



BY BRUCE D. ARMON

A Practice of Your Own

When you get the chance to acquire a practice, take steps to ensure success.

The opportunity has arrived. You can now be the sole owner of your medical practice and control your destiny. You will be your own boss—for better or for worse. There is no right or wrong time in which you can be presented with this chance. Whether it occurs when you are fresh out of training, five years later, or beyond the mid-point of your professional career, you must make sure you have adequately prepared so you can ensure your opportunity is not squandered. Follow these five tips when you are ready to purchase an established medical practice.

1. Know what you are buying

There are two general types of practice acquisitions: an asset purchase and a stock purchase. Absent unusual circumstances, the purchaser

should insist on an asset purchase agreement. There are significant tax advantages to the seller of a medical practice in a stock purchase agreement (i.e., all of the gain is taxable to the seller at capital gain rates rather than general income tax rates). As the purchaser of stock in such a transaction, you will not get any tax deduction for any portion of the purchase price.

The asset purchase agreement should be drafted so that it clearly delineates the respective rights and obligations of the purchaser and seller. Both the seller and purchaser should understand what is included in the purchase (e.g., the practice's medical records; furniture, fixtures and equipment; and, medical supplies). As the purchaser of the medical practice, you need to ensure

that all of the furniture, fixtures and equipment being sold to you is free and clear of liens and encumbrances so you do not have to worry about another party laying claim to these items post-closing. If you are retaining the seller's employees, you need to know whether any of these individuals have an employment contract and the terms of their employment.

2. How to buy the practice

There are two elements to this question. First, just as the seller has likely established the practice in some form of corporate entity, you

should establish a corporate entity to buy the assets of the practice. Depending on where your practice is located, there are different entity choices that will be available. The entity you decide to use to purchase the practice should be selected for legal and tax reasons. Unlike the other items which we will discuss, the seller of the medical practice should have no say (or interest) in which entity you select.

The biggest potential detriment to not selecting any "entity" and instead practicing as a sole proprietor is that you have a much greater potential for liability in case of personal litigation since you do not have the "protection" of the

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corporate entity.

The second item to consider is whether you will pay cash, require third-party financing, and/or take a “loan” from the selling physician. Cash can be king, and if you have the wherewithal to purchase with cash, you may be able to get a more favorable price from the seller. If you require the assistance of a bank, make sure you understand the terms of the loan and each of the documents you will be required to execute before the bank provides you with any financing. If you are getting a loan from the seller of the medical practice, the seller will want to memorialize the terms of the transaction in a separate agreement. Make sure you understand the ramifications of your failure to fulfill the terms of these loan documents. For instance, will the seller have a priority interest in your accounts receivable and unfettered access to your books and records if you default in making a payment? Or will the seller have the opportunity to buy back the practice from you at a very discounted rate from the original purchase price you negotiated? The financing decisions you will make can be just as important as the actual acquisition of the practice.

3. Where will the selling physician practice medicine post-transaction?

Hopefully, he will either retire or be far away from your medical practice. A big portion of what you will be paying for in your practice acquisition is the selling physician’s patients and professional relationships in the community. If the selling physician stays in your community (e.g., takes a “part time” job at the local hospital or works periodically for some physician friends), this will likely damage your ability to maintain the practice’s productivity at the level it was before you made the purchase, and a key factor in deter-

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mining how much you agreed to pay for the practice.

The deal documents should expressly preclude the selling physician from practicing medicine in your community. As the purchasing physician, you should seek to define the community as broadly as possible. In addition to prohibiting practice activities, the selling physician should be precluded from interfering with any of the practice’s referral sources or taking any other action that will be to the detriment of the purchasing physician.

Significant financial penalties should be included in the deal documents should the physician (or anyone acting on his behalf) violate any of the enumerated provisions. If you do not pay the entire purchase price for the practice upfront, any action by the selling physician which violates any of these “restrictive covenants” should trigger a forfeiture of all or remaining payments for the purchase price in addition to any other available legal remedy.

If the selling physician is going to work for you in some capacity, you must be careful in ensuring that the selling physician understands that, effective on the date of closing, he will no longer be calling the shots with regard to how the practice is run. The “employment contract” that you have in place with the selling physician must delineate the respective roles and responsibilities of each party and should also include noncompetition provisions during and after the selling physician’s employment with the new practice.

4. Ensure you are productive from the first day you own the practice

Too often, physicians believe that once they have successfully negotiated the terms of the practice acquisition that the hard part is complete. Actually, the real work is only just beginning.

One sure step to help retain the selling physician’s patient base is to require, as part of the acquisition documents, that the selling physician jointly write a letter with you to each of the selling physician’s patients and referral sources communicating your status as the new owner of the practice. Be aware, however, if your due diligence suggests that the selling physician may have a mixed reputation in the community, that you carefully consider what is included in this transmittal and to whom the letter is sent. In many respects this letter will be your first substantive introduction to the community and you want to make sure you have placed your best foot forward.

In addition to your external communications with patients and referral sources, you need to make sure that the practice is ready to run under your direction on the first day. Making sure that you have secured third party payer participation numbers and obtained local hospital

privileges are two very important and time-consuming activities. In addition, you will need to secure your professional liability coverage and obtain benefits for yourself (e.g., health insurance, disability coverage, life insurance, etc.) and potentially your employees. You will need to execute a lease—whether or not you are relocating your practice—and obtain any necessary office and medical equipment and supplies. If you are hiring new employees or retaining the seller's employees, you need to make sure each of these individuals understands what you expect them to do and not necessarily what they used to do for the seller or in their previous employment. In many respects, you will only be as successful as your professional and administrative staff allow you to be.

Because you will likely not have the trailing accounts receivable from the selling physician and will not receive third party payer payments for at least 45 or 60 days after closing, you will need to have access to cash (a line of credit or a small business loan) to meet all of your expenses until the dollars are flowing more readily.

Creating a checklist and timeline of the activities you need to complete to be operational and effective on day one, and delegating tasks accordingly, will help ensure your success as a practice owner in both the short and long-term.

5. Where to turn for help

Negotiating and buying a practice can be an expensive proposition. In fact, it may be the most expensive transaction you ever make—even more expensive than your house. Of course, the practice can provide a lifetime of quality income for you and your dependents and, one day, can create a very nice retirement package when you are ready to sell it.

An experienced attorney to assist you is invaluable. The selling physician is most likely going to have someone representing his interest, and you should have the same resources at your disposal. There is no right or wrong role that your attorney can play. She could act entirely behind the scenes as your adviser, or she could play a more prominent role as your negotiator. Because your attorney is working for you, you need to establish the ground rules for how you are most comfortable having your attorney provide assistance.

There are a variety of documents that will need to be drafted or reviewed to accomplish the practice purchase. Your attorney should understand the interplay of these documents and be able to advise you accordingly. Once you have acquired the practice, your attorney should help in drafting employment agreements, vendor agreements, compliance plan documentation, and personnel policies, among other things.

Buying a medical practice can be a wonderful (and stressful) opportunity. You need to understand what you are buying and how you are buying it. You need to ensure the selling physician does not become a competitor and that you have the resources at your disposal to be a successful owner from day one. Take advantage of your attorney's knowledge to help structure the best possible deal for you and allow you to focus on being a good clinician and businessperson. Plan ahead so you can be proactive and creative. Be sure you are ready when this opportunity becomes available, whether it is in the very near or not-so-distant future. ■

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