



"I WALK DOWN THE STREET.
THERE IS A DEEP HOLE IN THE SIDEWALK.
I FALL IN.
I AM LOST... I AM HELPLESS.
IT ISN'T MY FAULT.
IT TAKES FOREVER TO FIND A WAY OUT.

I WALK DOWN THE SAME STREET.
THERE IS A DEEP HOLE IN THE SIDEWALK.
I PRETEND I DON'T SEE IT.
I FALL IN AGAIN.
I CAN'T BELIEVE I AM IN THE SAME PLACE.
BUT, IT ISN'T MY FAULT.
IT STILL TAKES ME A LONG TIME TO GET OUT.

I WALK DOWN THE SAME STREET.
THERE IS A DEEP HOLE IN THE SIDEWALK.
I SEE IT IS THERE.
I STILL FALL IN. IT'S A HABIT.
MY EYES ARE OPEN.
I KNOW WHERE I AM.
IT IS MY FAULT. I GET OUT IMMEDIATELY.

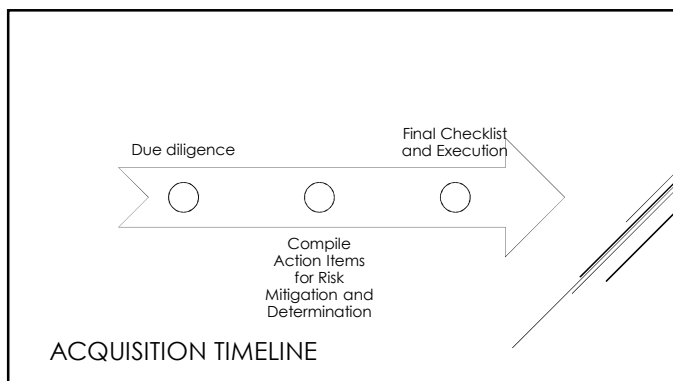
WALK DOWN THE SAME STREET.
THERE IS A DEEP HOLE IN THE SIDEWALK.
I WALK AROUND IT.
I WALK DOWN ANOTHER STREET."

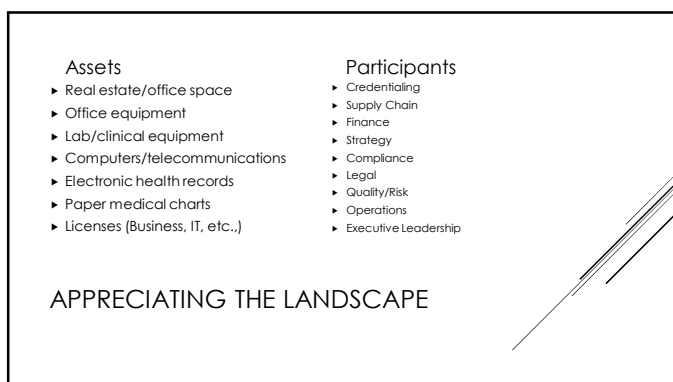
— DORTA NIELSON: THERE'S A HOLE IN MY SIDEWALK: THE ROMANCE OF SELF-DISCOVERY

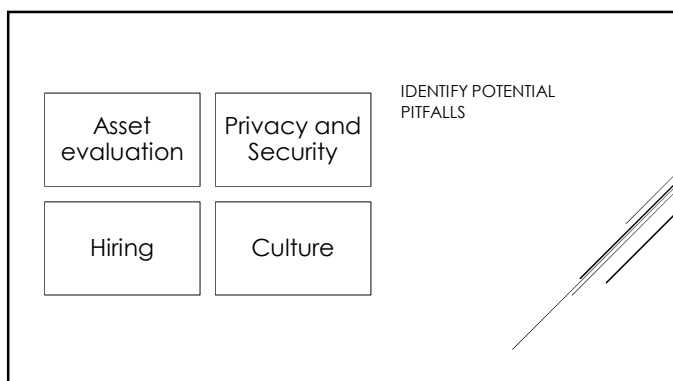
BENCHMARKING

Group exercise: Audience benchmarking





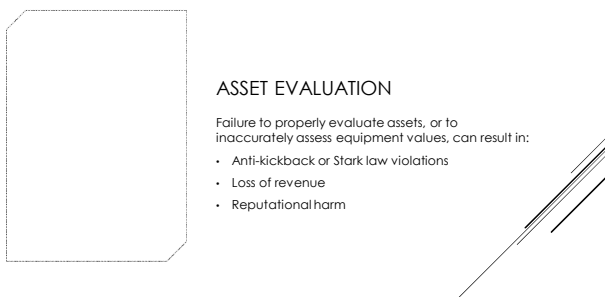




ASSET EVALUATION

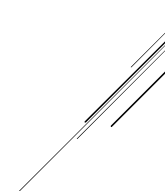
Failure to properly evaluate assets, or to inaccurately assess equipment values, can result in:

- Anti-kickback or Stark law violations
- Loss of revenue
- Reputational harm



► Case example Case example

**EVALUATING ASSETS:
WHAT CAN GO WRONG?**



► Location

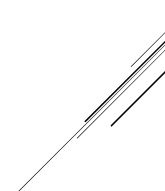
- ▶ Healthcare real estate ≠ commercial real estate
- ▶ Use vendors with experience in healthcare laws and real estate transactions
- ▶ Avoid leases at sub-optimum locations and consider reputational damage from prior location

► Relationships

- ▶ Commercially reasonable
- ▶ Need legitimate business purpose for renting from a provider-owned building
- ▶ Need arms length transactions
- ▶ Fair Market Value applies at all times

TRAIL GUIDE FOR ASSETS

Real Estate / Office Space:



▶ Include the use of fair market value (FMV) when appraising equipment, space and other items recognized in the Asset Purchase Agreement.

▶ Use vendors who are experienced in appraising equipment in a healthcare environment

- ▶ Avoid inaccurate assessments due to liens or no consideration of depreciation, etc.

▶ Consider costs to purchase and refurbish/re-image to match the organization's security standards v. replace devices/network infrastructure

▶ Consider license, maintenance, archiving costs for the transition and integration periods

TRAIL GUIDE FOR ASSETS

Office equipment
Lab/diagnostic/clinical equipment
Business Licenses

PRIVACY AND SECURITY RISKS

Failure to properly assess privacy and security risks can result in:

- HIPAA, SAMSHA, and state privacy law violations
- Loss of data from Ransom ware and other malware attacks
- Loss of patient and community trust and other reputational harm
- Loss of revenue

▶ Case example

▶ Case example

**PRIVACY AND SECURITY:
WHAT CAN GO WRONG?**

- ▶ Avoid purchasing legacy systems
- ▶ Need gap analysis on security standards for IT devices/systems
- ▶ Identify ownership for risk mitigation plan, archiving steps. Pull such costs into Asset Purchase Price.
- ▶ Consider a full 're-boot' on Privacy expectations and education, especially in rural settings
- ▶ Consider active and automated monitoring of user access logs, especially in rural settings
- ▶ Physical walk-through of privacy and security safeguards is essential to capture risks to which current operations may be desensitized

**TRAIL GUIDE
FOR PRIVACY AND SECURITY**
 Know your technology systems
 Privacy culture and awareness
 Physical safeguards

HIRING PROVIDERS AND STAFF

Failure to properly vet providers and staff can result in:


- Patient harm from bad actors
- Decreased quality/performance scores
- False Claim Act violations
- Loss of revenue from CMS ineligibility (conditions of participation)
- Reputational harm

▶ Case example ▶ Case example

**HIRING PROVIDERS:
WHAT CAN GO WRONG?**


- ▶ Licensure issues:
 - ▶ Contract Language: must have active license in good standing
 - ▶ Inquire of provider: Are you currently under investigation?
- ▶ Balance the load of primary care v. specialists/sub-specialists with the organization's strategy (Think: growth and stability)
- ▶ Avoid costly promises: excessive sign-on bonuses, guarantees of jobs for family/friends, selecting payer panels, etc.
- ▶ Conflicts of interest: vetted before closing the deal. Have a Management Plan in place before contract is executed
- ▶ Medical necessity reviews must be performed for specialists
- ▶ Coding concerns must be addressed in a timely manner

TRAIL GUIDE FOR HIRING
Check-points for Physicians and other clinical providers




▶ Case example ▶ Case example

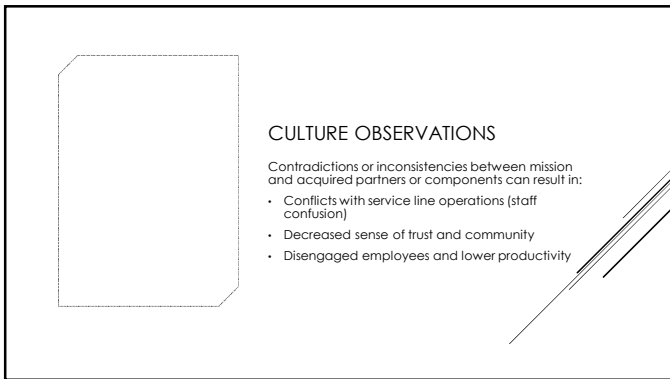
**HIRING STAFF (NON-CLINICAL):
WHAT CAN GO WRONG?**



- ▶ Work with human resources to make sure the staff retained in the purchase are placed in the correct classification and have the skill sets needed for their roles
- ▶ Qualifications and licenses:
 - ▶ Review qualifications for ALS/BLS, other certifications
 - ▶ Review scope of license v. historical practice
 - ▶ Meaningful use requirements related to CMA, RMA roles in EHR and attestations
- ▶ Offers of employment should contain contingency language where applicable
 - ▶ Drug screens, certifications, licenses, COI management plans, etc.

TRAIL GUIDE FOR HIRING
Check-points for Staff and non-providers

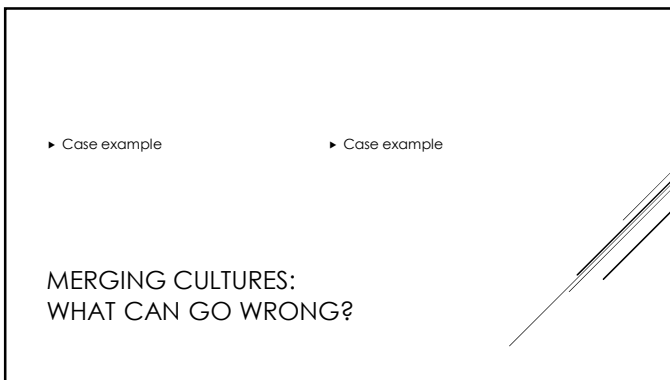




CULTURE OBSERVATIONS

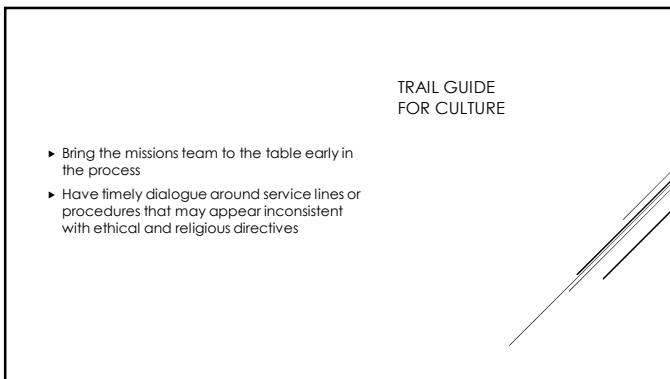
Contradictions or inconsistencies between mission and acquired partners or components can result in:

- Conflicts with service line operations (staff confusion)
- Decreased sense of trust and community
- Disengaged employees and lower productivity



► Case example ► Case example


**MERGING CULTURES:
WHAT CAN GO WRONG?**



**TRAIL GUIDE
FOR CULTURE**

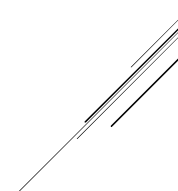
- Bring the missions team to the table early in the process
- Have timely dialogue around service lines or procedures that may appear inconsistent with ethical and religious directives

DUE DILIGENCE IS VITAL
What to do when the due diligence recommendation is not heeded?




TRAIL GUIDE FOR REJECTION OF DUE DILIGENCE RECOMMENDATION
Manage expectations

- ▶ The purpose of due diligence process is to ask the questions and document the responses and observations
- ▶ When effective, the due diligence process will identify potential risks, justify or quantify the level of risk based upon laws, regulations, mission, etc., and to return a recommendation to the stakeholders.
- ▶ Make sure legal counsel (in addition to stakeholders/strategy team) is aware of the recommendations from due diligence efforts.



▶ Due Diligence Game Time!

GROUP EXERCISE



RECAP / Q&A

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