

Buying and Selling Businesses in the Health Care Space

Author : Ross Swanson

Every business transaction is unique and strategies surrounding the acquisition or divestiture of a business do not take place in a vacuum. We frequently act for professionals in the health care space (medical doctors, dentists, pharmacists and veterinarians) and in some cases, for business enterprises whose business model involves the acquisition of professional health care practices to integrate into a broader network of similar practices.

Typical Components That Should be Considered by Aggregators

While the following is not an exhaustive list, it will give you some idea of the issues that you need consider as part of planning your deal (whether you are being acquired by an aggregator or you are part of a group who is pursuing an aggregation strategy).

Valuation

Consider the following formula: *expectations (what a seller believes the value of the business to be) less observations (what an arm's length buyer is willing and able to pay) equals frustration*. Similarly, working capital requirements, earn-outs or other price adjustment mechanisms can be confusing and lead to misunderstandings between the parties in a transaction. Resolving gaps in valuation and addressing the details surrounding purchase price adjustment mechanisms calls for lawyers, accountants/valuators (for example, Chartered Business Valuators) and bankers experienced in buying and selling practices who can assist with aligning the expectations of the buyer and seller and ensure that the parties are able to settle the financial terms of the proposed transaction.

Business Financing and Corresponding Security Agreements

Most third party purchasers will be working with a third party lender to finance their expansion plans. That might be a traditional lender, a niche (specialized lender) and/or equity partners. Loan terms and related security will need to be integrated to meet with the expectations/requirements of the various parties providing financing for the transaction.

Commercial Leasing and Real Estate

Where the practice being transitioned includes a leased office, laboratory or other space, you will need to negotiate lease terms and conditions with third party landlords as well as others who may have an interest in such lease (for example, third party lenders). Where the real estate assets of the practice are owned by the professional (directly or indirectly), additional considerations factor into play including appropriate levels of due diligence in respect of the property (for example, the

condition of the building, zoning, environmental considerations, financial and non-financial encumbrances on title or otherwise).

Employees

If you are transitioning an existing practice, there is, without doubt, a people component to your transaction. Naturally, the transition of a practice may involve the retention of key members of the practice or possibly, some level of employee attrition and obligations that follow such considerations (for example, severance exposure). There may also be issues associated with non-competition and non-solicitation restrictions surrounding the proposed transaction.

Third-Party Approvals

Depending on your specific circumstances, third party consents may be required before a transaction can be completed. For example, if the sale or expansion is taking place in a highly regulated environment such as health care, consider whether there are Provincial regulatory approvals that need to be sought and granted (consider for example, the Alberta Dental Association and College in the context of a dental practice located in Alberta).

Corporate Structure

Aside from issues of succession planning, the strategy surrounding an acquisition or for that matter, the financing required to complete an acquisition, a key consideration from both the perspective of a buyer or seller are the manner in which the transaction will be structured. From a seller's point of view, a corporate reorganization which precedes the sale transaction may be required to remove certain redundant assets from the practice and to ensure that the health care professional is able to plan the sale in a tax efficient matter. From the perspective of an purchaser/aggregator, regard will need to be given to the manner in which the assets of the practice are held following the completion of the acquisition in order to accommodate regulatory requirements as well as the overall business model of the aggregator.

Relationship Agreements

Anytime that you are transitioning a practice, you will need to develop appropriate relationship agreements for managing employees and contractors of the practice as well as for defining the rights and obligations of the practice owners. Such agreements may cover topics like employment, practice management, profit sharing as well as documents for defining the rights and obligations of owners (for example, a unanimous shareholders' agreement).

Strategic Business Development and Future Planning

As is apparent, there are a number of moving parts involved with the transition of any business

including those in the health care space. Having a lawyer who understands the variables impacting the transaction is encouraged. If you are looking for legal guidance from lawyers with business sense to help you sell your practice to a practice aggregator or for that matter, pursue an aggregation strategy, the [business solutions lawyers](#) at Duncan Craig LLP have the technical expertise and multidisciplinary connections to help make that happen.

[Ross Swanson](#)