

Understanding the Process of Selling a Medical Practice

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There are numerous complex issues, legal and otherwise, that the seller of a medical practice needs to consider, both in preparations of the sale and during the transaction. Those physicians who do not properly prepare their practice in anticipation of such a transaction run the risk of receiving less than the maximum valuation of their practice. This article is intended to help physicians recognize these issues with the goal of both maximizing the value obtained from a sale and ensuring that any actions undertaken during such a transaction are not in violation of the relevant laws pertaining to such transactions.

There are many reasons physicians make the choice to sell their practice. Increasingly, physicians are making the choice to sell their practice to a large group or hospital and entering into employment agreements with the particular purchaser, perhaps seeking a change in their quality of life and the peace of mind of a stable salary. Other physicians wish to relieve themselves of the burden of dealing with the “business” of medicine resulting in more time to focus on the actual treatment of patients. Yet other physicians simply choose to sell their practice upon retirement instead of closing it outright. Whatever the reason may be, there are fundamental issues that, when thoughtfully considered with the assistance of attorneys concentrating in health care law, will determine whether the transaction garners maximum value and properly protects the patients of the practice.

In preparing for the sale, it is advisable to begin planning years in advance. Planning well in advance will both ensure an accurate valuation of the practice and allow the seller to avoid being “forced” to sell the practice at an unfavorable price due to current market trends. To that end, it is in the best interest of the physician to retain a team of professionals – attorneys, accountants, appraiser, etc. – who *specialize in health care transactions*. It is their specific expertise in health care transactions, as opposed to a general knowledge, that will help in obtaining maximum value for the sale of the practice.

The value of a medical practice is determined by three distinct categories of assets. The first are the tangible assets of a practice. These tangible assets consist of the furniture, fixtures and equipment owned by the practice including but not limited to, examination tables, desks, chairs and medical equipment. The second category of assets is the practice’s accounts receivable. The accounts receivable includes the revenue due the practice prior to the sale. The last category of assets is known as “goodwill”. The

goodwill of a medical practice includes its reputation, the trained support staff, established client base and accompanying medical records, practice history and practice location. Of the three categories of assets, goodwill typically comprises the greatest value, however is the most difficult to assess a value. Again, as there are specialized methods in determining the value of a medical practice specifically and tax implications in the way assets are categorized upon sale, it is imperative that the physician discuss the asset allocation carefully with those professionals retained by the physician to facilitate the transaction.

During the time leading up to the actual sale, it is imperative that that physician avoid any action that would result in the reduction of the value of the practice. Although it may be tempting for a would-be seller to slow down the operation of the practice in anticipation of the sale, this may result in the loss of patients or staff – effectively a reduction in the goodwill of the practice. This reduction in goodwill can also be avoided by notifying the staff and patients of the practice of the imminent sale at the right time so as to avoid their loss by attrition.

The seller of a medical practice also needs to consider numerous legal issues pertaining to its current patients. As an example, in the event the purchaser of the practice is paying for the practice over an extended period of time, as opposed to an payment in full at the closing, the physician-seller and his attorney need to take careful consideration of whether the transaction is inviolate of New York State’s prohibition against “fee-splitting”. Generally, New York law prohibits a physician from paying another physician for referrals of patients.¹ In the event that such a payment arrangement is necessary, a health care attorney can structure the transaction so as to avoid any legal risks.

Another legal issue to consider is the privacy of the patients of the practice and, more specifically, their medical records. Under New York law, a patient’s medical records are required to be maintained by the physician for a minimum amount of time. Moreover, these records may not be released to any third-party without the patient’s express authorization. It is essential that the physician-seller’s attorney prepare the proper legal documents to ensure both that the privacy rights of the patients of the practice are respected and a smooth transition of the maintenance of their medical records.

Conclusion

In selling a medical practice, a physician should take great care in preparing it for sale to both maximize the value obtained from such a sale and the protection of its patients. If you should have any questions with regard to the sale of a medical practice, please contact Mathew J. Levy, Esq. at (800) 445-0954.

¹ As a general rule, an exception to this “fee-splitting” prohibition occurs when the seller is retiring.