



## ANATOMY OF THE HEALTHCARE TRANSACTION

UT LAW CLE

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## FOCUS OF DISCUSSION

- Presentation Focuses on Transactions Involving Hospitals That Are Operational
- Presentation Does Not Address Transactions Involving Shutted Facilities or Hospitals in Bankruptcy/Insolvency
- Thus, Presentation Will Not Discuss Additional Complexities That Arise Through Bankruptcy/State Insolvency Law

## ACQUISITION DEAL STRUCTURE

Asset Transaction vs. Stock Transaction

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## BEFORE THE TRANSACTION DOCUMENTS

- A. Confidentiality/ Non-Disclosure Agreement
  - Add a Stand-Still?
- B. Letter of Intent
  - Exclusivity?
- C. Term Sheet
  - Binding vs. Non-Binding?
- D. Texas Disciplinary Rule of Professional Conduct (“Ethics Rules”) 1.05: Confidentiality of Information
- E. Ethics Rules 1.06 (Conflict of Interest: General Rule) and 1.07 (Conflict of Interest: Intermediary)

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## NOW THE WORK BEGINS: DUE DILIGENCE

- A. Work Rooms/Data Rooms/War Rooms/Need for Analytic Teams
- B. General Health Care Laws Affecting Transactions:
  - Anti Kickback Statute (and state equivalents); 42 U.S.C. § 1320a-7b(b); Tex. Occ. Code § 102.001 et seq.
  - Stark Law (and state equivalents); 42 U.S.C. § 1395nn
  - False Claims Act (and state equivalents)
  - HIPAA (and state privacy rules)
  - State and Federal Permits and Licensing
  - Medicare/Medicaid Program Requirements (including overpayment rules)
  - Billing/Collection/Reimbursement
  - Antitrust: FTC/HSR
  - Tax and Tax Exemption Laws and Issues

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## NOW THE WORK BEGINS: DUE DILIGENCE

- C. Physician Relationships
  - Very important due to potential liability exposure; not as immaterial as they used to be
  - Independent Contractor
  - Leasing
  - Employment
  - Medical Directorships/Call Coverage Arrangements
  - Compliance/Coding Audits
  - Identified Overpayments
  - Cost Report Analysis (Rural Health Clinics)
  - Ethics Rules 1.06, 1.07, and 1.09 (Conflict of Interest: Former Client)

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Title search: Anatomy of the Healthcare Transaction

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First appeared as part of the conference materials for the  
29<sup>th</sup> Annual Health Law Conference session

"Anatomy of the Healthcare Transaction"