FLASTER GREENBERG
Attorneys at Law | A Professional Corporation

Healthcare

The healthcare industry group at Flaster Greenberg is an integrated, interdisciplinary team of attorneys that draws on a diverse number of legal specialties. Flaster Greenberg has a long history of representing a broad range of clients in this highly regulated industry and we understand the regulatory and legal forces needed to address the dynamic and complex issues particular to numerous healthcare services providers. As economic, legislative and regulatory forces create challenging times, our experienced attorneys take proactive, creative approaches so healthcare clients can remain vital during trying times of change.

We produce cost-effective and practical solutions to difficult legal, operational and strategic issues that face our clients. Our healthcare clients include:

- Ambulatory care centers, ambulatory surgical treatment centers, home health agencies and diagnostic imaging centers
- Subacute care facilities, residential treatment centers and rehabilitation agencies
- Dialysis centers, cancer centers and disease management companies
- eHealth companies providing IT solutions and medical education to providers and payors
- Group purchasing organizations
- Individual physicians
- Single-specialty and multi-specialty physician and dental group practices
- Physician practice management companies
- Nursing providers and nursing organizations
- Retirement, long-term care and assisted living facilities
- Equity investors, lenders, and investment banking firms financing transactions for healthcare companies
- Businesses that design, manufacture and distribute medical equipment, devices and pharmaceuticals
- For-profit/nonprofit joint ventures

From starting or acquiring a practice to the emergence of Internet-based healthcare businesses and healthcare "roll-up" companies, our attorneys have extensive experience with common and critical issues, and produce cost-effective and practical solutions to legal, operational and strategic challenges unique to this industry. As a multidisciplinary law firm of attorneys whose practices focus on asset protection, employment law, pension and benefit plans, taxation,

Attorneys

Thomas J. Durling
Allen P. Fineberg
Stephen M. Greenberg
Steven S. Poulathas
Alma L. Saravia
Alan H. Zuckerman

financial restructuring, intellectual property, mergers and acquisitions, and other related areas, Flaster Greenberg brings sophisticated expertise in relationships with physicians, healthcare providers and related businesses beyond traditional healthcare law. We provide our clients with a 360 degree perspective, which is outlined in brief in the following substantive areas.

Starting a Practice or Business

For the healthcare provider starting a practice or the businessperson starting a healthcare business, the details of the startup 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 startup assistance, maximizing the available tax benefits, negotiating with hospitals and health maintenance organizations, hiring employees, reserving and protecting a business name, and structuring arrangements with partners.

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.

Sales, Mergers and Acquisitions

Whether because of retirement, industry consolidation or other reasons, healthcare practices and businesses are bought, sold and merged daily. Our corporate attorneys provide a full range of merger and acquisition (M&A) services to our healthcare industry clients, from thorough due diligence to bare any legal exposure in joint venture partners or acquired entities during 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, 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.

Management Companies and Related Businesses

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. Our attorneys have 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.

Trust and 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, our attorneys provide a full range of trust and estate planning and wealth preservation services to the individual practitioner or owner.

Ownership Agreements

One of the greatest pitfalls for any business is disagreement among owners, and healthcare in particular, 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 allow 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.

Multidisciplinary Healthcare Practices

Both New Jersey and Pennsylvania have permitted multidisciplinary practices between licensed health care providers for a number of years. Flaster Greenberg 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.

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. Our knowledge of tax, ERISA, estate planning and corporate governance within the healthcare industry are all utilized to construct a practical plan for the transaction which recognizes and addresses each client's unique concerns.

Labor and Employment Issues

Our labor and employment attorneys have extensive experience representing clients in the healthcare industry, including the largest cardiology group in Pennsylvania and local and regional physician practice groups. Their practical advice to help clients avoid the high costs of litigation provides counsel on a comprehensive range of matters including:

- Classification of employees as exempt or non-exempt

- Wage and hour issues, hiring and firing, and compliance with federal and state anti-discrimination laws
- Management of overtime and temporary employee issues
- Claims of wrongful termination and discrimination
- Proactive labor relations strategies to assist healthcare industry clients in remaining union free
- Traditional union labor issues
- Enforcement of business interests when threatened by violations of non-competition, non-solicitation, confidentiality and other employment agreements
- Onsite training for managers and supervisors in appropriate interview techniques, employee reviews and disciplinary procedures
- Providing onsite training of physicians, practice managers and other healthcare providers in issues that arise in a traditionally male-dominated industry in which female employees are a considerable part of the labor force
- Preparing and reviewing employee manuals, handbooks, employment applications, termination letters and other employment-related documents

Lobbying and Legislative Matters

Our representation of clients in the healthcare industry extends beyond the interpretation and implementation of current laws. Our attorneys monitor federal and state healthcare laws and regulations to provide clients with up-to-date information regarding important legislative developments affecting the healthcare industry. We release client alerts detailing important matters that may pose risks or opportunities. Where appropriate, we lobby on behalf of clients and industry groups, including contacting key legislators with regard to legislative proposals being considered. We even draft legislation for the consideration of the legislature.

Litigation and Dispute Resolution

We 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.

Contracts

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

- Shareholder agreements
- Employment and restrictive covenant agreements
- Office and facility leases
- Practice acquisition agreements
- HMO contracts
- Buy-in agreements
- Sale and leaseback transactions
- Hospital contracts

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.

Operational and Regulatory

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 attorneys monitor and handle a multitude of healthcare regulatory and operational issues, and advise clients on statutes and regulations to ensure compliance with such complex laws as the HIPAA patient privacy and security compliance; the Medicare anti-kickback statute and Medicare, Medicaid and third-party payor reimbursement matters; Stark I and II statutes; self-referral prohibitions; fraud and abuse analysis and restriction; the federal safe harbor regulations; 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. We adopt a more positive and pro-active approach, understanding the business objectives of our clients and finding a way to achieve those objectives within the applicable legal framework.

In order to structure financial relationships and joint ventures to comply with federal and state laws, we counsel clients on complex laws involving physician self-referral and fraud and abuse restrictions and those relating to the corporate practice of medicine and fee splitting. Assistance with operational requirements pertinent to healthcare facilities is provided to clients when guidance is needed in establishing medical staff bylaws, staff privileges and professional liability requirements. Confidentiality, advance directives, EMTALA transfers, informed consent and anti-discrimination and accessibility laws are among the patient care issues handled by our attorneys.

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 discomforting 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 our capable representation.

Buying or Leasing Real Estate

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.

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.

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 a 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.

Internet-Based Healthcare Businesses

The 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 or a business seeking to protect its domain name, Flaster Greenberg can offer knowledge and experience, fast-forwarding your business in reaching out for the new technology frontiers.

Medical Staff Issues

Flaster Greenberg's healthcare attorneys represent hospitals and medical staffs in the preparation of medical staff bylaws, rules and regulations. Clients receive counsel and advice regarding antitrust issues, as our substantial experience also comes to bear in representing physicians in matters involving credentialing, peer review hearings and appeals.

Medical Intellectual Property and Technology

Our Intellectual Property and Technology attorneys help facilitate the identification, acquisition, transfer and protection of intellectual property. They also assist healthcare clients in the negotiation and implementation of software and technology licensing maintenance, development and outsourcing arrangements.

They 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 attorneys counsel physicians, hospitals, universities and other medical clients regarding medical devices, surgical procedures, treatment methods, pharmaceuticals and other medical products and inventions. We also represent companies and developers that have created healthcare applications, medical software and technology-based services.

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.

Taxation

Our integrated approach to clients in the healthcare industry is often reflected in our work on tax matters as our attorneys routinely advise healthcare clients on tax considerations in business formation, unrelated business income tax and nonprofit to for-profit conversions, in addition to the varied tax issues that arise in structuring taxable and tax-free acquisitions and joint ventures. Our tax expertise is also a valuable asset we provide in connection with corporate restructurings and spin-offs.