

# TWO APPROACHES TO CANCER CENTER JOINT VENTURE ARRANGEMENTS

Douglas Mancino



**Douglas Mancino** is a partner in the Los Angeles, CA, office of McDermott, Will & Emery.

**H**ospitals and physicians are increasingly exploring new ways to deliver comprehensive cancer services to the communities they serve. Many hospitals have identified "product line managers" to identify existing cancer treatment programs, both inpatient and outpatient; to identify new programs and services that should be added to existing programs and services; and to develop strategies for repositioning the typical dif-fused community cancer delivery system into a more comprehensive, organized set of programs. Similarly, many community hospitals are seeking to develop single modality or multimodality cancer treatment programs to complement existing inpatient programs, as well as to help position the hospital by having a cancer product line that is comprehensive and competitive with other programs in the communities served.

At the same time, medical and radiation oncologists are examining their existing practices, and exploring organizational and operational relationships with themselves, as well as with other providers to position themselves for the more competitive delivery of cancer-related professional and ancillary services.

In many cases, the successful development of inpatient and outpatient comprehensive cancer treatment programs

requires the merger of medical and hospital interests and expertise and, frequently, the economic interests of the medical and hospital providers are combined through some form of joint venture. The purpose of this article is first to explore certain joint venture options and, second, to analyze some of the common concerns and considerations that need to be addressed before any medical professional or hospital embarks on a joint venture for a comprehensive cancer center.

*Despite the growing popularity of joint ventures per se, joint ventures for outpatient cancer treatment centers are relatively rare; each will have its own unique economic, legal, and operational character*

At the outset, it is fair to observe that despite the growing popularity of joint ventures *per se*, joint ventures for outpatient cancer treatment centers are relatively rare and each will have its own unique economic, legal and operational character.

However, two general approaches have been developed that seem to be suitable for the development of hospital-physician sponsored comprehensive cancer centers.

The first approach is the so-called physician office model. In this model, the medical and radiation oncologists, along with the hospital and, in some cases, a cancer center management firm, develop, equip, staff and operate a facility in which the medical and radiation oncologists relocate their practices, and in which chemotherapy, radiation therapy, cancer pharmacy, laboratory, and counseling services are provided or available.

However, because such a facility typically is not capable of being licensed, nor may such a facility become a provider for Medicare and other third-party payment programs, the owner of the facility enters into contractual relationships with the medical and radiation oncologists pursuant to which professional services are provided under the oncologists' provider numbers (either individually or through one or more group practices). The oncologists then reimburse the facility for the fair value of the space, services, supplies and other benefits provided to them.

Frequently, this approach enables the

comprehensive cancer center to be established without having to obtain a certificate of need, because it will be operated as a physician's office, and without separate licensure or provider numbers.

The second approach for the development of a freestanding comprehensive cancer center is for a hospital to develop, equip, staff and operate the facility as an outpatient department of the hospital, and then enter into contractual relationships with medical and radiation oncologists pursuant to which such oncologists perform the professional services for patients who are patients of both the hospital and

the physicians. As with the physician office approach, different means can be used by which the facilities and operations themselves can also be joint ventured to permit physicians, cancer center managers, and others, in addition to the hospi-

tal, to share the revenues and expenses of the technical component of the service.

Typically, however, joint venturing an outpatient cancer center is more complex because it may be difficult to establish a cancer center in rate setting or rate review states, and the physicians will be subject to the hospital's medical staff rules and regulations. Further, reimbursement for the technical component is more complicated because of the application of Medicare's leased department rules.

In the coming years, oncologists will be approached with these and other options and they will be faced with the decision of whether to make a change in their existing method of conducting their medical practices, and if they do so, what their economic and other interests should or ought to be.

Although it is difficult to generalize about approaches that will fit every particular situation, oncologists should be aware that joint venturing for the sake of joint venturing is not necessarily a desirable strategy. Rather, oncologists should approach a joint venture opportunity with a specifically-defined set of professional, economic and operational objectives that will permit effective negotiation with the proposed joint venture partner and ensure that professional independence and economic benefits are not unacceptably compromised.

The following considerations ought to be evaluated in connection with developing and participating in a joint venture for a comprehensive cancer center. The first consideration is one of professional autonomy. In cases where the medical oncologist or a significant group of physicians already participate in a group practice, this issue is easier to address, at least with the prospective venturer. The physicians already have developed methods for working together, handling internal patient referrals, and dividing the revenues. However, when new individuals are brought into a group, or when oncology specialties are brought together, such as medical and radiation oncology, greater attention must be paid in the formulative stage to the issues of what physicians are responsible for what services, how referrals among specialties will be handled, and how professional revenues will be divided.

Frequently, it has been this author's experience that the best approach is to regard the integration of otherwise independent medical practices as a long-term objective. Unless the physicians who otherwise practice independently already

have a pre-existing desire to consolidate their practices, then cancer center development ought not to be delayed pending resolution of what may be complex and difficult negotiations to bring together in one entity the professional component. Successful cancer centers can be developed while the physicians retain their pre-

because both the physicians and the hospital may have different ideas as to how the cancer center should be operated. In such cases, the retention of the services of an experienced cancer center manager may serve as a workable solution.

In any event, it is becoming increasingly clear that outpatient cancer treatment requires the combined efforts of the medical and radiation oncologists, as well as the hospital at which they practice, in order to develop an effective, competitive outpatient cancer program. It is also becoming apparent that a greater sharing of economic involvement is necessary on the part of all participants in such centers.

At the same time, before a joint venture is selected as a strategy for cancer center development, all parties to the prospective venture must clearly identify their objectives, define

their professional needs, discuss their willingness to share authority, be willing to integrate what may otherwise be independent practices, and be willing to accept the risk of economic loss. Unless these actions are taken, joint venturing a comprehensive cancer center may be a perilous approach because of professional, financial, or other reasons. ■

## *Oncologists should approach a joint venture opportunity with a specifically-defined set of professional, economic and operational objectives*

existing autonomy, at least relative to the medical practices they bring with them to the comprehensive cancer center.

The second issue relates to the economics of existing medical practices, as well as the economics of the cancer center itself; that is, the "technical" component the center will provide to cancer patients. For example, significant economies of scale may be derived by combining the otherwise independent practices of several medical oncologists at a single site, so that chemotherapy can be administered under appropriate supervision in a more economical setting. On the other hand, the involved medical oncologists must be concerned that they do not jeopardize the existing sources of revenues they presently derive from administering chemotherapy in their offices. Consequently, a careful analysis must be undertaken of both the revenues and expenses associated with administration of chemotherapy in the physicians' offices to accurately value existing practices that are to be combined, and to develop a suitable means for the sharing of expenses and revenue.

The third issue relates to control over cancer center operations. If the cancer center is operated as a hospital outpatient department, it is possible to transfer a great deal of control to the joint venturers; however, the board of directors and medical staff of the hospital must retain ultimate control for licensure and accreditation purposes. In contrast, a great deal of control can be retained by physicians when the cancer center is operated as a physician's office.

Frequently, however, the issue of control is difficult to deal with. This is particularly true when a hospital is involved,

### **'JOINT VENTURES BETWEEN HOSPITALS AND PHYSICIANS'**

Joint ventures are quickly becoming the preferred method for creating economic interdependence between hospitals and their medical staffs. *Joint Ventures Between Hospitals and Physicians* provides a comprehensive overview of the strategic, legal, economic, operational and ethical issues that must be addressed in structuring and implementing joint ventures. The authors, Douglas Mancino and Linda Burns, present a step-by-step process for forming such an alliance. They also discuss financial, tax, antitrust, fraud and abuse, marketing and other planning issues.

The book is available through Aspen Systems, 7201 McKinney Circle, Frederick, MD 21701. Phone: 800/638-8437.