

## YOUR STARK LAW AND ANTI-KICKBACK STATUTE

# PLAYBOOK

If you're a health system and think patient referrals have nothing to do with your real estate, think again. Arm's length isn't just for anatomy lessons; it's necessary to ensure real estate transactions don't corrupt professional, medical judgement, resulting in fines and criminal charges.

Two intertwined federal laws concern patient referrals influenced by improper financial incentives (ex. below fair market value rents) and are a critical consideration in the management of a health system's real estate:

### STARK LAW

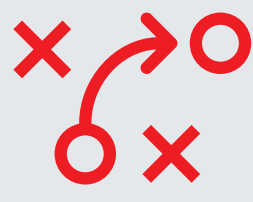
For services paid for by Medicare, Medicaid or other state healthcare plans, Stark prevents physician self-referral and patient referral to entities with which the physician has a financial interest or relationship.

### ANTI-KICKBACK STATUTE

Prohibits kickbacks, bribes, rewards and other economic incentives that induce physicians to refer patients for services or recommend purchase of medical supplies that are reimbursable under government-funded healthcare programs.

While we can't offer advice as legal professionals, consider our Stark/AKS Playbook at the initiation of lease negotiations between physician group and health system, using it as a guide to meeting all Stark and AKS safe harbors and exceptions. Final compliance decisions are for you and your outside counsel.

## THE PLAYS



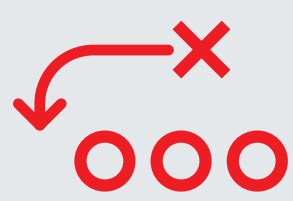
### WRITTEN, SIGNED LEASE SPECIFYING PREMISES

Even if you're the top doc, you can't occupy your space until the lease is in writing and signed by all parties. We won't even tell you the grace periods, since you shouldn't rely on them. Your lease needs an extremely specific description of the space, from square feet to equipment, which someone could use to walk there without relying on GPS.



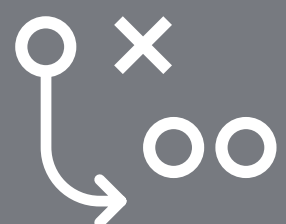
### LEASE TERM OF AT LEAST ONE YEAR

Your lease must contain a minimum one year stated term. Early termination is ok, but impedes future agreements if it occurs in the first year. Auto-renewing leases must remain "commercially reasonable" as the market evolves.



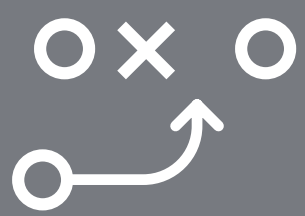
### THE LEASED SPACE IS REASONABLE, NECESSARY AND NOT SHARED

The size of your space must be reasonable and necessary for legitimate business purposes and it can't be shared with the landlord. All laws apply similarly to a sublessee. Tenants can make pro-rated payments for use of common areas (waiting rooms, vending areas, etc.) with the appropriate documentation and associated calculations.



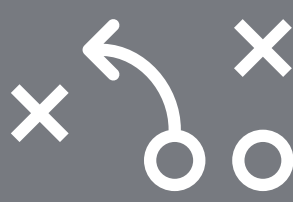
### RENTAL RATE HAS NOTHING TO DO WITH BUSINESS GENERATED

Rents, from fixed to variable to eventual amendments, must be set in advance in a written, signed lease. Rental rates may not take into account the volume or value of referrals, percent of revenue from services performed in the space or per-unit service rental charges related to referred patients.



### RENTAL RATE REFLECTS FAIR MARKET VALUE

If you're paying below-market rents, both parties are guilty until proven innocent of inducing referrals. That's why a fair market value lease rate and an arm's length transaction are key. Rents cannot factor in any benefits or convenience physician group and health system will gain from their newfound proximity. Make sure to document fair market value every couple years using a third-party, licensed appraiser.



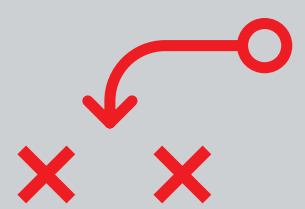
### COMMERCIALLY REASONABLE TERMS

There's no regulatory definition here. The Centers for Medicare and Medicaid Services call an arrangement commercially reasonable "if the arrangement would make commercial sense if entered into by a reasonable entity of similar size and a reasonable physician...of similar scope and specialty, even if there were no potential designated health services referrals." Document term, termination and rent escalation provisions accordingly.



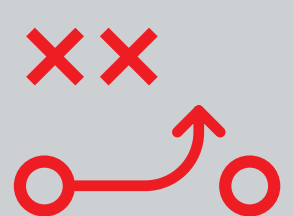
### TENANT HOLDOVER

Holdover tenants in their leased space past lease expiration must adhere to lease terms and conditions, but limit holdovers to no more than six months. Rent increases are allowed if they were set in the preceding lease and are consistent with fair market value. Landlords can't waive holdover premiums specified in the immediately preceding lease.



### HONOR AND ENFORCE THE TERMS OF THE LEASE

Stay within the four corners of the written lease. Pay and collect rent, don't waive late fees, enforce default remedies and stay vigilant before lease expiration to allow adequate time for renegotiation. Treat assignments and subleases the same as a direct lease and make sure healthcare services (ex. removal of medical waste) are provided for in the lease.



### TIMESHARE ARRANGEMENTS

Stark has an exception related to timeshare arrangements, which permit physician groups and hospitals to share space, equipment, personnel, items, supplies or services. These conditions must be met: a written, signed arrangement; an arm's length relationship between parties; arrangements are used for patients on the same schedule and in the same location; the arrangement is not conditional on referrals; fair market value compensation is set in advance; and the arrangement is commercially reasonable.

The key to Stark and AKS compliance is adherence to these safe harbors and exceptions, as well as exhaustive documentation. After working with outside counsel to ensure you're above board, call us to help execute your real estate transactions.

**GREG GERBER**

+1 312 228 2330

Greg.Gerber@am.jll.com

**SYLVIA VAN LOVEREN**

+1 312 228 2125

Sylvia.vanLoveren@am.jll.com