

OUR PRACTICE

Physicians Organizations Regulatory Issues

With intense pressure throughout the American health care system to control costs while improving the quality of care, no one in the industry faces greater scrutiny or works under more complicated legal constraints than physicians and physician organizations. They must routinely work and do business within the limits of federal and state Anti-Kickback statutes, the federal Stark law restrictions on self-referrals and similar state self-referral restrictions, and reams of related regulation.

Meanwhile, there is pressure to shift away from the fee-for-service system that doctors have worked under for decades. The stated goal: Don't just provide services, produce healthy patients.

In this climate, representing physician groups demands imagination as well as experience. The attorneys in Baker Donelson's Health Law Department have worked extensively with physician practices, both large and small, on a wide range of regulatory matters, including internal compliance investigations, reimbursement, privacy, security, licensure and employment protection practices; and on business matters, including corporate restructuring, tax issues, compensation, admission of new practice members, departure and retirement buy/sell arrangements, and the establishment of new practices and structures for physician services.

But the newest challenges are on the transactional side. Under the guise of "aligning interests," the federal government, hospitals and health care systems are all experimenting with innovative ways of acquiring physicians' groups and contracting with physicians. Arrangements range from the traditional hospital/physician employee relationship, to professional service agreement arrangements (in which physicians provide exclusive staffing to the hospital but remain independent). They also include clinical co-management agreements and clinically integrated networks, which reward physicians based on performance in the areas of quality of care and best practices, patient satisfaction, and reduced levels of complications, and grant them a substantial voice in how the hospital is run.

The latest iteration, a creation of the Affordable Care Act, is Accountable Care Organizations (ACOs), which, in the words of the Centers for Medicare and Medicaid Services (CMS), "create incentives for health care providers to work together to treat an individual patient across care settings – including doctor's offices, hospitals, and long-term care facilities."

Baker Donelson's health law attorneys have extensive experience helping physician groups structure acquisitions and strategic alliances so as to retain a significant measure of autonomy and control, which many doctors see as the very essence of medical practice. Our clients have included the nation's largest neurosurgery group; a major academic medical center that was reorganizing all its faculty practice plans into a single integrated structure; and a large cardiovascular group that combined with a major tertiary care center to create a regional heart institute. In the past few years, we have represented numerous large physician organizations in forming, acquiring and operating hospitals, ambulatory surgery centers and other specialty centers.

The stakes are high. As hospitals, managed care organizations and other payors increasingly seek to control costs and improve care by establishing relationships with physician groups, doctors need reliable legal counsel from experienced attorneys like those at Baker Donelson more than ever before.



Representative Matters

- Counseled health care providers on litigation and liability issues related to the formation of a medical practice after returning to Louisiana post-Katrina.
- Represented a dermatology group in their sale to a private equity fund for \$10 million.
- Represented a fertility practice in their sale to a private equity fund for more than \$15 million.
- Advised a practice merging with three other practices to become a group practice.
- Advised a practice that had sold out to a hospital system to buy back their practice and autonomy.
- Represented a physician in the sale of his neurosurgery practice to a physician-owned hospital and the sale of his interest in the hospital to the for-profit hospital operator.
- Represented a physician-owned laboratory company in its acquisition of numerous physician-owned pathology practices and affiliated laboratories.
- Represented physician groups of various sizes in acquisitions of other physician practices by asset, stock, and merger.
- Represented dentistry, optometry, and podiatry practices in sales or acquisitions.
- Advised a radiology practice merge with three other practices to create a practice that will provide service for all of the hospitals of the largest hospital system in town.
- Advised a 75-doctor multi-specialty group practice on buying back their practice from a hospital system to which they have previously sold.