# Can patient care and joint ventures coexist?

– Ron DiGiaimo, MBA

Today's questionable economic times are affecting every sector in the country and health care is not immune. We can hope that the new administration is helpful in developing a vaccine for our economy but it is still too early to know for sure. Our future business direction might be changing to a more formal team approach in various forms of joint ventures (JV) either by choice or from pressure attributed to financial constraints. JVs designed to improve the patient experience appear to not only make clinical sense but might become a necessity in order to capitalize on the patient outcome as well as insure a long term arrangement. As we all know, first and foremost, patient care must be a priority consideration and cannot be a cavalier catch phrase used to get a deal done, but a way of behaving with regard to patient satisfaction and clinical outcomes. Patient advocacy and outcome analysis is only expected to increase as cancer currently strikes one in three Americans and within the next 20 years, that number is expected to rise to one in two. Such statistics combined with declining access to medical professionals will cause or even force innovative approaches that will allow for access to care for all Americans.

Already we are seeing hypo-fractionation in the case of Radiation Therapy in SBRT, APBI and other short courses of radiation therapy. We are seeing monotherapy with HDR in both breast and prostate, and protons are touting future reduced courses as a way to combat their high associated cost of treatment. According to Marsha Fountain, principal and founding partner of The Oncology Group, in Waco, Texas; "All the cards have to be on the table in a JV and frank and honest discussion must occur up front or the marriage might be doomed from the beginning. Partners who go into a JV with the sole goal of financial benefit without the patient as a focus might find that the JV quickly becomes a fiscal division with no common ground for improving care."

A win-win arrangement is certainly possible, as Marsha and I discussed; all parties must be sure to truly have common culture and goal alignment to achieve desired outcomes. The Oncology Group has seen a few JVs that took up to two years to put together, only to fall apart one year post fruition because there were not material increases in cash flows which illustrates the need for the patient to be a constant and core component of the JV. If financials are the only concern then the JV appears temporary. Marsha makes a last point: "When preparing for a JV, closely review state specific laws which might limit the ownership of ancillary services by medical providers such as the case of Maryland. At times this might include radiation oncology services."

While further researching for this article, I spoke to Greg Koonsman, CFA and principal of VMG Health, specializing solely in health care valuations with an emphasis on radiation and medical oncology. Greg had this to say when questioned on JVs and the associated financial risk/benefit, "Joint Ventures help both sides to create an equity ownership position that might otherwise not be realized by either party alone, i.e. obsolescence of equipment can more easily be avoided from shared capital of two or more sources which is especially critical in today's economic downturn. In addition, it is important that fair market valuations be able to withstand review from Office of Inspector General (OIG) or Internal Revenue Service (IRS) standpoints." In JVs both sides, "benefit from the increased efficiency and reduced expenses from combined volumes and contributions of resources and capital based on volume." In addition, with the increased complexity of insurance credentialing for sites and physicians, you might have a competitive advantage if you are able to provide increased patient access by geographic penetration of a particular city, state or region. Greg pointed out that cancer care has been disjointed in the past; for example, imaging from surgery and even radiation from medical oncology and joint ventures helps to alleviate that gap which ultimately benefits the patient. Although there are stark limits such combinations, there are legal ways to have a JV benefit all involved and most importantly the clinical portion. VMG has seen medical oncology lose much of its economic power recently, making radiation oncologists a critical component in financial stability.

Several leaders in the industry even believe that radiation oncologists might be put into a position where they will need to protect their economic position because other specialties are trying to benefit from the downstream revenue, though not all are convinced this is the best strategy. Surgery appears to be the next step in heavy JV penetration as breast surgeons, urologists and recently even dermatologists try and follow in the footsteps of medical oncologist's joint ventures with radiation oncologists.

VMG also works with hospital JVs, which have some and other concerns such as:

- IRS implications in not for profit exempt status.
- All hospitals must be concerned with anti kick back.

- They require fair market valuations to make sure this has been examined.
- Valuations will most likely change from year to year due to changes in the federal register or changes in RVUs. This requires updates during the negotiation that might have a negative financial impact and might change or doom the deal.

Some companies are counting on the fact that the "patient experience" will be a future driver in their success. Duane Choate, CFO, OnCure, Denver, Colorado, believes that, "Joint ventures are overall positive in OnCure's view in that it limits over-utilization in markets and reduces the cost of treatment. With reduction of over-utilization and reduced cost of treatment, we can focus on patient care which benefits all parties involved. Some of the issues that need to be considered during the negotiation surround complex legal and regulatory environments as well as the future risk to legislative scrutiny and changes that can materially affect the nature of the JV." David Chernow, CEO of OnCure further elaborated by emphasizing that in addition to comprehensive management services whose goal is to provide high quality care; "Clearly, physicians/health-care providers (hospitals and health-care systems) working together can provide high quality and cost-effective care if the structure incentivizes them appropriately. It really makes no sense to duplicate facilities in certain communities and obviously partnering and doing joint ventures, if possible would be the right approach." Mr. Chernow reiterated, "Providing quality cancer care includes providing a great patient experience where convenience and cost-effectiveness are addressed. Joint ventures can provide just that. Radiation Oncology provides wonderful – curative and palliative – necessary treatment and is a very important part of the future of cancer care. Whether it be in major cities, suburbs or rural communities, joint-venturing, partnering between various health-care providers (physicians and hospitals) can indeed help patient care and cost-effectiveness. Quality and cost-effectiveness are not mutually exclusive especially through partnering and/or joint-venturing."

An area of JV that is surprisingly underestimated is the legal aspect. I recall working on Radiation Oncology/Hospital JV in which the physicians' legal partner was also their real estate attorney. It was quickly apparent that the attorney was not engaged, could not keep up and was not doing the physician any favors with his presence; it was a painful experience to watch. If you are going to do a JV make absolutely sure that you have a knowledgeable and experienced health-care attorney on your side. Sharron Swann, Esq., of Swann and Waddill, a law firm in Austin, Texas, states, "Many of the physician-hospital joint ventures that have proliferated in past years may have to be unwound by October 1, 2009, due to the change in the definition of 'entity' under the Stark law that will include not only the entity that bills Medicare, but the entity that provides the designated health services as well. A joint venture that includes direct or indirect ownership by physicians must carefully analyze the arrangement under the various federal and state health-care laws. CMS enacted several changes to the Stark law last year that must be taken into consideration when evaluating a joint venture opportunity and the changes require constant re-evaluation by existing joint ventures." For example, effective October 1, 2009, percentage-based and per-click lease arrangements whereby the lessor is a physician will be prohibited. A particular area of possible concern for oncology is block leasing of space and equipment. Although currently a common practice, such lease arrangements might become prohibited in the future under the Stark law. Swann goes on to point out that, "State health-care laws might further complicate the scenario in addition to the Stark and Federal Anti-kickback Laws. Joint ventures also must be aware of whether the joint venture's services are subject to any Certificate of Need (CON) laws, which vary by state to state, and in some cases, might affect whether a joint venture is even viable."

Despite the potential regulatory and financial concerns joint ventures appear a viable avenue. Dr. Daniel Dosoretz, founder of 21st Century, Fort Myers, Florida, believes that the current financial strains will increase because of the way hospitals have been affected. Chief Development Officer of Vantage Oncology (Manhattan Beach, California), Mark Ahern has seen an increase in JV partnerships with hospitals, as well as with comprehensive, single group practices that provide both medical oncology and radiation therapy, as well as a full complement of supportive services and expects that JV interest will continue for the foreseeable future. "It only makes sense for oncologists in a given community to organize into a comprehensive group practice," said Ahern. "With the current financing challenges and an increasingly com-

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petitive environment, hospitals and community-based physician groups are looking for experienced business partners to facilitate growth and access to capital. However, it is important for those health-care providers to find the right partners. The critical elements of a successful JV start with an experienced business partner that has made the requisite investments in their clinical and operational infrastructure and clearly demonstrate the ability to provide a wide range of comprehensive management services. At a minimum, those services should include billing and reimbursement management, strategic planning and implementation, a willingness and an ability to invest capital for advancing technology and to successfully integrate a comprehensive EMR and clinical outcomes initiative. Additionally, the right JV partner should be able to demonstrate effective marketing strategies and the day-to-day operational support services that are critical for managing a program in a highly competitive and ever-changing environment."

When considering JV, historical trends of care, expenses and utilization must be reviewed to establish a common ground and weakness such as drug purchase expense or access to medical professionals that might be alleviated with a partnership opportunity. These key items can begin material discussions. Carolyn Parsons, MBA, executive vice president of OncoreLogistics noted that for Medical Oncology practices, "We are seeing acquisition or mergers at a faster rate than joint ventures. Medical Oncology practices are motivated to align themselves with other groups or hospitals because of experiencing a significant reduction in revenue over the past couple of years. Another compelling consideration is the threat of managed care adopting Medicare reimbursement methodology, rates and coverage policies. Mean-while, hospitals have stepped up their efforts to acquire Medical Oncology practices to protect revenue and perhaps increase inpatient, ancillary and outpatient revenue through contributions to the medical center from the oncology service line." Oncology is generally in the top three service lines for hospitals throughout the country. Revenue Cycle is having the same experience as OnCoreLogistics in this area. The pendulum is swinging back toward acquisitions. Several years ago hospitals made a strong push into acquiring physician practices, then the pendulum swung away for a while. But now hospitals are realizing the benefits of locking in the oncologists. Parsons notes that "one of the critical success factors in acquiring a medical oncology practice is the integration of the practice and the hospital in the pharmacy component to assure compliance with federal and state regulations and to gain improvement of financial performance for the medical center. Hospital pharmacies are generally more regulated, and the office-based pharmacies need to be brought up to these standards. From a financial perspective, hospital oncology programs could benefit from the experience many private medical oncology practices bring in their understanding of the economics of alternate comparable therapy options and efficient drug management procedures. These drug management practices extend from wise and careful purchasing policies to careful waste prevention to thorough charge capture processes." Parsons cautions, "From a physician perspective, hospitals might underestimate the oncologists' current income and unless the physicians are well informed, with good representation, they might not recognize the impact that a hospital acquisition might have on their income stream as well as what freedoms they are releasing in joining the hospital." Hospitals might gain from increased volume of drug administration, especially if they qualify for 340b reduced drug pricing; however the reduced costs benefit only the eligible entity, and therefore the oncologists cannot directly benefit.

It will certainly be a very interesting next decade as we watch the mergers of specialties trying to benefit from downstream revenue, increased competition, changes in hospital approaches to physicians practices and decreased reimbursement and reduced clinical providers. There are some great deals out there providing life saving and awesome care for patients in all parts of the country. Let's learn from them and help change our sector.