

# Want to Buy an “Ology”? Six Things to Know Before You Buy a Physician Practice

**D**ermatology, ophthalmology, radiology, urology? The list goes on. Yet, in any physician practice management transaction, the following six key considerations apply and, if not carefully managed, can derail a transaction:

## 1. Corporate Practice of Medicine

Although somewhat antiquated, the majority of states still have a prohibition on the corporate practice of medicine. This results in a private equity firm acquiror having to set up a “friendly physician” model with a management services agreement and securities transfer restriction agreement. If done properly, the private equity firm may be able to consolidate for both financial reporting and tax purposes.

## 2. Fee Splitting

Depending on state law, the management fee payable under a management services agreement may or may not be based on a percentage of revenue. Alternative fee structures include a fixed fee or fee based on a multiple of costs. Fees should be adjusted no more than annually and only on a prospective basis.

## 3. Earn-outs

Can you pay an earn-out? Although there are structures that can be implemented to provide for contingent payments based on certain metrics, care should be taken in structuring such payments based on the facts and circumstances of each individual situation.

## 4. Physician Noncompetes

Although noncompetes are generally favored in connection with a sale of a business, noncompetes in connection with ongoing employment of physicians post-sale can present issues. Arizona, California, Oregon and Texas, among others, all have specific restrictions on the enforcement of noncompetes in connection with physician employment. This necessitates careful drafting and risk mitigation.

## 5. Labs & Rollover Equity

Does your platform have a lab? Is the lab operated through a group practice? Any physician who has rollover equity in the platform parent who refers government program business to a lab may need to do so through a lab contained in the physician's group practice in order to meet the Stark Law in-office ancillary services exception.

## 6. Platform Expansion

So, you have a great platform with great payor contracts. Can you use that platform to expand across multiple states? Maybe, maybe not. Some states require that the practice entity be domiciled in that state. Other states only permit the use of certain types of entities. California, for example, only permits the use of a California professional corporation. Some states also require all or some of the physician owners to be licensed in and/or a resident of the state.

Although every physician specialty has its own set of regulatory issues, the above issues present themselves in transactions across specialties. Addressing these issues prior to an LOI or indication of interest will help to keep your physician practice management transactions on track. If you have questions or need assistance with any upcoming physician practice management transactions, [click here](#) to contact Angela Humphreys, Chair of our Healthcare Practice.

### About Bass, Berry & Sims' Healthcare Private Equity Practice

With over 200 attorneys in its nationally recognized healthcare industry practice, Bass, Berry & Sims represents clients in more than 30 healthcare industry sectors. We regularly assist private equity firms and healthcare portfolio companies in finding creative and pragmatic, business-oriented solutions while navigating the unique healthcare regulatory, M&A and business environment.

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