

Mergers and Acquisitions of Radiology Practices

The Deal Process: Start to Finish

BY RACHEL H. YAFFE, ESQ., AND RICHARD S. COOPER, ESQ.

Whether a radiology practice is large or small, the group may be thinking about entering into a merger or acquisition in the near future based on desire or need. For some radiology groups, mergers and acquisitions may be part of a growth strategy designed to increase a geographic footprint, market penetration, or bargaining power. For others, a desire to retire or an inability to either afford or justify certain capital investments needed to remain competitive may lead them to consider selling their radiology practices. Moreover, changes in the healthcare industry may be a factor that drives some to consider selling their practices in the near future.

This article will provide an overview of the elements of a typical merger or acquisition transaction for a radiology practice.

Preliminary Matters

For those radiology practice owners and executives who may be considering selling their practice, a number of preliminary matters should be addressed in preparation for the sale. First, potential sellers should carefully consider whether they really wish to enter into the sale process. The sale process is lengthy, time-consuming, and costly, and often stressful and demanding on the practice's management. Thus, potential sellers should not undertake the process unless they are serious about selling and have a realistic expectation of what they will receive as the purchase price.

As part of the preparation, sellers should begin by assembling an experienced transaction team. Typically, the team includes key members of the practice's management, as well as experienced healthcare mergers and acquisitions attorneys and accountants.

Another prudent step is undertaking a tax analysis to determine the implications of the sale on both the selling practice and its individual owners. Sellers will also want to use this preparatory phase to make sure that the practice's books and records are in good order, in preparation for the buyer's due diligence review (discussed below). Also, the seller should identify and correct known internal issues before the deal is well underway in order to prevent a delay in the sale process, create a "deal

breaker" that will be discovered by the buyer during the due diligence review, or decrease the purchase price.

Finding a Buyer

As a seller begins the process to find a buyer, the seller must first consider the approach that it desires to take. Some larger groups are often sold through auction-like processes, where a number of bidders are contacted and invited to participate. The advantage of this type of process is that it typically drives prices higher by introducing competition into the bidding process. However, this type of process has certain disadvantages, such as a longer time frame and an increased risk of a breach of confidentiality regarding the transaction.

For some sellers, a more targeted approach, with limited participants, may be more desirable. If a fair purchase price can be obtained without involving multiple potential buyers, the process may be completed faster and with less risk to the ongoing business operations.

The process of finding a buyer typically requires the seller to provide the potential buyers with confidential information regarding the business in order for the interested parties to evaluate whether the selling group is even of interest and the amount that they will be willing to pay. However, the selling practice should only provide this confidential information after the potential buyers have signed nondisclosure agreements.

The next big step is for the seller and the selected buyer to enter into a Letter of Intent—a statement of key terms for the proposed transaction. Typically, in this phase of the process, the basic structure of the transaction and the purchase price are determined.

Due Diligence

In almost all sale transactions, the buyer will conduct a review and investigation of the seller's business. The purpose of this review is to confirm the information previously provided by the seller and to allow the buyer to gain a thorough understanding of the business to determine whether it is truly willing to buy the business on the terms identified in the Letter of Intent. The buyer will want to confirm that it is not going to inherit any unex-

An orderly sale process is essential for both buyers and sellers. Sellers will want to take steps to make sure that the transaction is completed in a timely manner while minimizing risk to the ongoing business operations. Buyers will want to make sure that the value that they are receiving from the seller's business is commensurate with the purchase price and that the buyer's goals for entering into the sale will truly be met post-closing.

pected liabilities or problems, such as healthcare regulatory issues or lawsuits. The seller will be required to assemble many documents and voluminous amounts of financial and other information to provide to the buyer.

Upon the completion of the due diligence process, the buyer will either confirm that it is willing to move forward with the transaction 'as is' or, if the due diligence review reveals troubling information, the buyer may demand changes to the transaction (such as a reduction of the purchase price) or may not be willing to proceed with the transaction altogether.

Negotiating the Contracts

The parties will need to negotiate and agree on certain written agreements which will govern the transaction. This will include a purchase agreement, such as a Stock Purchase Agreement or an Asset Purchase Agreement. In addition, there may also be various other agreements, such as non-competition agreements between the buyer and the owners of the selling practice and new employment agreements for the selling owners. Typically, the negotiation and drafting of these agreements is done simultaneously with the buyer's due diligence review.

Closing

At the closing, both sides will sign numerous documents, including those necessary to transfer ownership of the purchased group to the buyer, as well as all ancillary agreements and other documents needed for the transaction. Once signatures have been obtained and exchanged between the parties, the transfer of title will occur and the buyer will pay the purchase price.

Post-Closing

Although the vast majority of the work associated with the transaction will terminate upon the completion of the closing, certain aspects of the sale will require some attention after the closing. For example, there may be purchase price adjustments based upon the final balance sheet or net working capital position of the seller's business as of the closing date.



RACHEL H. YAFFE, ESQ.,

is an attorney of the law firm McDonald Hopkins LLC and is a member of its National Healthcare Practice Group. Rachel can be reached at 300 N. LaSalle, Suite 2100, Chicago, IL 60654; 312.642.2856; ryaffe@mcdonaldhopkins.com.



RICHARD S. COOPER, ESQ.,

is a member of McDonald Hopkins LLC. Rick is the manager of the firm's National Healthcare Practice Group and is co-chair of its Healthcare Restructuring Practice Group. He also serves on the firm's board of directors. Rick can be reached at McDonald Hopkins LLC, 600 Superior Ave., East, Suite 2100, Cleveland, OH 44114; 216.348.5438; 216.348.5474 fax; rcooper@mcdonaldhopkins.com.