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Plymouth Meeting, PA

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*Financial Interest

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Who We Are

- Business and legal advisors to physicians
- Publishers of the Goodwill Registry, used in valuation of ophthalmology and other medical practices
- Handle and advise re: practice buy-ins, buy-outs, sales, mergers and valuations
Topics

- Types of Merged Entities
- Reasons to Merge
- Potential Obstacles
- Financial and Legal To Dos

Types of Merged Entities

- Group Practice without Walls
- Versus Fully Integrated Merger

Fully Integrated Merger

- Very simple model
- Two corps become one corp
- Single tax ID, provider number
- Single pension plan
**Fully Integrated Merger**
- Single governance body: the new Board
- Full integration of finances
  - sharing of overhead
  - possibly, sharing of revenue
- “Everybody owns everything”

**Fully Integrated Group**
- Can have a transition (operationally, financially)
- But end point is a true group, not a collection of sites
- Ultimate goal is for doctors to identify more with the group than with the pre-merger sites

**GPWW Corporate Structure**
- Two corps (or LLCs) become one corp (or LLC)
- Single tax ID, provider number
- Single pension plan
- These attributes are the same in GPWW as in full integration model
GPWW Finances

- But GPWW model allows each site to retain its separate finances
- The individual sites do not share overhead
- EOBs are “unwound” by central billing
- Revenues are drilled back to the generating site

GPWW Governance

- Much less centralized than fully integrated model
- Three layers:
  - Entity Level: Board of Managers, composed of representatives from each site
  - Site Level: management by the site doctors
  - Shareholder level: voting on major group decisions

Site Level Decisions

- Day to day operating decisions are made at the site level
- Compensation to site providers and staff, hiring and firing of providers and staff, supplies, office equipment and furniture, vendor payables and maintenance contracts, separate checking account for expenses
Board Decisions

- But entity-level Board controls issues that effect other sites, such as selection of billing software, pension plan, payor contracting

More Board Decisions

- Entity level Board also must approve site decisions that pose potential liability to the entity or other sites
  - Hiring and firing of associate and shareholder physicians
  - Handling of lawsuits, audits
  - Relocation of office near a another site/operating division
  - Establishment of new office near another site
  - Incurring debt, signing of leases and other major contracts

Shareholder Decisions

- Shareholder Level: Certain major decisions require approval by supermajority vote (e.g. 75%) of all shareholders
  - Merger with another entity, or sale of all assets to another entity
  - Purchase of another practice
  - Admission of a new shareholder
  - Capital contributions
  - Incurring major debt
Is GPWW a Painless Alternative to Full Merger?

- Both models allow the merging groups to (legally) band together to negotiate with insurance companies
- Both models may enable cost efficiencies, such as central billing

GPWW is Not Pain Free

- It does require some compromises
  - Sites must share Medicare revenue from Stark “designated health services” - A-scan, B-scan, pachymetry, OCT
  - May need to use new entity-wide software systems, adopt EMR

GPWW Compromises

- Single pension plan
- Constraints on relocation or expansion of office
- General right of entity-level Board to approve site actions, such as admission of new shareholder, sale of practice assets, purchase of another practice
- You are no longer a “free bird”
Rare in Ophthalmology

- Haven’t yet seen many GPWWs in ophthalmology
- Often, a GPWW is formed to share revenue from a new, expensive, centralized ancillary service
- But there is no such service in ophthalmology
- Compare: orthopedics (MRI); urology (radiation therapy)

Reasons to Merge

- Merger entails costs and change
- More comfortable to do nothing
- So there must be good motivation by both parties, to overcome these obstacles
- “Details, details, details”

Why Are We Doing This?

- There needs to be a business plan
- A vision, that you are moving towards
  - To gain a competitive edge
  - To protect against threats on the horizon
- How will we make more money than we do now (to cover merger costs)?
**Common Reasons to Merge**

- Gain clout in marketplace! (maybe)
- Become more “full service”
- Pool resources to hire subspecialists
- Geographic expansion (clout, branding)
- More attractive to recruits
- Share costs (new equipment, new space, new personnel)

**Fears, Concerns**

- Are the personalities compatible? Mutual respect? Any “problem partners” (in other group, of course)
- Overhead rates and doctor compensation formula
- Amount of change contemplated

**Initial Meetings**

- Doctors and administrators
- Discuss reason for merger, vision for future
- Identify major obstacles, fears and concerns
Meetings, Continued

- Discuss professional advisors needed
- Information to be exchanged (e.g., financials)
- Develop smaller working groups, for operational and other issues
- Future meeting schedule
- Next steps, to dos

Are We Good for Each Other?

- “Problem partners”
- Payor participation
  - Need to be together on this
  - Ensure compatibility of patient bases
  - Can everyone be credentialled?

Services and Style

- Interest in (and belief in) elective services (premium IOLs, lasik, aesthetic services)
- Comfort with treatment styles – surgical aggressiveness, drugs used
- Co-Management, relationship with Ods
Tastes and Plans

- Desire for latest and greatest technology, equipment
- Interest in growth
- Facilities used and/or owned
- Computer practice management software and EHR
- Malpractice insurance carriers

Financial Compatibility

- How do “per doctor” incomes in the two groups compare?
- Compare the groups’ compensation formulae – if there are differences, is there a middle ground that everyone will accept?
- What about time off?

Financial Changes

- Will the business plan change the amount of $$ available for shareholder compensation?
  - New services offered
  - New specialists hired
  - New equipment and/or offices
Do a Financial Proforma

- No one is going to want to take a paycut
- Will there be efficiencies or extra revenue to cover transitional costs?
- Need to have some idea of the business plan

Governance

- Do the groups have similar governance styles (e.g., everyone has equal vote versus benevolent dictatorship)?
- Can all current shareholders continue to be on the Board (of the new merged entity)?

Buy-Sell Valuation Issues

- Review each group’s buy-sell documentation
- Evaluate philosophy on goodwill
  - For buy-ins?
  - For buy-outs?
  - How much $$
Termination Issues

- What % Board vote is necessary to terminate a shareholder? 51%? 75% Unanimous?
- Is termination permitted without cause?
- Is the departing shareholder subject to a non-compete?
- How are charts handled?

Liability Issues

- Does either group have any substantial legal problems? E.g., payor audits, government investigation, whistleblower claims, sex harassment suits, departed partner claims.
- There may be a show stopper, or no merger until issue is resolved.

Liability Issues, Cont.

- Consider indemnification clauses – each group promises to shield the other against the other’s contingent liabilities
- Also evaluate relative per partner bank debt load
Legal: Merger Mechanics

- Option A: Merger of one entity into another
- Option B: New “greenfield” entity

Option A: Merger of Entities

- Preserves at least one group’s provider numbers
- But all contingent liabilities (payor recoupments, tax issues, legal claims) will follow the new, joint entity
- Use indemnification clauses to ameliorate risk

Option B: “Greenfield”

- All doctors quit their old entity to join the newly formed one
- Medical charts and lists transferred to new entity
- Helps shield each group from the other’s prior liabilities
- But will need to re-credential all providers
Tax Issues

- Goal is for merger not to have tax impact on doctors
- Merger of corporations is generally tax free
- But merger of LLCs (or merger of LLC with corp) may have tax impacts

Tax Issues, Cont.

- With “greenfield” entity, there may be some tax impact or tax risk
- May need to lease equipment from old corp to new corp to avoid tax impact
- Involve your attorneys and accountants

Integration Issues

- Evaluate fringe benefit policies – need to transition to one framework for all staff
  - Health insurance
  - Vacation, sick, personal day benefits
  - Retirement plans – need to consolidate into single plan for everyone
Integration Issues, Cont.

• Review job descriptions and staffing – any changes appropriate? Evaluate in light of business plan.
• Consolidation of offices? Savings possible?

Integration Issues, Cont.

• Policy Manuals
  • Employee handbook
  • HIPAA Compliance Plan
  • OSHA plan

Other Entities

• Separate Optical Shop, ASC, Real Estate
• Try to give everybody a stake in everything
• Differing doctor interests lead to differing doctor agendas and conflict
Concluding Thoughts?

- You will have to invest some time and money to investigate whether merger is feasible.
- This is a project to secure the future; there will be some transitional costs and bumps.
- This is going to take some time: 12 to 24 months.


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