Leases for medical office space raise additional issues and considerations beyond those of a standard commercial office lease. Both landlords and tenants should be aware of these unique issues so they can draft a lease that sets up both parties for success.

Some of the key issues for landlords and tenants leasing medical office space to consider are:

- **Hazardous Materials and Biohazard Waste.** Many medical offices will deal with hazardous materials and biohazard waste. Most standard landlord forms expressly prohibit a tenant from having or working with any type of hazardous materials within their premises. Landlords and tenants should carefully negotiate this provision (which materials are allowed, who is responsible for removing biohazard waste, etc.) to provide clear guidance on what is or is not permitted and to clearly allocate liability.

- **Access and Utilities.** Tenants should ensure that the medical practitioner and his or her patients will have access to the premises during the hours the practitioner intends on being open (including path of travel to the premises, parking, common areas/lobbies and elevators). Tenants should make sure that all necessary utilities will be provided when needed (especially if patients will be utilizing machines during off-hours, medicine requires constant refrigeration, etc.) and clarify whether there are additional charges for “off-hours” utilities. If patients will be on machines providing critical life support functions, tenants should ensure that their premises have an adequate backup power source in case of a power failure. The parties should also address the location of the backup power source (inside the premises or elsewhere in the building and, if located outside the premises, should consider access, repair and rent implications). Many office leases also prohibit tenants from overloading electrical outlets/utilities. Because some medical equipment is power intensive, the parties will need to ensure all equipment is permitted and the utilities serving the premises are sufficient.

- **Stark Act and Anti-kickback.** The Stark Act and anti-kickback laws are federal laws generally aimed at preventing payment for referral arrangements. These laws can apply to leases (typically where the landlord is also a provider of medical services, such as a hospital or physician owned building), because they apply to situations where anything of value is exchanged for a referral (e.g., a below-market lease rate in exchange for referrals). Many states, including Colorado, have companion laws that mirror the federal laws and apply to state-funded care and products. There are well-defined “safe harbors” for the Stark and anti-kickback laws so landlords and tenants who are mindful of the safe harbors can ensure that their leases do not violate these laws.

- **Entry Rights and HIPAA.** Most leases will give a landlord the right to enter a tenant’s space, typically with some period of advanced notice. Medical offices contain patient health records, the disclosure of which could result in HIPAA violations. Some medical offices also keep prescription medications or other valuable medical supplies on site. In such instances, the lease should specifically address these issues and appropriately limit the landlord’s general right of access. Landlords should also specifically exclude any HIPAA protected patient information from any landlord lien to avoid becoming responsible for HIPAA information.

- **Death and Disability.** Solo practitioners should be sure that their leases address what happens in the event of the practitioner’s death or long-term disability during the lease term. One frequent approach is to continue the lease term and obligations for a set period of time, often a number of months, after which the practitioner will be released from any further lease obligations.

- **End of Term.** It is important to understand removal obligations at the end of a lease term. For example, most dental offices install under-floor lines to plumb each chair. If the lease requires the lines to be removed at the expiration of the term, it can be a significant and unanticipated expense. Additionally, if the practitioner desires to remove certain equipment, either because it is financed or otherwise expensive, the lease should be clear on the right to remove such items. Adding language dealing with HIPAA protected patient information that is, for some reason, left behind after a tenant vacates is helpful in clarifying the rights and obligations relating to the information.

- **ADA.** Because medical offices have a higher likelihood of needing to accommodate the mobility impaired, additional care should be taken with Americans with Disabilities Act clauses. For multitenant spaces, a representation from the landlord and/or obligation on behalf of the landlord to ensure that an ADA path of travel both exists and will be preserved is important. Equally important is clarifying whether the landlord or tenant is obligated to create/pay for/maintain the path of travel. Another concern is ADA restroom compliance. If the suite/office will have its own restrooms, they should be space planned to be ADA accessible and to ensure that any additional size required will not jeopardize the space plan for the suite. If the suite will rely on shared restrooms, the representation of compliance and the obligation to continue compliance should be broad enough to apply to the shared restrooms as well.

Although this is not an exhaustive list of issues that arise in leasing medical office space, having an understanding of the unique challenges both landlords and tenants face in leasing medical office space, and dealing with such challenges up front in the lease document, can help both parties have a successful and productive relationship.