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Practice Consolidations, Mergers and Arrangements;
Considerations for
Pre and Post-Closing

by

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I. Introduction

Whether through acquisitions by hospitals, private equity companies, insurance companies (i.e., Optum) or other ventures, many medical practices-across all specialties-are being purchased or merged and consolidated such that the independent practice is becoming a corporate practice. While these types of deals are nothing new, the frequency with which they are occurring is much greater over the last few years than in the preceding several years. There is a myriad of reasons why such transactions are occurring, a myriad of ways they occur, and a myriad of considerations that should be made when determining whether to enter into such a transaction.

II. Why sell or merge?

- Lower reimbursement rates
- Increase in expenses/labor costs
- Fear
- Inability to manage
- Partnership disputes
- New physicians’ attitudes towards work and partnership

III. Mergers versus sales

A. Mergers (two or more groups combining into one or forming a new group and causing the “legacy” groups to wind-down)

1. Perceived Positives:

   - Achieving economies of scale insofar as reducing billing expenses; qualifying for better group purchases, reducing staffing expense; reducing costs of employee benefits (i.e., reduced overall costs of health insurance), etc.
   - Possibly obtaining better 3rd-party payer contracts and perhaps contracts with hospitals
   - Having additional funds in the combined Practice to enable easier expansion and faster creation of new lines of business;
   - Centralized billing and administration
   - Being more attractive to physician recruits on a national level;
   - The ability to create ancillary ventures
   - The ability to maintain decision-making authority at the Division level.

2. Perceived Negatives/Risks:

   - Loss of autonomy
   - Management and voting structure
   - Delayed contracting/credentialing
• Inability to re-start legacy practice if one leaves
• Compliance (Stark Law, Anti-kickback Statute, etc.)
• Choice of using current Tax ID of one practice versus obtaining a new Tax ID, and legacy debts and obligations
• Transfers of assets, leases and obligations

IV. Sale Considerations:

• NDA
• Engaging broker(s)
• Equity v. asset sale (tax implications; allocation)
• LOI
• Representations and warranties
• Employee/staff retention
• Valuation (depends upon specialty and the buyer)
• Purchase price-payment terms
• Roll-over/swap equity
• Non-competes in the purchase and subsequent employment agreements
• Compensation
• Benefits
• Due diligence by seller (get references and understand what you are owning and/or who you are working for)
• “Younger” versus “Older” physicians’ consideration
• What about current ancillaries (ASC, real estate, lab, path, etc.)

V. Other Options.

• Organic growth
• Get together (escape the “herding cats” stigma)!!
• Direct/Concierge Medicine
• Legislation

VI. Q & A

NOTE: many are starting new practices, and many are entrepreneurial. -attitudes. Some docs want 9-5 and do not want or care about partnership (so, major paradigm shift)

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Medical records transfer/sale....

Predictions...