

ORGANIZING PHYSICIANS -- LEGAL ISSUES

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At last month's meeting of the Mercer County Medical Society, a presentation was made by a representative of the Pennsylvania Podiatric Society seeking to recruit physicians to join their AFL-CIO affiliated Labor Union. The presenter quite candidly admitted that the Union would be unable to offer collective bargaining services to the physicians. One must, therefore, immediately question the value of paying \$1,000 per physician per year as Union dues when the Union has no legal ability to collectively bargain for the physicians.

The presenter argues that by sending \$1,000 per physician per year to the Union, physicians will be able to use the legislative clout of the AFL-CIO to further physicians' interests on Capital Hill. Of course, if physicians paid \$1,000 each to their Political Action Committee, their political clout would substantially increase as well. Moreover, the interests of the AFL-CIO are, historically, hardly consistent with those of physicians. An obvious example is in the area of tort reform where the Union has steadfastly fought every effort to eliminate the abuses in this system. To believe that a relatively small group of physicians would substantially impact upon the Union's legislative positions as they relate to three million mostly non-professional members, is a giant leap of faith.

While Union membership seems unlikely to solve the problems physicians currently face, there are alternatives. In order for these alternatives to work, however, physicians must agree to work together. To date, their failure to do so has proven to be the greatest impediment to their ability to maintain control of health care decisions and the health care marketplace.

For a number of years physicians have blithely entered into PPOs, IPAs, and PHOs with, ordinarily, little return on investment. PPOs and IPAs have often turned into tools of managed care companies, allowing them to quickly negotiate one contract to provide many physicians for their panels, at low cost. Since the PPOs and IPAs cannot negotiate fees for individual members, price has always been "negotiated" on a take it or leave it basis.

Physician Hospital Organizations, now more frequently referred to as "Independent Delivery Systems" or IDSs, have, almost universally, failed to achieve physicians' expectations. With no known exception these organizations are ultimately controlled by hospital administration, regardless of the theoretical organizational structure. Another version on the theme, hospital run Management Service Organizations ("MSOs") seek to lure physicians with promises of reducing their burden of administration, management and marketing. These organizations have little likelihood of success for the same reason that prior efforts have failed. Physicians cannot engage in collective bargaining and their partner, the hospital, is also their major competitor for shrinking health care dollars.

Similar disappointments have been realized in physician's efforts to own HMOs. First Option (always a hospital controlled HMO, despite marketing representations to the contrary) is rumored to be in serious financial straits. Physicians' Health Plan of New Jersey has been unable to make any significant inroads into the Managed Care Market and, from its inception, has failed in its promise to maintain high reimbursement rates, and eliminate gatekeepers.

Is all lost? Perhaps not -- but only if physicians will organize together for their common good -- to date a very big IF.

A relatively new opportunity is now available for physicians to join together (usually within similar specialties) to access capital necessary to grow their practices, incorporate laboratories, ambulatory care centers, surgical centers, and other facilities within their practices, and to attract world class management and information systems to permit quality management, effective marketing, and contract negotiations. Moreover, through proper structure, physicians will be able to legally collectively bargain with managed care companies and other payors!

For this to work, physicians in similar specialties must bring their practices together into a single, regional professional corporation. This does not mean that the physicians lose their existing practices. The physicians' existing practices will continue, as individual care centers, within the professional corporation. Physician revenues will continue to be based on individual practice revenues. On a day to day basis, the operation of the physicians' practice does not change.

Once the professional corporation forms, it creates its own PPM. The physicians control all of the stock of the professional corporation and a large majority of the stock of the PPM. The remaining PPM stock is used to attract high quality management and, ultimately capital. Since the project can be structured initially as a bankable transaction, no venture capital is required, thus maximizing physician ownership in the PPM. Moreover, due to the availability of stock, the physicians need take no money out of their own pockets to form these ventures. Rather, as part of the package, it is not unusual for physicians to receive stock and cash equal to as much as their previous year's actual collections.

By entering into relationships with one another, physicians can retake control of the practice of medicine and also incorporate into their practices services which are now being provided by hospitals or other non-physician entities. The profits from these ancillary services can enure to the benefit of the physicians and, as importantly, allow physicians to maintain their control over the quality and availability of these services.

While non-physician owned PPMs have existed on Wall Street for some time, most have been controlled by insurance executives or real estate developers. Nonetheless, to date they have attracted approximately 7% of the nation's physicians and, due to the huge amount of money available to them to buy practices -- literally billions of dollars -- many more physicians will find themselves working for these non-physician owned PPMs in the near future. Physicians need only look to the independent drug stores to understand this natural progression. Soon the vast majority of formerly independent medical practices may operate under brand names just as the once independent drug stores now operate as part of CVS, Rite-Aid, Eckert, or Pathmark. Given this obvious evolution, physicians must either form their own PPMs or yield to the real estate developers and insurance executives.

In summary, physicians need to join together into meaningful business relationships. These relationships must be set up to attract high quality management, capital, information systems, and provide the ability for collective bargaining. The model exists and it can be implemented at little cost. All physicians need to do is agree to organize together.