

## Leasing Medical Office Space in New York

By Jordan Fensterman



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Finding suitable space to lease for your medical practice is challenging and rife with potential pitfalls. Advanced planning, thorough analysis, and being mindful of industry specific medical practice real estate requirements will aid in ensuring the experience and endeavor pan out in a fruitful manner. Working with others who have experience guiding you through the complex web of potential landmines will go a long way towards ensuring you avoid the booby-traps. The questions to consider, listed below, are not meant to be exhaustive, but rather should serve as a quick guide to spark your thoughts on certain medical office space real estate issues to consider.

### Will you lease a space that is/was already functioning as a medical office space or will you be leasing with the intention of building out a medical office space from scratch?

Leasing medical office space that is/was already functioning as a medical office has advantages and disadvantages. One of the advantages of leasing out a currently existing medical office space is the fact that you will not have to incur the expenses and put forth the effort necessary to build out a space entirely from scratch. Landlords may give you a break on lease terms because you will be able to occupy the space more quickly. The landlord may also give you a break on lease terms because your rental would not require the necessity of substantial construction. Landlords disfavor rent concessions, and rent concessions are often necessary while the construction of a medical office space takes place. While every medical office and medical practice varies in the required set up, a space that was already functioning as a medical office, especially one in an analogous field or specialty, will make life easier for you and for the property owner. Other advantages of leasing a space that is already built out as a medical office are that the guessing game relating to the cost of improvements is eliminated, there will not be a necessity to incur the costs of hiring an architect, and you can be fairly certain that the space is already zoned appropriately for your business. Underestimating the costs of construction, and underestimating the timeline and complexity of the work to be performed are some of the typical problems doctors run into after having leased a space not built out as a medical practice.

On the other hand, there are some substantial disadvantages of leasing a

space that is already set up as a medical office. You might be stuck with the prior set-up regardless of its suitability to your practice's needs. Changing the lay out might be more complicated than if there was nothing laid out to begin with. You may run into problems with record keeping requirements for medical practices. Patients and/or the government may assume that you have purchased the practice from the prior physician, and if you decide to see and treat those patients you may become responsible for the

actions or inaction (good or bad) of the prior physician. Patients of the prior physician may file complaints about you thinking they are complaining about the prior physician. You may become responsible for the maintenance of medical records that were kept at the prior practice, whether or not the departing physician actually left you with the records. If you are assuming a lease and/or purchasing a medical practice from another physician, a whole host of other issues need to be considered. Carefully constructed indemnification provisions in practice purchase agreements, and adequate representations and warranties in the contracts involved will go a long way towards protecting your future practice when leasing a space already built out as a medical practice as part of a practice purchase transaction.

### Have you utilized experienced professionals with knowledge of the complex laws, rules and regulations involving the practice of medicine in New York?

The failure to consult with appropriate professionals before entering into a lease for medical office space is the primary mistake made by physicians that could result in significant troubles down the road. With the complicated prohibitions against the corporate practice of medicine in New York, anti-kickback laws, patient abandonment prohibitions, omnipresent malpractice litigation, medical records retention regulations, patient confidentiality issues, and possible contractual obligations that may run with the land, consulting with lawyers, accountants, and other advisors who are experienced in these matters is absolutely crucial to future success.

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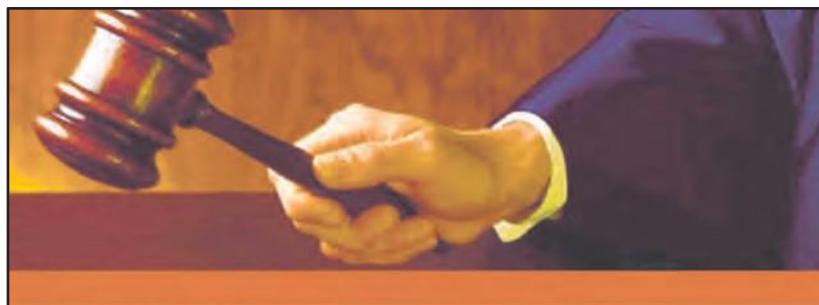
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