



New Opportunities for Surgical Practices

The new law that requires that a Surgical Practice be licensed as an Ambulatory Care Facility presents the current and prospective owners/operators with certain business opportunities upon licensure¹, including:

- I. **Syndication:** You may invite non-physician investors (e.g., private equity investors) or passive physician investors to invest in the entity that operates the Surgical Practice, while you retain an interest in the Surgical Practice. As the licensure of the Surgical Practice may enhance the value of the same, a syndication may yield a significant return for the existing owners. To effectuate the syndication, you have several options, including splitting the existing units so as to avail the Surgical Practice of new Units to offer investors.
- II. **Expansion of your Medical Staff:** You may credential non-owner physicians to perform procedures at the Surgical Practice. This may help you increase your volume and revenues.
- III. **Engagement of a Management Company on Percentage-Basis:** Since the Surgical Practice will no longer constitute a medical practice upon licensure, traditional professional fee splitting concerns will no longer apply to the same. Accordingly, the Surgical Practice may engage a third-party management company and pay the same a fee based on a percentage of the Surgical Practice's revenues, provided that the management company does not refer to or market for the Surgical Practice and is not owned by any person who refers to or markets for the Surgical Practice.
- IV. **Sale:** You may sell to a national ASC conglomerate, a healthcare system or other purchaser.
- V. **Merger with Other Surgical Practices:** You may merge with other Surgical Practices to form an Ambulatory Surgical Facility. As an Ambulatory Surgical Facility, the formerly independent Surgical Practices may be able to finally secure reimbursements from certain payors (such as Cigna) that have historically declined to pay Surgical Practices.
- VI. **Merger with Ambulatory Surgical Facilities.** You may merge with an Ambulatory Surgical Facility, but retain your geographic distinction and operate under the same TIN as the Ambulatory Surgical Facility, which may enable the Surgical Practice to receive the benefits of the payor contracts of the Ambulatory Surgical Facility.
- VII. **Restructuring:** You may restructure the Surgical Practice so that your ownership of the same is no longer contingent on your active medical practice, and survives your death/disability/cessation of practice. You may own your Surgical Practice through a trust for the benefit of your heirs. You may create different classes of shares/units, and grant such classes different management/ownership rights (e.g., Class A Members need not perform procedures at the Surgical Practice or meet professional qualifications (e.g., licensure), and would exclusively be entitled to manage the Surgical Practice, while Class B Members must perform procedures at the Surgical Practice and meet certain qualifications in order to remain members).

¹ 1 A Surgical Practice must first secure an Ambulatory Care Facility License before exploiting these opportunities, but may prepare for the same pre-licensure, by creating the structure and all corresponding documents. Additionally, a Surgical Practice may need to operate under an LLC or Inc. in order to exploit the above opportunities.



If you would like our assistance in exploring and engaging in any of the above, including shepherding you through the licensure process, please contact Mohamed H. Nabulsi, Esq. at 973-979-1150. According to my trusted contact at the DOH, a Surgical Practice should await DOH guidance before applying for licensure.

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