

Key Considerations When Merging or Acquiring A Medical Practice – Part One

February 1, 2024
By Michael H. Cohen

Merging or buying a healthcare practice or clinic is complicated. You need to understand the legal compliance issues, the medical compliance issues, the financial concerns, and many practical issues. Experienced healthcare lawyers can help you understand these requirements. Healthcare lawyers can explain the pros and cons of the various issues and help you anticipate all the things that may go wrong as well as the things that should go right. Skilled healthcare lawyers will prepare and negotiate the contracts that are necessary to specify the terms of the merger or buyout.

In this article, we will begin the discussion of the overall concerns that doctors need to address. In subsequent articles, we will focus on some of the more complex issues such as how to value a business, Stark and Anti-Kickback requirements, and other legal compliance issues. We'll also discuss how a management services organization (MSO) can help provide the new medical practice the business services it needs so the practice can focus on providing medical services to their patients.

Practical considerations in merging or buying a medical practice

Some of the issues that affect a merger or acquisition of a medical practice are:

- What type of medicine are your physicians authorized to practice?
- What states can you practice in?
- Are you buying a practice or merging the practice with your current practice?
- Do you have a letter of intent?
- What part of the practice is being sold? Is the whole practice being sold? Are just the assets being sold?
- Who will be responsible for the liabilities of the business?
- What will be the role of each of the physicians from the current practices in the new practice?
- Who has the responsibility for preparing the agreement of sale or the terms of the merger?
- What will be the payment terms? Will there be a lump sum payment or a buyout?

Strategic planning issues when merging or acquiring medical practices

Before considering the buyout or merger, physician practices need to review many different issues with their healthcare lawyer. Some of these issues include the following:

- **Why do you want to buy, merge, or sell your medical practice?** Possible purposes include expanding the medical

services you can provide, increasing marketing share, expanding the territory where you practice, and other reasons.

- **What regulatory and compliance issues do you need to review?** Some of these issues include complying with federal and state anti-referral laws, licensing, accreditation, privacy laws, and laws requiring notice to patients about the new business arrangement. There are also laws that need to be reviewed about the corporate practice of medicine, the type of supervision required of the medical staff, and many other factors.
- **Why do you need a legal and financial due diligence review?** Medical practices that wish to acquire a medical practice or merge their medical practice need to conduct due diligence reviews about the legal, financial, and operational aspects of both organizations. These reviews can inform your practice of any current or likely future claims or issues that you may be assuming if you buy or acquire another medical practice. The review should also disclose any legal, financial, or regulatory challenges that need to be addressed. Experienced healthcare counsel can explain how to conduct due diligence, what issues should be reviewed, and how to handle or negotiate any issues that arise.

Another key consideration is which is the bigger practice. The bigger practice will normally want to control the terms of any merger.

HEALTHCARE M&A: DO'S AND DON'TS OF BUYING OR SELLING A MEDICAL PRACTICE

Buying and selling a medical practice is much different than selling a commercial business. Due diligence must address special healthcare legal compliance issues, licensing requirements, patient [...]

Integration Planning

Each medical practice must have a detailed integration plan that outlines the timeline, tasks, and responsibilities for each phase of the merger or acquisition. The integration plan should identify key leadership roles and responsibilities for the integrated organization – including medical roles and business roles.

Stakeholder Communication

The parties to the merger or acquisition should develop a comprehensive communication plan for employees, patients, vendors, and other stakeholders. These communications should address such issues as the reasons behind the merger, the benefits, and the potential changes in services. There are laws that require that patients be notified of their rights to keep the same doctors or choose other physicians outside of the new medical practice – and their rights to take possession of their medical records.

Cultural Compatibility

A key factor that helps determine whether the new practice (whether obtained by purchase or a merger) is culturally compatible. Some of the issues that should be reviewed are the work cultures of each medical practice, the financial values of the practices, and how the work cultures may affect the integration process.

Information technology (IT) and Data Integration

Virtually every medical practice has hardware and software to manage their business. The practices should have electronic health records (EHRs) and data management systems. There are technical concerns that should be addressed to make the integration of the IT systems, including access to patient records, as seamless as possible. There will also be HIPAA and possibly other privacy issues that need to be reviewed in order to properly integrate the EHRs.

Human Resources Integration

The buyout or merger of medical practices requires reviewing the credentials and skills of the healthcare providers and healthcare staff. Some of the issues that should be reviewed on a personnel level include staffing redundancies, compensation, benefits, and cultural integration. The new medical practice will want to retain key talent and manage any

necessary staff transitions after the merger or buyout.

Performance Measurements

The new practice should create metrics to track the success of the merger or acquisition. The metrics should monitor the financial, operational, and clinical performance of the new venture to ensure that objectives are being met.

The metrics and evaluation should be ongoing. Adjustments should be made as needed. The strategies should be refined when necessary. The status of the facilities and the equipment of both practices should be reviewed. Some facilities and equipment may need to be sold. Some can be combined. The Stark and AKS laws need to be reviewed to help ensure there are no violations of these anti-referral laws. Resources should be consolidated or optimized when necessary.

A critical performance measurement involves the quality and continuity of patient care. During the transition to the new practice, patient care should not be disrupted. Ideally, patients will be happy with the new medical practice.

A major goal of the buyout or merger is aligning the clinical practices, treatment protocols, and patient care standards. These practices, protocols, and standards need to be assessed. It's a good idea – before the acquisition or merger, to obtain input from all of the medical staff members.

THE NEW STARK AND AKS LAWS

Physicians and medical practices should review their MSO and referral arrangements to help comply with the new Stark Law and AKS changes.

Why do medical practices consider buying, selling, or merging with a medical practice?

The reasons for wanting to acquire or merge a medical practice include the following:

- Increased leverage with paying patients
- Sharing overhead costs and other operational costs
- Merging the brand image of the practices
- The potential for growth
- Diversifying a practice within the limits of the original practice areas

The senior leadership of each medical practice should have a clear vision of why the leadership wants to buy, sell, or merge a medical practice. The practices need to ask – “*Why do we want to change our medical practice?*” When conducting due diligence, the medical practices should understand on a daily basis what bills will be due, should look for any conflicts of interest, and should examine the online reputation of each medical practice.

The North Carolina Medical Society recommends that medical practices consider the following when buying, selling, or merging their medical practice. Consider that much of the revenue of a medical practice comes from the doctor's knowledge, skills, personality, and reputation. These features are generally not transferrable. The patient list generally should be valuable.

Doctors may consider buying, selling, or merging their medical practice to obtain better professional support, more stability, the prospect of internal referrals from within the new organization, and a better work-life balance.

The doctors should recognize that the other physicians in the practice may have different interests. While one doctor may want to retire, the other doctors may want to continue practicing.

Generally, the buyers of medical practices are:

- New physicians who want to purchase a seller's medical practice
- A small medical practice that wants to grow – in the same or a related specialty
- A larger medical practice that wants to acquire new patients, decrease overhead expenses, or move into a new geographic location
- A large specialty group entering a new market, for example; kidney dialysis, radiation oncology, or anesthesia
- A hospital or healthcare system
- A physician wants to relocate due to personal or professional reasons

The types of medical practices that may be sold include:

- Private practices
- Group practices
- Emergency practices
- A broad range of specialty practices
- Direct family care practices
- Hospital-based practices
- HMOs
- Urgent care centers

There are many pros and cons to acquiring a new medical practice or merging with an existing practice. Once a practice has decided to buy or merge with another practice, both practices should speak with experienced healthcare counsel who can explain the legal and healthcare compliance issues along with many financial, medical, and practical considerations. The more legal, medical, business, compatibility, and performance issues that are reviewed at the start, the more likely the new practice is likely to be successful.

Medical practices of all sizes and practices that are considering buying a new practice or merging with a practice should contact Cohen Healthcare Law Group to discuss their legal and healthcare compliance requirements. Our experienced healthcare attorneys advise physicians and medical practices about healthcare compliance laws and regulations.

Book a Legal Strategy Session Today

Contact our healthcare law and FDA attorneys for legal advice relevant to your healthcare venture.