

# Health Law Webinar

PE, or not PE, that is the Question

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& BYRON, P.A.

# Our Agenda

- Market Overview
- Growth/Exit Options
- Compensation Models
- Regulatory Considerations
- Long-Term Considerations
- Q&A

# Existential Questions. . .



- To sell or not to sell?
- Considerations...

# Physician Practice Market



- Concerns
  - Remaining Independent
    - Recruitment Challenges, Reimbursement, Costs, Access to Capital, Exit
  - Selling Out
    - Autonomy, Inefficiencies, Unwinding, Future Compensation, Loss of Control
- Market Trends
- Options: Remain Independent, Sell to Hospital/Health System, Sell to PE

# Trusted Advisors

- Key Staff
- Attorneys
- Accountants
- Investment bankers
- Peers



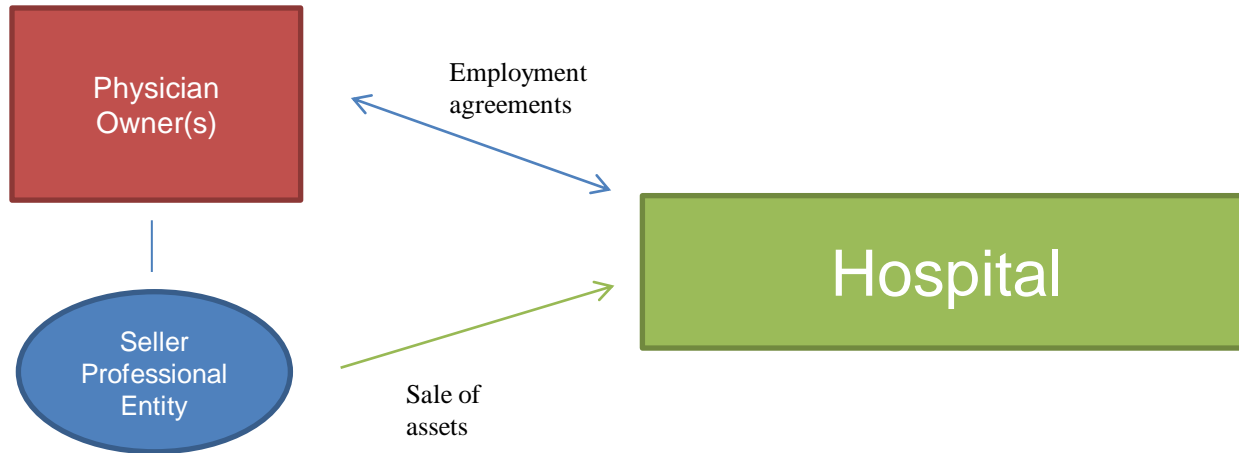
# Health System Market

- Considerations
- Market trends
- Options

# Health System Transactions

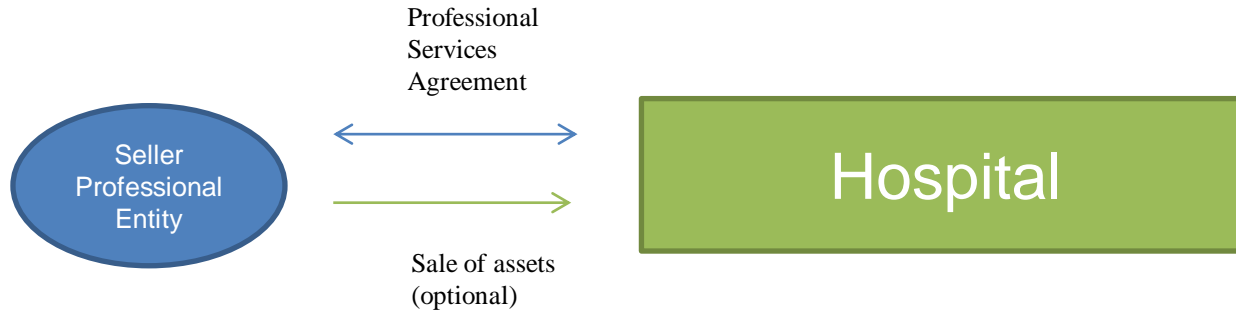
- Deal structures
- Valuation methodologies
- Compensation
- Common deal issues

# Sample Hospital Acquisition





# Sample Sale Plus Professional Services Agreement (PSA)



# What is a PSA?

- Agreement between two health care entities for the provision of professional services
- Examples:
  - Hospital/specialists
  - Primary care group/specialists
  - Hospital/physician group

# Critical Terms of PSAs

- Term length and renewal
- Termination rights
- Exclusivity
- Payment
- Non-competition
- Non-solicitation and no-hire
- Performance standards

# Other Options\*

- Hospital investment in the practice
- Different class of equity
- Participating debt
- Joint venture for under-arrangement services

\*Do NOT try these at home\*

# PE Market

- Considerations
- Market trends
- Options

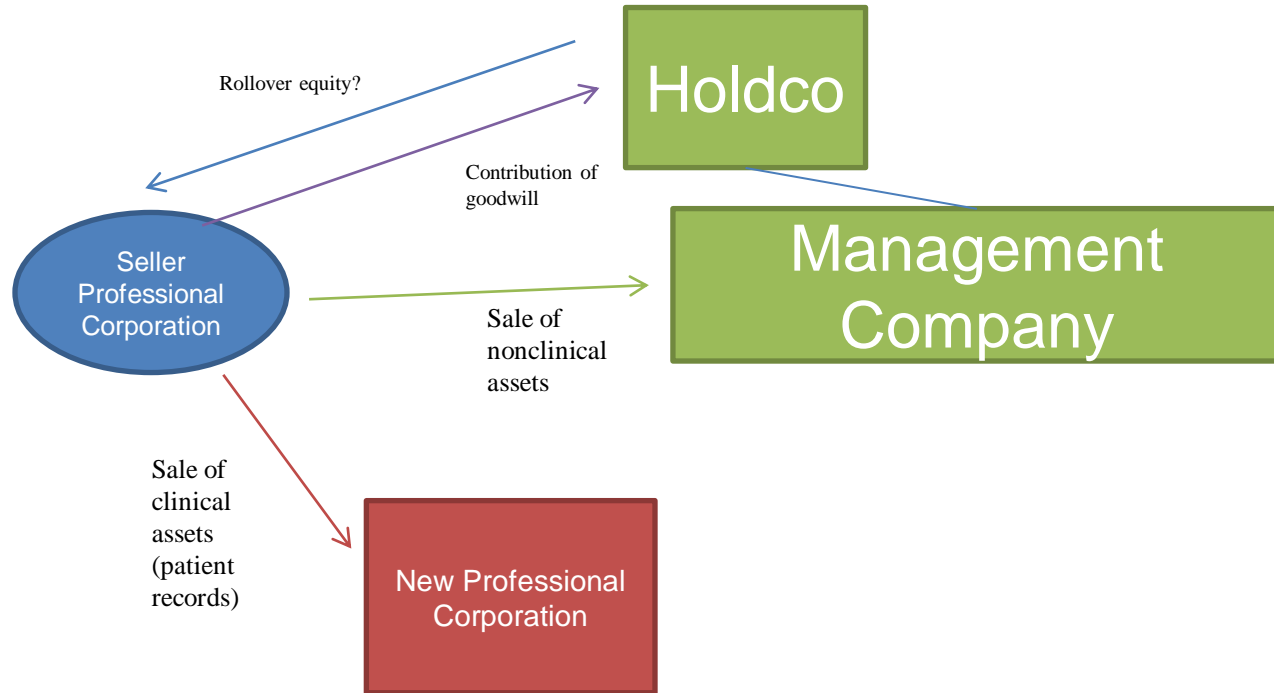
# PE Considerations

- Who is the buyer?
- What is the buyer's track record?
- How will the practice be operated?
- What is the exit plan?

# PE Transactions: Common Deal Issues

- Deal structures
  - Platform v. add-on transactions
- Purchase price
  - Rollover equity?
  - Earnout?
- Employment/compensation
- Restrictive covenants

# Sample Acquisition

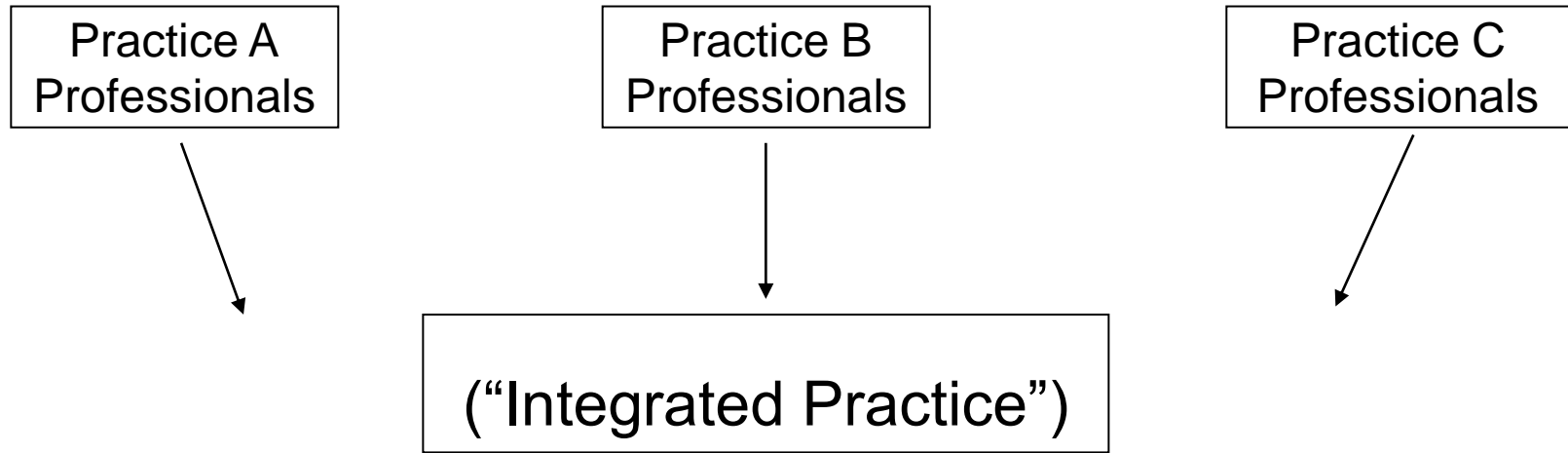




# Independent Practice Options

- Transaction options
  - Recruitment/succession plans
  - Practice sales
  - Merger (divisional merger)
  - Hospital (group practice option)

# Divisional Merger Structure



- Physicians become equal owners of the Integrated Practice
- Practice assets/liabilities become asset/liabilities of new Integrated Practice divisions

# Hospital/Health System Investment in Practice

- Separate class of stock/division
- Stark “group practice” requirements
- Other considerations...

# Long Term Considerations

- Health system/hospital
- PE
- Physician Practice

# Regulatory Issues

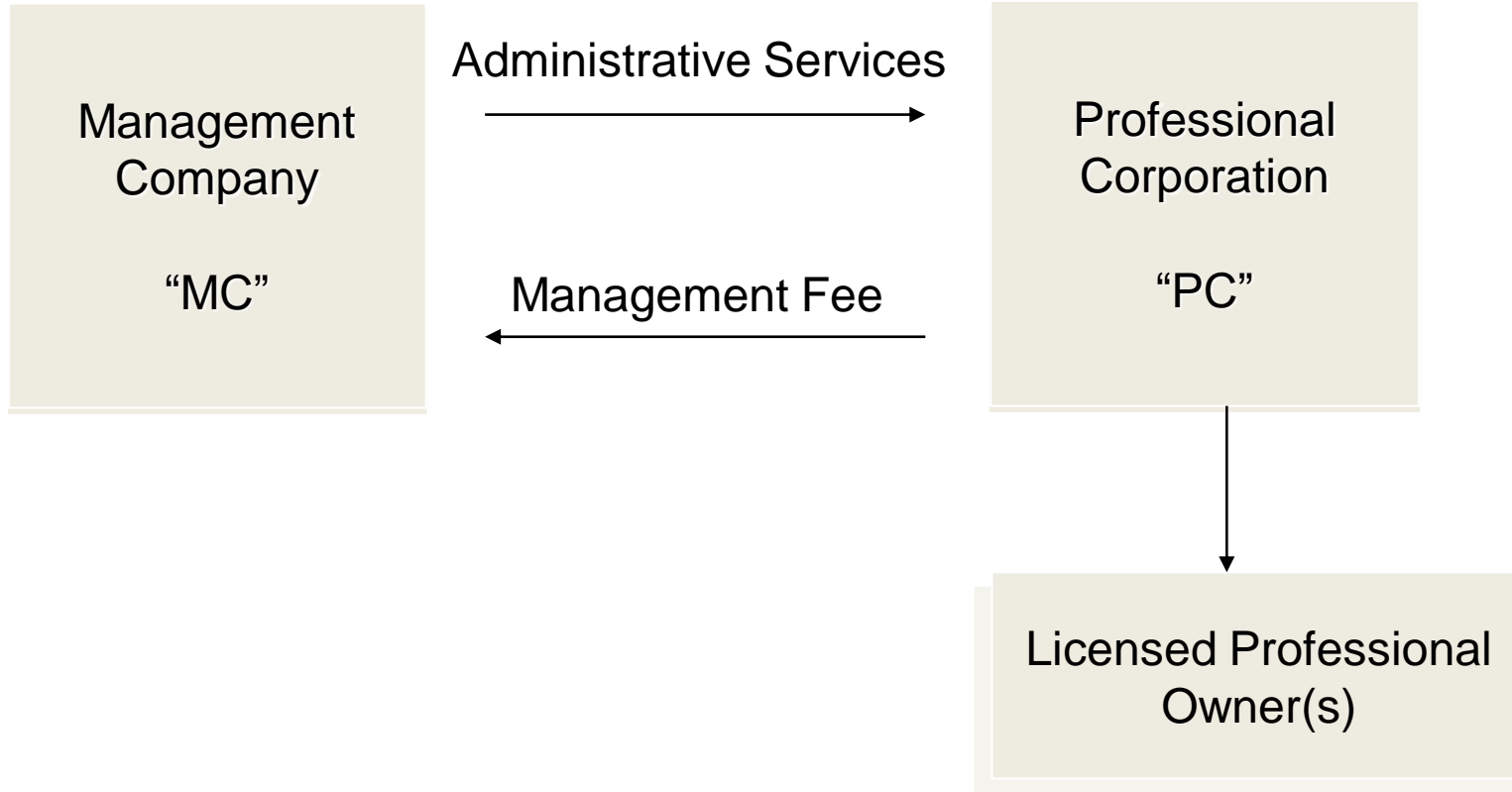
- Antikickback
- Stark
- Antitrust
- Tax exemption (for nonprofit tax exempt organizations)
- Corporate practice/licensing
- HIPAA/privacy laws

# Regulatory Issues

- Corporate Practice of Medicine (“CPM”) Prohibition
  - Prohibits corporations from employing professionals or owning professional practices
  - Applies to many disciplines (e.g., dentistry, nursing, veterinary)
- Need to consider when partnering with PE

# Regulatory Issues (CPM Cont.)

- Potential Ramifications for Violating the CPM Prohibition
  - Injunction against continued operation
  - Criminal prosecution
  - Arrangement is voided
  - Refusal to pay claims
  - Loss of “private practice”, “physician office” and similar exceptions from state licensing requirements





# Friendly PC Arrangement

- Common Aspects of Management Agreement
  - Long-term
  - Restrictions on termination
  - Restrictive covenant
  - Management fee
- Other Agreements re: Continuity of Ownership

# Health Information

- HIPAA
  - PHI may be disclosed in a “sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity.”
- State Law

# Health Information

- HIPAA policies and procedures
- Employee training
- Security risk assessment
- Breaches
- Business associate agreements

# Antikickback

- It is illegal to offer, solicit, make or receive any payment intended to influence referrals under a federal health care program.
  - “One purpose” test
- “Sale of Practice” Safe Harbor
- Not required to meet a safe harbor

# Antikickback

- Preparing for transaction
- Structuring the transaction
  - Earnouts
  - Compensation arrangements

# Stark

- Prohibits a physician from making a referral to a provider for “designated health services” if the physician has a financial relationship with the provider, unless an exception applies:
  - Isolated Transaction Exception
    - FMV
    - Not based on volume or value of referrals
    - Commercially reasonable agreement
    - No additional transactions between the parties for 6 months unless an exception applies (e.g. employment) and certain post-closing adjustments

# Stark

- Preparing for transaction
- Structuring the transaction
  - Earnouts
  - Compensation arrangements

# Questions?





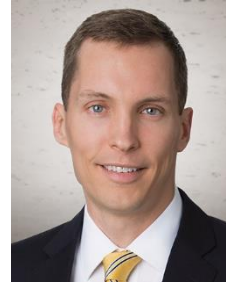
# Presenters



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