

THE SIREN SONG OF HOSPITAL (UN)EMPLOYMENT

Mark F. Weiss, Esq.

The Advisory Law Group, a Professional Corporation, Los Angeles, CA

It's a tough world out there for anesthesiologists. At least, that's what many anesthesiologists think.

Many believe that hospital employment is the panacea: the new "safe" career option. And why not—that's the song that hospitals are singing loud and clear, and it's the one they're encouraging you to sing, too, via "alignment."

Are anesthesiologists being guided into a safe harbor from the storm of uncertainty, or are they being lured by the siren song of a creature lethal to physician success?

SIREN SONG

In Greek and Roman mythology, sirens lured mariners to their deaths. Lethal creatures that they were, they didn't kill with knives, spears, or other observable weapons; they didn't even give rise to a threat.

Instead, they used their enchanting voices in song to lure their victims' ships aground on the rocky shore.

Today, there are a number of trends creating a storm in the sea of medical practice.

THE PERFECT STORM

Let's consider a few of the trends contributing to the current state of affairs.

Healthcare Reform

Certainly, there's the incredible uncertainty of the financial future resulting from Obamacare. Even though the Supreme Court upheld the challenge to its individual mandate and ruled that its



fee . . . err tax . . . for noncompliance is constitutional, Obamacare continues to make waves. Will healthcare exchanges be implemented on time or implemented at all? Will the law be defunded by Congress? Will bundled payments, accountable care organizations (ACOs), and cost-cutting masquerading as quality initiatives gut the private practice of medicine?

Complementary Medicine

In many areas of the country, complementary and alternative medicine practitioners, from chiropractors to naturopaths, are asserting their "right" to independent or equal practice. Many patients are receptive to their care and their aspirations—and to emptying their pocketbooks in their favor.

As federal and state governments, employers and payers seek to reduce healthcare costs, they, too, are becoming

increasingly supportive of alternatives to physician-delivered care.

This is resulting in increased pressure on physicians: in some specialties, it's the pressure of potential replacement; for others, including anesthesiologists, it's the impact of a lessened flow of patients due to the growing percentage of the public seeking alternative care.

National Groups

As anesthesiologists know all too well, national and large regional groups are putting tremendous competitive pressure on historical local practice, promising subspecialty coverage and superlative customer service . . . even though opinion on what they actually deliver varies.

Direct Financial Pressure

As payers become squeezed by rising administrative costs and the pressure to

provide broader coverage, they are putting increasing pressure on physicians to accept smaller increases in reimbursement or even outright reductions. In addition, hospitals, which once freely doled out stipend support, are beginning to use the threat of replacement by national groups and the induced pressures of requests for proposal to dash anesthesiologists' expectations of stipends.

THE SIREN SONG

Faced with the difficulties described above, along with the time, effort and financial requirements of running independent practices in good times or bad, many physicians are becoming disenchanted with private practice.

The timing could not be better for hospitals.

Note that not all hospitals are in a position to do something: in fact, a significant number of hospitals close each year.

Of those hospitals with (relatively) healthier balance sheets, many see a future in which healthcare services, even services that were routinely delivered in an independent physician's office, are provided through a hospital-centric system. Encouraged by the Medicare Shared Savings Program provisions of the Patient Protection and Affordable Care Act, they seek to "align" physicians, often through employment, either directly or via a hospital-controlled practice entity or foundation.

THE ROCKS

But from an anesthesiologist's viewpoint, are hospitals really in a better position—practically, businesswise and financially—to manage a physician practice?

On a meta-level, why is it that physician "alignment" requires more control by hospitals when the general impact of the microchip revolution has been the flattening of organizations, making it much



easier for independent producers of both products and services to conduct business and to coordinate their activities with other independent entities?

Wasn't the entire notion of HIPAA that individuals' health data had to be secured because independent entities would be coordinating the sharing of electronic health information?

And, regarding the central issue for most anesthesiologists, the protection of their incomes, hospital employment comes with a challenge that has no real equivalent in the physician-owned practice world: the restrictions of fair market value compensation levels, as defined for healthcare compliance purposes, are neither generally fair nor at market value. Linked to national surveys, over time they will result in a spiraling down of anesthesiologist income as hospital-engaged valuation consultants opine at less than top compensation percentiles—today's 75th percentile will become tomorrow's 99th percentile.

Finally, all employment contracts have a term—and most have a real term provision: the one pertaining to early termination. What safety is there in an "alignment" that might only last for the

next 60 to 90 days, or the notice period for termination without cause?

As you consider these issues, you need to determine if you want a job or a career. If it's a career, how much control do you want to have over your future? Is there more or less safety in hospital employment? Is it a safe harbor or a rocky death trap?

Is there, in reality, more safety on the sea of uncertainty than there is in the hospital's siren song? 🚢

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 nationally with the Advisory Law Group, a firm with offices in Los Angeles and Santa Barbara, CA. Mr. Weiss provides complimentary educational materials to our readers at www.advisorylawgroup.com. He can be reached by email at markweiss@advisorylawgroup.com.

