

Do You Understand Due Diligence In Physician Practice Acquisitions?

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Often in the sale of a physician's practice, the owner of the selling practice (the "Selling Practice") may desire to structure the transaction as what some refer to as a "handshake deal" – using minimal documentation and providing minimal diligence for review. Although this may be advantageous for the Selling Practice and its owner (depending on the documentation), this is generally quite risky for the purchaser (the "Purchaser") – as the Purchaser may purchase unwanted liabilities or pay for assets that the Selling Practice cannot transfer.

On the other hand, typically the Purchaser wants to structure the transaction as an asset purchase (an "asset deal"), as opposed to acquiring ownership of the Selling Practice entity (a "stock deal"), so that the Purchaser can pick and choose which assets to purchase and which liabilities to assume (as opposed to taking everything in a stock deal). Regardless of the transaction structure, it is critical for the Purchaser to perform due diligence.

Provided below are a few examples of due diligence items that should be reviewed by the Purchaser (in the context of an asset deal):

- 1) **Corporate / Organizational** – Even in asset deals, a Selling Practice's governing documents should be reviewed to confirm which owners must approve (and what actions are needed to approve) the transaction, and who can sign on behalf of the Selling Practice. It is important to confirm that the governing documents do not provide any third parties a prior right to purchase the Selling Practice or its assets.
- 2) **Liens / Litigation** – UCC searches should be conducted to ensure no third party has a security interest, lien, or other encumbrance on the assets. Litigation searches should be conducted to ensure no assets are the subject of any pending litigation.
- 3) **Contracts** – Each contract should be reviewed to determine which, if any, contracts the Purchaser wants to assume, to confirm the federal Stark Law, federal Anti-Kickback Statute, and related state statutes are not violated, and to determine which contracts can be assigned. If the Purchaser wants to assume a contract under which assignment is restricted, consent to assignment will need to be obtained prior to closing. The Selling Practice will be left with any contracts the Purchaser does not assume.
- 4) **Governmental / Regulatory Matters** – It should be confirmed the Selling Practice has all required licenses, provider numbers, permits, registrations and accreditations to conduct its business. Depending on the circumstances and the applicable legal framework, the Purchaser may obtain new licenses, provider numbers, permits and registrations.

- 5) **Employees / Independent Contractors** – All employee and confidentiality agreements, non-compete and non-solicitation provisions, disciplinary actions, immigration status, garnishment actions, paid time off and benefit policies should be reviewed. The Purchaser will need to analyze which employees it wants to hire and whether it wants to honor any “paid time off” and, if so, how much time will be honored (typically resulting in a corresponding reduction to the purchase price).

The above items are only a few of many examples. Other critical items such as real estate ownership/ leases must also be reviewed.

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