

Morgan Lewis

FAST BREAK: **HOT TOPICS IN** **HEALTHCARE M&A**

Tara McElhiney, Banee Pachuca,
and Jake Harper
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Morgan Lewis

TODAY'S HOST & PRESENTERS



Jake Harper



Tara McElhiney



Banee Pachuca

Hot Topics in Healthcare M&A

Topics to be discussed today include



Structuring Issues and Considerations



Environmental, Social and Governance Matters



Representation and Warranty Insurance



COVID-19 Impact on Healthcare M&A

HOT TOPICS IN HEALTHCARE M&A:

STRUCTURE ISSUES AND CONSIDERATIONS

Regulatory Structure Issues and Considerations



Corporate Practice

Corporate Practice prohibits corporate entities from practicing a licensed profession (including medicine, dentistry, physical therapy, among others).



Licensing and Enrollment

A transaction may constitute a "change of ownership," requiring consent from a government agency to transfer an enrollment, license, or permit.



Fraud and Abuse

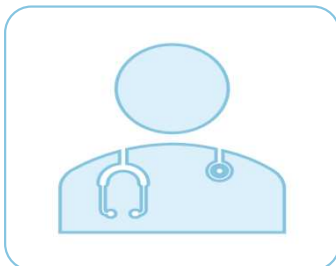
Fraud and abuse laws, including the federal anti-kickback statute and the Stark Law, should be considered when structuring a transaction.

Corporate Practice



Owning or Operating Certain Businesses

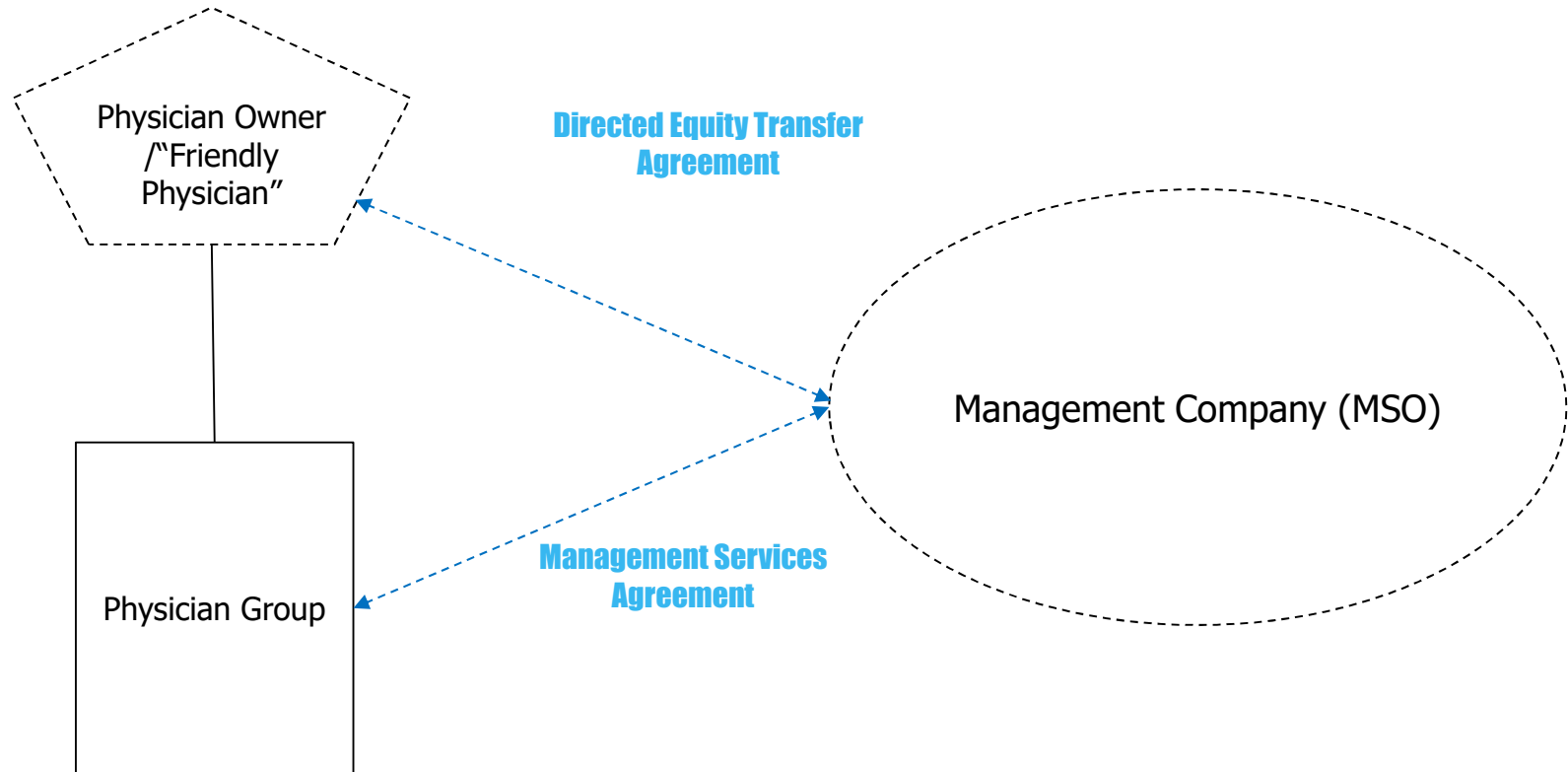
- Holding equity in a professional practice
- Employing physicians
- Directing or controlling clinical decisions



Licensed Professions

- Medicine
- Dentistry
- Optometry
- Physical Therapy

Corporate Practice



Licensing and Enrollment

- Businesses in the healthcare industry hold various permits, licenses, and enrollments.
- A transaction may constitute a “change of ownership” (CHOW) that requires consent from a government agency in order to transfer an applicable permit, license, or enrollment.
- The government consent process is burdensome and time-consuming. Alternative transaction structures can be considered to avoid a CHOW.



Fraud and Abuse

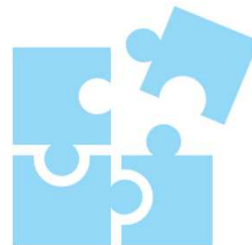


Transaction Structure

- Earnouts
- Identity of Buyer and Affiliates

Post-Close Structure

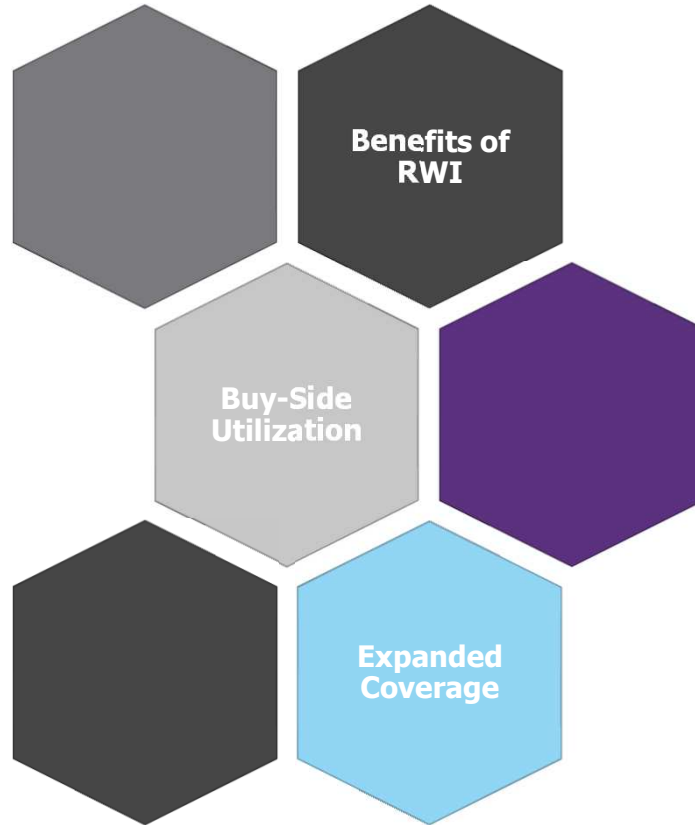
- In Office Ancillary Services Exception
- Engagement of Personnel



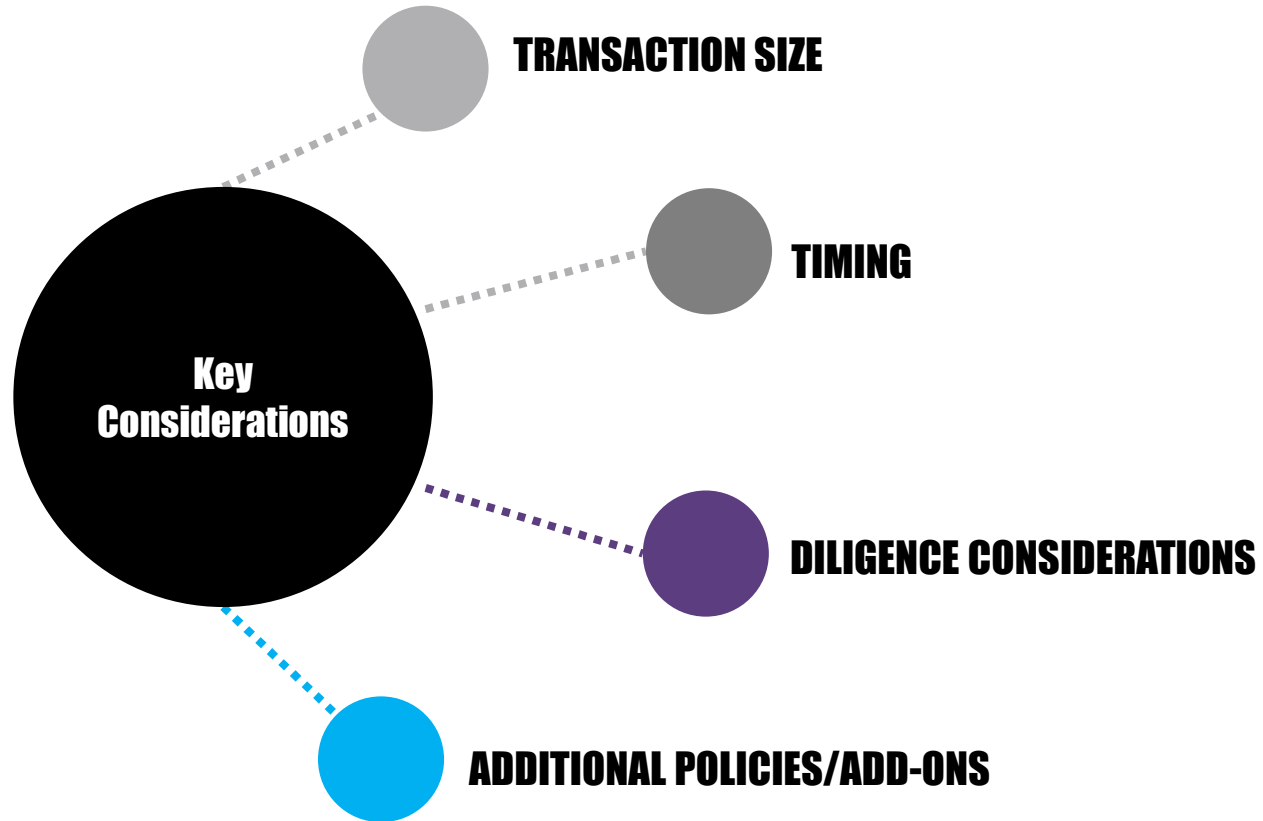
HOT TOPICS IN HEALTHCARE M&A:

REPRESENTATION AND WARRANTY INSURANCE

Representation and Warranty Insurance (RWI)



Representation and Warranty Insurance (RWI)



HOT TOPICS IN HEALTHCARE M&A:

**ENVIRONMENTAL, SOCIAL
AND GOVERNANCE MATTERS**

ESG Matters

Increased focus on environmental, social and governance (or ESG) matters across M&A transactions

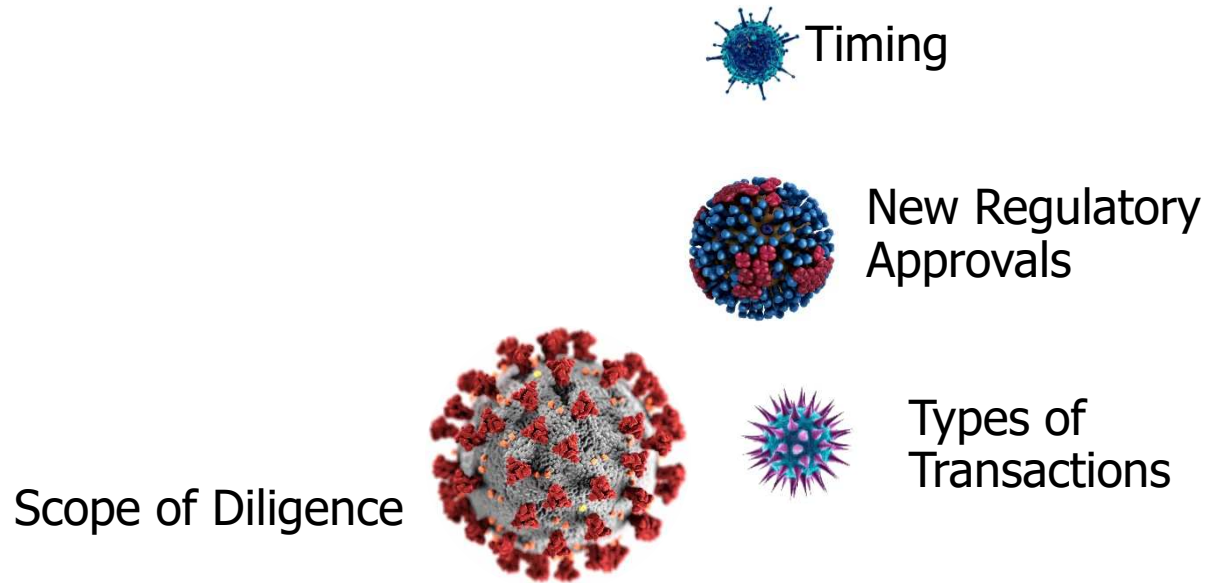
Specific considerations for healthcare M&A transactions include initiatives related to the social determinants of health and the inequities in healthcare systems

Take a critical look at your ESG strategy and policies in advance of any sales process.

HOT TOPICS IN HEALTHCARE M&A:

COVID-19 IMPACT ON HEALTHCARE M&A

COVID-19 Impact on Healthcare M&A



Join us next month!

Please join us for next month's webinar:

Fast Break: Regulatory Sprint to Coordinated Care

Featuring

Kathleen McDermott, Albert Shay, and Jake Harper

➤ Thursday, February 25, 2021 3:00 PM (EST)

Thanks and Be Well!



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[Click Here for full bio](#)

Tara focuses her practice on complex corporate transactions and corporate governance matters in a variety of industries, including the healthcare and biotechnology sectors. She represents private equity firms and their healthcare-based portfolio companies, emerging telehealth and biotechnology companies and physician practice management companies in a broad range of strategic transactions, including mergers and acquisitions, divestitures, joint ventures, strategic alliances, equity and debt financings, and strategic investments.

Thanks and Be Well!



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Banee focuses her practice on healthcare law, including transactional, regulatory, and compliance matters. She represents hospitals, health systems, academic medical centers, large physician groups, and private equity and financial investor clients in mergers, acquisitions, divestitures, joint ventures, and other collaborative and alignment strategies. Additionally, Banee frequently advises clients with respect to fraud and abuse laws, including the Stark Law and state and federal anti-kickback laws, billing compliance, as well as state and federal privacy laws. She assists healthcare clients with internal investigations, analyzing potential self-disclosures, responding to government subpoenas, and developing compliance programs.

Thanks and Be Well!



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Jake advises stakeholders across the healthcare industry, including hospitals, health systems, large physician group practices, practice management companies, hospices, chain pharmacies, manufacturers, and private equity clients, on an array of healthcare regulatory, transactional, and litigation matters. His practice focuses on compliance, fraud and abuse, and reimbursement matters, self-disclosures to and negotiations with OIG and CMS, internal investigations, provider mergers and acquisitions, and appeals before the PRRB, OMHA, and the Medicare Appeals Council.