



Excerpt from

Business Valuation and
HEALTHCARE
Case Law Compendium

Business Valuation and Healthcare Case Law Compendium



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(503) 291-7963 • www.bvresources.com



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ISBN: 978-1-62150-075-9

Library of Congress Control Number: 2016954006

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INTRODUCTION

In the heavily regulated and litigated healthcare industry, valuation issues such as physician compensation, intangible assets, personal and professional goodwill, and noncompete agreements, among others, often take center stage in court. To perform well, appraisers, attorneys, consultants, and other industry professionals must be familiar with the courts' positions on the key issues and on valuation methodologies.

BVR's *Business Valuation and Healthcare Case Law Compendium* features the most discussed and the most recent court cases involving business valuation disputes. The compendium features 117 cases, presented in alphabetical order with a case summary table at the front of the book that outlines the case name, state, court, valuation issue, and type of healthcare business. The main body includes an analysis of each of the cases prepared by BVR's legal analysts. Some examples of the insights offered follow.

Goodwill is easily one of the most contentious issues in divorce cases involving physician practices. The courts in some states focus on salability as a factor in whether goodwill is divisible, while others focus on the "value to the holder" and still others on whether the goodwill is transferable absent a noncompete agreement. Some states have statutes that define, or attempt to define, when physician practice goodwill is and is not a divisible asset. Along with the proper application of valuation methods—excess earnings, capitalization of cash flows, net asset value, or the "fair market value" method—including the determination of reasonable compensation to distinguish return on ownership from return on labor, being aware of the elements of goodwill jurisprudence is a requirement for appraisers practicing in the healthcare environment.

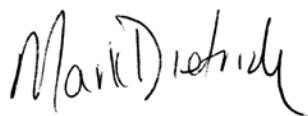
Gallo v. Gallo, a recent Ohio divorce case involving an ocular plastic surgeon who owned a practice and had ownership interests in two surgical centers, is one of the cases the compendium features. In its 2015 decision, the Court of Appeals revisited and repudiated the double dip framework that it had established in the 2008 *Heller* decision. *Heller*, the appeals court said in *Gallo*, violated the applicable spousal support statute. Moreover, the key question for a trial court handling divorce

proceedings was to analyze what the effect of double dipping was on the parties. Ultimately, the goal was to achieve a fair and equitable resolution, the appeals court found.

Another case of note is *Healthcare v. Orr*, a 2016 California Court of Appeal decision in which the court found a noncompete agreement unenforceable. The buyer, a larger medical entity, bought the practice of a solo practitioner but allocated 100% of the purchase price to tangible assets and 0% to goodwill. This approach violated California's requirement that there be a "clear indication" that the parties valued goodwill as part of the sales price for the noncompete to be valid. The noncompete issue assumes more importance as more large healthcare entities buy up smaller or solo practices.

The compendium also includes *Delaware Open MRI Radiology Associates, P.A. v. Kessler*. This case, which also appears in the recently published *BVR/AHLA Guide to Healthcare Industry Finance and Valuation*, has received a lot of analysis that focuses on the court's novel approach to the tax affecting of S corps. Also noteworthy are the inclusion of expansion plans in a discounted cash flow valuation and the importance of considering Medicare data.¹ *Kessler*, as it is also known, became the basis for the *Bernier* decision involving a divorce in Massachusetts; *Bernier* is also included in the compendium.

Note that this is only a small sampling of the case treatment in this compendium. The compendium offers a lot more information and analysis to assist you in gaining a deeper understanding of the complex and varied valuation issues that preoccupy our industry. To strengthen your understanding of healthcare industry valuation theory, methods, and techniques, you may want to pair this compendium with the *BVR/AHLA Guide to Healthcare Industry Finance and Valuation*, which is available at www.bvresources.com/publications.



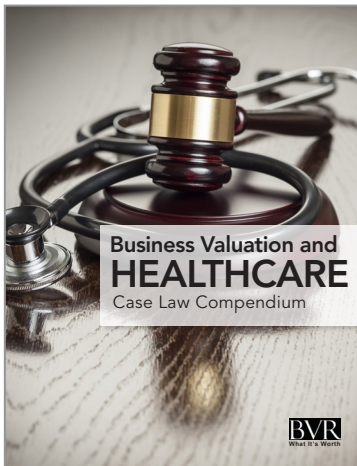
Mark O. Dietrich
2016

1 That said, for whatever reason, the court was not apprised of or did not take into account expected and dramatic cuts in Medicare's payment for MRIs that were legislated in the Deficit Reduction Act of 2005, before the court's decision was even released.

Editor's note: BVR is pleased to offer you access to the courts' full opinions of all cases referenced in this compendium. Please visit www.bvresources.com/healthcarecases and log in to access this resource.



A thorough analysis of the most important healthcare valuation cases in one place



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In the heavily regulated and litigated healthcare industry, valuation issues such as physician compensation, intangible assets, personal and professional goodwill, among others, often take center stage in court. Appraisers, attorneys, consultants, and others involved in healthcare industry finance and valuation must be well informed on jurisprudence as well as how the courts view the heavily debated valuation methodologies they are presented. **BVR's new Business Valuation and Healthcare Case Law Compendium** features the most discussed and the most recent court cases involving business valuation disputes in the healthcare industry.

Highlights of the compendium include:

- Get key business valuation cases from healthcare entities such as physician practices, hospitals, ancillary services, and more
- Understand how the courts ruled on a variety of healthcare industry valuation issues with a comprehensive look at the latest court rulings
- Save research time - quickly find the cases you are looking for with a summary table for easy reference, plus online access to the full court opinion

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