

Considering selling your medical practice to a hospital or merging with other practices?

April 17, 2019 | **ARTICLES**

Considering selling your medical practice to a hospital or merging with other practices? Physicians face this decision in many different contexts: pending retirements, hospital affiliations, and market pressures, to name a few. But regardless of the road you traveled to arrive at this decision, there are a few key considerations and issues you may face before you reach your final destination. These issues carry both business and legal implications and should be carefully traversed before putting pen to paper.

1. **Accounts Receivable.** Will your accounts receivable be sold to the buyer? If not, then you will need to retain access to your billing system after the transaction closes so that you can wind down your accounts receivable. If the buyer is acquiring your billing software, this could require a special side agreement to ensure you have the necessary resources to wind down after the transaction closes. If the buyer is not acquiring your billing software, then you will need to terminate your license agreement with your billing company after you wind down your accounts receivable.
2. **EMR.** Is the new practice or hospital acquiring your EMR? If not, do they have the same EMR as you currently use? The answers to these questions can create logistical nightmares for practitioners. You may not have easy access to the same patient information your current EMR offers you. Things may be coded differently. You will very likely need to involve your EMR service provider in connection with the transition.
3. **Patient Intake and Onboarding.** Without proper planning, your patients could face long wait times after the transaction closes as their information is loaded onto the EMR and/or billing system of the new practice or hospital. Each patient would be treated as a new patient and this will take additional time for your staff before the patient can be seen (particularly if your staff is just learning the new EMR and/or billing system!). This may not bode well for patient satisfaction. You may consider providing patient demographic information to the new practice or hospital in advance of closing, but this will require careful planning to ensure compliance with HIPAA.
4. **Timing.** Timing is everything. You must be realistic.
 - a. If a new professional entity must be formed, it could take months before that entity is organized and able to bill for services. In New York, the average time to form a new professional entity is four to eight months. Additionally, you will need to consider whether your transaction will close before or after the new entity is capable of billing third-party payors. Sometimes these transactions take place in phases and billing for your professional services may transition last – if that will be the case, then additional agreements may need to be put in place to address interim staffing and resources.
 - b. It may take an additional two to six months for the new professional entity or buyer to be able to bill third party payors (like Medicare and Medicaid) for your services. Even if a new professional entity does not need to be formed, it may take several months before the buyer can credential you to bill.
 - c. Due diligence will be performed by all parties involved before agreements are drafted and signed. This will involve a considerable amount of information exchanged between the parties and generally takes much more time than practitioners expect. Generally, this process can take two to six months, depending on the extent of

information requested by the buyer, the extent of information provided, and any additional follow-up questions or issues that may arise as a result of the information exchanged.

d. Physician owners often ask when they should inform their employees about the sale. The buyer may have its own preferences and should be consulted. In any event, it is advisable to wait until you have (at the very least) a signed letter of intent and non-disclosure agreement. It would be even better to wait until the purchase agreements were signed.

5. Physician Compensation. As an owner of your physician practice, you are probably used to taking monthly or quarterly draws or distributions and receiving a Schedule K-1 for your personal income taxes each year. Some of you may also be employees of your practice and receive a salary reported on Form W-2. In the acquisition of your practice, you will want to involve your legal and financial advisors to fully understand how changing from a practice owner to an employee will affect your personal finances. Additionally, you will need to discuss and understand the methodology under which you will be compensated by the buyer, particularly if productivity based.

6. Contracts, contracts, contracts. This is a mission-critical item often undervalued by physician practices. The buyer will need to know (and read) all of your existing contractual arrangements with third parties (agreements, memoranda of understanding, leases, licenses, etc.) so that it can decide whether or not it is buying those contracts (this is accomplished through an "assignment"). If the buyer will be acquiring the contract, then the third party may need to consent in advance to the sale or may need to receive advance notice of the sale. Alternatively, rather than buying a contract, the buyer may already have its own arrangement in place and will transition your practice to its account or the buyer may try to enter into a brand new agreement with the third party directly. These operational (and legal) questions must be answered for each and every contract you have, including things like your telephone and internet providers, medical waste disposal services, shredding services, professional service arrangements, employment agreements, leases for equipment and real property, EMR software, and all other computer software.

7. Equipment. Do you lease any of your office or medical equipment? Is the buyer acquiring this equipment? If so, the third party lessor may need to consent to or receive notice of the transfer. Additionally, in New York, the State must approve the transfer of x-ray equipment.

8. Inventory. Are you selling your medical and non-medical inventory? Generally, the answer is yes, but the more difficult questions involve the value assigned to the inventory and the timing of that valuation. It may be burdensome and impossible to take a physical inventory, particularly given that your practice will continue to operate up until the closing. Therefore, you will need to negotiate with the buyer exactly what needs to be inventoried, how that inventory is going to be valued, and when you need to take the inventory.

9. Financing. Do you have any existing financing in place that pledges your practice's assets (including accounts receivable) as collateral? Have you personally guaranteed any of your practice's financing? Will the buyer be funding the acquisition of your practice with financing? These financing issues can take the longest to resolve, so they should be discussed early and often.

10. Real Property Mortgage Guarantees. Do you rent the office that you use? Do you personally own the office through a separate company? If there is a mortgage on the property, did your practice execute a guarantee of that mortgage? Does the landlord need to obtain consent of the bank to permit your lease to be assigned to the buyer? This issue is often overlooked.

11. Employees. Will the buyer be bringing on all of your employees? Will the buyer honor your employees' accrued PTO and years in service for purposes of the buyer's employee benefits? Do your employee policies require you to pay out any accrued, but unused PTO at the time of the employee's termination from your practice? If you have any employment agreements with any employees (medical or not), you will need to take a close look at the grounds for termination so that you do not inadvertently expose yourself to a breach of contract.

12. Retirement Plans. What is going to happen to any retirement plans you or your employees contribute to after the transaction closes? Usually, you and your employees begin contributing to the plan offered by the buyer. But, if the

buyer is a newly formed professional entity, it may not have the infrastructure in place and may want to acquire your plan instead. If you are merging with other practices, this may be especially complicated as it is very likely you all have different types of retirement plans and benefits.

13. Compliance Issues.

a. Before negotiating with potential buyers, take a close look at any financial arrangements with referral sources. Self-disclosures and repayments may need to be made before closing, especially in a stock deal. Also in a stock deal, you will want to audit your historical coding and billing and address any issues that are discovered.

b. Small practices often don't have a compliance plan or appropriate HIPAA privacy and security policies in place. Merging with a larger medical practice or a hospital will mean that you and your employees will need special attention and training to become more sophisticated in the area of compliance.

14. Your Practice Manager. Your practice manager holds the keys to every logistical and operational aspect of your practice. You know that, even now, nothing gets done without your practice manager's buy-in, cooperation, and understanding. It is no different in the context of the merger or sale of your practice. Need to provide the buyer with a copy of your contract with your medical waste removal service provider? You'll need your practice manager for that. Need a list of all of your employees as of a certain date? He or she will know that too. While the practice manager is a VIP in this process, keep in mind that he or she already has a full-time job. Everything asked of him or her will be burdensome and take much more time than anticipated because he or she is still juggling the day-to-day operations of the practice. Your practice manager needs to be involved early and often and it is critical that he or she understands contract assignments, equipment issues, inventory, compliance issues, third party consents, and his or her role and responsibilities in the process.

Related Team



Lauren A. Suttell

Partner | Team

Leader - Not-For-Profit