

Going to Work For A Hospital

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The Transaction

- You have an active, successful 10-member cardiac practice located on the campus of a major hospital at which the members practice. The group leases its offices from several of its shareholders, who own the building in a separate partnership, and leases a CT machine, which it operates in its office under the in-office ancillary services exemption from the Stark Law.

The Transaction

- The group has seen its *per* physician income decline in recent years and the shareholders are becoming concerned for their futures. At just this point, the CEO of the hospital approaches the senior member of the group and says that the hospital would like to “buy” the group and employ its physicians.

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 - Clinical trials, *etc.*

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 - If it does not buy the building from the physician owners, probably the lease for the space, but it will want to renegotiate the lease first

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 - Debt, leases or service agreements unrelated to the purchased assets
 - Employer obligations for such things as retirement plans, unused PTO, severance pay, taxes, *etc.*

What Does This Mean?

- After the closing, the hospital will employ some or all of the physicians in the group, typically pursuant to separate written employment agreements with each physician.

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 - You will typically be paid an independently determined “fair” value for the assets purchased due to Stark and Anti-Kickback law limitations.
 - You and/or the group will be taxed on the proceeds
 - Capital assets will be taxed as capital gains
 - If the practice is a C corporation, it will pay the tax and any remainder will be dividended to its shareholder, where it will be taxed again.

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- **Do not expect to continue to receive income from the CT machine.**
 - The group will no longer own the machine.
 - For this reason, you and/or the group will no longer qualify under the in-office ancillary services exemption from Stark

What To Expect From The Sale

- **Do expect to continue to collect the accounts receivable left in the group following the closing.**
 - Taxed to the group as ordinary income just as would have been if sale had not occurred.

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 - To attempt to stabilize your incomes in the coming era of downward pressure.

What To Look For In Your Employment Agreement?

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 - Compensation and Benefits Issues.
 - Practice and Practice Control Issues
 - Term and Termination Issues

Compensation And Benefits

- **Personal Compensation:**

- How/how much will I be paid?
- Will it be guaranteed? If so, for how long?
- When will it begin?
- What about when I leave?
- What about outside activities: Writing, speaking, teaching, witness fees, inventions, research?

Compensation And Benefits

- **Benefits:**

- How will they compare to what I have now?
- Will my seniority carry over?
- What about my professional liability/medical malpractice insurance?
 - Who will pay my “tail” going in?
 - Who will pay my “tail” when I leave?

Practice And Practice Control

- What will I be expected to do?
- Where will I be expected to do it?
- Will I be required to work a certain number of hours *per week*?
- How much control will I have over the people I work with?
 - Can I keep my nurse?
- How much say will I/we have in the running of our “practice” after we go to work for the hospital?

Term And Termination

- For how long is my employment guaranteed?
- For how long is my compensation guaranteed?
- Can I terminate the agreement before it expires?
 - Can the hospital? On what basis? Will they owe me anything if they do?
- If I terminate the agreement early will there be a non-compete? A non-solicitation provision?
- Can I buy my practice/assets back? On what terms?

Pointers

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- Negotiate the entire employment agreement before you commit to sell your practice.
- Unlike the decision to sell your practice, your employment agreement is **personal** to you.
 - Get your own lawyer and accountant to advise you
 - Do not be afraid to negotiate items that are (uniquely) important to you
 - Do not be afraid to walk away from the deal

Remember

**Once you sign the employment agreement,
you will be working for them.**



"Now that you've all put in your two cents' worth, I should like to interject my fifty-one per cent controlling interest."

Questions?