

# Proskauer Profiles in Health Care: Jason Madden

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[Jason](#) has significant experience in transactional and regulatory health care law to Proskauer's Health Care Group. He represents clients across the industry – from hospitals and physician groups to not-for-profit corporations and private equity firms and other financial institutions. Jason also maintains an active pro bono practice, representing not-for-profit organizations on a variety of matters.

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## **1. Tell us about your practice and your client base.**

I focus mostly on health care transactional work. My practice is broadly a combination of private equity- or sponsor-backed M&A for health care entities, both on the buy and sell side. I also support non-sponsor-backed clients in the industry, including hospital and health systems, on joint ventures, divestitures and other transactions.

My work starts early on in the transaction life cycle, as I advise clients on structuring related to the corporate practice of medicine on a state-by-state basis. I work in concert with the Firm's tax partners to ensure that when practices across the country are contemplating an M&A transaction and are getting ready to go to market, that they are set up in a way that is compliant with state-specific laws and is inviting for outside investment. Given New York's restrictive regulatory landscape, this expertise is essential in helping New York physician practices seek outside investment.

## **2. You were promoted to partner in 2021. What is the biggest skill that helped get you there?**

I am very collaborative in nature and enjoy working across practices with my colleagues in Tax, Private Equity and Mergers and Acquisitions, Executive Compensation and Real Estate in order to achieve successful outcomes for our clients. It is great being a part of and helping to organize so many cross-disciplinary teams who work to maximize value and deliver best-in-class service to our clients.

### **3. What are some challenges you see for sponsor or PE-backed companies in the health care sector?**

Health care M&A has seen a lot of activity over the past few years, and much of that has come from platform acquisitions. But many of the funds that made those investments may be coming up to their end of life. It's unclear what happens when that happens. In the late 1990s–early 2000s, similar factors to today led to a bottoming out of the market and there was significant upheaval in the industry. A number of platform entities broke up and practices went back to being unaffiliated with MSOs.

As the economy roller coasters and funds look to exit their investments, it's easy to question what that will mean for the industry. Will portfolio companies be able to stand on their own or will there be another backer to support them? Will practices revert to being self-supported? Is the only other alternative being subsumed through an affiliation with a large hospital or health system? It's so important to consider how these transactions are being set up and what the broader implications are for these transactions market-wide.

### **4. What are some key points clients should consider during a transaction?**

The key is to find the right balance between always setting up our structures and entering into transactions in a compliant manner, while also being cognizant of what the market has set as the standard for these types of transactions and ensuring regulatory compliance. It's important to ensure that the balance of control is correct between an investor and a clinician. Economic investors need to be assured that their investment is protected, and clinicians need to ensure that, as licensed practitioners, they will remain in control of the day-to-day clinical practice.

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Throughout my career, I've represented both buyers and sellers. This has given me a strong understanding of what the right balance of control is to get a deal over the finish line – there is always going to be a give and take.

It's important to ensure that both the buyer and seller in these transactions are happy with how the deal has been structured and they are excited to move forward as partners in the post-transaction phase.

## **5. What has been your biggest deal-centered challenge, and how did you overcome it?**

In any deal on the sell-side, it can be challenging to address all of the various stakeholders involved in a transaction. For example, in a physician-backed acquisition, you have your physician shareholders who you report to; you have a management team who has worked hard to get to the point of selling; and you have employees and clinicians who may just be along for the ride, but had the long-term expectation of being equity holders. It is important to ensure that each group of stakeholders is incentivized to continue as a contributing member of the post-closing enterprise, whether that is performance-based incentives to management or a continued path to real ownership for equity-track physicians.

On the buy-side, it can be challenging to navigate the on-going governance expectations of existing sponsors and balancing that against what a new, larger sponsor expects in terms of post-closing control. It's important to make sure it is not too much of a seismic shift, but that you put in place the right controls to ensure that if you are a new sponsor for one of these investments, you are instilled with the appropriate amount of control for the size of investment you are making. For a new sponsor coming into an existing sponsor-backed MSO platform, the physician group may not be expecting much change in terms of governance at the practice level, and it is important to layer on reasonable, incremental changes that do not have a major impact on the operations. We recently helped a fund invest in a practice group in a highly-regulated state that already had sponsor investment, and were tactical in our changes to the documents laying out the rights between the practice group and the MSO to ensure our client was comfortable from a compliance perspective, while also given deference to the business deal struck during the initial investment.

## **6. Are there any other trends you are keeping an eye on in the industry?**

Telemedicine, telehealth and tele-prescribing is an ever-changing area of law that is very state-specific. Many states have repealed the executive orders that allowed telehealth companies to operate with more freedom in states that previously limited telehealth operations, and some are in the process of considering legislation or administrative actions to permanently adopt less restrictive laws in this area. Threading the needle of continuing operations based on a telehealth infrastructure developed during the pandemic while states consider the benefits of more lax regulations in this area is an on-going challenge that must be addressed in real-time on a state-by-state basis.

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