



[MFW Website](#) / [Blog, Wisdom. Applied](#) / [Podcasts](#) / [Past Issues](#) / [Q&A Video Series](#)

## Little Mercy For Mercy Hospital: Government Gets \$34 Million Settlement in Whistleblower Case

The data's clear. Hospitals lose money on nearly every employed physician.

At least that's the case when you compare what you're supposed to be comparing, which is what the hospitals are supposed to be comparing when setting physician compensation. They can pay a physician for his or her services. But, they can't pay for the value of the physician's referrals to the hospital. Or, wink wink, for nothing.

Hospitals know this. What they sometimes do, is something else.

Just ask Mercy Hospital in Springfield, Missouri.

Earlier this month, Mercy Hospital Springfield (formerly known as St. John's Regional Health Center) and Mercy Clinic Springfield Communities (formerly known as St. John's Clinic) settled a physician compensation related False Claims Act lawsuit, popularly known as a "whistleblower action," for \$34,000,000.

While many physicians are familiar with the fact that the Stark Law prohibits them from making referrals to any hospital with which they have a compensation arrangement or in which they have an investment interest, unless the arrangement falls within one of the law's exceptions, referred to as "safe harbors."

There's another side to the Stark Law violation coin: Claims filed by a hospital as a result of referrals in violation of Stark are false claims.

Additionally, the same fact pattern can trigger violation of other laws, such as the federal Anti-Kickback Statute ("AKS") which, roughly speaking, prohibits any remuneration to induce referrals.

At the heart of the Mercy lawsuit were allegations that the Mercy controlled clinic compensated twelve employed physicians in a manner that improperly took into account the volume and value of the physicians' referrals of patients to Mercy Hospital's Mercy Oncology Infusion Center - Chub O'Reilly Cancer Center (the "Infusion Center"), for certain infusion services.

The allegations included the following points:

Initially, the Mercy Clinic ran the "Infusion Center." The Clinic also employed the physicians, who practiced in the Clinic's Cancer Center. At that time, the physicians participated in the profits of the Infusion Center as a part of their collections-based compensation model.

- Subsequently, Mercy Hospital took over ownership of the Infusion Center.
- The physicians became upset that the loss of Infusion Center profits at the Clinic level was going to reduce their compensation. The defendants assured the physicians that they would be "made whole."
- Subsequently, the physicians compensation model in the clinic was changed to include "work RVU for drug administration in the hospital department." However, the payment was not calculated based on physician work, clinical expense, or malpractice overhead, but rather was "solved for" by working backwards from a desired level of overall compensation.
- Additionally, Mercy Hospital also paid "management fees" to Mercy Clinic on behalf of the physicians. These "management fees" were purportedly paid for the physicians' management of the Infusion Center; however, those physicians were not responsible for management of the Infusion Center.

The Mercy defendants denied the allegations and the settlement doesn't include any admission of guilt.

Out of the \$34,000,000 received in the settlement, \$5,440,000 was paid to the whistleblower, Viran Roger Holden, M.D., Ph.D., a physician employed by Mercy.

### Some essential takeaways for you:

1. Whistleblowing pays better than most day jobs. And, once again, the whistleblower was an insider. In this case, he was a physician employed by a defendant.
2. False Claims Act suits are civil actions. As such, the settlement agreement does not release the Mercy defendants, or anyone else, from potential criminal liability. Although the Stark Law is a civil statute, the AKS is a criminal statute. It remains to be seen whether the Department of Justice, or a Missouri state prosecutor, will bring criminal charges against the Mercy entities, their executives, and the employed physicians.
3. Among the allegations (again, Mercy did not admit any guilt) were that (a) the compensation plan was reverse engineered to make the performance measurement drive the intended compensation outcome, and (b) Mercy created a sham management arrangement to generate payments to the physicians. How different are those underlying fact patterns from the type of "management fees" and other payments that referring physicians often demand from referral-receiving physicians? (Spoiler Alert!) They're not.
4. Physician compensation arrangements are under scrutiny. They're fertile ground for both whistleblowers and for prosecutors.

Ma

IS AN  
OR OTH  
OUTPAT  
RIGHT F  
YOU

IN COORDINA  
PARTNER, HD  
MOST EXPERI  
DEVELOPERS  
-OWNED OUT  
OFFERING A L  
ANALYSES.

CONTACT ME  
IN KNOWING

COMPLIMENTARY E  
DOWNLOAD

Success. Even more  
to the club, which app  
day, not due to evolut  
sometimes we get stu  
that pop up, blocking  
that they don't know v  
with medical group le  
group's profits and m  
years. Does that mea  
But what I do have is  
your success. So go  
going to do it for you.  
number one.

The Impending Death  
in hard copy or in Kin  
download a complime

[Download Here>](#)

5. Think twice about both the form and substance of physician employment agreements. Competent counsel should be brought in at the earliest stage, both in respect of an initial compensation structure and in respect of any contemplated change.

6. "Red teaming" your contracts and relationships, that is, having counsel "attack" your deals to discover compliance weaknesses is cheap in comparison to the cost of mounting a civil defense, paying to settle, absorbing the bad publicity, and then, potentially, repeating the process again at the criminal trial stage.

## Wisdom. Applied. 101 - The Devaluation of Value Based Billing

"Value based billing" remains dominant in the medical industry news, chiefly from the MACRA angle. Mostly, though, it's a lie. Watch and find out why.



## All Things Personal

I just boarded an American Airlines flight in Phoenix

A few minutes before boarding, I watched a gate agent make a woman unpack and remove clothes from her carry-on luggage because, to get it into the "sizing" gauge, she had to push it in.

Perhaps the gate agent didn't notice the other bulging carry-on items, some the size of small goats, being yanked past her and down the jetway by nearly everyone..

Later the gate agent told me that, "if someone doesn't do what I tell them, they don't get on the plane."

The powerless go mad when given a little slice of authority. It's what makes surely cops, rabid airline employees, and nearly all motor vehicle department workers.

Years ago, I had a "gate agent" employee working for me. I got rid of her. Left in place, their attitude destroys customer relationships and infects the workplace.

Do you have one working for you?

## Recently Published Blog Posts

Tuesday, May 30

[The Lesson of Indoor Farming Applied to ASC/Facility Development](#)

Thursday, May, 25

[I'm A Partner in the Group, So Leave Me Alone](#)

Wednesday, May 24

[Mermaids and Medical Groups](#)

Tuesday, May 23

[But Everyone's Doing It - Not A Great Defense To Compliance Violations](#)

[More>>>](#)

## Forward This!

Feel free to forward this newsletter to your friends. They can sign up for their own copy [here](#).



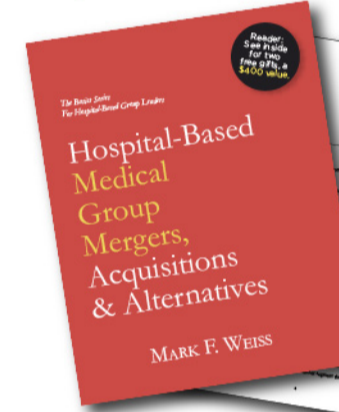
### COMPLIMENTARY E-BOOK DOWNLOAD

Having fallen for the false promise of a share, hospitals have been willing to sacrifice employment and alignment with their patients. They have been willing to pay the price of the belief that there's a silver lining in becoming evident that the system is broken and that integrated care is the only way to reduce costs. And now, technology is providing reasons for a hospital to survive and even thrive.

The Impending Death of Hospital is available in hard copy or in Kindle format. [Download a complimentary copy here.](#)

[Download Here>](#)

### Hospital-Based Medical Group Acquisitions & Alternatives



### COMPLIMENTARY E-BOOK DOWNLOAD

Some days, it seems like the only way to practice to vascular surgery practice to a larger group is to acquire a hospital.

The reality is that some hospitals will never be sold, and some will be sold to a hospital.

The reality also is that there are alternatives to a practice being acquired by a hospital.

A perfect storm of factors is creating a hospital-based medical group.

[Download Here>](#)

### Directions: Clarity For Medical Group Leaders



### COMPLIMENTARY E-BOOK DOWNLOAD

The healthcare market is full of problems. How can you find a solution?

How can you find a solution?

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

### 1. Download a copy of *The Success Prescription Book*.

My book *The Success Prescription* provides you with a framework for thinking about your success. You can buy it on [Amazon](#) or, for free, download a copy of the e-book [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 events, healthcare organization events, large corporate events, university-sponsored events, and private, invitation-only events on 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, [email](#) my Santa Barbara office staff.

### 4. If You're Not Yet a Client, Engage Me to Represent You.

If You're Not Yet a Client, Engage Me to Represent You. If you're not yet a client, and you're interested in increasing your profit and managing your risk of loss, [email](#) me directly. I'll contact you to set up a call or meeting.

---

Mark F. Weiss

The Mark F. Weiss Law Firm, a Professional Corporation  
(Formerly known as Advisory Law Group, a Professional Corporation)  
[markweiss@advisorylawgroup.com](mailto:markweiss@advisorylawgroup.com)

[Twitter](#)  
[Facebook](#)

SANTA BARBARA OFFICE:  
1227 De La Vina Street  
Santa Barbara, CA 93101  
Tel: 805 695 8107

LOS ANGELES OFFICE:  
10940 Wilshire Boulevard  
16th Floor  
Los Angeles, CA 90024  
Tel: 310 843 2800

DALLAS OFFICE:  
1717 McKinney Avenue  
Suite 700  
Dallas, TX 75202  
Tel: 972 392 9200

Fax (all locations): 877 883 0099  
[www.advisorylawgroup.com](http://www.advisorylawgroup.com)

Read Mark Weiss' blog, "Wisdom. Applied." at [www.advisorylawgroup.com/blog1](http://www.advisorylawgroup.com/blog1)  
Sign up for our complementary email newsletter, Advisory E-Alert, at [www.advisorylawgroup.com](http://www.advisorylawgroup.com)

THIS EMAIL IS INTENDED ONLY FOR THE PERSON OR PERSONS TO WHOM IT IS ADDRESSED. IF YOU ARE NOT AN INTENDED RECIPIENT, PLEASE CONTACT [MARKWEISS@ADVISORYLAWGROUP.COM](mailto:MARKWEISS@ADVISORYLAWGROUP.COM) IMMEDIATELY. This email may contain confidential and/or privileged information protected under applicable law which may be exempt from disclosure. If you are not an intended recipient or are not the person who is responsible for delivering the message to an intended recipient, please note that any distribution, copying or other dissemination of this email is absolutely prohibited.  
© 2017 The Mark F. Weiss Law Firm, A Professional Corporation

---

If you no longer wish to receive our emails, click the link below:  
[Unsubscribe](#)

The Mark F. Weiss Law Firm 1227 De La Vina St. Santa Barbara, California 93101 United States (310) 843-2800

development of strate  
your group's, future w  
thinking?

Directions is a collect  
intended to instruct, i  
give pause to instruct

[Download Here >](#)



## MFW Knowledge

If you're an independ  
current topic, click [he](#)  
Knowledge Products.

## Recent Interview

Mark's article **Why Yo**  
**Worthless** was publi  
[Communique](#). Read o

Mark was quoted in th  
**Developers Need To**  
2016 in The Ambulat  
[here](#).

Mark's article **OIG Ad**  
**Strategies** was publi  
of [Communique](#). Rea

Finders keepers, lose  
overpayments from M  
federal False Claims  
is, unless you repay t  
**CMS Resets the Clo**  
**Overpayments** publi  
May 2016. Read or d

Mark's article **A New**  
**Interventional Radic**  
Kronawitter, was publi  
2016. Read or downl

Three of Mark's blog  
entitled **Practice Cha**  
Pennsylvania Society  
[Sentinel](#). Read or dow

Mark's article **Is Ther**  
**(irASC) In Your Futu**  
2016 volume of [Radi](#)  
download [here](#).

Mark's article **Impenc**  
**Anesthesia Practice**  
2016 volume of [Com](#)