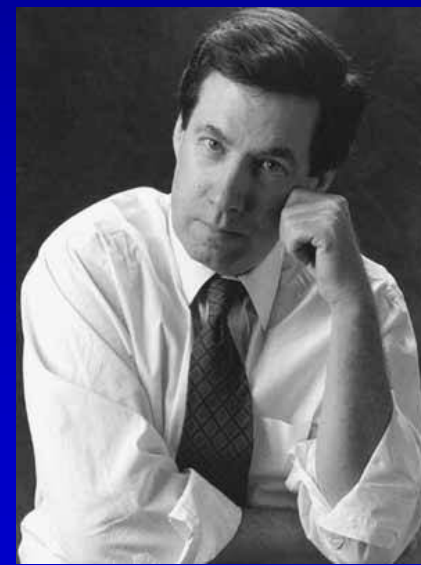


# An Introduction for Board Members Regarding Fiduciary Duty and Compliance In Hospitals and Medical Centers

The logo for The Health Capital Group, featuring the letters 'h', 'C', and 'g' in a stylized font, with the words 'health', 'Capital', and 'group' in a sans-serif font to their right.

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# Limitations of This Brief Presentation

My talk is not comprehensive  
but it does attempt to cover some waterfront  
along the lines of an introductory overview

Many aspects of fiduciary duty and compliance involve  
both federal and state laws and regs...  
I'll cover mostly federal topics here

Keep in mind...I don't know your specific situation

# Orientation of Remarks

My remarks are directed primarily at board members of community hospitals and medical centers, including teaching hospitals, that are not-for-profit organizations since they represent the preponderance of our health care system and need to address a complex array of issues.

# You are part of a broad team...

If you are a director of a not-for-profit hospital, then you are in a position of responsibility with respect to both your community and your management team.


The 'charitable purpose' to the community of a not-for-profit 'tax-exempt' hospital is important...  
**your responsibilities go beyond the hospital's doors!**

# 'Fiduciary Duty' of Directors

Concept of 'responsible caretakers' goes back to at least early 1600s, especially in regards to not-for-profit 'charitable orgs' and state/municipal entities.

Board members are supposed to...

- Use best efforts to protect, maintain, nourish the organization
- Use best efforts to protect donations, funds, assets
- Avoid conflicts of interest



Use best efforts to perpetuate organization *as a charitable organization*, comporting with its established purpose and in accordance with relevant laws and regulations!

There are two-way responsibilities with and in relation to your organization's management team...

The management team has a proactive responsibility to inform and consult with directors.

 Directors have a responsibility to proactively ask for information, delve into key issues and make sure that systems are in place to monitor compliance!

Directors aren't expected to 'manage' but they are expected to be involved in major strategies, projects and problems.

# **A Board's organization should be multi-disciplinary in terms of focus, BUT...**

It's impractical for each director to have in-depth knowledge of every key issue, even on an oversight basis...and so having different directors focusing on different areas of knowledge is a good thing.

**BUT** when it comes to certain overriding issues, all directors really need to have a good working knowledge and awareness of such issues...

# So what are some of these areas where all directors need to have a decent working knowledge?

- Basic overall hospital business fundamentals
- Fundamentals of hospital-physician relations
- Essentials of strategic and market planning
- Basics of facility development and improvement
- Fundamentals of hospital creditworthiness
- Elements of some key regulatory areas:

Hospital-Physician transactions, ventures, etc.

Compensation of hospital executives and physician execs

Overview of false claims, billing and related areas

Prudent Board oversight, review and documentation

## What does 'compliance' mean?

'Compliance' is a highly encompassing area involving all federal, state and local laws and regulations in their total context.

There is a special oversight responsibility with respect to 'compliance' for directors... aided, of course by a proactive management and a proactive legal team.

# Not all compliance areas can be covered here...but that does not diminish them

For example, I'm leaving HIPAA aside for this talk. I'm not covering coding, billing, collections here. There are, obviously, many other topics left out.

I would like to remark on...

- Hospital-physician relations and transactions
- Compensation of physicians and executives
- Creation of Board-level systems

**Three broad areas of Federal law  
are involved here in many of these areas....**

**Anti-Kickback fraud and abuse laws**

**'Stark' self-referral laws and related regulations**

**Laws and regs governing 'charitable purpose' of  
an 'exempt org' where the IRS has oversight,  
up to and including 'intermediate sanctions' law  
and related regs**

# **The applicability of Anti-Kickback laws in respect to buying/selling medical practices...**

Medical practices purchased in early and mid-1990s....acquisitions did not work out...

Docs want the practice back and want the hospital to 'give back' a practice that the hospital paid for in the 90s.

This involves both OIG and IRS issues!

# Be aware.....

Past transactions can be audited/examined

Past compensation arrangements can be examined, as well as current comp arrangements.

A hospital's own accounting statements are subject to 'real world readjustments' and do not in themselves constitute automatic insulation



This is a VERY 'high interest' area!

# Compensation of physician executives...

This area has attracted interest on the part of both the OIG and the IRS.

The IRS can and will audit employment and 'contractual' comp arrangements.

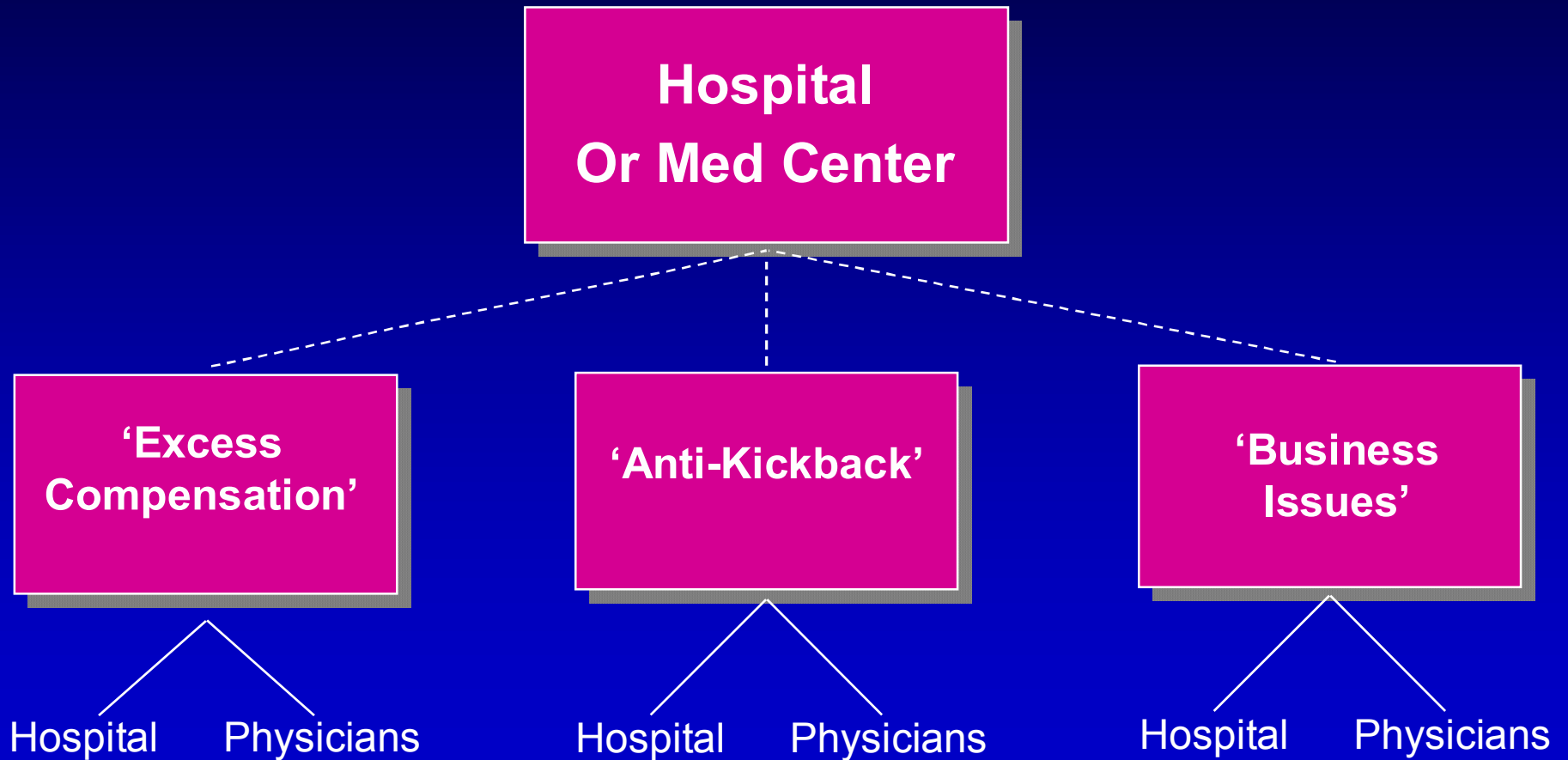
The government learns and evolves in respect to its level of sophistication. In addition, they don't always telegraph what they're going to do!

## Three things to be aware of in respect to physician compensation...

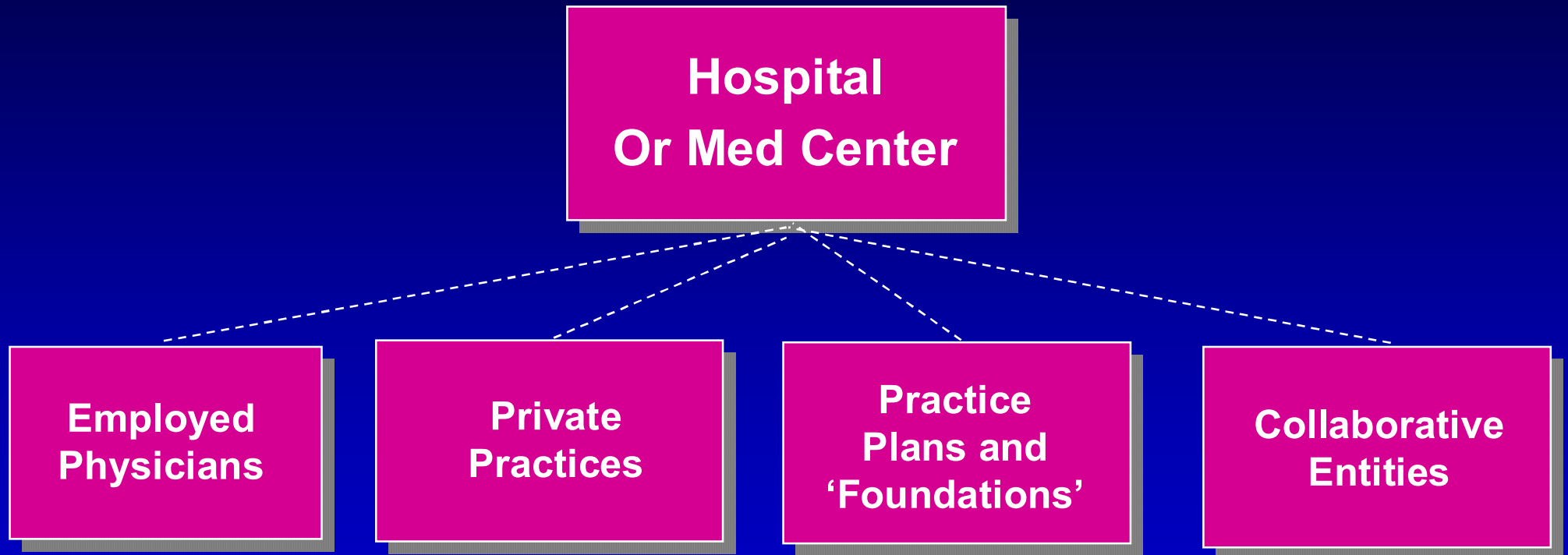
- The actual level of compensation
- The sheer number of positions held by one individual irrespective of the comp levels
- The existence or lack thereof of 'tracking systems' which correlate compensation with 'value received' per Section 4958(c) (1) of the Internal Revenue Code relating to 'intermediate sanctions.'

 The degree and nature of Board-level oversight!

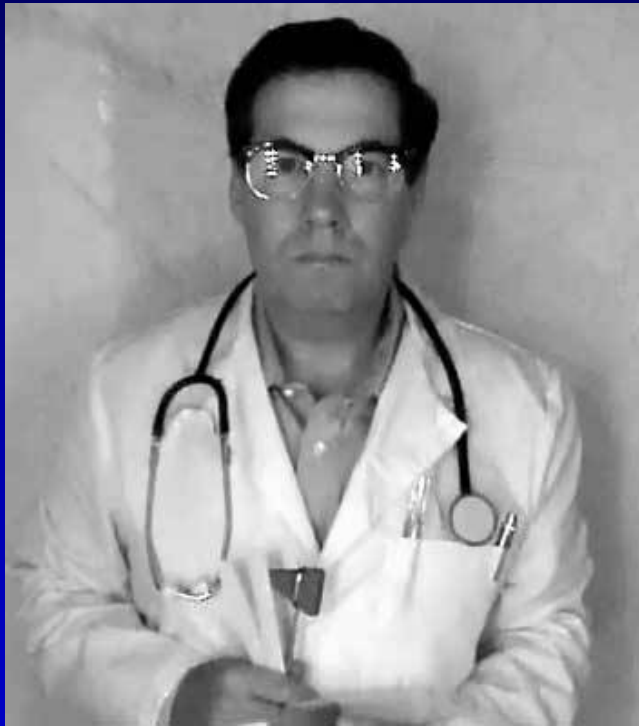
# Range of Implications



# Entities Potentially Involved

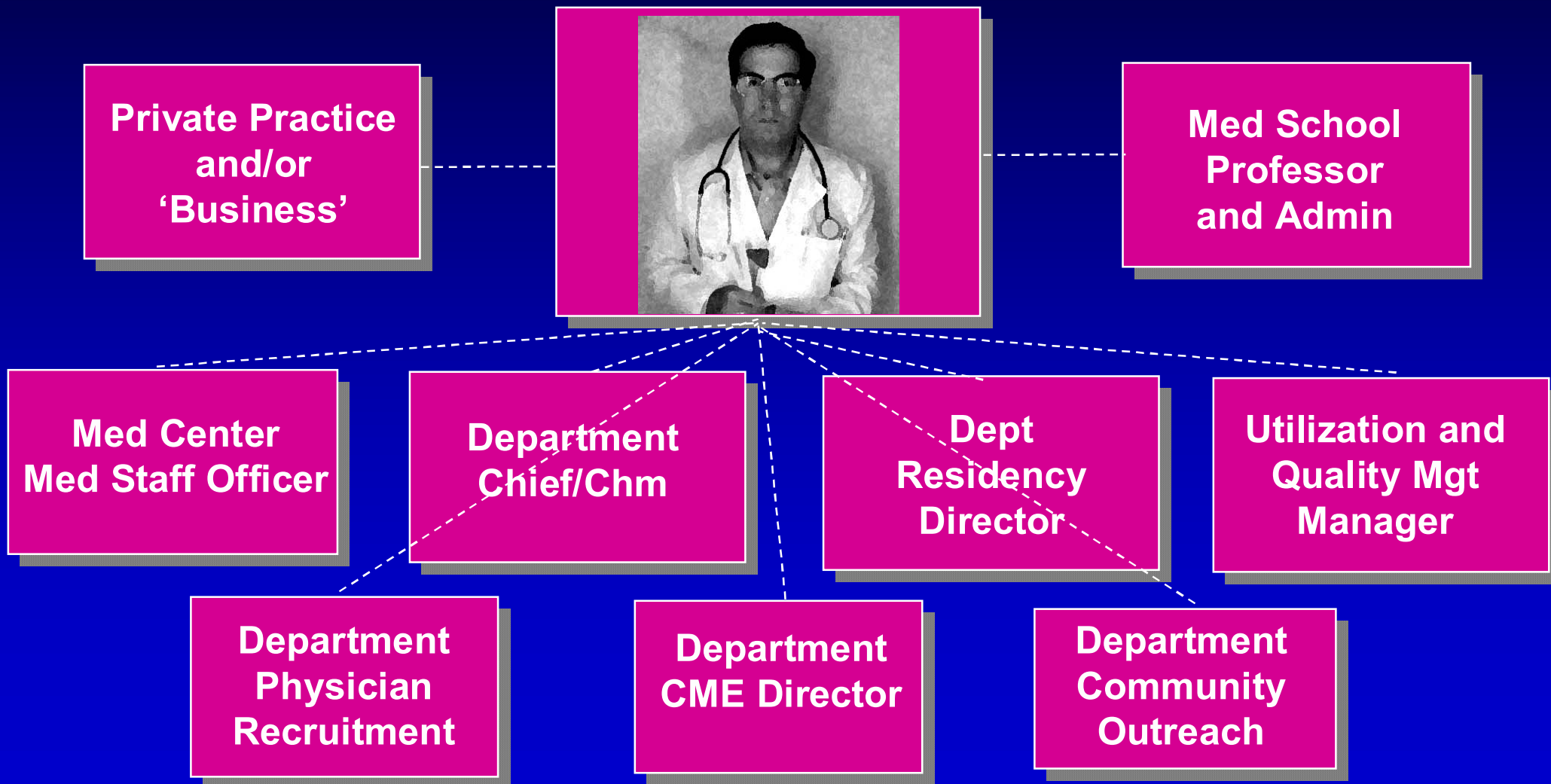


# Importance of 'Whole Person'



Understand and appreciate the full range of activities and business interests of a physician or group.

# Multiple Positions Held by a Physician Can Attract Attention Irrespective of Other Factors!



# Hospital-Physician ‘joint ventures’ or ‘collaborative ventures’

Huge strategic and business implications

Major regulatory involvements/scrutiny

Hospitals may be caught in the middle

# Physician-owned ‘specialty hospitals’ and ‘boutique hospitals’ complicate matters...

Very serious, high-credit-impact developments when physicians ‘lift out’ high profitability services.

Federal and state regulations are involved, and now several new legislative initiatives as well.

This area is very hot and requires monitoring!

# Hospitals still can enter into legal joint ownership with physicians...

But the definition of what kinds of arrangements are 'legal' is a bit of a moving target.

That's at least partially because of:

- (a) Cases and 'settlements' that occur
- (b) The government's evolving thinking

# **This is one of the core ‘Hospital Viability’ issues in coming years...**

Issues that could affect underlying hospital viability....

- Government and private reimbursement
- Hospital-physician collaboration or lack thereof
- Access to capital for facilities, equipment, upgrades

# For more information....

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