How to Say 'Farewell and Adieu' to Owning Your Business

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How do you know when it's time to cut bait? Remember the scene in *Jaws* when Chief Martin Brody (Roy Scheider) is throwing fish guts into the ocean and comes face to face with the shark? He remarks, somewhat casually, "You're going to need a bigger boat."

Despite the fact that everyone in the theater is yelling "run for your life," the trio then decides to continue after the shark even though the boat is horribly outmatched when compared with the size of the great white. (Parenthetically, if it were me, I would have come back with the Exxon Valdez.)

Anyway, this poor choice ultimately causes Quint (Robert Shaw) to not only lose his other leg, but the rest of his body, as well. Kind of like "reverse sushi."

So, when is it time to stop throwing good money after bad and either try to sell the urgent care or simply take your lumps, close it, and move on? I have been receiving quite a few calls and e-mails recently about urgent care centers that are quickly going under. Some of these failures are due to poor planning/execution, some are due to an initial lack of capitalization, and, finally, some are due to the credit crunch (banks promised a line of credit but then called the note or cancelled the line).

Preparing to Sell

Let's first discuss how to get your center ready to sell and what to expect during due diligence.

If the reason your center is failing falls into the first category—poor planning or execution—chances are that it is going to be tough to sell. The field of groups buying urgent care centers is very sparse, and believing they are going to pay cash for your mistake is unrealistic unless the initial mistake is easily correctable and, but for your lack of financing, you could fix it yourself.

If, however, the reason your center is struggling is secondary to lack of initial capitalization and/or the credit crunch, you may be in a position to sell or at least have a group assume the liabilities, allowing you to exit the business somewhat intact.

What will the potential buyer expect when evaluating your center? The first and foremost is brutal honesty. Trying to hide some bad facts (failure to pay taxes, undisclosed lawsuits, less than arm's length transactions, etc.) is not only deceitful, it will delay and, most likely, ultimately derail the sale once discovered.

Due diligence is much like an awake colonoscopy; the preparation is awful, the procedure painful, and neither party enjoys the process very much. The ultimate purchase agreement is only as sound as the parties signing the document, and if the relationship starts with a lie, it is doomed for ultimate failure.

The second expectation the potential buyer will have is that your books are accurate, hopefully accrual-based, and timely. The value of your business will most likely be based upon the EBITDA (earnings before interest, taxes, depreciation, and amortization) generated during the last 12 months, referred to as "trailing 12 months EBITDA" or "TTM EBITDA."

If your books are "cash basis," the prospective buyers will want to convert them to an accrual basis, which will take some time.

The cleaner and more accurate your books, the shorter the process and the more likely the sale will actually close. At the very least, have the following documents on hand prior to any serious discussions:

- Health plan contracts
- Building leases
- Equipment leases
- Employee contracts
- Provider contracts
- Cash flow, balance sheets, and profit-and-loss statements

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- Pending lawsuits
- Payroll data
- Licenses
- Collection history
- Payor aging reports
- Patient volume reports

This list just scratches the surface, but at least it will get you and the potential buyer started.

Types of Transactions

One of two types of sales transactions will most likely take place. An *asset purchase* simply means that the buyer will buy the assets of the business that are specified in the purchase agreement. The seller retains non-operating assets and liabilities and keeps the "legal shell" of the business and all of liabilities not included in the purchase agreement.

From a tax point of view, an asset transaction is generally favored by buyers, inasmuch as it allows them to set higher values for assets which depreciate quickly, and lower values for assets that depreciate slowly or not at all. Thus, the purchaser acquires a new cost basis in the assets, which may allow a larger depreciation deduction to be taken.

Most transactions of this size are asset transactions, since a purchaser will want to limit their liability and obtain a more advantageous tax treatment.

Conversely, in a *stock transaction*, the legal shell of the selling company is being purchased by the buyer. This includes all existing and future or unknown assets and liabilities.

Stock deals often make the actual transfer of the operation easier for the buyer, since usually all existing contracts (leases, payroll, employee benefit plans, etc.) are transferred to the new owner. Generally, a stock transaction offers the seller tax advantages which are partially dependant on whether the business is a C-Corp., S-Corp., or Limited Liability Corp.

If there is no profit (EBITDA) on a trailing 12-month basis, the best you can probably hope for is that the buyer simply assumes your lease and agrees to cover some or all of your liabilities. This approach gets you off the hook and stops the bleeding, but will most likely not make you whole.

Operating a business in these economic times is like hunting for a great white in a small wooden boat. Bad things can happen quickly and without much warning; consequently, it is not for the faint of heart or ill-prepared.

Sometimes you just have to "cut bait" and chalk it up to a great learning experience and realize, as Matt Hooper (Richard Dreyfus) did, that "this was no boating accident!" ■

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where there may be opportunities for improvement.

At the same time, not all measures are created equal, and careful thought needs to be given to developing and selecting appropriate measures.

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Someone who is not a clinician but has had a few infections may have some knowledge of antibiotics, but it is still preferable to have someone with clinical training and experience decide whether an antibiotic is necessary and which one is most appropriate. Similarly, individuals and organizations with expertise in quality measurement can help urgent care centers develop appropriate measures and survey tools, and can help to effectively tell the story of the quality of care provided at urgent care centers and the role they play in the larger healthcare system. ■

References

1. Weinick RM, Betancourt RM. No appointment needed: The resurgence of urgent care centers in the United States. 2007. California HealthCare Foundation. Avilable at: *www.chcf.org/documents/policy/NoAppointmentNecessaryUrgentCareCenters.pdf*.
2. The American Association for Public Opinion Research. *Standard Definitions: Final Dispositions of Case Codes and Outcome Rates for Surveys*. Revised 2008. Available at: *www.aapor.org/uploads/Standard_Definitions_07_08_Final.pdf*.
3. *Facts About Family Medicine*. Table 31: Hospital admission privileges of family physicians by census division, July 2008. American Academy of Family Physicians. Available at: *www.aafp.org/online/en/home/aboutus/specialty/facts/31.html*.
4. Smart DR. *Physician Characteristics and Distribution in the U.S.: 2006 Edition*. AMA Bookstore.
5. McGlynn EA, Asch SM, Adams J, et al. The quality of health care delivered to adults in the United States. *N Engl J Med*. 2003;348(26):2635-2645.
6. Audet AM, Doty MM, Shamasdin J, et al. Measure, learn, and improve: Physicians' involvement in quality improvement. *Health Aff*. 2005;24(3):843-853.
7. Institute of Medicine Committee on Quality of Health Care in America. *Crossing the Quality Chasm: A New Health System for the 21st Century*. Washington, DC: National Academy Press, 2001.

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Select data points from the benchmarking study will be highlighted over the course of 2009 in *Developing Data*, found on the last page of every issue of *JUCM*.