



# Client Alert



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## Key Leasing Issues for a Medical Practice

Experienced real estate leasing professionals understand that many of the business and legal issues associated with a lease apply to many or all of the various market segments, such as office, retail, medical and industrial properties. Within certain industries, certain specific issues take on special significance. This certainly is true with leasing space for a medical practice. This article explores several issues that warrant special attention or different treatment when negotiating a lease for a medical practice's office.

### Use Clause

The lease should include a broadly written use clause that allows for all aspects of the medical practice, including services that may be added in the future. When reviewing the lease on this issue, pay close attention to the use clause and the assignment/subletting clause. The lease should expressly authorize the tenant to sublease or license a portion of the premises to a related professional that is not a member of the practice, such as a lab or physical therapist, without requiring landlord's consent. These provisions may include a cap on the size of individual suites and the total amount of space that may be subleased or licensed for this purpose. Any lease provision obligating the tenant to give the landlord a list of permitted subtenants or licensees and/or the services they provide should be carefully evaluated. A landlord may justify this provision on the theory that it has a right to know who will be in its building, especially where it has no consent right; however, it is difficult for a medical practice to predict the specialty the practice's future physicians may offer to patients. Also, closely scrutinize any provision limiting the hours of service. Many landlords adopt forms that limit landlord-provided services or building access to standard building hours, and therefore these clauses may need modification to reflect the practice's standard operation.

### Project Design

Practitioners should work closely with the design professional to ensure that the lease provides an appropriate process for designing and finishing space that is suitable for the practice's particular needs. If plans and specifications are available at lease execution, have the tenant confirm that they are complete, accurate and properly designed. Where the landlord constructs the building and/or improves the premises in accordance with defective plans, the cost of corrections likely will shift to the tenant. If the plans and specifications are not complete when the lease is executed, the lease must give the

tenant adequate review and approval rights. Even where the design documents provide details regarding the equipment, the lease should obligate landlord to use only new equipment. Similarly, the lease should reserve to the tenant the right to specify the equipment manufacturers and the particular models. While the selected brand may affect cost (and give the landlord an opportunity to enhance its profit), the medical practitioner in particular may be very concerned about brand choice.

### **Construction**

For larger premises or more costly build-outs, the tenant should conduct adequate due diligence on the landlord's source of funds. In today's lending climate, every tenant should know early in the lease negotiation (i) which third-party lenders have the right to approve the lease, and (ii) that a defined source will make such funds available for construction. The tenant's representatives can raise these issues by including applicable landlord representations in the lease draft, and by requiring the landlord to provide evidence of funds availability from its lender. Where appropriate, an escrow of such funds with a third party or a letter of credit to secure the landlord's funding obligation should be considered.

### **Utilities**

Working closely with the design professionals, the broker and attorney should ensure that the lease includes appropriate representations and covenants regarding the building utility systems' capacity and redundancy. This redundancy is critical for premises where more sophisticated procedures are taking place. Also, if the tenant is paying a share of utilities, consider requiring submeters to prevent a disproportionate cost allocation. The lease should prohibit the landlord from profiting on utilities. And, the lease should specify that premises are carrier-neutral, meaning that the tenant has the right to select the internet, data and telephone provider for its space without the landlord's consent.

### **Conclusion**

In conclusion, while most leasing issues are equally applicable to healthcare-related leases, several issues are particularly important to these deals and warrant special attention or different treatment. By working with the professional team of attorneys, brokers and design professionals, these and other interests important to the data center tenant can be properly addressed.

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