



Leadership Series Archives: Vol. 3

An Attorney's Perspective on Scaling Physician Groups



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Recently, **Roy Bejarano**, SCALE Healthcare's Co-Founder and CEO, had the opportunity to speak with **Michele Masucci**, Partner in the Health Services Practice Group at Nixon Peabody, about scaling physician groups from a legal perspective.

Attorneys in Nixon Peabody's **Health Care practice** advise hospitals and health systems; private equity firms; health services providers in all sectors including dermatology, behavioral health, physical therapy, ophthalmology, dental and others; accountable care organizations and clinically integrated networks; management services organizations; and digital health companies across a range of areas. Michele Masucci is a partner with the firm and has represented a broad range of companies within the healthcare industry over the course of her career.

Scaling Physician Groups

When it comes to maintaining legal compliance, do you see benefits of SCALE with physician groups? Do you see regulators acknowledging and rewarding these benefits?

SCALE allows you to invest in compliance, for example HIPAA – these compliance requirements are the same for a 5-provider group as they are for 50 or 150 providers – so the more SCALE, the easier to deploy the resources for a strong compliance program. And beyond compliance programs, supporting compliance with higher quality employees and managers that help you remain compliant every day by making good decisions.

Another example is chart auditing, which is a critical part of the process. The auditing process is there to help you first and foremost identify outliers; which providers are pushing the productivity envelope. Internally tracking and responding to your outliers quickly comes from a robust program with engaged managers.

Additionally, larger platforms can afford to bring in expert third parties to help augment what's missing on a day-to-day basis. We believe that the government will be looking closely at the private equity funded platform investments to assure that these investments create the right vs. wrong provider incentives. Being able to demonstrate a strong audit and response program will be important in demonstrating to the government that management is focused on quality first and foremost. Internal communications should always be balanced and all parties need to demonstrate as much as possible that they are good citizens with quality orientated priorities. We all know that the government views its auditing as a reliable source of revenue.



The SCALE concept represents an opportunity for private equity to bring operational expertise to support management with a greater focus on “sustainable” growth via more experience-based decision making.

Physician platforms become complex ecosystems very quickly as they scale. Are there common “diseconomies of SCALE” physician groups should be cognizant of when it comes to maintaining legal compliance?

The integration of acquired practices will always result in the introduction of legacy practices that don't necessarily fit into your compliance aspirations. Beyond recognizing the outliers as part of due diligence you will need to continue to monitor and improve them as quickly as possible post-closing. That individual physician who is now part of a larger group needs to be effectively integrated into the larger platform, and afforded all of the support and resources the platform can give her. Is your compliance officer given the time and resources to monitor the transition of that provider to a more robust compliance program?

How do you see MSO's bridge the gap between non-clinical influence and the need to ensure their affiliated providers are part of a fully compliant program?

Remember – the MSO is there to support the clinical operations so the physicians can practice medicine. But the MSO is not there to make clinical decisions, or to impose clinical directives on the physicians. I would expect to see the MSO through its Medical Director representative engage in the following at the practice level: participation in clinical discussions (for example QAPI meetings) and observe, document, consult, assist in providing solutions where they are required. But this team of MSO clinicians should not be providing any clinical care, and should not do any more than educate their practice partners where necessary on any key findings. They should not have the ability to influence nor control any clinical decision making. Think of it as a consultative relationship born of recognizing that physicians are the ultimate clinical arbiters of care.

What are the top few criteria physician groups should evaluate when considering which corporate counsel to select for their practice? Does the criteria change based on the scale of the group?

There are many very good and competent lawyers. Physician groups have different needs depending upon their size, maturity and trajectory. Health care regulations and laws are increasingly complex. It is a rational decision to utilize lower cost attorneys for day to day operations in smaller businesses. However, I advise all physician groups to consult with competent health care counsel in connection with all of its relationships with referral sources. As the business grows, you will also benefit by having a lawyer who is familiar with market conditions, has the experience with complex transactions and does not always need to re-invent the wheel. As a sign, is your law firm giving you the same lawyer for every question and is that lawyer really demonstrating deep expertise in every answer provided, or is he/she stalling and researching every time you raise a question? Are you finding yourself teaching your lawyer? Is your lawyer constantly catching up to what you are doing or is he/she comfortable with his/her team's prior experience and its relevance to your current circumstances. Some of this is obviously style and personality fit.

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Scaling Transaction Execution

During a physician transaction diligence process, a lot of time is spent building post-close legal structures. How much variance do you ultimately see in the following areas across deals – are you seeing multiple fundamentally different approaches or are you generally seeing variations of the same general underlying structure? Do you see material variances in structure by physician specialty?

- Physician compensation
- PLLC Board governance
- MSO governance
- PLLC – MSO service agreements
- Earnouts, up-front proceed claw backs

I see the most post-close variance in physician compensation structures. Physicians typically respond to new structures by changing their behavior. Physicians that don't feel properly remunerated might complain or they might, through frustration, become less engaged and productive at work. The complexities normally derive from the items that are difficult to measure, broader contributions such as physicians that help with



recruitment, committees, expense savings, leadership, training, late phone calls and team-work that doesn't get recorded. When these contributions get lost in a large organization and they don't get acknowledged and rewarded then you get resentment. It can't be entirely productivity driven – compensation is always more complex than that.

Physician retirements are often a sensitive topic of discussion in the context of a transaction. What are some ways you have seen buyers and sellers most effectively solve for physicians nearing retirement at the time of a transaction?

Similarly, on the question of retirement, the long-term contributions of retiring physicians, their ongoing relationships with remaining providers, we just have to be careful to remember that every action has a consequence and retiring physicians treated too rigidly has consequences on how remaining providers view management. It's never easy because a group can only do so much and has to be reasonable when physicians expect to be paid for past contributions. The more managerial resources – again, input from SCALE and its team – focused on compensation issues, the better.

What are some strategies / points of advice you offer your clients to help keep buyer and seller legal bills down during a transaction process?

This is simple, do as much work as you can up-front post LOI before you engage in drafting and negotiating closing documents. Manage the sellers and their bankers' expectations regarding timeline effectively – a platform investment is complex in so many ways, the greatest gift you can give all parties is reasonable expectations regarding timeline and the patience that comes with accurate expectations.

Note: The interviewee is sharing general thoughts based on Michele's experience as an experienced health care lawyer and is not intending to provide legal advice. Readers should seek their own counsel with respect to any substantive legal issues they have.



Special thanks to Michele Masucci for her insights and our Executive for their participation in this discussion.

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SCALE prides itself in developing customized solutions for its clients and helping physician groups grow and thrive in a challenging marketplace. Now, we are ready to help you. We look forward to sharing examples of how we have helped our clients and invite you to schedule a 1-on-1 complimentary consultation with us.

Contact Kevin Gillis at kgillis@scale-healthcare.com, or +1 (603) 440-3375 to continue the conversation.