

A Hospital Wants to Buy Your Practice-What do you do?

January 1, 2010

The mid 1990s saw a wave of physician practice acquisitions by hospitals. Some worked out well; many didn't, and the trend died out—until recently. Physicians are an attractive target for hospitals because their relationships with patients make them a major influence on where patients are referred for services.

Considering selling? Take these steps to make an informed decision:

- Get professional help: a CPA familiar with medical practices and an experienced healthcare attorney.
- Have your CPA compare your past results against projections based on the deal offered by the hospital.
- Have an experienced healthcare attorney help you properly structure the sale and post-sale legal arrangements to maximize benefits and help ensure the relationship's long term viability. How the hospital responds to your proposals for fairly structuring the relationship will speak volumes about whether it will make a good business partner.
- Consider how the new arrangements will affect the day-to-day conduct of your practice. Personal and professional satisfaction is important.
- Don't assume all your practice management problems will end if you sell. You will no longer have to manage your practice, but you will have to manage the hospital relationship. Like a good marriage, a good business relationship requires considerable time and effort.

Healthcare laws require that the sale price be limited to "fair market value," which is generally established by an independent third party valuation of your practice. The sale comprises the more standardized elements of the overall transaction. **It is the structure of the post-sale arrangements that separates the good deals from the bad.**

What should the post-sale business arrangements look like?

For a solo practitioner or small group, the alternatives are very limited. The physicians will probably have to become employees. Employment agreements with guaranteed compensation arrangements and benefits for as long a term as reasonably possible are essential.

Multi-specialty groups and certain large or well situated single specialty practices can often negotiate more favorable arrangements. Such groups should consider keeping their PC intact and having it enter into a professional services agreement ("PSA") with the hospital. This is a huge advantage over individual employment agreements, which the hospital can change at will once the term of the agreements expires. The chief advantage of a PSA is that it provides a mechanism for the physicians to bargain collectively with the hospital.

A PSA can provide many important protections; the following are just a few examples:

- Contractually guaranteed compensation arrangements. However, if hospital management is doing its job it will insist that pay be based, in large part, on performance. A formula using RVUs with an upper limit tied to physician compensation benchmarks is often used.

Continued

- PSAs have 10 to 20 year terms. Some physicians have negotiated an option to terminate the PSA at intervals (e.g., every five years). This helps assure the hospital will be responsive to the needs of the physicians.
- The PSA can provide a legally guaranteed voice in hospital decisions affecting the physicians.
- Hospitals generally want non-compete agreements from the physicians; this is reasonable. However, what if the physician group elects to terminate the PSA as described in bullet point two above? The PSA can provide that the non-compete provisions do not apply if the entire group chooses to disaffiliate from the hospital.
- If the hospital wishes to hire new physicians in practice areas relevant to the group, the PSA can grant the group a first refusal to hire the new physicians and have them covered by the PSA. This helps maintain the size and bargaining power of the group.

If you can't strike an acceptable deal with the hospital there may be other alternatives:

- Sell to a multi-specialty practice. Such practices usually offer enhanced revenue from cross referrals, better rates and terms with payers due to the group's size, and additional revenues in the form of ancillary service income (e.g. ambulatory surgery center, physical and occupational therapy, lab, imaging, etc.).
- Join together with other groups to form a new multi-specialty group.

Consider your options carefully, seek experienced professional help, and above all, be realistic. The "new normal" applies to hospitals and physicians alike.