



STARK LAW MAKES NAVIGATION TRICKY IN MEDICAL OFFICE SPACE

Originating in 1988, the Stark Law is nothing new. However, it continues to have a reverberating effect for all parties surrounding the sale and leasing of medical office space. As defined, the Stark Law is a set of United States federal laws that prohibit physicians from referring to themselves. Specifically, a physician may not refer a Medicare or Medicaid patient to a healthcare entity if the physician (or an immediate family member) has a financial relationship with that entity.

If self-referral sounds like an oxymoron, consider this example. Suppose you are a physician that has invested in an imaging center. The Stark law requires the resulting financial relationship to fit within a recognized exception, or you may not refer patients to the facility, and the entity may not bill for the referred imaging services.

This law creates some interesting considerations for the healthcare real estate market. Of particular interest is the notion of fair market value.

Why the concern about Fair Market Value?

Investopedia tells us that Fair market value (FMV) is the price that one party is interested in buying or leasing a given property would pay to another party interested in selling or leasing that property. Therefore, the price of a particular space or building should represent its actual worth. So, if party A is interested in leasing space from party B, the \$17 per square foot that is paid, should generally be an accurate representation of the value of the space on the open market.



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Recent Testimonial

“Mr. Compton,

Dr. Burnette and I would like to thank you for your excellent representation on our two recent medical office sales. The Northside property was a particularly complex transaction in view of the multiple owners with different interests. You handled the personalities and real estate complexities with equal skill and most importantly obtained a record per square foot price on our property. The Brandon property was also sold quickly and you handled every issue including personally getting our air conditioner repaired. You are a true professional and I will be spreading your name around the medical community in a very positive manner.”

- Joel Silverfield, M.D.



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Over time, within the healthcare industry, this free market-style approach got messy. Hospitals and medical centers grew but so to did patients' needs for community-centered care and easier access to physicians. To meet demand, stay competitive and to staff their facilities, hospitals and medical centers entered into feudal style property arrangements with practitioners. For various considerations like surgical referrals or affiliating their practice with a healthcare center, practitioners were able to utilize office space that was arguably granted to them below fair market value.

Impact on Healthcare Real Estate

As a result of the Stark law and other legislation surrounding kickbacks, “off-book” considerations (like those stated above) cannot be accounted for in the price of medical office space. Although they’ve been around, at least in part, for more than 30 years, these laws still create uncertainty for healthcare tenants in leasing medical office space. Without a doubt, these reforms have caused an increase in prices—the effects of actual fair market value. They’ve also created new practice paradigms. Today, individual providers may look for significantly larger suites with the hope of bringing more providers into the practice to offset the reality fair market property rental or purchase costs.

Hospitals with attached or adjacent medical office buildings (MOBs) must be careful in considering property usage in light of fair market value regulations. Outbuildings and annexes cannot be used as incentives for attracting top-tier practitioners. That may create heavy burdens for less profitable medical institutions.

Navigating the waters of new regulations

Medical professionals, hospitals, and other facilities need to consult with experienced real estate partners in assessing opportunity, risk, and compliance. Some providers have gotten in trouble recently and faced 7-figure penalties because they have conducted “business as usual”.

The pitfalls with the stark law can be numerous. For instance, a doctor that owns his building and plans to provide services to a hospital, has to be careful if he plans to have the hospital lease back his property. This would be a breach of Stark. As another example, a health systems attempting to sell medical office buildings that have been previously leased to physicians may find themselves under scrutiny during the due diligence process, if those leases were non-compliant with Stark.

By working with an experienced commercial real estate professional, healthcare professionals can avoid the pain of a Stark transgression. For instance, many medical institutions and professionals don’t realize that the opinion of value from a certified broker is an alternative to fair market appraisals and often costs less.

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