

# Industry Consolidation: The Smoking Gun of “Crony Capitalism”

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After many years of experience I have come to assume, as my default position, that politicians and bureaucrats are lying.

I've come to believe that government is in the business for—businesses. And big businesses will pay enormous sums for political favors, those that mandate the purchase of their products or services, or those favors that hamstring or destroy their competitors. Creating almost impenetrable webs of lies to cover their true purpose is part of the political game, a game usually played in the name of our “well-being” or “safety.”

How do we know what to believe? Even harder sometimes is how to know what to look for. One helpful question is Murray Rothbard's “Cui bono?” (Who benefits?), as a way to look at historical events, a method that allows one to “back in” to the real reasons that this or that policy is or was promoted. Take electronic medical records, for instance. Who benefited from mandating the purchase of these systems? Clearly, those producing these systems reaped the first and maximum benefits.

Jim Epstein at *Reason* magazine suggested the investigative tool that helps us know when to ask Rothbard's question. During his two days of filming a documentary on free-market medicine at our facility, he said that “industry consolidation is a smoking gun.” It helps to show that government and its capitalist cronies are acting in concert to achieve their usual objectives.

One example is the rapid disappearance of rural hospitals. This has occurred simultaneously with record profitability at the big city corporate hospitals. The big city hospitals are the obvious beneficiaries of this industry consolidation. The difficulties of the rural hospitals are primarily the result of the rules and regulations issued by the federal government, with which only the big corporate hospitals can comply. That this hospital industry consolidation is occurring should represent sufficient evidence that the big hospital beneficiaries were actually instrumental in the implementation of these crushing rules and regulations.

## Compounding Pharmacies

Using this approach, let's take a look at compounding pharmacies and the renewed desire of the FDA to “regulate” them, using as its excuse the apparent failure of New England Compounding Center, Inc., of Framingham, Mass., a family-owned and operated business, to comply with certain obvious control measures. Never let a crisis go to waste!

At Surgery Center of Oklahoma, we used Wydase (brand name of hyaluronidase) to enhance anesthesia in ophthalmologic surgery until 1999, when the Food and Drug Administration declared the Wyeth-Ayerst manufacturing facility to be “noncompliant.” The patent for Wydase had expired, so there wasn't enough profit in the production of the drug to make it worth dealing with FDA's bureaucratic requirements. The compounding pharmacies came to the rescue, partly because they are not subservient to the FDA. They have supplied facilities like ours with hyaluronidase for more than a decade now without a hitch.

Hylenex and Vitrase, the new brand name producers of hyaluronidase that came on line in 2004, cost eight times what our local compounder charges us. Every drug the compounders supply cuts in to the business of companies like those making Hylenex and Vitrase. Thanks to the abuses of the Massachusetts compounding facility, the FDA sees its opportunity to “regulate” the compounders, a move it knows will shut them down because they do not have the resources to cope with enormously expensive but clinically unnecessary procedures. This is the type of industry consolidation that Epstein told us to look for, particularly one that occurred under the veil of “safety concerns.”

It is important to understand that the FDA doesn't really want to “regulate” compounding pharmacies. It wants to close them! This will leave purchasers of essential drugs at the mercy of the FDA's primary clients, the big pharmaceutical companies that pay homage in various forms to the government and elected politicians. Can you imagine this sort of conversation with a congressman or senator: “Do you think you could have the FDA seize the next plausible opportunity to crush these local compounders? It would sure help our stock price.”

If you see the stock prices of the major pharmaceutical companies soar when a bill is passed, you will know that the compounders are in trouble and that the politicians sold out to the highest bidder.

## Bonnie and Clyde Hospital Economics

I generally refer to “not for profit” hospitals as “not show a profit” hospitals. I believe that no other group deserves more blame for the disastrously expensive state of American medicine than these big not-show-a-profit hospitals. They have an incredibly powerful lobby, the American Hospital Association, which has bribed sufficient players in Washington, D.C., to allow them to have their way with the sick.

These big hospitals were granted a concession of tax-free status when they were required to see all patients that came through their doors, whether or not they could pay. The value of this concession is huge, and while sufficient to cover the costs of indigent care and to finance hospital expansions, it was nonetheless insufficient to slake the managers' greed.

The not-show-a-profit hospitals have long complained about inadequate “reimbursement,” but their complaining reached a fevered pitch in the mid-to-late 1990s when physician-owned specialty hospitals made their debut. “Doctor-owners are cherry-picking,” they grumbled. “They are leaving us with all of the patients who can't pay,” they protested. Here in Oklahoma, a state-commissioned Trauma Task Force was hijacked by these hospitals, whose spokesmen used that vehicle to make an anti-competitive case against new physician-owned facilities. A libertarian-leaning legislator saw to it that I was appointed to this task force. Here I learned first-hand the lengths to which these hospitals will go to avoid the competition that is present in every other sector of our economy.

All the while, the hospitals were lobbying for disproportionate funding from Medicare and Medicaid, compared to physician-owned facilities. They prevailed, and today if you have your knee replaced at a not-show-a profit hospital in Oklahoma City, Medicare will pay that hospital twice what the physician-owned (and far superior) orthopedic hospital would have been paid. Then the outrageous costs are attributed to “those greedy doctors”!

There’s more. Unsatisfied with their tax-free status and disproportionate government payments, the hospitals pulled off their ultimate heist: the uncompensated care scam. Declaring any amount of their bill which they did not collect to be “charitable care,” they managed to secure even higher Medicare and Medicaid funding based on this fiction. The federal government provides DSH (disproportionate share hospital) payments to hospitals based on the amount they claim they didn’t collect. This incentivized the hospitals to produce the most outrageously fictitious bills they could, as this padded their DSH payments. This “uncollected” amount also helped maintain the fiction of their “not for profit” status. The more hospitals “lost,” the more they made, kind of a reverse-Enron, overstating losses instead of gains. Insurance companies discovered that they could “sell” their services to “re-price” these false bills and make billions in this way.

Hospitals justified their outrageous bills by claiming that they were going broke from all of the “charity” care they were delivering—although they were being paid for this “charity” care by the taxpayer even if the patient wasn’t paying them. The hospitals began more aggressively “shifting the costs” to those who were paying their bills, even though there were no costs to shift. Insurance companies liked this, as it gave them justification for raising premiums and padded their “re-pricing” profits.

If this seems unbelievable, look at the building cranes in front of these large hospitals. The largest crane I’ve ever seen is in front of St. Francis Hospital in Tulsa as I write this. The Catholic Hospital Association, of which it is a member, pushed hard for the [Un]Affordable Care Act, as its members stand to make money like never before, getting paid by “insurance” while continuing their uncompensated care scam.

Also look at the devastation of rural hospitals inflicted by the big hospitals. First the giant hospitals buy all of the doctors in town, turning them into referral tools, requiring that they transport every patient they can to the mother ship. Then they buy the rural hospitals in a hostile takeover, having bankrupted them with this scheme.

One Catholic hospital system has made so much money with these schemes that it set up a separate supply-purchasing company that, after procuring goods for its hospitals, marks up the price to itself, allowing it to dump unlimited profits from its not-show-a-profit members.

Parenthetically, the administrators of these facilities make millions of dollars every year. The head of the Catholic Hospital Association, a nun, makes \$1 million per year!

To put this in perspective, the new Devon Tower in Oklahoma City, a magnificent architectural project that has redefined the skyline of Oklahoma City and is now the tallest building in the state, cost Devon Energy \$800 million. In late 2010, the Sisters of Mercy announced that they planned to spend \$4.2 billion on their building campaign.

Legislators talk about “access issues” and the “high cost of healthcare.” At the same time, they tell their hospital cronies, “Thanks for the check. I’ll see to it that no other facilities open

to make you become price-competitive. I’ll tell the voters it’s for their safety and that we need to protect the integrity of our hospital systems so you’ll be there when we need you.”

## Effect on Patients

Recently I anesthetized a man with laryngeal cancer, a good man with no insurance. He will soon be bankrupt, but not because of any bill we sent him.

He will be bankrupt because the system is corrupt. He ultimately will require chemotherapy and radiation, neither one of which is available to him without going to a big hospital. His radiologist (even though working at a hospital) will not send him huge bills. His oncologist (unless a hospital employee) will not send him huge bills. The hospital will bankrupt him.

The drugs he will receive are unnecessarily expensive for a number of reasons, all but one of which result from government interference. The FDA, whose purpose is to limit new competing manufacturers by enforcing rules and regulations with which only the big companies can comply, drives up the price of new drugs many-fold. This occurs because of the cost of the rules and regulations themselves, and lack of real competition resulting from their enforcement. The hospital delivers the final blow by adding a markup to these drugs of up to 3,000 percent. Yes, that’s three thousand percent.

If this patient needs to enter a hospital or requires a tracheotomy, his bills will easily overwhelm his finances. Merciless hospitals will gladly keep adding to his tab as their take from the uncompensated care scam (where they get rebates from taxpayers for the amounts they bill for which they aren’t paid by the patient) depends on generating large and unpayable bills. All the while these hospitals will claim that they are going broke from patients like this man. They will also make a point to educate all of us about their value to the community, as if bankrupting this man qualifies.

This man’s bankruptcy will be the work of the American Hospital Association, the big insurance lobby, and Big Pharma. It will be the product of their greed and that of those in government all too willing to accept their bribes to make their bankrupting way of doing business the law.

These corporate lobbyists have now written a healthcare bill that will completely finish off their small competitors, paving the way for the abuses that only companies without competition can get away with. This is corporatism. This is fascism. This is what economist Friedrich Hayek warned us about in his book *The Road to Serfdom* (1944). The only thing worse than big government is big government in bed with big business.

We don’t need to make sure everyone has insurance so these companies can make even more money. We need to talk honestly about the costs, as very few of the costs in the healthcare marketplace can even be discovered, let alone be justified.

Unless we wake up to the government-enabled scams of the health cartel, we will find ourselves on “kill” lists to spare their stock prices. I don’t think our soon-to-be bankrupt laryngeal cancer patient will survive to see the kill lists, but we physicians will, unless a bold and fresh market-driven approach is adopted.

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## REFERENCE

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