

CASE STUDY

Phased Approach to
Building Hospital-Physician
Trust and Collaboration
Achieves Positive Outcomes



CLIENT

The client organizations are a regional hospital with 350+ beds and a physician group practice of approximately 20 physicians plus allied health practitioners.

BACKGROUND & CHALLENGES

As the sole provider hospital and the largest group practice in the local market, the two organizations profited had tried to collaborate multiple times for more than ten years. Every failed attempt led to finger-pointing and broken trust on both sides—with each organization blaming the other for the failure to collaborate. The group was on the verge of selling themselves to a competing health system and the hospital was preparing to hire physicians to directly compete with the group.

Recognizing that going to war with each other would be costly for both sides and further injure relationships in their medical community, the organizations turned to The Greeley Company in one last attempt to try to collaborate.

PROJECT SCOPE AND OUTCOMES

The team from **The Greeley Company** determined a phased approach to the collaboration initiative would be the best strategy. At the completion of phase one, the Greeley consultants secured the agreement of both sides for the scope of the next phase. This allowed for an off ramp after each phase if either party was not satisfied with the process, the result of the most recent phase of work, or the conduct of the other party.

Through this step-wise process, the parties achieved outcomes that nobody had thought possible at the outset, culminating in an asset purchase and employment of the physicians. An added benefit was that the participants on both sides were eventually able to function at the top of their effectiveness because issues of trust and politics were effectively navigated to positive resolution.

The engagement eventually encompassed the following five phases:

PHASE I – THREE KEY AGREEMENTS

The first phase involved listening to representatives on both sides and **facilitating three key agreements** from both parties to:

1. Step back from the precipice of going to war
2. Establish behavioral expectations to cease and desist on conduct that was continuing to harm trust and collegiality
3. Make one more effort to attempt to collaborate

PHASE II – INTEREST-BASED NEGOTIATION

During Phase II, Greeley established and led a Steering Committee consisting of senior representatives from each of the organizations. Greeley facilitated the Steering Committee in conducting an interest-based negotiation between the two parties, during which the Greeley consultants:

- **Worked with each party to distill their concerns and goals** into a coherent, prioritized set of interests.
- **Facilitated sharing the concerns, goals, and interests** with the other party.
- **Helped the parties brainstorm and prioritize a list of short-term collaboration initiatives** that could enhance the interests of both parties.
- **Conducted a vetting process** to determine for each of the highest prioritized collaboration initiatives: necessary activities and resources, likelihood of success, and likely downstream impact.
- **Facilitated decision-making and commitment** by both parties to undertake three initial collaboration initiatives with the target of completing them within a 2-3 month period.

Phase II resulted in a substantial improvement in the tenor and quality of relationships between leaders of both organizations and the Steering Committee beginning to function as an effective group.

PHASE III – FIRST COLLABORATION INITIATIVES

During Phase III, Greeley facilitated the Steering Committee in providing oversight of the work groups implementing the first collaboration initiatives, resulting in successful completion of two of the three initiatives on time and on budget and continued progress on the third when several

barriers were encountered. Greeley then facilitated the Steering Committee in identifying and prioritizing a second round of collaboration opportunities—this time with a target of 4-6 months for implementation, which allowed for choosing more challenging and potentially higher-value opportunities. Phase III led to even greater improvement in trust and collaboration between the two organizations.

PHASE IV – MORE COLLABORATION OPPORTUNITIES IMPLEMENTED AND IDENTIFIED

By this phase, the two organizations were collaborating at an exceptionally high level and were able to implement all of the second round of collaboration opportunities on their own except for one: the merging of the hospital's and the group's separate sleep labs. They required Greeley's assistance for this collaboration project because it had proved particularly complex and challenging to implement due to complex legal, regulatory, financial, and political issues. Greeley facilitated the merging of the sleep labs to a successful conclusion.

During Phase IV, Greeley helped the organizations vet a new collaboration opportunity that had been identified in Phase III—the potential for the hospital to purchase the group's largest facility (building and land)—which would help the group to retire its substantial debt. The vetting process required addressing the corporate compliance issues of Stark, Anti-Kickback, and private inurement. During the vetting process, both parties agreed to consider the possibility of combining the purchase of the facility with employment of the physicians in the group.

This phase ended with an agreement by both parties in principle to move forward with the hospital purchasing the group's largest facility and employing the group's physicians, pending successful negotiation on the terms of each transaction consistent with fair market value and all corporate compliance requirements.

PHASE V – COMPLEX NEGOTIATIONS AND TRANSACTIONS

Phase V involved Greeley facilitating negotiation of the purchase of the group's facility and physician employment. Greeley collaborated with the law firm of Frost Brown Todd (FBT) for this part of the project, utilizing FBT's extensive legal experience in similar transactions to achieve strict compliance with Stark, Anti-Kickback, and private inurement requirements. FBT was also able to serve as legal facilitator, preventing the need for each of the parties to have their lawyers at the table. The result was a much smoother, more collaborative process (with fewer legal fees)

than would have been possible had each party involved its attorney in negotiating the terms of the deal. Both parties ultimately reviewed the terms of the final deal with their respective legal counsel, but no substantive issues were identified on either side.

This phase was marked by multiple challenges that arose along the way—any one of which could have derailed the deal. Due to the high level of trust and excellent communication between the parties, combined with facilitation by Greeley and FBT, each of these challenges was successfully addressed.

One of the biggest challenges arose when the group decided it would not accept the hospital's offer to purchase the facility even though the offer price had been based on a third-party fair market value/commercial reasonableness analysis. The group requested the opportunity to seek another buyer, and the hospital agreed, even though this would add significant complexity to the deal. The hospital was also concerned this change might create additional compliance risk for the transaction, a major factor as the hospital was committed to strict compliance with Stark, Antikickback, and all other legal requirements applicable to this deal.

Because the parties had established such a high level of trust in the previous phases of their work together, they were able to navigate these challenges with Greeley's help. The group eventually found a real estate investment trust (REIT) interested in purchasing the property. If the hospital ended up employing the physicians, then it would become a long-term tenant in the building owned by the REIT. This scenario required negotiation of the lease terms between the hospital and the REIT, which was eventually successfully accomplished. With the help of FBT, the potential compliance issues were effectively addressed and the deal was able to keep moving forward.

Another major challenge was that the physician group was organized into three separate entities, each of which had slightly different governance and ownership. When a subset of the physicians in the group chose to remain in private practice and not to become employed, the final asset purchase agreement was required to be accomplished as a four-way negotiation among the hospital, its employed physician group, the existing group, and the newly forming group of physicians who would remain in private practice. This resulted in a multi-sided complex transaction involving three sellers and four buyers. This, too, was brought to successful resolution with Greeley providing facilitation and FBT providing critically needed expertise in complex deal making and drafting the legal documents to execute the transaction. In the end, by working

through these and other challenges during this process, all parties developed greater trust, smoothing the way for launching the next phase of collaboration when most of the physicians in the group would become employed by the hospital.

SUMMARY OF KEY FINDINGS & SOLUTIONS

When this project started, multiple failed past attempts at collaboration had poisoned the relationships between the hospital and the group, undermining trust and making collaboration difficult if not impossible. The Greeley Company provided expertise in gaining the trust of both parties, facilitating the crucial conversations, reframing the challenges as opportunities through an interest-based negotiation, and repeatedly stepping in to keep the process on track each time old history, personalities and politics, and emerging new challenges threatened to pull the collaboration efforts off track. Collaboration between Greeley and FBT created great synergies that together helped the clients achieve far more than anybody had expected possible when the process was begun.

Through a series of phases facilitated by Greeley, each party proved that they can collaborate and earned the trust of the other party. This became a wonderful feed-forward process, making each phase of collaboration more successful and enabling the organizations to tackle progressively more challenging conflicts throughout the project.

KEY ACTIVITIES & DELIVERABLES

PHASES I & II

- Establishing behavioral expectations to turn down the temperature and pull the organizations from the brink of war
- Reframing the initial conflicts as an interest-based negotiation, helping both parties to be willing to try to collaborate one more time
- Conducting analyses with each party that helped to communicate the interests of both parties and reveal vulnerabilities and opportunities that the other party could help address
- Methodological tools for vetting collaboration opportunities

PHASES III & IV

- Resources, work plan, metrics and targets for each agreed upon collaboration opportunity
- Careful processing and sequencing of events to assure compliance in the face of complex factual and legal situations
- Timely, effective facilitation to achieve each party's goals

PHASE V

- FBT's outstanding expertise in the legal compliance issues, deal-making, and drafting of the final agreement documents
- Ongoing facilitation to keep the process on track as new issues arose that threatened the deal
- Over 50 final contractual documents involving seven separate corporate parties, including:
 - physician employment contracts
 - furniture, fixture, and equipment asset purchase agreements
 - reconciliation documents
 - hundreds of pages of schedules needed to support the final agreements and support the fair market value and commercial reasonableness determination

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