Before you sign the LOI: 25 questions for physicians selling to private equity

The letter of intent looks non-binding. In practice, the allocation, the rollover terms, and the structure are set by the time you sign it and rarely move afterward. Ask these before exclusivity begins. Bring the answers to your transaction attorney, your CPA, and a fee-only planner.

The price and what it is made of

1 **What is the allocation of the price between goodwill, the non-compete, equipment, receivables, and any transition or consulting agreement?**
Goodwill is taxed at 20 percent federal. The non-compete, transition pay, receivables, and depreciation recapture are taxed at up to 37 percent. The buyer deducts goodwill and the non-compete over the same 15 years, so the buyer usually does not care. You should. If the LOI is silent, ask for the principle to be written in.

2 **What EBITDA adjustments did the buyer make, and what is the scrape?**
The buyer recalculates your profit as if you were paid less, typically 20 to 30 percent less, and prices the practice on that number. Ask for the bridge from your reported income to the buyer's adjusted EBITDA.

3 **Is the multiple on the LOI a platform multiple or an add-on multiple, and which are we?**
Platforms clear three to five turns above add-ons. Know which you are being priced as.

4 **How much is cash at closing, how much is rollover, how much is held back, and how much is contingent?**
In 2025 and 2026 buyers have pushed more of the price into rollover, earnouts, and seller notes. Model the cash, not the headline.

5 **If there is an earnout, what are the targets, who measures them, and does it survive if I leave?**
An earnout tied to your employment can be recharacterized as compensation. Each payment also carries imputed interest taxed as ordinary income.

6 **Will more than $5 million of installment obligations (notes plus earnouts) be outstanding at year end?**
If so, Section 453A charges you nondeductible interest on the deferred tax every year the obligation is outstanding.

7 **Who pays the banker, the quality of earnings firm, and the attorneys, and is any of it contingent on closing?**
Contingent fees align your advisors with closing, not with the best terms for you.

The structure

8 **Is the deal an asset sale, a stock sale, a 338(h)(10) election, or an F-reorganization?**
For an S corporation, the F-reorganization gives the buyer a step-up and keeps your rollover tax-deferred. If the buyer proposes a 338(h)(10), ask why, because it taxes your rollover too.

9 **How old is our S election, and did the corporation ever hold assets as a C corporation?**
An S election under five years old triggers the Section 1374 built-in gains tax at 21 percent at the entity level.

10 **If we are a C corporation, is personal goodwill available to me, and have I already signed an employment agreement and non-compete with my own practice?**
In Howard v. United States a dentist lost his personal goodwill treatment because he had a covenant with his own corporation. Check this before you assume the double tax can be avoided.

11 **Which entity is buying, and in what state is it organized? Is the physician entity a "friendly PC" with a succession agreement?**
In strict corporate practice of medicine states (California, New York, Texas) you will own equity in a management company, not in the practice. Ask who owns the PC and what the stock transfer restriction agreement says.

The rollover equity

12 **Under which code section is the rollover deferred (721 or 351), and is any of it subject to vesting?**
Vested rollover is deferred with carryover basis. Unvested rollover is compensation and needs an 83(b) election within 30 days of closing.

13 **Is the holding company a partnership or a corporation, and will I receive K-1 income I do not receive in cash?**
Partnership holdcos can produce phantom income. Ask whether the operating agreement requires tax distributions.

14 **What class of equity do I hold, and what sits ahead of me in the waterfall?**
Lenders first, then any preferred equity and its accrued return (sometimes paid in kind, so it compounds), then common. Ask whether your units are the same class as the sponsor's.

15 **What happens to my equity if I retire, become disabled, die, quit early, or am terminated?**
Good-leaver and bad-leaver provisions decide whether you are bought out at fair market value, at cost, or not at all.

16 **Do I have tag-along rights, information rights, and any say if the platform is sold to a continuation fund the sponsor also controls?**
Drag-along is standard and means you have no vote on the exit. Tag-along, annual financials, and a clear answer on re-roll scenarios are worth asking for.

17 **May I gift or transfer units to a trust for my family, and does it require consent?**
Transfer restrictions are common. If estate planning with the rollover matters to you, negotiate a carve-out now.

Your employment and your pay

18 **What is the term, the base, the production formula, and the minimum period before I can leave without a clawback?**
Three-year minimums with clawback of part of the upfront payment are standard. Five-year terms are common.

19 **Which ancillary income (surgery center, imaging, pathology, therapy, cosmetic) moves to the platform, and is any of it shared back?**
For many specialties the ancillaries are most of what is being bought.

20 **What are the non-compete radius and term, and does a sale-of-business covenant survive even in a state that limits employment non-competes?**
It usually does. Texas now caps physician employment non-competes at one year and five miles; California voids them in management contracts but not in the sale itself.

21 **Who pays for malpractice tail coverage, and does the buyer provide prior-acts coverage for continuing physicians?**
A tail can cost roughly twice the annual premium. Retiring partners are the ones most often surprised.

Timing, state, and the things that cannot be fixed later

22 **In which tax year will the deal close, and can we fund a cash balance or profit sharing plan for our final year of ownership?**

A final-year retirement plan contribution offsets ordinary income taxed at 37 percent federal plus state. The plan must be adopted before the return due date and terminated cleanly after closing.

23 **If I am considering a charitable remainder trust or donor-advised fund gift, is the sale already "practically certain"?**

In Estate of Hoensheid (2023) the Tax Court denied a deduction for a gift made two days before closing. Gifts must be completed before the LOI hardens, with a qualified appraisal.

24 **Which state will tax the sale, and if I am considering a move, will it be complete before closing?**

California taxes installment payments received after you leave if you were a resident when you sold. New York treats a 338(h)(10) or asset sale of a New York practice as New York income regardless of residence. Moving in the year of sale is the highest audit risk pattern in both.

25 **Does our state have a pass-through entity tax election, and what are its deadlines and prepayments for the sale year?**

The federal SALT deduction shrinks to $10,000 at high income, so state tax on the sale is otherwise paid with no federal offset. California's and New York's elections have deadlines that fall before most closings.

> **The one thing to remember.** Almost everything on this list is negotiable before the LOI and almost nothing is negotiable after exclusivity begins. If you take one step, take this one: have a tax-focused review of the term sheet before you sign, with your attorney, your CPA, and a planner whose fee does not depend on the deal closing.

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