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2024 **ACG ENDOSCOPY SCHOOL & ASGE BEST PRACTICES COURSE**
2024 **ACG BOARD OF GOVERNORS /**
2024 **ASGE BEST PRACTICES COURSE**

JANUARY 26-28, 2024 | ARIA RESORT LAS VEGAS, NEVADA

ACG ASGE Register online: meetings.gi.org

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2024 **ACG/LGS REGIONAL**
POSTGRADUATE COURSE

MARCH 1-3, 2024 | DOUBLETREE BY HILTON NEW ORLEANS
NEW ORLEANS, LOUISIANA

Register online: meetings.gi.org




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2024 **ACG / FGS**
ANNUAL SPRING
SYMPOSIUM

MARCH 8-10, 2024 | NAPLES GRANDE BEACH RESORT
NAPLES, FLORIDA





Register /
Learn more

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FREE!

ACG Institute

THE CENTER
FOR LEADERSHIP,
ETHICS & EQUITY

CLINICAL RESEARCH LEADERSHIP PROGRAM

Application Deadline **November 10, 2023**
 Apply Online: gi.org/clinical-research-leadership

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Request for Applications

GRADE Methodologists
for ACG Guidelines



APPLICATION DEADLINE:
➔ December 15, 2023




Those selected will be required to participate and complete the International Guideline Development Credentialing & Certification Program through McMaster University. The onsite training will be in Spring 2024 and is sponsored by the ACG. Applicants must agree to a 5-year term as a GRADE Methodologist.

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Participating in the Webinar




Moderator:
Louis Wilson, MD, FACC

All attendees will be muted and will remain in "Listen Only Mode"

Type your questions here so that the moderator can see them.
Not all questions will be answered but we will get to as many as possible.

A handout with the slides and room to take notes can be downloaded from your control panel.



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ACG Virtual Grand Rounds

Join us for upcoming Virtual Grand Rounds!




Week 50 – Thursday, December 14, 2023
 Antibiotic Stewardship in Common GI Scenarios
 Faculty: Neil H. Stollman, MD, FACC
 Moderator: Costas H. Kefalas, MD, MMM, FACC
At Noon and 8pm Eastern




Week 2 – Thursday, January 11, 2024
 Evidence-Based GI Highlights: Advances in IBD Therapy
 Faculty: Bharati Kochar, MD, MS
 Moderator: Philip S Schoenfeld, MD, MSED, MSCEPi, FACC
At Noon and 8pm Eastern

Visit gi.org/ACGVGR to Register

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ACG Standard Slide Decks

Colorectal Cancer Screening and Surveillance Slide Deck
Ulcerative Colitis Slide Deck


ACG has created presentation-ready, semi-customizable MS PowerPoint clinical slide decks for your unique teaching and learning needs.

Visit gi.org/ACGSlideDecks to learn more and request access to the standard slide decks!

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Disclosures



Ann Bittinger, Esq:
No relevant financial relationships with ineligible companies.



Louis Wilson, MD FACG:
No relevant financial relationships with ineligible companies.

*All of the relevant financial relationships listed for these individuals have been mitigated

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Antitrust in GI in 2024



Ann Bittinger, Attorney
December 7, 2023



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Not your father's FTC

- What is changing:
 - Federal government's use of anti-trust rules, promulgated by the FTC, and merger guidelines (DOJ and FTC) with a focus not on market impact but on **workers**.
- Focus less on monopolies than on workers' pay.
 - Physicians are workers. ;-)
 - Power imbalance
 - Labor mobility
 - Unfair methods of competition
 - Concentration in markets



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And it's not your father's medical industry

Irony: consolidation was fueled by an anti-trust issue: bigger practices have greater negotiating power with payers

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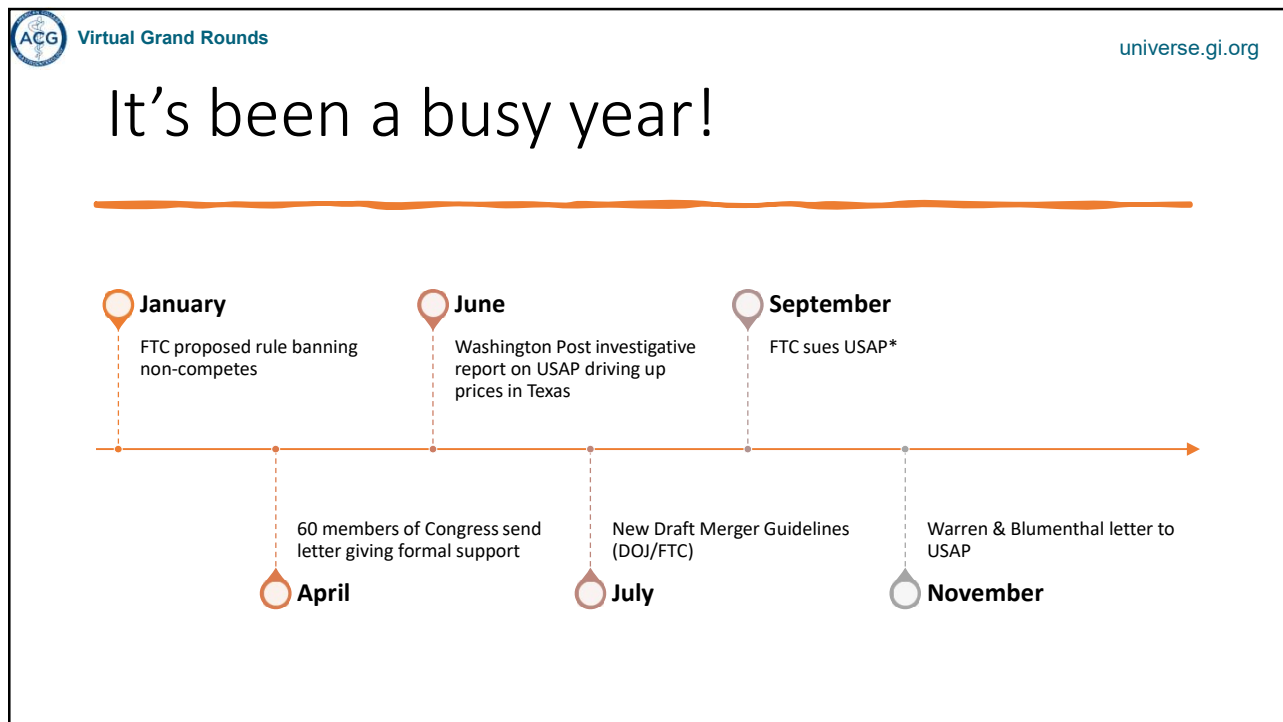
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“Gastroenterology Practice Consolidation in the United States: Causes, Caveats, Consequences and calls to Action”

- **National Library of Medicine 2022**
- “The relentless consolidation of the US health care industry has spread to the practice of gastroenterology, which, despite previous resistance and persistent fragmentation, is belatedly being consolidated.”
- “In this issue of *Digestive Diseases and Sciences*, the authors of ‘Gastroenterology Practice Consolidation Between 2012 and 2020’ report that practice consolidation in gastroenterology has increased precipitously in recent years.”
- “Despite a 9% increase in the number of gastroenterology physicians in practice from 2012 to 2020, the total number of practices has decreased by 14%.”
- Importantly, these trends, observable in every region of the country, are expected to continue.

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January 2023 Proposed Rule banning Non-Competes



- Employers may not:
 - Enter into non-competes with workers
 - Maintain non-compete clauses
 - Represent to employees that they are subject to non-compete clauses absent good faith basis to believe that an enforceable non-compete clause exists
- Employers must:
 - rescind existing non-competes within a certain timeframe after publication of final rule
 - Provide formal written notice of rescission to both current and former employees bound by non-competes

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Who is covered?

- “Worker” includes:
 - Employees
 - Independent contractors
 - Interns, externs, and volunteers
 - Apprentices
 - Sole proprietors who provide a service to a client or customer
- “De Facto” or functional non-competes may include those created by:
 - NDAs
 - Customer or client non-solicits
 - No-business agreements
 - No-recruit agreements
 - Liquidated damages provisions
 - Training repayment (i.e., upon termination) agreements



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Two caveats:

- Sale of Practice: prohibition doesn't apply between buyers and sellers of a business where restricted party holds at least 25% ownership interest in the applicable business entity at the time of entering in to the non-compete.
- Non-Profits: FTC has no jurisdiction over non-profits, including (presumably) non-profit healthcare systems.
 - No non-competes: PE-owned practices, physician-owned groups, for-profit health systems
 - Non-competes would still be legal in physician contracts with non-profits health systems.

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Conflict with State law?



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A typical covenant against competition

*time/
activity/
geography*

- “Commencing with the Employment Date and continuing thereafter during the Initial Term and for a period of **one (1) year** following the termination or expiration of this Agreement, Physician shall not **practice gastroenterology** on Physician’s own behalf or on behalf of others within the **Restricted Territory.**”

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What will happen with non-competes?

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Will gastroenterologist pay increase?

- What's happening currently in states where non-competes are banned?
- Will there be a for-profit and NFP distinction?



25,058	154,568	95,054
25,487	56,845	97,511
124,000	110,000	99,011
105,450	150,000	99,216
86,502	35,000	101,090
	83,000	101,684
	45,000	101,962
		102,747
		124,000
		12,000
		1,000


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There's more than one way to peel an orange

- Internal:
 - Financial penalties upon leaving or benefits upon staying
 - Bonus payment timeframe and requirements; Retention payments
 - Tail insurance
 - Longer employment agreement terms with no without-cause termination
 - Increased restrictions on the ownership side of things for physician owned practices
 - Referral restrictions
 - Anti-poaching agreements (patients)
- External:
 - Exclusive contracts with hospitals and payers and maybe even employers
 - Closed medical staffs

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Boomerang

- Are we going to see PE exit health care?
 - Lawsuits and investigations are expensive and embarrassing
- Amid a physician shortage, are non-profits going to have more difficulty recruiting physicians because the systems will have non-competes?
- How will this impact price transparency?
- The elephant in the corner? The payers.
 - Who is actually paying for healthcare?


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Thank you!

- Ann Bittinger
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- www.bittingerlaw.com

A professional headshot of Ann Bittinger, a woman with dark hair, wearing a white blouse and a gold necklace, smiling.


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Questions



Ann Bittinger, Esq



Louis Wilson, MD, FACC

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IBD Circle
A Partnership of the American College of Gastroenterology
and the Crohn's & Colitis Foundation



ACG Hepatology Circle



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