

BERRY ♦ MOORMAN
ATTORNEYS AND COUNSELORS

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PRE-EMPLOYMENT DUE DILIGENCE:

A. Preliminary Considerations

- § Google the Practice and Doctors or Dentists – 4 Star review * * * *
- § Review State of Michigan License Lookup for issues
- § Ask colleagues about the reputation of the Practice and Staff
- § Staff retention/turnover
- § Patient census
- § Location, location, location
- § Growing Practice or winding down
- § Is this a stepping stone or are you looking for a home?

B. Contracts/Legal Documents

1. Employment Agreement – Key Terms.
 - a. Term of Agreement – “for cause” versus at-will.
 - b. Compensation and bonuses (is calculation/formula based on billings or revenues and overhead). Opportunity to review or audit? Bonus history? How are new patients assigned?
 - c. Health/welfare, retirement & fringe benefits.
 - (1) Health Insurance, Dental Insurance, Eye Care (review waiting periods, co-pays, coverages and exclusions).
 - (2) Life Insurance.
 - (3) Short-term/long-term disability Insurance (review waiting periods and coverage). Any gaps in coverage?
 - (4) Pension/Retirement (review waiting period and vesting requirements).

- (5) Vacation, personal, sick time.
 - (6) CME.
 - (7) Moving expenses.
 - (8) Cell phone/pager.
 - (9) Car allowance. (Don't bet on this)
- d. Licenses, DEA certifications, & memberships (paid or unpaid).
- e. Staff fees and parking.
- f. Non-Compete and Confidentiality Provisions.
 - (1) Duration.
 - (2) Geographical limitation.
 - (3) Scope (i.e. type of practice/specialty).
- g. Medical Malpractice/Professional Liability Insurance.
 - (1) Occurrence or claims based.
 - (2) Indemnification and Hold Harmless.
 - (3) Tail Coverage.
- 2. Stock Purchase Agreement.
- 3. Buy-Sell Agreement.

PRE-PURCHASE DUE DILIGENCE:

A. Valuation of Business

1. Corporate/Tax Status, i.e., P.C., Limited Liability Corporation, Partnership or Corporation (S or C corporation).
2. Owned or Leased Property (review of mortgage or lease terms including leased equipment).
3. Appraisal of real estate (if owned) and equipment.
4. Patient demographics.
5. Patient Insurance (private/Medicare/Medicaid).
6. Examination of Financial Records and systems.
 - a. Accounts receivable (collection history).
 - b. Accounts payable.
 - c. Financial statements, including tax returns.
 - d. Bank Records.
 - e. Overhead.
7. Professionals/staff profiles (hire dates, resumes, employment applications, employment contracts, salaries and benefits). Personnel files. Independent contractors.
8. Stock register and minute book, if applicable.
9. Articles of Incorporation/By-laws, Partnership Agreement or Articles of Organization and Operating Agreement, depending on entity status.
10. Business and professional licenses and permits.
11. Patient files – how maintained (HIPAA Compliance).
12. Insurance coverages.
13. Litigation pending and threatened.