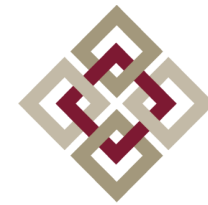


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Spotlight on Executive Compensation in the Healthcare Industry

Thursday, November 17, 2011

Presented by EpsteinBeckerGreen and Integrated Healthcare Strategies

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Today's Speakers



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Today's Topics

Not-for-profit healthcare organizations

1. Federal and state governmental efforts & compensation trends
2. Board and officer responsibilities and liability
3. Best practices

For-profit healthcare organizations

4. Special executive compensation issues for healthcare for-profit organizations

Conditions Affecting Compensation Decisions

Economic conditions

- The nation is three years into economic downturn
- Public budget deficits are mounting, with some states on the verge of bankruptcy
- Conditions have constrained compensation and created pressure on high-performing organizations as low performers moderate or freeze salaries and pay smaller incentive awards
- There is a negative attitude among the public and regulators toward executive pay in light of TARP, bailouts, and jobless recovery
- Many states are trying to trim public funding for healthcare

Conditions Affecting Compensation Decisions

Likelihood of more regulation

- Healthcare reform
- Federal, state, and local regulatory activity

Likely outcomes of healthcare reform

- More true integrated delivery systems with financing/insurance risk-taking (ACOs)
- Physician involvement in governance
- More mergers, bigger statewide/regional systems
- Declining margins/tighter reimbursement

What is the Impact on Executive Pay Practices?

- **Executive salary increases**
 - In 2009 and 2010, average salary increases declined to 2.5% from the historical norm of 4%
 - However, Integrated Healthcare Strategies and other industry sources are reporting salary increases in the 2.8% to 3.0% range for 2011
 - Current “hot jobs” are in information technology, medical practice management, and finance, where increases are outpacing the industry norms
- **Incentive compensation**
 - Incentive compensation remains a typical component of executive compensation for healthcare executives
 - Most not-for-profit hospitals and systems have performance-based annual incentives for executives
 - Fewer than one-quarter utilize long-term incentives
 - Most recent awards were roughly 10% below target levels, due primarily to the tough economic environment
 - Many organizations are placing more weight on non-financial measures – physician alignment, community benefit, and quality
 - More organizations are exploring the use of long-term incentives that align with long-term transformation under healthcare reform

What is the Impact on Executive Pay Practices?

- **Benefits**
 - Reductions in annual and/or maximum accruals for paid time off/elimination of cash out options
 - Increased employee premium contributions and co-pays for medical and dental coverage
 - Reductions in qualified retirement plan employer contribution or match
- **Perquisites**
 - Perquisites are slowly disappearing, especially highly visible ones (i.e., cars and country club memberships)
 - Business need becomes the justification
- **Severance**
 - Large severance awards are a hot-button issue in today's economic climate
 - Boards/committees are becoming more cautious with regard to severance guarantees
 - Reasonable severance is still acceptable

Topic 1: Federal and state governmental initiatives of executive compensation of not-for-profit healthcare organizations



State Developments: New York

- **NYS Task Force on Not-for-Profit Entities**
 - Created in August by Governor Cuomo to investigate executive compensation at not-for-profit organizations that receive state funding.
 - Announced one day after a *NY Times* article about excessive compensation paid by a not-for-profit organization that received Medicaid funding.
 - Sent letters beginning in August to request extensive compensation information from hundreds of organizations that receive state funding.
- **The NYS task force's press release and letter:**
 - <http://www.ins.state.ny.us/press/2011/p1108251.htm>

State Developments: Massachusetts

- **One proposed bill in MA:**
 - limit executive compensation to \$500,000/year for certain public charities with annual gross revenues >\$1 million.
 - Would permit waivers following a public hearing by a special commission.
 - Impose state-level financial penalties and other sanctions for any act that constitutes an “excess benefit transaction” under federal tax law, which includes payment of excessive compensation.

State Developments: Massachusetts

- **Another pending bill in MA would prohibit public charities from compensating board members without advance approval.**
 - Follows a report by the Attorney General's Office reviewing compensation paid to board members by Massachusetts' four major not-for-profit health insurers and concluding that there was no justification for such compensation.

State Developments: Massachusetts

- **The MA Attorney General's Office issued a letter in July describing its review of a multi-million dollar severance package given to a president/CEO of a not-for-profit health insurer who was terminated due to the board of directors' loss of confidence in his performance.**
 - Certain common severance provisions “diminish board independence, when triggered are costly both in dollars and public perceptions, and, in most cases, do not sufficiently advance legitimate corporate purposes to merit their scope and pervasive use.”

Proposals to cap CEO pay

- **New York:** Assembly member Deborah J. Glick is sponsoring a bill that would cap executive pay at publicly financed hospitals to \$250,000.
- **Maine:** to cap hospital administrators' compensation at \$70,000 (the governor's salary).
- **Rhode Island:** to cap hospital administrator pay to 110% of what their regional counterparts receive.
- **California:** to cap CSU campus presidents' salaries at \$300,000 per year.
- These bills, other than NY's, have died.

Other State Developments: New Jersey

- **New Jersey**

- Addendum added to state contracts with third-party social service providers now imposes caps on compensation that may be paid from contract payments from the Department of Human Services and the Department of Children and Families, and also imposes other rules regarding the use of such funds.
- The caps vary with the size of the organization. The highest amount permitted to be paid from such state contracts is \$141,000 for provider organizations whose gross revenue from their last annual audit report exceeded \$20 million.

Federal Developments

- **IRS Compliance Check Projects: Executive Compensation, Hospitals**
- **Overhaul of IRS Form 990**
- **Congressional hearings**
 - Various topics related to nonprofits over the past several years.
- **Efforts by individual political leaders**
 - Sen. Grassley (R-IA) – recently called for elimination of the rebuttable presumption and first-bite exclusion
 - Rep. Boustany (R-LA) – October letter to IRS seeking an explanation of how it conducts nonprofit oversight and how it will tighten compliance with the laws and regulations governing charity and philanthropy
- **Focus on executive compensation – part of a larger trend of scrutinizing whether tax-exempt organizations are giving enough benefits back to society to justify their tax-exemptions (income, property, sales taxes, etc.).**

Topic 2: Board and officer responsibilities and liability for executive compensation of healthcare not-for-profit organizations



Board and officer responsibilities and liability

- **Directors and officers have duties and liabilities under both federal tax law and state corporate law.**
- **Enforcement – historically primarily by the IRS**
 - States are not bound by how the IRS defines reasonable compensation
 - Recent state activity – concern that states may enact different, and perhaps more restrictive, rules than the IRS
- **NY: one of few states whose non-profit corporation laws regulate compensation**
 - NY standard: reasonableness

Corporate Law: Governance & Executive Compensation

- **Governance**
 - Certificate of incorporation
 - Bylaws
 - Board compensation committee – charter
 - Conflicts of interest policy
 - Compensation policy
 - Compensation philosophy
- **Fiduciary Duties**
- **Liability**
 - Many states and federal law have enacted certain limitations on the personal liability of volunteer directors

Getting Board Members Prepared

- **Business Judgment Rule Considerations – Education is Needed**

- Past decade has brought a revolution in corporate governance (Sarbanes-Oxley; Dodd-Frank)
 - Directors must be active participants in oversight, not mere passive recipients of information by:
 - Demanding enough to rattle cages when necessary
 - Being knowledgeable enough to set direction
 - Acting bold enough to add value through hard questions
 - Being vigorous enough to assure that the organization's plans are conscientiously prepared to have the best shot at success
 - Managing board expectations is the responsibility of chairs and senior management by recognizing the difference between fiduciary and managerial responsibilities

Federal Tax Law: Excess benefit transactions

- **Internal Revenue Code Section 4958 imposes excise taxes on “disqualified persons” who engage in an “excess benefit transaction” with a Section 501(c)(3) public charity or 501(c)(4) tax-exempt organization.**
 - **Excess benefit transaction:** a transaction in which an economic benefit is provided by the organization, directly or indirectly, to a disqualified person, that exceeds the value that the organization received in return.
 - Includes: payment of excessive compensation
 - **Disqualified person:** in a position to exercise substantial influence over the organizations affairs during 5-year look-back period (*e.g.*, directors, CEO, COO, CFO).

Excess benefit transactions

- **Reasonable compensation:** what would ordinarily be paid for like services by like enterprises under like circumstances.
- **All items of compensation are generally taken into account.**
 - Salary, fees, bonuses, severance payments, and deferred and noncash compensation
 - Foregone interest on loans
 - Certain fringe benefits

Excess benefit transactions: Excise Taxes

- **On the disqualified person:**
 1. **Excise tax** – 25% of the “excess benefit”
 2. **Disgorgement** – undoing the transaction / additional 200% tax
- **On “organization managers”:**
 - Organization managers: officers, directors, trustees, etc.
 - Only if they “knowingly” approved such transactions.
 - Exception: if participation was not willful and was due to reasonable cause.
 - For example, a director who votes against giving an excess benefit would ordinarily not be subject to this tax.
 - **Excise Tax:** 10% of the excess benefit
- **The organization itself is not subject to tax (but in certain extreme situations, may risk its tax-exemption).**

Rebuttable presumption of reasonableness

- **Compensation is presumed to be reasonable if:**
 1. The transaction was approved by an authorized body of the organization composed of individuals who do not have a conflict of interest.
 2. Prior to making its determination, the authorized body relied upon appropriate comparability data.
 3. The authorized body adequately and concurrently documented the basis for its determination.
- **The IRS may refute the presumption of reasonableness only if it develops sufficient contrary evidence to rebut the probative value of the comparability data.**

Where can legal counsel add value?

- **General compliance with tax and corporate law**
- **Tax consequences of deferred compensation and retirement plans**
- **Responses to audits, compliance checks and inquiries (such as the NYS Task Force letter)**
- **Review of overall compensation program**
 - Compensation policy and philosophy
 - Bylaws
 - Compensation committee charter
 - Conflicts of interest management
- **Form 990 reporting**
- **Employer and employee tax implications**
- **Board education**

Compensation Consultants

- **Independence from management**
 - Engaged by the board of directors
- **Certified opinions under Section 4958 – liability protection**
- **Help boards develop an effective compensation philosophy**
 - Supports mission
 - Mix of salary, incentive pay, and benefits
 - Ability to recruit and retain
- **Industry trends and best practices**
- **Prepare boards for dealing with PR/media relations**
- **Develop incentive and deferred compensation programs that allow organization to recruit and retain talent**

Topic 3: Best practices of not-for-profit healthcare organizations for executive compensation



Best Practices: Board of Directors

- Educating and annually updating the full board – and not only the compensation committee – about the board’s executive compensation responsibilities, the excess benefit transaction rules, the organization’s procedures for addressing them, and related recent developments.
- Periodically reviewing the delegation of the authority of the board of directors to the compensation committee to ensure that the compensation committee is fully independent and is also keeping the board appropriately informed about executive compensation matters.
- Having the compensation committee inform the full board of the compensation arrangements that the committee reviewed and approved for (at least) the Chief Executive Officer.
- The Board should receive a copy of Form 990 prior to filing.
 - Directors responsible for reviewing Form 990 should be educated about its contents and the key areas that pose the greatest tax compliance, reputational and audit risks.
- Consider engaging reputable compensation consultants.

Best Practices in Governing Executive Compensation

- **Structure, charter, and compliance**
 - Separate compensation committee, entirely independent
 - Committee members should be independent and have no conflict of interest with regard to executive compensation
 - Charged to oversee all of executive compensation (not just CEO pay)
 - Required to meet two or three times a year
 - Required to report periodically to the whole board
 - Written charter, with prescribed process
 - Requiring thorough documentation of process and decisions
 - Set qualifications for membership
 - Requiring annual self-appraisal on process, charge, effectiveness
 - Establishment of a “rebuttable presumption of reasonableness” for all disqualified individuals (executives and employed physician leaders)

Best Practices in Governing Executive Compensation

- **Have a formal, board approved executive compensation philosophy**
 - Defines the governance process, roles, and responsibilities
 - Approval authority at all levels
 - If 501(c)(3) specifically states the intent to establish a “rebuttable presumption of reasonableness”
 - Clearly defines the peer group(s)
 - National, regional, local, etc.
 - Size and type of organizations
 - Hospitals, systems, general acute care, specialty, etc.
 - For-profit or not-for-profit
 - Data sources
 - Defines targeted position for each element of compensation
 - Salary
 - Pay-for-performance
 - Benefits
 - Perquisites
 - Allows for flexibility
 - Defines a process for dealing with exceptions, instead of making exceptions to the rule

Executive Compensation Philosophy Trends

- **Executive philosophies at not-for-profit hospitals and health systems**
 - The most common (over half) is a “median” philosophy
 - Just under half intentionally position salaries above median
 - About one-quarter position salaries at the 60th or 65th percentiles
 - Another one-quarter position salaries at the 75th percentile
 - Almost all also have performance-based incentive plans, most commonly annual plans
 - Almost one-third target total cash compensation (salaries plus incentives) at the 75th percentile
 - Quite often, organizations which target total compensation at the 75th percentile also offer the opportunity to earn above the 75th percentile for exceptional performance
 - A few hospitals define pay targets that are below median due to financial constraints

Best Practices in Governing Executive Compensation

- **Focus on total compensation**
 - Get quantitative data on total compensation (including salaries, incentives, benefits and perquisites) and use it in making all decisions
 - Document rationale for exceptions to policy/philosophy clearly in minutes
 - Evaluate every enhancement in terms of impact on total compensation
 - Use same consultant to evaluate all aspects of executive compensation to make sure that all decisions are based on impact on total compensation
 - Annually present tally sheets to the Board that quantify total compensation

Best Practices in Governing Executive Compensation

- **Process**
 - Require a thorough review of all aspects of executive compensation program every few years, including:
 - Employment contracts and total value of severance and retirement benefits
 - Perquisites and business entertainment and travel expenses
 - Use a consultant to gather data on competitive practices – not staff
 - Committee should hire and supervise consultant directly
 - Committee should meet regularly in executive session
 - Staff should be excused from any decision affecting their own compensation
 - All decisions should be adequately documented in minutes
 - Committee reports decisions to full board

Best Practices in Governing Executive Compensation

- **Documentation**

- Make sure minutes include enough information to establish “rebuttable presumption”
 - Statement of intent to establish presumption of reasonableness
 - Identify those present during debate, deliberation, and vote
 - Lack of conflict of interest for all present or indication of how conflict was dealt with
 - Source of comparability data and how it was collected
 - Assertion that comparability data are for like jobs, like organizations
 - Terms of compensation approved
 - Assertion that committee relied on comparability data in making decisions
 - Statement of directors’ belief that pay approved represents fair market value
 - Rationale for approval of any compensation above comparability data

Executive Compensation Communication Strategy Continuum

- **Have a plan for responding to inquiries:**



1. **Preparation:** How prepared are you to respond? Are you ready for questions? Do you have a plan for what your rationale and explanation will be?
2. **Timing:** When will you release your rationale and explanation? Will you wait for questions or be more proactive and communicate compensation to constituents through various vehicles?

Topic 4: Special Executive Compensation Issues for Healthcare For Profit Organizations



- **Dodd-Frank Wall Street Reform and Consumer Protection Act – enacted July 21, 2010; requirements include:**
 - public company disclosure of ratio of CEO total compensation to the median of all employee total compensation
 - Focuses on compensation independence
 - Requires “say on pay”
 - Requires claw-back provision

- **Section 162(m)(6) Deduction Limits**
 - The Patient Protection and Affordable Care Act set a \$500,000 limit on the allowable deduction for compensation and deferred compensation that would otherwise be deductible by a "covered health insurance provider" in taxable years beginning on or after Jan. 1, 2013.
 - Further guidance is expected from the Internal Revenue Service during the year.

Nondiscrimination Rules for Highly Compensated – 105(h)

- **Affordable Care Act: insured health plans are prohibited from discriminating in favor of highly compensated employees, applying rules similar to Section 105(h) of the Internal Revenue Code**
 - Under existing Section 105(h), which applies only to self-insured plans, failure to comply results in taxable premiums and benefits
 - New rules would provide significant penalties for insured plans (\$100/day per participant)

Nondiscrimination Rules for Highly Compensated – 105(h)

- **Not clear how to apply these rules to insured group health plans**
- **COBRA**
 - How is the terminating employee or group tested?
 - Does it matter if ERISA severance plan or individual executive agreement?
- **Retiree medical**
 - Will the exception be expanded if actives participate in early retiree plan?

Questions & Answers



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Links to helpful materials

- **“New York Takes Bold Action in Joining the Intensifying Focus on Not-for-Profit Compensation,”** by Jay E. Gerzog and Tamar R. Rosenberg, *The Exempt Organization Tax Review*, Vol. 68, No. 5, p. 477 (November 2011).
 - <http://www.ebglaw.com/showarticle.aspx?Show=15133>
- **“Executive Compensation in the Headlights: Challenges Ahead for Nonprofit Hospitals in Compensating Executives,”** by Joan Disler, Michelle Capezza and Gretchen Harders, *BNA’s Health Law Reporter*, 19 HLR 17 (April 29, 2010).
 - www.ebglaw.com/showArticle.aspx?Show=12880

Links to helpful materials

- **“Spotlight on Executive Incentives”**

Author, Kevin Talbot

http://www.ihstrategies.com/knowledge_center_article.php?article_id=142&file=articles/142.pdf

- **“M & A Activity at Record High – But Many Will Stall at the Employee Intersection”**

Author, Mark Wade

http://www.ihstrategies.com/knowledge_center_article.php?article_id=344&file=articles/344.pdf

About Integrated Healthcare Strategies

Integrated Healthcare Strategies is a national compensation and human resource consulting firm dedicated exclusively to healthcare. We offer a wide range of compensation, governance, and employee engagement solutions to help you align people, pay and performance in your organization. We can assist you with:

- Executive compensation
- Staff compensation
- Director compensation
- Physician compensation
- Leadership development
- Leadership transition planning
- Governance solutions
- Human resource solutions
- Labor relations
- Executive search
- Physician practice management
- Physician resource planning
- Mergers & acquisition transitions
- Compensation surveys
- Employee engagement surveys
- Hospital and physician alignment

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About EpsteinBeckerGreen

Epstein Becker Green is uncompromising in its pursuit of legal excellence and client service in its areas of practice: [Health Care and Life Sciences](#), [Labor and Employment](#), [Litigation](#), [Corporate Services](#), and [Employee Benefits](#). The Firm was founded to serve the health care industry and has been at the forefront of health care legal developments since 1973. Our commitment to these practices reflects the founders' belief in focused proficiency paired with seasoned experience. EBG's national practices regularly share and access each other's knowledge and resources to provide clients with tailored solutions to their legal and business issues. Understanding the complex evolution and critical trends within these areas enables EBG practitioners to provide clients with focused insight and deliver high-quality service and results.

Visit the www.ebglaw.com website for the various alerts we have published on a wide range of issues related to health care, health reform, not-for-profit organizations, corporate law, labor and employment, employee benefits.



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Who we are

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- Executive search
- Physician practice management
- Physician resource planning
- Mergers & Acquisition transitions
- Compensation surveys
- Employee engagement surveys
- Hospital and physician alignment

Who we serve

Healthcare organizations face different challenges than other firms. While on the surface your issues appear similar to those of other industries — executive recruiting, employee retention, compensation, performance management, human resources management and labor relations — we know they are different. With over 30 years of experience providing strategic consulting services to healthcare organizations, and seasoned consultants with healthcare field experience, Integrated Healthcare Strategies has unmatched depth and breadth of knowledge of the unique issues healthcare organizations face.

We've worked with over 1,200 major healthcare providers, 1,800 hospitals and over 700 independent and affiliated medical groups. We work with healthcare systems – secular, religious, and not-for-profit; medium to large free-standing hospitals; prestigious teaching institutions; health maintenance organizations; hospital-owned physician groups and medical clinics of varying sizes and specialties; children's hospitals; senior services; and national and state health and hospital associations.

With convenient access to healthcare-specific services, insightful consulting advice from industry professionals, and “best practice” experiences of thousands of healthcare organizations, our clients can successfully create the components, build the structure, and maintain the integrated strategic solutions critical to their long-term success.

Aligned: Boards, Leaders, Physicians, Staff, and Volunteers

Our clients benefit from our unique blend of integrated solutions and consultant knowledge that covers every aspect of people, pay, and performance strategies. Because you can work with us for all of your human resource and management needs, you get better solutions since we know your organization already, much more quickly because we don't require ramp up time. Our services include:

Executive Compensation and Governance

Our Executive Compensation and Governance group provides executive compensation, governance, and leadership strategies designed to foster success in the new era of healthcare reform. Services include executive total compensation review and design, physician leader alignment, reasonableness opinions, leadership continuity planning, governance model design development, board education and development, executive performance development and appraisals, and many other governance and compensation services.

Continued on next page

Staff and Director Compensation

Our Staff and Director Compensation group helps healthcare organizations manage employee compensation effectively and efficiently. We help you balance the goals of satisfying your key employees, managing a budget, and attracting and retaining the best talent in your area through the insights of our employee relations specialists and our extensive knowledge of the current compensation practices of over 2,000 healthcare organizations across the country.

MSA Executive Search Practice

Our MSA Executive Search consultants have perfected a comprehensive, customized search process to present your firm with the best candidates for your executive and director positions. Every candidate analysis includes personal interviews using behavioral techniques, in-depth Executive Assessments, thorough background checks, and individual discussions with cited references. We place leaders at all levels - CEOs, CMOs, Vice Presidents, Physician Practice Leaders, Senior Services, and director and manager level positions. Additional assistance includes leadership assessment, team assessment, executive on-boarding, and recruiting support. We provide a personal touch to every search and are proud that our clients have found the right CEO in our first slate presentation, 100% of the time.

Physician Services Practice

Our Physician Services consultants help healthcare organizations develop and maintain a successful relationship with their employed and affiliated physicians - a critical initiative given the rise in integrated delivery models. Services include physician fair market value and commercial reasonableness assessments, physician compensation review and design—including more complex arrangements such as call-pay, clinical co-management, and medical directorships, physician affiliation, employment of physicians and professional service agreements, physician practice operational assessments, physician opinion assessments, and physician resource planning. In a time of increased regulatory scrutiny, Physician Services stands behind their work to evaluate and create compensation plans for healthcare organizations.

MSA HR Capital Practice

Our MSA HR Capital experts help healthcare organizations develop effective people strategies, improve employee engagement, and develop labor relations strategies. Consulting services include leadership development and coaching, executive team building, HR management operations review and optimization, performance management redesign, performance improvement strategies, and special project management support with mergers, new hospital 'People' plans, labor strategies, staff reductions, and change management.

Mergers & Acquisitions

Our Healthcare Mergers & Acquisitions advisory consultants provide a proactive approach to your HR due diligence and integration process allowing you to identify and quantify liability exposure and realize potential efficiencies. In any transaction, successful integration of the human resource function is dependent on thorough knowledge of each organization's benefit and compensation plans, culture, and operating philosophy. Our consultants apply their healthcare industry knowledge along with extensive experience in mergers and acquisitions, benefits, and compensation, to help you address transaction issues key to facilitating a deal and a successful cultural integration.

Surveys

We've been in the survey business since the 1970's. For over 35 years, we have worked exclusively with healthcare organizations providing them with the tools and expertise they need to achieve higher levels of engagement and improved performance. Our compensation surveys provide critical decision-making data on leadership, staff, nursing, medical director, and advanced practice clinician pay, as well as executive benefits. If it's a pulse on levels of employee interest and satisfaction you need, we perform engagement and opinion surveys for leaders, employees, physicians, trustees, and volunteers. Exceptional post-survey consulting helps organizations analyze results and develop "next step" action plans.



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Mr. Talbot is an Executive Vice President with Integrated Healthcare Strategies. As the practice leader of the Executive Compensation and Governance practice, Mr. Talbot leads one of the country's largest and respected consulting group dedicated exclusively to compensation, benefits and governance in the healthcare industry. As practice leader, he manages a national client base of over 300 healthcare organizations and approximately 25 consultants.

Mr. Talbot is an experienced consultant to the healthcare industry, with an extensive background in executive compensation and benefits. He has worked with healthcare organizations ranging from some of the country's largest health systems to independent community hospitals to state hospital associations. Mr. Talbot regularly advises health care Boards and senior executives on all aspects of executive compensation and benefits. He has led a wide variety of consulting engagements including evaluating total compensation programs, designing performance-based incentive plans, developing global compensation philosophies, and educating trustees and executives on the latest regulatory issues and industry trends.

An expert on the governance of executive compensation, Mr. Talbot works closely with boards to help them remain compliant with regulatory requirements and establish best practices for governing their executive compensation programs. He frequently provides his expert opinion on the reasonableness of executive total compensation plans.

In an atmosphere of increasing transparency and scrutiny of executive compensation, Mr. Talbot is also regularly called upon by the boards of the nation's leading healthcare organization to navigate the complex relationship between the board and the organization's many stakeholders.

Professional Highlights

- Led a large, public safety-net hospital through a top-to-bottom assessment and redesign of its compensation, incentive and performance management systems.
- Developed a new management incentive plan for a major academic health system that increased collaboration between facilities and focused leadership on the common goals of its strategies and priorities.
- Conducted and published the industries leading surveys of compensation and benefits practices for healthcare executives.

Mr. Talbot received a Masters of Business Administration from the Carlson School of Management at the University of Minnesota, and completed his Bachelor of Science degree at the United States Naval Academy.

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Mark Wade is a Senior Vice President in the Executive Compensation and Governance practice of Integrated Healthcare Strategies, and works out of the firm's Dallas office location.

Mr. Wade has over 20 years of consulting and human resource industry experience. He has assisted hospital boards, equity investors, and executive committees with overall compensation strategy including the design, evaluation, and financial impact of not-for-profit reasonableness opinions, market competitive base and incentive compensation, stock and other long-term incentive programs, executive contracts, change-in-control and parachute programs, stay bonus and retention programs, supplemental executive retirement programs, and perquisites.

Mr. Wade also has extensive experience in mergers and acquisitions including assisting both financial and corporate buyers evaluate a companies' HR plans, programs, and initiatives for financial impact, operational issues, and overall plan appropriateness during due diligence, and formulating and implementing post-deal integration strategies. He has also consulted with organizations on overall benefit plan design and HR effectiveness.

Professional Highlights

- **Executive Compensation:** Assisted a large hospital management company in the redesign and harmonization of all executive programs across 250 facilities including base compensation, incentive plan design and long-term incentive programs.
- **HR Management:** Assisted a hospital system with approximately 8,000 employees in the evaluation of all human resource plans, programs, and delivery systems. Through vendor renegotiation and operational changes, identified approximately \$10 million in annual savings.
- **M&A Due Diligence:** Served as lead human resource consultant for a private equity backed health care organization. Responsible for all compensation, health & welfare, and retirement plan design and implementation as well as vendor selection and delivery solutions. Coordinated all HR related activities for 15 acquired hospitals.
- **Post-Deal Integration:** Led both multinational and domestic transaction teams in over a dozen human resource integration and restructuring projects including: Assisting companies in the development of a human resource strategy that was consistent with overall business objectives; harmonizing the merging companies' current compensation programs, benefit plans and policies; designing or redesigning plans and policies integrating communication and rollout of plans.

Prior to joining Integrated Healthcare Strategies, Mr. Wade worked with two national consulting firms and most recently was Vice President of Total Rewards for Baylor Healthcare System in Dallas, TX. He received a BBA in Management with an emphasis in Human Resources from Baylor University and is a Certified Compensation Professional through World at Work.

www.IHStrategies.com

The Firm

Epstein Becker Green (the “Firm”) is uncompromising in its pursuit of legal excellence and client service in its areas of practice: Health Care and Life Sciences, Labor and Employment, Litigation, Corporate Services, and Employee Benefits. The Firm was founded to serve the health care industry and has been at the forefront of health care legal developments since 1973. Epstein Becker Green is also known for its service to clients in the financial services and hospital-ity industries, among others, representing entities from startups to Fortune 100 companies. Our commitment to these practices and industries reflects the founders’ belief in focused proficiency paired with seasoned experience.

Client Relationships

At Epstein Becker Green, we build lasting relationships with our clients by delivering results based on our cutting-edge knowledge, top-notch legal skills, and clear understanding of each client’s business, operations, and goals. We know that solving problems isn’t enough. We want to help clients avoid them in the first place. Our national practices regularly share and access each other’s know-how and resources to provide clients with solutions tailored to their legal and business issues.

Competitive Advantage

Our attorneys’ backgrounds and training give us a competitive advantage over other law firms. Epstein Becker Green attorneys honed their skills as general counsel of major corporations; in key government positions with the U.S. Departments of Justice, Labor, and Health and Human Services as well as the National Labor Relations Board and the Equal Employment Opportunity Commission; in various U.S. attorneys’ offices; and as staff counsel to congressional committees. Our attorneys bring to the table valuable insight and perspective gained from those significant real-world experiences. Additionally, Epstein Becker Green attorneys stay at the forefront of developments in their practice areas by participating in business associations and law school faculties; speaking before business, civic, and educational groups; and publishing regularly in business and legal journals and on Firm blogs.

Global Reach

Epstein Becker Green is a founding member of the International Lawyers Network (“ILN”), an association of approximately 90 law firms with more than 5,000 lawyers worldwide. The ILN provides our attorneys with direct access to high-quality legal services in more than 65 countries, enabling the Firm to effectively serve clients wherever their businesses take them.

Pro Bono and Community Service

Epstein Becker Green donates substantial attorney time each year to pro bono legal services. We also believe in giving back to the community in meaningful ways: the Firm participates in charitable, civic, and community activities. Many of our attorneys serve on the governing boards of charitable, educational, and other not-for-profit organizations.

Health Care and Life Sciences

Epstein Becker Green was founded as a law firm dedicated to the health care industry. For nearly 40 years, this practice has been at the forefront of health care law, taking the lead in understanding, interpreting, and shaping the issues and regulations that affect health care and life sciences institutions. There are currently more than 100 attorneys in Epstein Becker Green's Health Care and Life Sciences practice. These attorneys serve a wide spectrum of health care organizations in capacities ranging from general counsel to special counsel on particularly complex issues. Epstein Becker Green's clients include academic medical centers, ambulatory care facilities, biotechnology and life sciences companies, health care e-commerce companies, health plans and other health care insurers, hospitals and health systems, insurance companies, investment banks and venture capital firms, pharmaceutical and medical device manufacturers, physician group practices/management companies, post-acute and long-term care providers and retirement facilities, suppliers and distributors, trade associations, and professional societies.

Labor and Employment

Epstein Becker Green's Labor and Employment practice is one of the largest in the United States limited to the representation of management. This practice represents companies across various industries, with particular depth in financial services, hospitality, energy, and the full spectrum of health care and life sciences organizations. In addition to handling traditional labor-management relations matters and vigorously defending employment law claims, Epstein Becker Green's labor and employment law attorneys have in-depth experience with every major legal issue confronting employers in the modern workplace. Our attorneys work closely with company executives, in-house counsel, and human resources departments on preventive measures that help protect against workplace problems before they occur. Additionally, the practice's Immigration Law Group provides a full range of immigration services, with an emphasis on the areas of transferred executives, specialized knowledge professionals, investors, and family-based immigration.

Litigation

Legally challenging, cutting-edge, and "bet the company" cases and investigations are those normally tackled by Epstein Becker Green's Litigation practice. Our litigators know the intricacies of modern investigations and litigations and are exceptionally qualified to assist clients, either by defending them if they are sued or by helping them use litigation affirmatively to accomplish their business objectives. This practice has litigated complex cases on behalf of domestic and global midsize and Fortune 500 clients in varied industries, including banking and financial services, construction, environment, government, health care and biotechnology, insurance, manufacturing, oil and gas, and real estate. In addition to conducting trials and appeals in both federal and state courts, Epstein Becker Green litigators participate in arbitrations, mediations, and other alternative dispute resolution methods and appear before federal and state enforcement and regulatory agencies and specialized federal bodies.

Corporate Services

Epstein Becker Green's Corporate Services practice understands that businesses today operate in a dynamic, competitive, and complex world. Our ability to see and appreciate the "big picture" has never been more valuable or critical to our clients. The Corporate Services practice offers clients a full-service platform to meet their corporate goals. Our attorneys provide advice and counsel in such areas as real estate, mergers and acquisitions, bankruptcy and restructuring, and corporate finance and securities. This practice represents companies across many industries, including, but not limited to, health care and life sciences, financial services, retail, hospitality, technology, energy, media and entertainment, government, commercial real estate, and construction. Regardless of the industry, our attorneys work as members of a client's business team, offering strategic and pragmatic guidance regarding a broad spectrum of transactional matters.

Employee Benefits

For both foreign and domestic clients, including taxable and tax-exempt entities, Epstein Becker Green's Employee Benefits practice provides a complete range of services relating to the design, structure, implementation, administration, and termination of all types of retirement, executive compensation, and welfare benefit plans. Attorneys in this practice partner with clients' human resources departments, in-house counsel, and other benefits professionals (such as plan actuaries, record keepers, and third-party administrators) to provide high-quality services that achieve sound, cost-efficient results. Additionally, our attorneys have the technical knowledge, the responsiveness, and the resources to support and advise employers of all sizes in every aspect of employee benefits law.

Diversity and the Women's Initiative

Epstein Becker Green is committed to maintaining a diverse workforce and fostering a work culture that promotes diversity in its recruitment, professional development, and ongoing communications. Forty percent of the Firm's attorneys and 26 percent of the Firm's members are women, while minorities make up 34 percent of the entire Firm (including both attorneys and staff). We recognize that diversity engenders more creative, nuanced, and sophisticated responses to both our employees' and our clients' concerns and expectations.

Additionally, through a variety of sponsorships and programs, Epstein Becker Green strives to advance the careers of women. The Epstein Becker Green Women's Initiative, which the Firm launched in 2002, has been helping women develop their careers by hosting events that educate, entertain, and facilitate networking with other women professionals. The Firm also is a founding sponsor of the Women Business Leaders of the U.S. Health Care Industry Foundation, an organization whose goal is to help senior executive women in the health care industry improve their businesses and continue to grow professionally.

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ROBERT D. REIF is Co-Chair of the firm's National Corporate Services Steering Committee, a Member of the Health Care and Life Sciences practice, and is the Managing Shareholder of and resident in the firm's Washington, DC, office. He concentrates on all aspects of corporate and transactional law primarily for the health care industry, including mergers and acquisitions, financings, joint ventures, corporate governance and general corporate and business law, for both for-profit and nonprofit corporations.

Mr. Reif has represented a variety of health care companies, including managed care organizations, hospitals, insurance and pharmaceutical companies, physician groups, managed mental health care companies, prepaid dental plan companies, preferred provider organizations and utilization review companies, as well as mezzanine lenders, private equity companies and venture capital companies.

Mr. Reif:

- Advises clients with regard to corporate structure, mergers and acquisitions, financing, joint ventures, tax issues, including nonprofit tax exemption matters, contracting, licensing requirements, risk management and strategic planning, and corporate governance
- Serves as lead transaction counsel in a variety of health care company transactions aggregating over \$1 billion in value and in 2005 was named as one of the ten "Outstanding Healthcare Transaction Lawyers" by *Nightingale Magazine*
- Advises companies, including venture capital companies, with regard to all aspects of the sales and acquisitions (non-hostile) of businesses
- Counsels companies seeking outside financing, including negotiating venture capital transactions, bank and other debt-financing transactions, private placement of securities under state and federal securities laws, corporate reorganizations, and corporate conversions from nonprofit to for-profit status
- Represents mezzanine lenders in a variety of health care lending and financing transactions
- Named a Washington DC "Super Lawyer," by *Washington DC Super Lawyer Magazine* in 2007 and 2009

PRACTICES

Corporate Services

- Corporate Governance
- Joint Ventures
- Loan Transactions
- Mergers & Acquisitions
- Private Equity & Venture Capital

Health Care and Life Sciences

- Corporate Financing
- Managed Care
- Mergers, Acquisitions and Divestitures
- Tax and Tax Exempt Counseling

EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1977

B.A., University of Delaware, 1974

BAR ADMISSIONS

District of Columbia

New York

Virginia

COURT ADMISSIONS

U.S. Court of Appeals for the District of Columbia Circuit

U.S. Court of Appeals for the Fourth Circuit

U.S. District Court, District of Columbia

U.S. District Court, Eastern District of California

U.S. District Court, Eastern District of Virginia

U.S. District Court, Northern District of California

U.S. Tax Court



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MICHELLE CAPEZZA is a Member of the Firm in the Employee Benefits Practice in the Firm's New York office. Ms. Capezza practices law in the areas of ERISA, employee benefits and executive compensation and has more than fourteen years of experience representing a range of clients, from *Fortune 500* companies to medium-sized businesses and individual executives in these matters. In 2011, Ms. Capezza was named a "Rising Star" by *New York Super Lawyers - Metro Edition*, and in 2009, she was named a "Rising Star" by *New Jersey Super Lawyers* magazine for her work in Employee Benefits/ERISA. Ms. Capezza has also been recognized in *Marquis Who's Who in America*, *American Law*, and *Emerging Leaders*.

Ms. Capezza counsels clients with respect to all aspects of employee benefits law, including:

- Design, administration and compliance of: qualified plans (such as 401(k), profit-sharing and pension plans), nonqualified deferred compensation arrangements (including SERPs), employee welfare benefit plans (including cafeteria plans) and equity/incentive compensation programs (such as stock option, restricted stock, phantom stock, and executive bonus programs)
- Employee benefits issues that arise in connection with merger and acquisition and joint venture transactions (including treatment of equity awards, change-in-control and golden parachute issues, severance, COBRA and PBGC-related issues)
- Review and negotiation of employment, severance and release agreements, and various types of vendor, trust, and service provider agreements
- Fiduciary issues under ERISA (including providing advice on best practices to plan trustees, as well as to investment and administrative committees)
- Compliance with ERISA and the Internal Revenue Code (including Sections 409A, 280G and 162(m))
- Representation of clients before the Department of Labor, Internal Revenue Service and other government agencies (including with regard to the DOL Voluntary Fiduciary Correction Program and the IRS Employee Plans Compliance Resolution System)

Ms. Capezza also is a member of the Technology Team at Epstein Becker Green. The

PRACTICES

Employee Benefits

- ERISA
- Executive Compensation
- Health and Welfare Plans
- HIPAA
- Mergers And Acquisitions/Downsizing
- Multi-Employer Plans
- Retirement Plans
- Technology Team

EDUCATION

J.D., Seton Hall University
School of Law, Member and Assistant Notes and Comments Editor, *Seton Hall Law Review*, and Jessup International Moot Court Team, 1996
B.A., Rutgers University, with High Honors & Phi Beta Kappa, 1993

BAR ADMISSIONS

New Jersey
New York

COURT ADMISSIONS

U.S. Supreme Court
U.S. District Court, District of New Jersey

MEMBERSHIPS

Alumni Council, Seton Hall University School of Law
American Bar Association
Board of Trustees, The First American Inn of Transactional Counsel (American Inns of Court)
National Association of Women Lawyers
New Jersey Chapter of the Worldwide Employee

Michelle Capezza

Benefits Network - Steering
Committee (2008 - 2010)
The Global Leaders

Technology Team counsels both public and private technology-based companies through a multidisciplinary approach that provides clients with comprehensive legal services, across a broad spectrum of specialties. By combining their individual areas of experience, and understanding their clients' technology-based businesses, the members of the Technology Team can tailor the level of legal services to the particular needs of their clients in a cost efficient manner. These legal services include providing advice on startup formation, acquisitions/divestitures, regulatory issues, business growth and development, tax issues, employee benefit plans, equity compensation programs, and litigation matters. As a member of the Technology Team, Ms. Capezza counsels clients on a wide range of employee benefits and executive compensation matters, including various forms of incentive compensation and benefits for the workforce of technology-based companies.

Prior to joining the Firm, Ms. Capezza practiced employee benefits law in both New York and New Jersey with prominent law firms ranked on "*The Am Law 200*." She also served as corporate in-house counsel to financial institutions with businesses in the retirement plan and equity award plan recordkeeping industry. Her combination of law firm and corporate in-house experience allows her to effectively partner with companies to achieve their business goals.

Ms. Capezza is an adjunct faculty member of the Seton Hall University School of Law, where she teaches a course in Corporate Transactional skills. She is also a frequent speaker on a variety of employee benefits and executive compensation topics.

Ms. Capezza began her career in 1996 as a judicial law clerk to the Honorable Richard S. Rebeck, Superior Court of New Jersey (Civil Part), Middlesex County.



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TAMAR R. ROSENBERG is an Associate in the Health Care and Life Sciences practice, in the firm's New York office. She focuses on tax, corporate, and regulatory matters, particularly those relating to tax-exempt and not-for-profit organizations. Ms. Rosenberg has experience with a wide range of not-for-profit organizations, including hospitals and other health care organizations, universities, private foundations, church-related organizations, performing arts organizations, community foundations, pension funds, charter schools, and other charitable organizations.

Ms. Rosenberg:

- Assists clients with obtaining federal, state, and local income tax-exemption, and with charitable solicitation registration
- Counsels organizations on issues relating to maintaining qualification for tax-exempt and public charity status and compliance with state not-for-profit corporation laws, including private inurement and private benefit; excess benefit transactions; unrelated business income tax; lobbying limitations; private foundation excise taxes; corporate governance; grant-making, scholarships, and awards; foreign charitable activities; fundraising; charitable giving; supporting organizations; donor-advised funds; endowment funds and restricted gifts; and executive compensation
- Advises clients on federal, state, and local tax reporting issues impacting not-for-profit organizations, including Forms 990, 990-PF, and 990-T and foreign reporting forms, such as Forms 926, 5471, and the Report of Foreign Bank and Financial Accounts (TD F 90-22.1)
- Assists organizations with various tax issues common to tax-exempt organizations, including sales and use tax and compensation and benefits issues
- Advises not-for-profit clients on corporate restructurings, mergers, acquisitions, reorganizations, dissolutions, and conversions of not-for-profit organizations to for-profit status
- Advises clients on the federal tax and state not-for-profit law implications of structuring complex affiliations and joint ventures between tax-exempt and for-profit organizations

PRACTICES

Health Care and Life Sciences

- Mergers, Acquisitions and Divestitures
- Tax and Tax Exempt Counseling

EDUCATION

J.D., New York University
School of Law, 2003

B.A., University of
Pennsylvania, *magna cum laude*, 2000

BAR ADMISSIONS

New York

MEMBERSHIPS

New York State Bar
Association

- Assists organizations with IRS audits and compliance questionnaires

Prior to joining Epstein Becker Green, Ms. Rosenberg was an associate at a global law firm and then worked in the Exempt Organizations Tax Practice of a major international accounting firm. She served on the Committee on Non-Profit Organizations of the New York City Bar Association from 2007 to 2010.

While attending New York University School of Law, Ms. Rosenberg was an executive articles editor and a staff editor of the school's *Annual Survey of American Law*.