

## Healthcare Law

Flaster Greenberg has a long history of representing professional practices, healthcare providers, and businesses in the healthcare industry and recognize that the needs of our clients are as diverse as the clients themselves.

Drawing on the firm's many years of experience, our healthcare law attorneys represent segments of this industry that include physicians and physician groups, ambulatory surgery centers, home care and nursing providers, rehabilitation centers, assisted living residences and nursing homes, medical equipment companies, and other providers of healthcare services.

From the nuts and bolts of starting or acquiring a practice to the emergence of Internet-based healthcare businesses and healthcare "roll-up" companies, our healthcare law attorneys have extensive experience in the healthcare industry and healthcare law, allowing us to provide focused, practical, and efficient service to our clients. We know the practical as well as the technical aspects of the healthcare industry.

As a multidisciplinary law firm of attorneys whose practices focus on mergers and acquisitions, employment law, pension and benefit plans, taxation, bankruptcy, intellectual property and other related areas, Flaster Greenberg offers legal services to healthcare providers and related businesses beyond traditional healthcare law.

Scroll down to learn all the ways our healthcare law attorneys help clients.

### Representative Matters

- Successful defense of a non-resident pharmacist against civil claims by the New Jersey Attorney General for violation of state statutes regarding Internet sales of prescription drugs
- Providing legal support for the organization and expansion of medical practice groups

### Admitting and Terminating Partners

Changes in the ownership of a practice or other healthcare business can have profound effects on the professional and personal dynamics within the group. We recognize the tension inherent in such transitions and seek to minimize the stress and maximize the benefit to the partners and the business itself. Flaster Greenberg's knowledge of tax, ERISA, estate planning, corporate governance and the healthcare industry are all utilized to construct a practical plan for the

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transaction which recognizes and addresses each client's unique concerns.

### Ambulatory Surgical Centers and Ambulatory Care Facilities

By combining several complimentary practices in one location and sharing the cost of personnel, computers, and space, an ambulatory surgical center or ambulatory care facility can present healthcare providers with an efficient and cost-effective method for delivering services. At the same time, developing and operating a successful center often involves a number of complex and interdependent legal issues, ranging from state licensure requirements to real estate acquisitions to contractual relationships. Armed with knowledge and experience in all applicable fields, we are prepared to assist clients in the formation and operation of a successful ASC or ACF.

### Buying and Leasing Real Estate: Healthcare

For the healthcare practice or business, acquiring real estate can involve a traditional lease or building purchase, or a more complex arrangement such as a space and equipment sublease or a comprehensive management agreement. We assist with all varieties of real estate transactions, from the simplest to the most complex. In addition, we understand that many real estate transactions, especially those between referring providers, must be structured to comply with fraud and abuse regulations.

### Fraud and Abuse, Anti-Kickback Statute, Stark I & II and Other Regulations

An increasingly complex labyrinth of federal and state statutes and regulations governs the healthcare industry, with federal and state agencies continually scrutinizing healthcare providers. Our healthcare attorneys monitor and advise clients on statutes and regulations to ensure compliance with such complex laws as: the Medicare anti-kickback statute, Stark I and II statutes, the Federal safe harbor regulations, state anti-self referral laws, state insurance laws, and licensing board regulations. The day is long past when a healthcare practice or business can be safely operated without guidance as to the impact of these rules. Yet too often, legal advice relating to these rules takes the form of telling the client what he or she cannot do. At Flaster Greenberg, we adopt a more positive and pro-active approach, understanding the business objectives of our client and finding a way to achieve those objectives within the applicable legal framework.

### Healthcare Contracts

Our attorneys have extensive experience in preparing and reviewing a wide range of contracts used in the healthcare industry. These include:

- Shareholder Agreements
- Office and Facility Leases
- HMO Contracts
- Hospital Contracts
- Employment and Restrictive Covenant Agreements
- Practice Acquisition Agreements
- Buy-In Agreements.

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In negotiating and drafting agreements between physicians and other healthcare providers, we structure these agreements to minimize exposure to liability where relationships are scrutinized for federal and state fraud and abuse, anti-kickback, Stark Anti-Referral laws, and related requirements. Because of our experience and our large database of existing contracts, we provide tremendous efficiency to our clients.

### Healthcare Employer-Employee Agreements

Our experience negotiating and preparing agreements between employers and employees in the healthcare industry is substantial. We are in a position to understand the needs and desires of both parties to the agreement and are therefore often able to cut through time-consuming and inefficient negotiations. We understand the need for employers to protect their goodwill and other intangible assets, and we craft appropriate restrictive covenants for that purpose. We also implement stock option plans, bonus plans, and other compensation arrangements to attract and retain valuable employees.

### Healthcare Estate Planning

We approach the healthcare practice or business as an integrated whole, where the interests of the individual owners are as meaningful as the interests of the business itself. In addition to representing the business or practice, we provide a full range of estate planning and wealth preservation services to the individual practitioner or owner.

### Healthcare Litigation and Dispute Resolution

Flaster Greenberg attorneys have substantial experience representing healthcare providers in private disputes and litigation, including:

- Licensing issues
- Staff privileges
- Accreditation challenges
- Insurance coverage
- Breach of contract
- Independent physician/group practice disputes
- Employment and restrictive covenant litigation
- Compensation disputes.

Recognizing that litigation can entail substantial costs - not only in money, but also in time and other resources - we seek to avoid the courts by mediating disputes in a cost-effective manner. Our understanding of the unique concerns and pressures in the healthcare field can help to settle disputes and preserve working relationships by facilitating solutions palatable to both sides.

## Healthcare Roll-Up Companies

A "roll-up" transaction is one in which smaller companies in a traditionally fragmented industry are acquired and merged to become part of larger business with expanded profits and payroll. At one time, when Wall Street's appetite for roll-up IPOs seemed insatiable, nearly every healthcare specialty and subspecialty was the target of one roll-up company or another. When Wall Street's appetite first slackened and then disappeared, new roll-up companies stopped appearing and many existing transactions fell apart. Through the ups and downs of Wall Street, the attorneys at Flaster Greenberg are prepared to deal with all of the issues these transactions raise, whether that means representing new roll-up companies, representing providers selling to a roll-up, or representing providers whose roll-up unraveled.

## HIPAA Privacy and Security

Our Healthcare Practice Group attorneys counsel clients on a regular basis regarding federal and state laws related to patient privacy and security rules that fall under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). We provide a variety of services to our clients including a Privacy and Security Plan with the necessary implementation checklists and audits; forms to ensure compliance (Authorizations, Notices of Privacy Practices and Business Associate Agreements); and educational seminars for staff.

## Internet-Based Healthcare Businesses

The growing popularity and importance of the Internet is having a profound effect on all industries, and healthcare is no exception. New methods of doing business and communicating with customers evolve overnight, and the rapid pace of innovation itself raises new challenges and opportunities. Whether you are a provider seeking to establish a presence online, a business seeking to protect its domain name, or an entrepreneur developing the next big dot-com, Flaster Greenberg can offer knowledge and experience fast-forwarding your business in reaching out for the new technology frontiers.

## Licensing Board Representation

Given the complexity of the statutes and regulations governing the healthcare industry, it is no surprise that providers are sometimes called before licensing boards to defend their professional or business practices. In addition to their familiarity with the statutes and regulations themselves, our attorneys provide effective representation of providers in these proceedings. By its nature, an order to appear before a licensing board is almost always discomfiting to a provider, especially when the reason for the order is not disclosed. Whatever the issues are and whether the stakes are small or large, the provider can benefit from the capable representation of a Flaster Greenberg attorney.

## Lobbying

Our representation of the healthcare industry extends beyond the interpretation and implementation of current laws. Where appropriate, lawyers at Flaster Greenberg also lobby the legislature on behalf of clients. Activities in this regard may include contacting key legislators or even drafting legislation for the consideration of the legislature.

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### Management Companies

The healthcare industry is comprised not only of licensed providers, but also a variety of other participants. Frequently, individuals or entities that are not licensed play important roles in healthcare through management companies and other service providers. Flaster Greenberg has extensive experience in structuring arrangements between licensed and unlicensed entities and in the preparation of management agreements and other related contracts. In addition, we represent management companies themselves in mergers and acquisitions and other business transactions.

### Medical Intellectual Property and Technology

Our Intellectual Property and Technology attorneys help facilitate the identification, acquisition, transfer, and protection of intellectual property. They also have experience in prosecution of domestic and foreign patent and trademark applications and in the litigation of intellectual property issues in the medical area. Our Intellectual Property attorneys counsel physicians, hospitals, universities and other medical clients regarding medical devices, surgical procedures, treatment methods, pharmaceuticals and other medical products and inventions. Our Corporate, Healthcare and Litigation attorneys work closely with our Intellectual Property attorneys in handling acquisitions involving medical and pharmaceutical technology, in strategic planning for litigation avoidance and to enforce and defend claims involving intellectual property when circumstances give rise to litigation.

### Multidisciplinary Practices

Both New Jersey and Pennsylvania have permitted multidisciplinary practices between licensed health care providers for a number of years. Flaster Greenberg healthcare law attorneys have been at the forefront in advising clients as to the legal requirements of such practices, and in creating legal structures in which such practices may be operated. We realize that the multidisciplinary practice is inherently no different than any other healthcare partnership and can provide significant benefits to all participants if created and operated within applicable legal guidelines. Like any other healthcare partnership, the multidisciplinary practice can benefit from our strong, well-rounded legal representation.

### Ownership Agreements

One of the greatest pitfalls for any business is disagreement among owners, and healthcare, with the intense personal and professional involvement required of its participants, can be especially prone to discord. Our extensive focus and experience in this area allows us to recognize potential conflicts and points of dissension. We can propose, implement, and document both innovative and time-tested solutions to help optimize partnerships and working relationships.

### Sales, Mergers, and Acquisitions

Whether because of retirement, industry consolidation, or other reasons, healthcare practices and businesses are bought, sold, and merged daily. We provide a full range of merger and acquisition (M & A) services to our healthcare clients. From the initial negotiations to the closing, we appreciate that the transfer of ownership of a practice involves more than a simple transfer of assets. Many areas of the law come into play in the sale or merger of a practice, including corporate law, ERISA, federal and state tax law, antitrust issues,

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third-party reimbursement law, and fraud and abuse laws. Our attorneys assist in determining how best to structure an M & A transaction for a healthcare business from a corporate, tax, liability, antitrust, regulatory, and often estate planning perspective when dealing with a closely held business. The knowledge and experience of our attorneys in these areas are all brought to bear whether representing the buyer or the seller in negotiations and documentation. We also can expedite most regulatory aspects of the M&A transaction, or the businesses involved where obtaining healthcare licenses, registrations and permits are necessary. Read more about our M&A practice [here](#).

### Starting a Practice or Business

For the healthcare provider starting a practice or the businessperson starting a healthcare business, the details of the start-up process can be daunting. We help clients unravel and understand these details, including choosing the form of entity, deciding whether a professional corporation is required, applying for loans and other start-up assistance, maximizing the available tax benefits, negotiating with hospitals and HMOs, hiring employees, reserving, and protecting a business name, and structuring arrangements with partners.