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## Leasing medical office space: Negotiate for long term but plan for change

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As medical practices move to traditional retail and office spaces, and as [urgent care centers](#) continue to grow, understanding the complexities of lease arrangements and spelling out the needs of a busy and changing medical practice take on even greater financial importance for physicians.

It's important to note that leases and the leasing process for medical practices are largely similar to leases for non-medical retail or office space, but there are far more patient safety and regulatory requirements to consider. Leasing medical space involves certain risks too. It is best to plan for the long term to avoid surprises, but the lease agreements have to be flexible enough to accommodate for change as the practice evolves and grows. While it is important to work with an attorney on such matters, this article details some of the most significant [real estate](#) and operational issues that you and your landlord must understand when initiating a medical lease.

### Special needs of medical practice

If your practice will occupy previously non-medical space, there may be a requirement for physical changes in the building. This must be made clear in the process of negotiating your lease.

It is important that the landlord understand the nature of a medical practice. Consider the possibility of [emergency care](#) or performance of outpatient surgery and the possible need for ambulance services to the premises. Late-night visits are not a problem for a retail location, but may be for an office or apartment building. Make sure your landlord spells out any rules and charges for needed after-hours usage of the property in the lease agreement. Since medical practices usually require installation of [extensive and expensive equipment](#), short-term leases are not practical. Your practice may need at least a 10-year lease and you should also seek extension options. A single practitioner obtaining a long lease may want a cancellation clause in the event of death or disability. A typical provision says the election can be made within 60 days after the event or appointment of the person's legal representatives.

Another choice is to allow sale of the practice upon death or disability without recapture or other impediments.

### Medical equipment

Certain equipment may be strictly regulated. X-ray, computed tomography (CT) scan or other radiation producing machines need lead shielding. Both parties will want to be sure they are operating safely and the lease should provide for plans, certified by your architect, designed to avoid the possibility of damage to the premises and individuals in or near the premises. In addition to obtaining required governmental approvals or certificates of compliance, be sure you understand what you need to do to comply with all rules mandated by the landlord's or your own insurance company regarding the elimination or amelioration of risk posed by X-rays or electromagnetic rays and/or fields.

If available, you should have an endorsement in your liability policy providing protection against claims of injury from exposure to X-rays, etc., making sure to name the landlord as an additional insured.

### **Medical waste**

Most medical offices have medical waste which cannot be combined with normal rubbish. You should expressly agree to properly dispose of any contaminated material, medical waste, or other articles which may be contagious or radioactive. Such waste must be in a secure place so that unauthorized persons or children cannot open or take the containers.

### **ADA requirements**

Some medical patients may have issues that make them prone to injury.

Careful compliance with the Americans with Disabilities Act is necessary from both landlord and tenant so no claim of injury can be based on a failure to comply with the act. Curb cuts must be in the right places, ramps must be angled correctly, and doors must be wide enough.

### **Medical records**

You will have to give your landlord timely access to your premises as needed to make repairs and show prospective lenders, purchasers, and tenants.

Medical personnel are required to keep confidential medical records either in paper or electronic files. Thus, you need the right to have any landlord representative accompanied by you or a member of your practice. If the lease ends and files and computers are abandoned, or for some other reason, such as eviction, are not taken, there should be specific requirements for storage and eventual destruction of such records.

### **End of lease**

The lease should clearly spell out your responsibilities to remove any alterations to your space at the end of the lease term.

You will want to specify in the lease that you need not remove lead shielding or other special installations. The landlord will probably want you to remove these installations or will want to make that determination shortly before the lease ends, in case he finds another medical tenant.

Relocation clauses are becoming more common in leases. If a landlord customarily includes a right to relocate a tenant to another location, you should make sure the provisions cover the extra time and expense involved to relocate a medical facility.

### **Liability, indemnity, and insurance**

While landlords are responsible for providing services, they generally state they have no liability, especially if the lack of service is caused by a utility company or is the result of natural causes or other reasons beyond landlord control.

Landlords may seek an indemnity from the tenant against claims of injury or damage caused by the tenant's patients. In some states there is a strict liability statute that may hold the landlord liable if his actions or failure to act contributes to the problem.

A smart landlord will ask you to indemnify him against any such claims. The protection, of course, is insurance. In addition to your professional liability insurance covering X-ray exposure claims, consider general liability insurance (with the landlord as an additional insured) that would cover any claim due to building failures not covered under your malpractice policy.

### **Exclusives and amenities**

Should you have an exclusive right to provide your medical specialty in the building or center? It may not be beneficial, and insistence on exclusivity could prevent you from being in a great location. Patients generally would not shop for services by walking from one office to another. More medical services at a location may give more credibility to those services.

The biggest benefit may be having a landlord familiar with medical needs and who has provided amenities for such needs. This could include better elevator service, extra facilities for the handicapped, or building-wide back-up generators.

In addition, a medical-use building providing many similar services could have in it a radiology lab or blood lab, making it convenient for patients to get tests and convenient for you to get results.

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**SIDE BAR FOLLOWS**

# LEASE NEGOTIATION CHECKLIST

Whatever the condition of your local real estate market, you still can take steps to get a better deal.

- Measure the space.**  
Don't just accept the square-footage amount (or approximation) the landlord provides. Catching even a 1% error will gain you 3 free weeks of rent in a 5-year lease.

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- Get representation.**  
Using your building's (or affiliated hospital's) broker to negotiate a lease for you is asking to be bamboozled. Have your own broker, consultant, or attorney on your side of the table. Spending a few hundred dollars could knock thousands off your cost of occupancy. More important, you could avoid being handcuffed to provisions that make your tenancy unbearable for years to come.

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- Put a cap on rent increases.**  
If you are willing to protect the landlord from inflation at all, then tie rent increases to some real-world index such as the local consumer price index. And bargain for only a portion of the increase as a pass-along. Let the landlord take some of the risk along with you.

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- Get an "out" clause.**  
Your landlord wants a 5-year lease, but your situation could change. So include a clause that gives you the right to cancel the lease any time after 3 years if you pay for unamortized improvements.

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- But keep the option to renew.**  
Try to lock in the renewal rate, too. If you find that the market is soft when your lease is up, you can always renegotiate.

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- Keep the right to sublease.**  
"Standard" leases forbid your assignment of the lease or subletting. Replace this language with your own clause requiring the landlord to approve a reasonable subtenant. And keep the "use" clause as vague as possible, too.

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