Preparing To Write Up A Sales Contract

Five Questions To Ask Before You Sell

Creating a sales contract is a complex process that requires the answers to many important questions. So rather than just showing you what a contract can and should look like (which is basically impossible given that each deal is unique), we'll instead go over many of the most important considerations that need to be dealt with in order to put together a solid contract for the sale of a medical practice.

In the bigger picture of selling a medical practice, the following issues will need to be thought through and likely negotiated by both the buyer and the seller before you can even consider putting together a contract.

1. What kind of sale is it?

With few exceptions, you will either be selling your corporate entity (S-Corp, C-Corp, LLC, etc.), or you will be selling the assets of your practice. The assets consist of tangible assets such as furniture, fixtures and the like; and intangible assets, such as intellectual property and goodwill. (See our post on practice valuation for more on the definitions of these terms.

If you are selling the parts that make the practice run, the assets, but perhaps retaining your company name or some parts of the business, you will likely do an "Asset Sale." If you are a sole proprietor, you will be doing an Asset Sale, though practices set up as corporations can also do Asset Sales and keep their corporate name after the deal is done, or choose to simply dissolve the corporate post-sale.

If you are selling the company, this is usually referred to as an "Entity Sale." You are selling the business entity itself.

There are big advantages and disadvantages depending you're your individual situation. These usually boil down to questions of legal liability and tax how taxes are calculated, so we highly recommend you get the advice of a trusted accountant and attorney when it comes to answering the questions inherent in the form your sale takes.

Whether you are considering buying or selling a medical practice, we are also happy to help you think through some of the legal and tax questions inherent in this decision. Check out our post on the advantages vs. disadvantages of Asset and Entity sales.

2. Show me the money! How will the practice be paid off?

When asked the question of whether the seller of a medical practice prefers to be paid up-front or over time, most would of course prefer to be paid the full balance as soon as the papers are signed. But like most large purchases, such as cars and homes, the reality is that you will most likely arrange to have some part of it paid upfront as a sort of down payment, and the rest paid over time in installments. And unlike buying a car or a house, which are both arms-length transactions with guarantees made by manufacturers and possibly involving middle-men or women (escrow agents), the sale and transfer of a medical practice is something that requires trust between the parties and will take time. Time to transition patients and employees and leases and utilities, and time to minimize attrition (link to a post on our suggestions for that).

Among our many recommendations for buyers is that they get as much of the payment up-front as possible. We have many other suggestions we'd be happy to talk about when it comes to payment structures, and we go into further detail on the details in another post. In the end, the way that the practice is paid off will be a significant defining quality of the final sales agreement.

3. How will you deal with employees?

As I write this, we are in the process of finalizing a deal for a very large practice in the Pacific Northwest. The sale involves both the sale of a medical practice, as well as the building it is housed in, and the practice has several key, loyal, long-term employees who play important roles in keeping the practice profitable. If you are buying a practice that has loyal, competent employees, an important question will be whether you want to keep those employees, or start anew with your own. Selling a medical practice may necessitate keeping employees, perhaps incentivizing them to work for your successor as part of a smooth sale. Like all of the other questions outlined here, the answers to these questions will form an important part of your sales contract.

Check out our post on employee options at sellingapractice.com.

4. Does the seller stay or go?

Related to the question above, the buyer of a medical practice may wish to have the seller stay on for a while as an employee or consultant for a given length of time. There are several considerations here, from the timeline during which the seller stays (months, years?), to the reasons why (help smooth the transition, pacify patients and assure employees). Depending upon the situation, the seller may want to get out ASAP, or, perhaps in the case of a larger entity like a hospital taking over a smaller practice, the buyer (the hospital) may want the seller (the practitioner) to stay for a while.

Check out our post on working after the sale at sellingapractice.com

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5. Will you have a non-competition agreement?

Most medical practitioners who have developed a solid practice will have a consistent stable of patients with whom they have created exceptional relationships. As practitioners, we know that our return patients form the backbone of our clinics, providing us with everything from word-of-mouth marketing to financial stability to the very pleasure we get out of the practice of medicine itself. So when it comes time to sell the practice, if you're not staying with the newly owners as an employee, will you want to keep practicing? And if so, where?

Most shrewd buyers are aware that your popularity as a practitioner is part of the value of your practice, and it's a reasonable assumption that they will want to have signed an agreement not to compete to preserve their investment. These agreements usually specify both a distance and length of time during which the seller will not compete with the practice they just sold.

These agreements also have a value when tax time arrives, so be sure to check with your accountant to see how you can allocate the value of the non-compete as part of your deal.

We have a separate post on non-competition agreements at sellingapractice.com

In Summary

Of course, there are many other considerations when it comes time to buy or sell a medical practice, but we find that most are subsets of the five big-picture items we discuss in this post. We recommend that you address these issues as early on in the process of buying or selling a practice as possible—even before you have an interested party on the other side. Having done so will help organize your thinking and get you ready to negotiate the finer points that lead to a successful, signed agreement, and a sale that closes.