

## ADVICE AND COUNSEL AND LEGAL INSTRUMENTS

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### I. Building a Winning Team

A key component for a pharmacist to be successful is for him to realize that he needs to surround himself with experts in their respective fields. In other words, the pharmacist may be very bright and competent.....as a pharmacist.....but he probably is not very skilled as an accountant or attorney or insurance agent. The author of these materials acknowledges that while he may be a decent health care attorney, he would make a "less than competent" pharmacist, or accountant, or physician. Years ago, there was an auto parts television commercial where the mechanic looked at the screen and said: "You may pay me now or you may pay me later." The upshot of the commercial was that by paying some money up front for high quality auto parts, the consumer will not have to pay a much greater amount in the future when the engine locks down. This same concept holds true with pharmacists. If the pharmacist hires experienced consultants/professionals at the beginning, then he will likely avoid the many tax, financial and legal landmines that can trip him up.

#### Consultants and Other Professionals

- Certified Public Accountant - The pharmacist needs to insure that the accountant is a "CPA." This means that the accountant has had to pass a rigorous exam and meet stringent licensing and continuing education requirements. In interviewing CPAs, the pharmacist needs to focus on those who specialize in representing small businesses. The gold standard is for the CPA to have experience in representing pharmacists.
- Attorney - First and foremost, the pharmacist's attorney needs to be experienced in practicing health law. A mechanism to determine the attorney's expertise is to ask if he is board certified in health law by the state bar's board of legal specialization. However, experienced health law attorneys have wide ranges of expertise.....from representing hospitals, to representing physicians, to representing long term care facilities. Therefore, the pharmacist's inquiry needs to go beyond whether the attorney is an experienced health law attorney. The pharmacist needs to further ask if the attorney has experience in representing pharmacists. When interviewing attorneys, the pharmacist needs to inquire whether the pharmacist has dealt with the state board of pharmacy, the DEA, the FDA, state Medicaid, the Medicare program (CMS), the Department of Justice, the Office of Inspector General, PBMs, and other third party payors. The pharmacist needs to inquire if the attorney is versed in handling (i) kickback issues; (ii) Stark issues; (iii) compounding issues; (iv) post-payment audits; and (v) compliance issues. The pharmacist will have legal needs other than health care regulatory needs. Therefore, the pharmacist will need to ask if the attorney has access to other attorneys with expertise in the areas of business formation, employment law, estate planning, and litigation.

- Banker - The pharmacist needs to look for a banker who has deep roots in the community, has a good reputation in the community, and has experience in working with small businesses. The focus of the inquiry needs to be on both the individual banker and the bank.
- Insurance Agent - The pharmacist needs to have several types of insurance coverage: general liability, malpractice, fire and casualty, workers compensation, disability, and health insurance. As with hiring a banker, the pharmacist needs to look for an insurance agent who has deep roots in the community, has a good reputation in the community, and has experience in working with small businesses. The agent can be an independent agent or can be tied to a particular insurance company (e.g., Northwestern Mutual or Mass Mutual). If the agent only has access to certain insurance products (e.g., health and disability), then the agent needs to give his assurance that he can work with other agents who have access to the other insurance products (e.g., malpractice).
- Buying Group - There are multiple buying groups in the marketplace that represent small and independent pharmacies. The value of the buying group is that it allows the pharmacist to purchase drugs and other products at prices lower than what the pharmacist can negotiate on his own.
- Professional and Trade Organizations - The pharmacist's state pharmacy association will bring value to the pharmacist. Equally as important is an organization such as NCPA. NCPA specializes in bringing multiple products and services to its members that allow them to successfully compete in the marketplace. Knowledge is power. NCPA constantly provides state-of-the-art education to its members.
- Other - Other consultants and professionals include billing consultants, IT consultants, marketing consultants, HR consultants, and operational consultants.

## **II. Marketing Programs, Contractual Arrangements and Joint Ventures**

### Legal Guidelines

#### I. Federal

##### A. Statutes

1. Medicare/Medicaid Anti-Kickback Statute (42 U.S.C. § 1320a-7b) (“anti-kickback statute”)

It is a felony for a person or entity to knowingly or willfully solicit or receive any remuneration in return for referring an individual for the furnishing or arranging for the furnishing of any item for which payment may be made under a federal health care program, or in return for purchasing, leasing or arranging for or recommending the purchasing or leasing of any item for which payment may be made under federal health care programs. Likewise, it is a felony for a person or entity to knowingly or willfully offer or pay any remuneration to induce a person to refer a person for the furnishing or