

## **GROUP PRACTICE; IS IT TIME TO RECONSIDER THIS OPTION?**

Stephen H. Siegel, Esq., Ruden McClosky<sup>\*</sup>

Sole practitioners and physicians who are members of small group practices (for purposes of this article, a “small group” has fewer than 6-8 fulltime physicians) may want to revisit the idea of forming, joining and/or expanding their group practices. Physicians have been bombarded with articles and presentations touting the advantages of group practices in general and so called “super groups” in particular (i.e., groups that are owned by more than 25 physicians). Many physicians have resisted the “urge to merge” for a variety of reasons. Some physicians assumed it would not be to their economic advantage, others have been wary because of the legal uncertainty surrounding group practices, and other physicians perceived joining a group as a loss of autonomy. These physicians may want to reevaluate their decisions in light of the current business and legal environment in which they are practicing medicine.

### Changing Landscape.

Over the past ten years the legal and business environment in which physicians practice medicine has changed dramatically, and not for the better. Probably the changes that have had the most adverse impact include:

1. reimbursement rates that either are being reduced or subject to minimal increases;
2. ever increasing overhead/or operating costs;
3. the escalating cost of malpractice insurance;
4. consolidation in the managed care industry, resulting in fewer payors with increased bargaining power;
5. the Florida and federal physician self-referral restrictions that limit the ability of sole practitioners and small group practices to generate ancillary service income;
6. increased scrutiny from federal and state agencies (for example, the OIG, FBI, AHCA, and MFCU);
7. the growing number of qui tam Relators (i.e., “Whistleblowers”);

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<sup>\*</sup> Mr. Siegel has been designated as Board Certified in Health Law by The Florida Bar. He is resident in the Miami office of Ruden McClosky and currently serves as chair of the firm’s Health Law Practice Group. Mr. Siegel can be contacted at either (305) 789-2783 or Stephen.Siegel@Ruden.com.

8. An increasingly complex Florida and federal scheme for regulating the business of the practice of medicine (for example, HIPAA, CLIA the Florida clinic registration and medical records ownership requirements); and
9. Increasing pressure to invest in and maintain both software and hardware in order to submit electronic claims and create electronic medical records.

At the same time these developments are making it increasingly difficult to maintain a solo or small group practice, other considerations are making group practices a more appealing alternative. One has been the development of guidelines and interpretations that provide much greater legal certainty in determining which group practice arrangements satisfy the federal and Florida self-referral restrictions. With the adoption of the so called "Stark II, Phase II" Final Rule, the federal government provided important clarification about how this complex scheme applies to physician group practices. The Board of Medicine has begun to look to this federal scheme when it is asked to apply the Florida Patient Self-Referral Act and recently has done so in ways that harmonize its provisions with the federal statute. With this increased clarity, the opportunities for group practices to take advantage of both jurisdictions' so called "in-office auxiliary services exception" have increased.

Another development that is making the group practice alternative more appealing is the growing number of group practices. Many of these new groups have increased their in size, prospered, and demonstrated that practicing in this form is not only possible but can be satisfying for many physicians. Many physicians have found that joining a group does not require radical changes in their well-established practices. The success of these groups has demonstrated that there are advantages to coming together.

The rest of this article discusses these advantages. While some of them are widely recognized, other advantages are not. An increasing physicians who practice alone or as members of a small group know colleagues who are members of larger group practices. As a consequence, they are becoming more comfortable with the idea of practicing as part of a large group practice and are reexamining the benefits of practicing medicine in this form.

#### Advantages of a Group Practice.

For many physicians the opportunity to generate income from ancillary services probably is the primary motivation for them to explore the large group practice option. A sole practitioner or small group may not be able to operate an ancillary service (for example, a clinical laboratory or diagnostic imaging center) profitably, because they do not have enough patients for whom it is medically

reasonable and necessary to order that ancillary service. They also may not have the financial resources needed to build, equip, staff and finance the start-up period necessary for many ancillary services to become profitable.

In contrast, a large group practice is more likely to have the patient demand that will enable it to provide one or more ancillary services profitably. A large group also probably is in a better financial position to finance the costs that must be incurred in starting up a new ancillary service. Equally important, these entities frequently have in-house personnel or outside consultants who can help them assess whether it makes financial sense to invest in that ancillary service in the first place.

Sole practitioners and small practices generally are at a distinct disadvantage in dealing with managed care organizations. In many instances these practices do not know whether their current managed care contracts make economic sense. They also are unable to negotiate more favorable terms, because they lack bargaining leverage as well as the tools and knowledge to conduct a thorough financial analysis that will enable them to evaluate which managed care contracts make economic sense. It is not unusual for sole practitioners and small practices to contract with managed care organizations indiscriminately, and accept terms and reimbursement levels that are unfavorable. One consequence of this lack of information and bargaining power is that these practices can find that a very significant portion of their patients are enrollees of these same managed care organizations.

A large group practice usually has the resources to identify which managed care contracts make sense for its members. In some cases it may make sense for only some of the group's members to participate in a particular managed care organization's network, in which case they might join the payers' panel while the other physicians in the group do not. Large group practices also frequently are able to negotiate more favorable terms than those offered to smaller groups and sole practitioners. While there are many possible reasons for this greater negotiating leverage, some of the more common ones include the fact that the group's physicians provide services to a larger number of a payer's enrollees, offer services over a wide geographic area, or are comprised of a significant number of the physicians in the area who practice a particular specialty.

The changes in the legal and business environment identified above are make it increasingly difficult for sole practitioners and physicians in a small group practice to do what they do best, practice medicine. Instead, these physicians are being forced into roles that are uncomfortable and, in many instances, for which they are not appropriately trained. These additional roles include:

- (i) managed care contract negotiator and administrator;

- (ii) HIPAA privacy and security officer;
- (iii) corporate compliance officer;
- (iv) chief financial officer;
- (v) director of personnel;
- (vi) chief information/technology officer;
- (vii) medical director; and
- (viii) chief executive officer.

For physicians, who already are attempting to keep up with the latest developments in their practice areas and provide the highest quality of appropriate medical care to each patient, trying to juggle these additional balls can become overwhelming. In many cases one or more of these balls gets dropped. When that happens the consequences can be severe and very disruptive as, for example, when the physician receives a letter notifying them that the Office of Inspector General is going to audit their practice, finds that the billing clerk is consistently submitting claims for a higher level of Evaluation & Management service than is supported in patients' medical records, or discovers that someone in the office has been embezzling funds.

A great deal is written about the administrative cost savings that can be realized when physicians join a group practice. While this may be true, perhaps a better perspective is to recognize the administrative efficiencies and benefits that large group practice members can realize. A large group practice is much more likely to be able to afford to retain an administrative staff whose members have the training and can focus on its business operations, while the physicians focus on practicing medicine. In this complex legal and financial environment (with no signs that things are going to get easier soon) having well trained support staff is an important consideration in ensuring the success of any health care business.

Some of the other potential administrative efficiencies and benefits that can be realized by a large group practice include the capacity to develop, implement and maintain electronic billing and electronic medical records systems and take advantage of group purchasing discounts. In having staff members who are not "jacks of all trades, masters of none", a large group practice is better able to ensure that the group's physicians and staff receive appropriate and timely training, a critical component of every compliance plan. In addition, a large group practice is in a better position negotiate to more affordable rates for malpractice insurance and, as a practical matter, has options for satisfying its

physicians' financial responsibility obligations that are not available to sole practitioners or small groups.

A large group practice also can regularly recruit physicians who are completing their residency programs. The reason is that a large group practice is both more likely to have a volume of work that will support a new practitioner and the resources to retain that physician until such time as he/she develops a self-sustaining medical practice. In this manner, a large group practice is in a better position to create "leverage", which should result in an increase the physician-owners' total compensation.

This same ability to recruit new physicians provides its physicians with one benefit they might not otherwise be able to obtain: a ready buyer when a physician decides or is forced to retire or reduce his/her work load. Whether it is a corporation, partnership, limited liability corporation, or limited liability partnership a group practices' organic documents (that is, its bylaws, shareholders agreement, partnership agreement, or operating agreement) should address the issue of how a physician may have his or her interest in the practice entity redeemed, thereby effectively selling his or her practice to the group. The larger the group, the greater the likelihood that it will have the financial resources needed to honor that commitment to its owners. Indeed, a successful group practice that recruits and retains younger physicians who are building both their individual practices and the practice of the group as a whole, will sustain its viability into the future and thereby guarantee the ability of the group to purchase a departing member's practice for what the parties already have agreed to be a fair price.

In the past, many physicians chose not to joint groups, particularly large group practices, for a variety of reasons. Some feared a loss of their independence. Others were concerned that the government would radically change the self-referral statutes' favorable treatment of group practices. Still other physicians viewed large group practices as a fad that would not survive for long.

A combination of increased legal certainty and adverse economic and regulatory pressures is making it increasingly difficult for sole practitioners and small groups to succeed. At the same time, the success of those large group practices which have been formed has demonstrated that this is not a fad and that many of the reasons for not joining a group practice can be addressed in a satisfactory manner. For all of these reasons, an increasing number of physicians are once again reconsidering the question of whether to join a large group practice.