in which the hospital is paying my client group a significant seven figure annual stipend. Just prior to the date set for signing, the hospital offered to increase the term of the contract by an additional year. My client’s response was that it would require a shareholder vote and, due to vacations, a quorum would not be available until sometime at the end of the following month. The hospital did not want to wait.

There’s no way to know for two years whether this group’s default position will result in a better or worse future for the group. What is certain is that its structure left it unable to exercise any leadership in attempting to determine its own future. Even a hastily made decision is better than simply permitting a third party to make a decision based on its best interests.

Whether your group is organized as a corporation or as a partnership, it is essential that you adopt a corporate-style structure for decision making. This involves a basic level of democracy in terms of electing a board, which in turn elects a leader. Small groups may dispense with the notion of a board.

Simply adopting a corporate-style structure for decision making is not enough. In order to be effective in terms of business decision making, the rules pertaining to power sharing among the levels must err on the side of allocating too much power upward in the chain.

At the basic level of shareholder or partner, group members should be entitled to vote for board members and on those major events that state law reserves to equity owners, such as dissolution of the group. The fewer other voting rights, the better.

If the group has a board, its purpose should be limited to major policy decision making and to electing the president or managing partner. The board should not be empowered to make day to day business decisions or to override the decisions of the group's leader.

That leaves the group's leader free to make decisions.

Understand that this is not meant to belittle the "we're all doctors" mentality. Of course you are. You are all human beings, too. It's just that you all can't be leaders or there will be no leadership. Sorry, it's tough love.

Mark F. Weiss is an attorney who specializes in the business and legal issues affecting anesthesia and other physician groups. He holds an appointment as clinical assistant professor of anesthesiology at USC's Keck School of Medicine and practices with the Advisory Law Group, a firm with offices in Los Angeles and Santa Barbara, Calif. He can be reached by email at markweiss@advisorylawgroup.com and by phone at 800-488-8014.

To receive complementary copies of our articles and newsletters, opt in to our emailing list by visiting www.advisorylawgroup.com/newslettermailinglist.html or by sending a request to opt-in@advisorylawgroup.com.