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## *Mergers and Acquisitions*

### **Who You Gonna Call? Health-Care Deal Attorney Hiring Strategies**

Deal activity is booming in the health-care industry, and choosing the right legal team is essential to the success of any health-care transaction.

From January to October 2017, Bloomberg Law has tracked over 400 transactions involving billions of dollars in various health-care sectors. With over \$17 billion in health-care deals in the third quarter alone, according to one report, that translates into a lot of billable hours for the firms that help put together these deals, which can range from mergers and acquisitions to physician practice consolidations and private equity investment.

But what type of attorney should a dealmaker hire to ensure the best result? There are two schools of thought, according to health-care deal attorneys who spoke to Bloomberg Law.

There are times dealmakers may be better off consulting legal teams that have a high level of expertise in health law, but there are other times when general corporate transaction lawyers may be a better choice, the attorneys said.

General corporate transactions lawyers bring a high degree of expertise in shepherding deals from the idea stage to closing, while health-care transactions counsel are steeped in esoteric health law issues that may not occur initially to another lawyer.

In the end, both health-care specialists and corporate generalists should be able to represent their client's interests well, resolving thorny legal problems with which they have dealt previously, consulting colleagues who have expertise they may lack, and generally ensuring the client gets the best deal possible, the attorneys agreed.

**Cost-Effective Counsel** Health-care attorneys who specialize in transactions offer cost-effective services because, in addition to handling transaction agreements, they also have a deep understanding of the health-care industry and the regulations that guide it, Gary Herschman, a health-care deal lawyer with Epstein, Becker & Green PC in New York and Newark, N.J., told Bloomberg Law.

Multiple regulatory issues and potential liabilities can lurk in any health-care transaction, ranging from potential federal False Claims Act liability exposure to state-law provider licensing and accreditation questions, Herschman said. Health-care attorneys can spot these is-

sues readily and have the skills to get them resolved quickly, he said.

Health-care is a very heavily regulated industry, and deals may progress more smoothly and efficiently if the lawyers guiding it know the field well, Herschman said. He added that the need for this high degree of specialization has increased in the past 10 years—at least since it became clear that health-care reform was happening under the Obama administration, he said.

Herschman is a Bloomberg Law advisory board member.

**Getting to Same Place** Keith Anderson, a partner in Drinker, Biddle & Reath LLP's Chicago office, told Bloomberg Law he isn't certain a specialized health-care transactions lawyer is necessarily "better" than a general corporate transactions attorney when it comes to putting a health-care deal together, as long as the corporate lawyer obtains a health-care regulatory lawyer's assistance. Corporate specialists will need health-care attorneys on the transaction team, but both approaches "will get to the same place eventually," he said.

Anderson, however, said that a health-care transaction lawyer will be able to immediately address certain regulatory concerns that could significantly affect the structure and important elements of the transaction. For example, health-care transaction attorneys will more readily understand how Stark Law and Anti-Kickback Statute questions or an entity's tax-exempt status could affect a proposed transaction.

In his home state of Illinois, Anderson frequently sees questions arise in physician-related deals over the corporate practice of medicine doctrine and restrictions on provider fee-splitting. Those issues fall within the more-specialized in-depth knowledge of a health-care attorney, he said.

**Separating Issues** "In most cases, it is difficult to truly separate out the corporate transactional aspects of a deal from many of the health-care regulatory and payment matters that are often intertwined" in a transaction, Paul A. Gomez, a health-care transactions lawyer with Polsinelli LLP in Los Angeles, told Bloomberg Law.

"A health-care lawyer who focuses on transactions may be better able to spot and anticipate the particular risks in a given transaction area, determine what the key payment concerns are likely to be, and may be more familiar with common methods of addressing those particular pitfalls" than a general transactions attorney, he said.

Even the decision on whether to structure a deal as a merger, stock purchase, or asset purchase arrangement may turn on health-care questions like successor liabil-

ity issues unique to government payers or licensing and certification approvals, Gomez said.

Additionally, health-care attorneys are “more likely to be familiar with the ‘big picture’ factors that are shaping change in health care and, more particularly, that are driving the specific transaction” under review, he said. That familiarity may help the attorney “ask better and more targeted questions earlier in the process, and help the client to better strategize to meet its objectives.”

It also may help the attorney determine if he or she needs to consult with lawyers in other areas of expertise to protect the client’s interest and help bring about a successful closing, Gomez said.

**Calling the Corporate Team** Corporate transactions attorneys may be better suited to handle certain health-care deals, Herschman, Anderson, and Gomez acknowledged.

Anderson, for example, said transactions can be more complicated when private equity is in the mix. Private equity firms have developed some creative financing options, like tiered financing, that require very sophisticated and specialized legal analysis more commonly handled by corporate lawyers, he said.

Gomez said corporate transactions attorneys may be a better fit when a transaction involves a novel or complicated corporate structure or a very large publicly traded company. The purely corporate transactional as-

pects of this type of deal, including compliance with Securities and Exchange Commission requirements, may be more complex and time consuming than the health-care regulatory components, he said.

Herschman said using a health-care transactions lawyer is “preferable, but not necessary,” in his opinion. Corporate transactions lawyers won’t shy away from consulting a health-care attorney about issues on which the latter has more experience and knowledge, he said. At the same time, they will bring in corporate transactions attorneys to help with more substantial deals—for example, those valued at \$500 million and above—if necessary.

Health-care transactions attorneys and corporate transactions lawyers with assistance from health-care regulatory lawyers offer “two paths to arrive at the same result,” Anderson said. One thing he wouldn’t recommend would be consulting an attorney who has neither health-care nor corporate transactional experience to undertake a strategic health-care transaction. That will complicate completing the deal and lengthen the process, he said.

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