

Unique issues and pitfalls in medical office leasing

The tremendous growth that the Denver metro area and the Front Range have experienced in recent years have driven increased demand on all types of real estate, including the need for medical office space. Accordingly, there has been an increase in the volume of leasing to medical office users who have come to Denver, not only due to increased demand, but also in search of skilled labor that Denver has been successful in attracting. Indeed, medical office users can now be found with increasing frequency in retail centers and general office developments, as opposed to the more traditional medical office buildings that are specifically designed and operated with medical office users in mind. This article will touch on a few of the most important issues that landlords must be aware of and address when entering into leases with such users, especially if the landlord's property is not specifically designed and operated as an MOB.

HIPAA

The Health Insurance Portability and Accountability Act of 1996 imposes data privacy and security requirements for safeguarding medical information for the benefit of patients. HIPAA applies to certain providers of medical services (known as "covered entities") as well as contractors (known as "business associates") of covered entities that receive "protected health information" or "PHI." The landlord's primary concern is ensuring that it does not run afoul of HIPAA due to a landlord's receipt of PHI stored in



Rick Thomas
Shareholder,
Brownstein Hyatt
Farber Schreck

the premises. For example, janitorial staff in an office building typically have broad access rights to the premises in connection with the services provided to the tenant. If janitorial or other landlord employees or service providers come into possession of PHI, a landlord may then be subject to HIPAA requirements. For this reason, landlords are advised to require medical office tenants to secure and store PHI in discrete areas within the premises, which a landlord need not access in performing routine services required under the lease. For this same reason, a landlord should always include language clarifying that it is not a "business associate" of the tenant to document and clarify the relationship between the parties. Landlords also are advised to include procedures in the event of a removal of the tenant from the property (i.e., eviction, casualty or condemnation) to allow for a landlord to remove any PHI that is abandoned on the premises. Finally, a landlord should always include a general indemnification for any claim against or loss incurred by a landlord due to the tenant's storage of PHI in the premises.

Medical Waste

Many medical office users will generate a certain amount of medical or infectious waste that must



Noelle Riccardella
Shareholder,
Brownstein Hyatt
Farber Schreck

be disposed of in accordance with applicable laws and regulations. For the landlord, it is imperative to clarify that the tenant is responsible for removal of such medical waste at the tenant's sole cost and that it is not within the general janitorial services that may be provided by a landlord. The tenant should also be required to comply with all applicable laws in the removal of medical waste and be prohibited from disposing of any materials classified as medical waste in any receptacle other than those specifically designated for medical waste disposal (which should be the responsibility, and within the control, of the tenant). This is not only a legal compliance issue, but also an issue that affects the health and safety of employees of the building. A general indemnification covering any claim against or loss incurred by the landlord due to the presence of medical waste in the premises also is appropriate.

Pharmaceuticals and Controlled Substances

Medical office users also may need to store pharmaceuticals and other controlled substances in the premises. The lease should require strict compliance with all legal requirements (this goes without saying

and should apply to every use of space, but it is worth repeating with respect to unique issues such as this). As with medical waste, there should be a prohibition of disposal of any pharmaceuticals in general trash receptacles and the tenant should be solely responsible for the removal and disposal of such items. Additionally, the landlord should consider including a provision requiring the tenants of the complex that store pharmaceuticals in their premises to pay for increased security costs to the extent the nature of the materials stored in the premises requires additional security services not required by other occupants of the property.

Other Concerns

There are various other issues that medical office leases present that both landlords and tenants should be aware of, including:

- **Landlord's liens.** Landlords should consider taking lien rights in medical equipment as security for future performance. Tenants obviously will want to avoid this and may be unable to provide such lien rights (and should seek an express waiver) if they intend to finance the acquisition of medical equipment with secured debt.

- **Guarantees.** Many medical practices are professional corporations or professional limited liability companies, which shield the shareholders or members from the debts and liabilities of the practice. The value of a medical practice, unlike other

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Design

Health care design with the caregiver in mind

An often-overlooked aspect in today's design of health care facilities is the caregiver experience. Industry experts suggest that caregivers must be given adequate physical and emotional support. Recently, I experienced the caretaker role for a family member undergoing hip replacement surgery, observing how caretakers experience a hospital setting. I wanted to share this important perspective in the design and operations of health care facilities from my recent, firsthand experience as a caregiver.

• **Arrival conveniences.** Our experience began at the surgery entry as we were treated to valet parking. The attendees were cheery on a cold morning and helped our patient into a wheelchair. We entered directly into the surgery waiting area and were greeted by another equally cheery individual aware of our patient's scheduled surgery and ready to help. Our initial encounters were very positive, primarily due to the staff's friendly welcome. While the entry was convenient and valet parking available, the staff made all the difference.

• **Waiting amenities.** After our patient was taken to pre-op, we began the long wait for surgery and recovery. As we looked for a place to sit, we found limited privacy. Many others were arriving to the equally cheerful greeters, and the waiting room was full of concerned caregivers. In the waiting room, there was a lack of appealing refreshments and electrical outlets for phones. The limited windows looked on to a roof with mechanical equipment and pools of standing water; not an ideal exterior view.

Typically, waiting areas are sized to accommodate the anticipated number of people accompanying the patient with an efficient chair layout. But we should consider that some caregivers may not want to sit with strangers and the number of people accompanying the patient varies with family size and culture. With rising health care construction costs, expansive waiting



Mary Morissette,
FAIA, LEED AP
Principal, Hord
Coplan Macht

areas are not typically a priority. But they are important, so creative design is necessary to provide spaces that are flexible and can serve the needs of the individuals so important to successful patient care outcomes.

• **Circulation and wayfinding.** Once our patient was situated

in the pre-op area, I could visit. I was told to follow the wayfinding graphics, which I did. However, I found myself in a long circuitous hallway and had to ask for directions. Assured I was on the right path, I came to an intersection where I was again unsure of which direction to proceed. Evidently this was a common problem, as there were signs taped to the wall, which were helpful but created clutter and were not part of the intended design. As designers, we need to evaluate how circulation might be unclear and use proper graphics to provide clarity and ease.

• **Sightlines and acoustics.** Once I arrived at the pre-op area, I was confronted with an enormous patient bay area. To reach our patient, I walked past other patients being prepped for surgery. While I was focused on the hip replacement surgery, it was a stark reality that others had far more serious issues to deal with. This was unsettling even for an experienced health care architect. While health care professionals are trained to see and experience health issues daily, the general public is not. Spaces need to be designed for staff efficiencies, but designers need to remember that visitors need not experience all of the same unsettling views. Sight lines and acoustics are significant aspects of the design.

• **Patient rooms.** After many hours in the waiting area, I was notified that our patient was recovering in her



Circulation with identifiable wayfinding features



Patient room with ample space for care team

room. After another circuitous path between the waiting area and patient room, I discovered our groggy but cheery patient. All had gone well with surgery and now the recovery process would begin. The private patient room was comfortable but small. This hospital had been constructed in the 1960s and expanded over time, but the patient tower had seemingly not been renovated. There was not adequate space for the providers to do their jobs. Furniture had to be moved out of the way so the meals could be served, or therapy conducted. While on the Front Range we are fortunate to have so many new hospitals, other areas of the country are not as fortunate and struggle to provide care within inadequate spaces.

• **Operational impacts.** Contemporary hip replacement typically includes the patient attempting to walk the day of surgery. The physical therapist arrived, and therapy commenced. Our patient was able to stand and walk into the corridor, which unfortunately occurred at the same time as trash pickup. While our patient was walking the

hallway, she had to navigate around a parked trash container. In addition to an inconvenience, I thought of the germs we were being exposed to. With the high rates of infection in hospitals, it is imperative that operational activities are coordinated the care teams.

As health care designers, we are committed to health and healing, but my recent experience as a caregiver gave me special insight to the stress and challenges associated in caring for a loved one. Seeing the facility through the eyes of a caregiver was a welcome and insightful opportunity. It shed light on several issues, including a lack of adequate respite areas, health providers straining to help patients because of inadequate space, lack of adequate signage and sightlines and acoustics issues – all adding to the stress of the caregiver's experience.

I would like to challenge my peers in the health care industry to take the same journey I did – experiencing a facility through the eyes of a caregiver to inform and enrich our work and the delivery of thoughtful, 21st century facilities. ▲



Waiting area with a variety of seating areas, daylight and views

Thomas

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businesses, often is associated with the individual shareholders and members who have patients (i.e., if a partner in the practice leaves and takes her patients with her, it may result in a serious loss to the practice and pose a risk to the landlord's rental stream). Accordingly, landlords should consider requiring personal guarantees from one or

more of the individuals comprising the business that have the patient relationships that generate value for the practice.

• **Excess power and water.** Many medical office users will use power and water well in excess of a typical office user or retail tenant. Accordingly, if a landlord is leasing space to a medical office user outside of an MOB (such as in a retail center or general office building), it should

consider requiring such tenant to pay an increased share of power and water costs (or to be separately metered or submetered) to avoid either shifting the burden of the medical office use to other tenants, or (worse) leakage if other tenants are not responsible for excess consumption of other tenants – a common area maintenance exclusion in retail centers.

The issues described in this article,

and others that are unique to medical office leasing, will continue to be prevalent as Denver and the Front Range grow. It is important for landlords (both those who are experienced in medical office leasing and those who may just be starting to lease to such tenants) to address these issues in a practical fashion that recognizes the tenants' needs while providing appropriate protections to landlords. ▲