



The Critical Case for Understanding Your Medical Office Lease

By Megan Headley
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In the name of patient-centered healthcare, more systems are putting medical offices into former retail or office spaces. It's no secret that this trend toward "[retailization](#)" is only growing. As John Wilson, president of HAS PrimeCare, [told National Real Estate Investor](#), "Healthcare providers want to be out in the community where their patients are, and that drives them to more of a retail mindset ... It's the location that the medical user is interested in, not the space itself." However, few of the real estate experts jumping on this trend understand the complexities regulating healthcare facilities — and this lack of knowledge about creating a space that meets all federal, state and local medical regulations can have serious implications not just for the landlord but for the healthcare tenant as well. When facility managers are involved early and throughout these transactions, major expenses can be avoided.

Avoiding regulatory traps

Mary Beth Kuzmanovich, national director of Healthcare Services - USA for Colliers International, sees several areas where leased buildings typically need to be remodeled to meet healthcare needs. Chief among these are the specific building code requirements, from the width of hallways to the electrical supply. And to meet Life Safety requirements, in the event that a patient is "rendered incapable of self-preservation" due to anesthesia or medication during a surgery or GI procedure, the building must be retrofitted both within the tenant's space and throughout the common areas through which the patient would need to be safely transported outside the building in the event of a fire. In both instances, Kuzmanovich says, "The lease agreement, typically the work letter, needs to specify who will provide and pay for the construction to meet the code requirements."

Finally, she adds, since healthcare services — particularly ambulatory surgery — start early and end late, the lease agreement needs to specify required services and charges for any extended hours of operation. Armed with a facility manager's knowledge of how the building must be adapted to meet code requirements, healthcare real estate experts may be able to specify in the lease terms that sit in their favor.

In his latest book, "[Understanding Regulatory Issues in Leasing Medical Office Buildings and Healthcare Facilities](#)," Alan Whitson, RPA, president of the Corporate Realty, Design & Management Institute, notes, "Few outside healthcare realize it is one of the most regulated industries in the United States. The failure of a landlord, including the landlord's employees and contractors, to comply with any of these regulations can lead to severe consequences for a healthcare tenant, including civil and criminal penalties."

A further challenge is that few healthcare systems are prepared to educate their landlords on the multitude of regulations governing medical offices — issues ranging from noncompliance with the Stark Self-Referral Act to the complex waste disposal needs of medical facilities to even basic ADA compliance that hospitals take for granted but that a retail site may see as an amenity.

According to Whitson, the implications of not meeting your local regulations range from civil penalties such as hefty fines to jail time for criminal violations.

Kuzmanovich says that the penalties may not be so extreme, because any code or regulatory issues would be identified during the inspection process and remedied before the medical tenant would get approval to open. "For medical leasing, the landlord should include language that requires the tenant to provide proof of inspection by agencies having jurisdiction (both building and healthcare) to ensure that the tenant complies," she adds.

Where facility managers must be involved

So what can the facility manager do to better prepare to prevent these penalties and, equally as important, ensure that your leased facility is a safe environment for staff, patients and visitors?

Kuzmanovich sees several areas where facility managers need to be actively involved in retail facility conversion:

- During the design process, the facility manager needs to work with the architect to identify and ensure that the design is compliant with all code requirements.

- During the construction process, the facility manager needs to conduct regular inspections and document any field changes to the drawings.
- Prior to occupancy, the facility manager needs to ensure that all inspections, by both local building code officials and healthcare agencies having jurisdiction, are scheduled timely to allow for any field corrections and re-inspections. In addition, the facility manager needs to coordinate installation of medical equipment as required by the inspections.
- After occupancy, the facility manager needs to track and report on regulatory compliance, based on use. This covers requirements for Life Safety, The Joint Commission and other healthcare agencies.

Whitson offers additional advice for ensuring that a building lease is in line with local regulations:

1. Know your local regulations. Some states, such as California, have regulations that far exceed state and federal requirements, while others just rely on the state and federal regulations. If you don't do your homework and find out what regulations your jurisdiction follows, you may be inviting trouble.
2. Learn the first rule of commercial real estate — if it's not in the lease in writing, then it doesn't exist. Work with a real estate consultant to include healthcare-specific language in the terms of your lease addressing each of the relevant regulatory items.
3. Consider attaching a list of applicable regulations to your lease, as well as building rules and regulations and even contracts with outside vendors and contractors. "I didn't know" is an unacceptable excuse if your facility is found in violation of a law.