

Is Selling Your Practice to a Hospital the Right Move for You?

By **Todd A. Rodriguez**



All eyes and ears are on Congress as those in the health care industry await affirmative guidance on exactly what shape the Obama administration's health care reform will take.

What we do know is that technology, quality and utilization management will likely play a major role in any such reform. In addition, with the government taking a larger role in health care, more and more complex regulation can be expected. In the face of these major changes, many physician practices are waking up to the realization that in order to survive and thrive in this new environment, they will need to be more sophisticated businesses than ever before. In light of the major financial investment and time commitment necessary to develop this required level of sophistication, many physicians are considering selling their practice to a local hospital or health system and becoming an employee.

Selling to a hospital in the current health care environment may make considerable sense. However, physicians considering this path are well advised to proceed with extreme caution since choosing the wrong partner or structuring an unworkable transaction can be disastrous. When evaluating a potential sale of your practice to a hospital or health system, consider carefully the following critical issues:

1. Can the hospital meet your practice's needs?

Certainly hospitals have deeper pockets than many physician practices and are able therefore to invest in new

technology, recruiting and marketing more readily than many private practices. However, if a practice in a particular specialty is not a priority within the hospital's strategic plan, a hospital may be reluctant to invest meaningful dollars to develop and grow the practice after the purchase.

Accordingly, it is critical early on in the transaction discussions to explore with the hospital exactly where your practice will fit in the hospital's strategic plan and then to get concrete commitments in the sale documents for investment in your practice going forward.

2. Will you be able to get along with your new employer?

Physicians who have been in private practice for most or all of their professional careers may find the transition to employment particularly difficult. Once the practice is sold, the physician employee may find himself taking direction from a non-physician. It is critical therefore that prior to signing on the dotted line, physicians spend some time getting to know hospital administration and in particular the administrators who will have responsibility for oversight of the practice after the sale. If the personalities do not mesh prior to the transaction, they will most certainly not be any better after the transaction.

3. Are the expectations realistic?

The days of big base salary guarantees are gone in hospital/physician employment arrangements. Instead,

most hospital employment agreements include compensation structures based at least in part on financial performance. Where the performance criteria are unclear, unworkable or unrealistic, one or both parties to the arrangement will surely be disappointed at the end of the employment term. It is important therefore to do a careful pro forma analysis of the compensation arrangement to make sure that the criteria can be objectively tracked and the compensation can be easily calculated. In addition, where an employed physician's compensation may be adjusted based on practice expenses, it is advisable to develop a budget up front and a process for budgeting in future years.

4. What if things don't work out?

Even with the most careful planning and analysis, there are a variety of ways in which hospital/physician employment arrangements can fall apart. Physicians entering into these arrangements should be sure to include a specific mechanism by which the arrangements can be unwound with as little disruption to the practice as possible. So for example, transaction documents should include dispute resolution procedures as well as a clear unwind clause that would permit the physician to reacquire his or her assets and return to private practice in as seamless a manner as possible.

Medical practice sales to hospitals are not a new phenomenon. However, just as the ground rules in health care are continuously

evolving, so too have the ground rules in practice sale transactions. Physicians exploring the sale of their practice to a hospital or health system must approach the arrangement with their eyes open and seek to achieve as much clarity in the transaction documents as possible.

For more information about this topic, contact Todd A. Rodriguez at 610.458.4978 or trodriguez@foxrothschild.com.



Fox Rothschild LLP
ATTORNEYS AT LAW

Attorney Advertisement

© 2009 Fox Rothschild LLP. All rights reserved. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.