



# PRIVATE EQUITY DILIGENCE ALERT

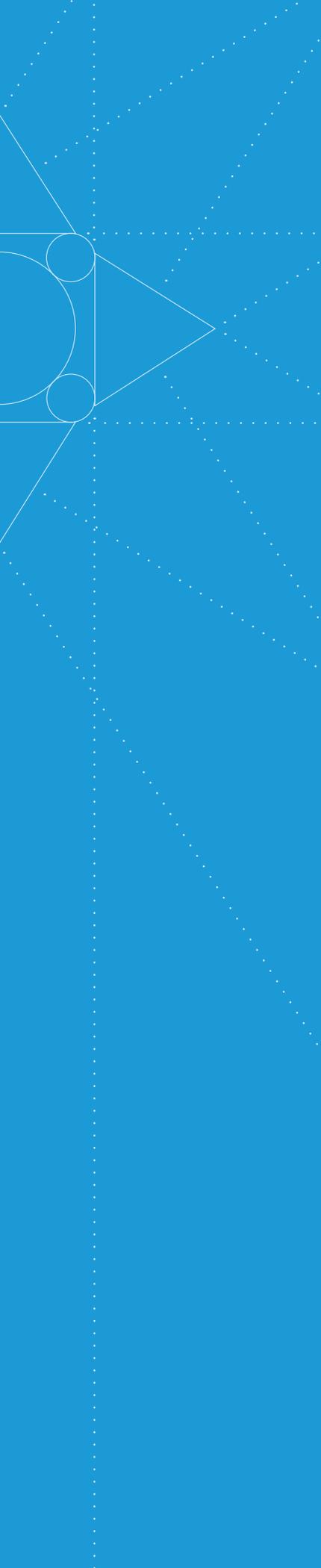
Avoid a Wrinkle in your Dermatology Deal

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Financial sponsors and physician practice management companies are keenly interested in dermatology because of market fragmentation and steady cash flows buoyed by the increasing prevalence of skin cancer and consumer purchasing of discretionary cosmetic treatments. While dermatology continues to gain popularity, it is important to identify a number of traps lurking for the unwary. Buyers should strongly consider engaging legal counsel and other advisors who are experienced with the nuances and regulations specific to this space.

Having closed more than 50 dermatology transactions in the past five years, we have identified common risks to be considered in the diligence process. Beyond the typical diligence matters, we encourage buyers to proactively vet the issues below early in the diligence process before valuable time and money is lost due to a derailed deal.

## **#1 LAB REFERRALS**

If the practice has a lab, does it meet applicable Stark Law requirements? In most cases, this means compliance with the Stark Law in-office ancillary services exception but other exceptions could apply. Additionally, further analysis and potential structuring considerations are required if the physician practice owner(s) will continue as equity owners in the management company after the transaction.

## **#2 PHYSICIAN SUPERVISION OF MID-LEVEL PROVIDERS**

Are the practice's mid-level providers, including nurse practitioners and physician assistants, appropriately supervised by a physician pursuant to state law requirements? For example, state law may require a supervision agreement; physical onsite presence by the physician for a certain number of hours each month; physician review of a certain number of charts; physician availability by phone at all times; or physician ability to be onsite in-person within a certain amount of time. Unfortunately, these requirements often vary by state, as does the complexity of the regulation, the climate of local enforcement and the consequences of non-compliance. Physician compensation for providing this supervision should be carefully analyzed and structured for compliance.

## **#3 LASER AND OTHER AESTHETIC TREATMENTS**

Are cosmetic treatments, such as laser treatments, performed by someone who is appropriately qualified, supervised and certified (if applicable) pursuant to state law requirements? This issue is regulated at the state level and the compensation related to these services needs to be assessed for compliance risks as well.

## **#4 EXCLUDED/DISCIPLINED PROVIDERS**

Have any of the physicians, mid-levels or other providers been excluded from Medicare, Medicaid or disciplined by state medical/nursing boards? It is important to check this issue early in the transaction in case there are potential lead-time issues to address. Buyers should also confirm the validity of accreditations and degrees as part of their background check process.

## **#5 CODING COMPLIANCE**

While upcoding and other coding matters are not typically legal matters covered during standard legal diligence, a law firm can engage a third party coding auditor to preserve privilege and look into this potential deal killer. It is vital not only to understand compliance risk, but also verify the quality of the earnings in the event future revenue streams need to be discounted to give effect to proper billing and coding methodologies going forward.

## ABOUT BASS, BERRY & SIMS' HEALTHCARE PRIVATE EQUITY PRACTICE

Our results-oriented, business-minded deal attorneys work seamlessly with our nationally ranked healthcare regulatory attorneys to help private equity clients and their portfolio companies achieve their strategic goals. Clients rely on our deep understanding of healthcare law and our significant experience navigating the unique regulatory and business environment of the healthcare industry.

We regularly assist private equity firms and their healthcare portfolio companies in structuring, negotiating and executing acquisitions and financings and in dispositions of healthcare investments through sales, recapitalizations and public offerings. Private equity firms utilize our comprehensive due diligence of healthcare targets to help uncover and assess key issues and regulatory and compliance risks associated with an investment and rely on the sophisticated guidance of our healthcare regulatory and compliance and investigations counsel.

We advise investors, portfolio companies and management teams in the following:

- ✦ Acquisitions and exits including:
  - ▶ Platform and add-on acquisitions
  - ▶ Due diligence and risk analysis
  - ▶ Leveraged dividends and recapitalizations
  - ▶ Leveraged buyouts
  - ▶ Going private transactions
  - ▶ Sponsor-sponsor transactions
  - ▶ Initial public offerings and exit transaction services and preparation
  - ▶ Management team representation and executive compensation matters
- ✦ Healthcare regulatory and operations
- ✦ Healthcare compliance and investigations
- ✦ Financing including minority interest transactions and mezzanine and senior financings

To learn more about our team and experience, [click here](#).

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