

# ClinicalOncology

Advances in Cancer Care

news

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## EDUCATIONAL REVIEW

Guide to Cancer Therapeutic Regimens for Solid Tumors

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## The Cost of Extending Life

At the New Mexico Cancer Center in Albuquerque, a breast cancer patient recently approached Barbara L. McAneny, MD, wanting to switch from oral chemotherapy to intravenous chemotherapy. The issue wasn't the effectiveness of capecitabine (Xeloda, Roche Laboratories)—it was the cost.

Dr. McAneny, who is also CEO of the New Mexico Oncology Hematology Consultants, Ltd., said the patient's predicament epitomized a growing issue in oncology treatment.

"She was doing beautifully on her oral chemotherapy, but she capped out on her association health plan because the drug is expensive," said Dr. McAneny. "It cost her about \$3,000 a month for the drug that had her breast cancer completely under control—she's asymptomatic and she's

see **COST**, page 22 ►

## In HER2-Positive Patients ... Breast Cancer Vaccine May Reduce Mortality by 50%

SAN DIEGO—Women with breast cancer that over-expresses *HER2/neu* appear to respond well to a new *HER2* E75 peptide vaccine and have a 50% absolute reduction in mortality compared with controls, according to results from a Phase II trial by Texas researchers. Rather unexpectedly, the researchers also found that women with tumors that are low expressers of *HER2* exhibited a better response to treatment, not only immunologically but also clinically, with a decreased recurrence of breast cancer and no

see **VACCINE**, page 3 ►

## Drug Combo Radically Reduces Recurrent Colorectal Adenomas

SAN DIEGO—A combination of the targeted agent difluoromethylornithine (DFMO) at a low dose and sulindac, a nonsteroidal anti-inflammatory drug, appears to reduce the risk for recurrent colorectal adenomas by up to 95% with less toxicity than chemotherapy, according to a Phase III trial. The randomized, placebo-controlled, double-blind study was presented at the recent annual meeting of the American Association of Cancer Research (AACR; abstract 142).

"There is great hope that we will be able to prevent colon cancer effectively using this method. We

had not been able to do this before due to the high toxicity of available therapies. Difluoromethylornithine is

a targeted agent that represents a new treatment paradigm,"

said lead study author Frank Meyskens, MD.

He is a professor

of medicine and

biological

chemistry and

director of the Chao Family

Comprehensive

Cancer Center at the

University of California at

Irvine College of Medicine.

Studies have shown that

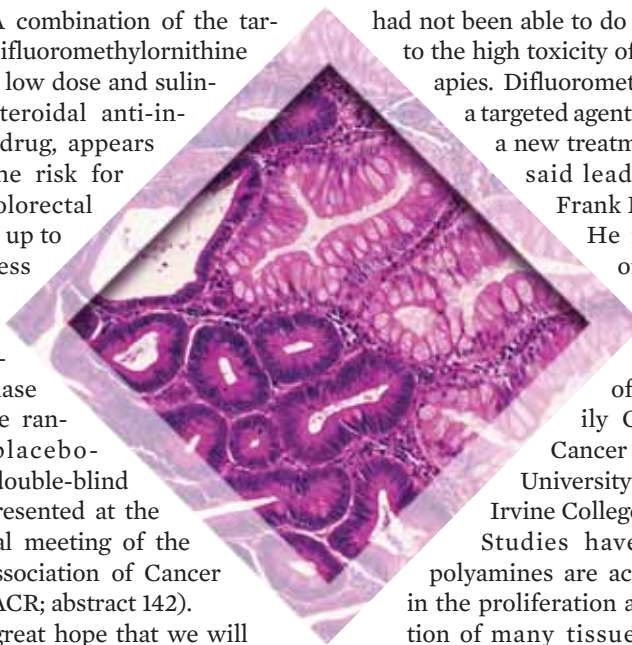
polyamines are actively involved

in the proliferation and differentiation

of many tissues. Preclinical

colon cancer models have also

see **ADENOMAS**, page 7 ►



Colon adenomas

Credit: CNRI/Photo Researchers Inc

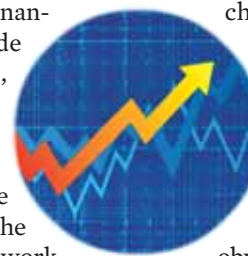
## POLICY & MANAGEMENT

## The Right Stuff

Evaluating Business Opportunities and Investments

Physicians today are increasingly involved in business and financial opportunities that include limited liability companies, partnerships, joint ventures, capital purchases, real estate and other investments. The two biggest mistakes people can make are to invest for the wrong reason and not do homework before taking the plunge. This article provides basic insight into some of the business and legal issues that a physician should keep in mind when evaluating an opportunity. It focuses on two different

types of investments—namely, the purchase of a building and the start of a new business venture.



### Preliminary Considerations

Before making any type of investment, you should consider several questions. The most obvious question is—why am I considering a particular investment? For example, are you looking to supplement your income with additional cash flow, or are you building a nest egg for your future?

see **DECISIONS**, page 25 ►

McMahonMedicalBooks.com

*Diseases of the Breast*

Jay R. Harris; Marc E. Lippman; Monica Morrow; C. Kent

For more information, see page 21.



The Book Page

A service from Clinical Oncology News

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## DECISIONS

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Are you funding your child's college education?

Other important considerations are whether or not the investment will be related to your practice and how much of your personal time the business opportunity will require. It is not uncommon for a physician's income to drop significantly because he or she takes time away from a thriving practice and instead devotes it to a business opportunity that may or may not be financially viable. Finally, if you are considering investing with partners, how well do you know them?

In this last context, due diligence is critical. Find out if your prospective partners are involved in any lawsuits or have any credit issues. If your partners are friends, do not forget to scrutinize their records.

### Involve Your Lawyer and Accountant

Before you make a decision, talk to your business attorney. Not only will your lawyer ensure that your business plans comply with local, state and federal laws; he or she can also negotiate the deal and any necessary contracts. Additionally, your lawyer can educate you about market conditions to assist you in making your business decisions and structuring the deal with the appropriate legal entities. A good business lawyer should have a number of banking contacts with whom you can discuss any financing necessary for your deal.

In addition to inquiring about legal implications, it is advisable to discuss your plans with your accountant or financial advisor. You need someone to "run the numbers" to ensure that your understanding of the financial aspects of the deal is accurate and that as the deal changes throughout the negotiations, it still makes sense.

### Purchasing a Building

Purchasing a building requires careful consideration and planning (see sidebar below). As you assess your options, value your personal time. For example, if you are currently a tenant in a building, the landlord arranges for trash disposal, janitorial service, routine maintenance and snow removal. As the owner of a building, you will be responsible for all these needed services unless you hire a property management company.

You should also ensure that you plan an exit strategy. Is this a building that you plan to renovate, lease

and sell within two years, or is it a building that you plan to hold on to for the longer term?

After you work through these preliminary issues, the first legal matter to consider is how to own the property. Will it be in your own name, or will it be held by a corporation, a partnership or a limited liability company? Chances are, your lawyer will recommend holding the property in a limited liability company (LLC).

An LLC has the advantage of protecting you and your practice from personal liability arising out of the ownership of the building, and it is not as complicated as a corporation. An LLC does not require a board of directors or officers, and it does not require its owners to have shareholder meetings. Furthermore, an LLC does not pay taxes as a corporation does. It will also provide you with certain flexibilities for income tax planning and how you structure your relationship with your partners, if you have any.

### Deal or No Deal?

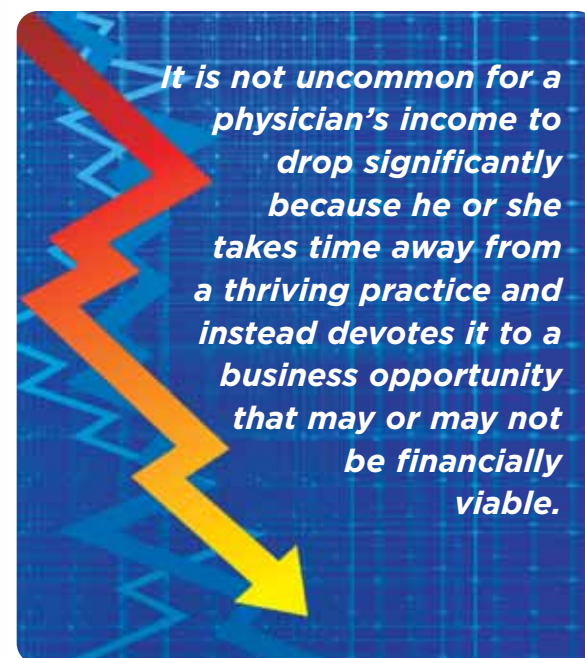
Typically, the buyer of commercial real estate will submit either a letter of intent or a purchase contract to the seller. A letter of intent is simply a nonbinding outline of the major business terms of the deal that you propose to the seller—for example, price, deposit, payment terms, financing terms, condition of the building and the status of any leases. Starting with a letter of intent allows you to make a business deal before incurring the expense of having your attorney draft a purchase contract. Once the letter of intent is accepted, it is easier for you and your lawyer to negotiate a purchase contract. Most purchase contracts will contain a study period, a time within which the purchaser can perform due diligence and, if not satisfied with the result, terminate the contract with no liability before the end of the due diligence period.

During due diligence, your lawyer will order a title report to make sure that the seller owns the building "free and clear." That means that there are no competing claims from any third parties, no restrictions on the property that would prevent you from using the building as planned and no monetary liens, such as tax liens or mortgages, that cannot be paid off out of the purchase proceeds. Your lawyer will also order a survey that identifies the location of the building and confirms that the property is in compliance with various zoning requirements, such as setbacks.

Any bank will require a title report and survey before lending money for a property purchase. The due diligence period is used to explore financing options or obtain a financing commitment. This is one area in which the nature of the investment may affect the type of financing available. If your practice will be occupying the building, you want to tell the bank that the property will be "owner-occupied" because that fact may make it easier to obtain financing, and financing may be less expensive than that for an investment property.

Bear in mind the question of a personal guarantee when seeking financing. If you are purchasing the building in an LLC, you will have no liability unless the bank requires you and your spouse to guarantee the loan personally. This is common, but not universal, so check with your lawyer or accountant to see if the requirement is customary with your lender.

The due diligence period may be a time to undertake other investigations of the property. Your lawyer may order an environmental report, commonly known as a "Phase 1," to make sure no environmental problems exist. An engineering report can be conducted to ensure that the building is sound. Finally, if there are any tenants in the building, your lawyer will



want to review their leases to make sure that they are commercially reasonable and may also require the seller to obtain an "estoppel certificate" from each tenant. A tenant provides an estoppel certificate to a landlord's lender or purchaser as evidence of the tenant's confirmation of the rent being paid, and of both parties' compliance with the lease.

Once you make it through the due diligence period and obtain the necessary financing, you are ready to purchase the building.

### Starting a Business

In the course of your practice, suppose you determine that it would be very useful for your patients to be able to easily store and access personal electronic health information on the fly. You look for a product to recommend to your patients but find nothing suitable, so you decide to create the software yourself. You not only develop the basic software for the application but also create it in such a manner that it can be adapted to integrate with many different platforms, computers, PDAs and cell phones. After talking with several of your colleagues, you decide you have a winner and want to start a company to market and sell the software.

The analysis for determining whether this type of business opportunity makes sense is similar to the analysis for purchasing a building. In this case, however, the preliminary consideration of your time is much more critical. Starting a business will take far more of your personal time and a far greater commitment than purchasing and operating a building. You will have to devote a substantial amount of time to developing the software for commercial use, creating systems for the business in addition to marketing and selling the software.

Another important consideration is whether your product is really commercially viable. You have to ask yourself: If this is such a great product, why hasn't another major software company already developed it? You should consider a market study before going further. Your potential competitors may have already spent research dollars to determine that although the concept and idea are novel, the return on investment does not warrant the development, marketing, packaging and selling of the product.

The biggest challenge for this type of business is intellectual property; an attorney specializing in this can assist you. Intellectual property, as its name

## Considerations for Purchasing a Building

- Why do you want to purchase the building?
- Is the building where your practice is currently located?
- Will you occupy the whole building or will there be other tenants?
- Are you looking at an investment unrelated to your practice?
- How much of your time will be required to manage the property?
- What is your exit strategy?

## DECISIONS

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suggests, is something you create with your intellect—an invention, new software, a trademark or original written material that can be copyrighted. You have to determine whether the software you created is original and, if so, whether you can, should you wish, obtain a patent or a copyright. The difference between a patent and a copyright and the question of which is better for you is beyond the scope of this article. For purposes of the introduction of legal concepts, this article will assume that patent protection is better suited for your software invention. Patent protection presents several legal challenges. First, what did you create? Did you write original code from scratch, or did you develop your software by using an existing platform? If the former is true, you can explore the possibility of obtaining a patent. If not, you may still be able to obtain a patent for what you have created, but there is a good possibility that you will have to license the software platform on which it is based. Your legal advisor can guide you through the process.

If you believe you have created something original, how do you confirm this? You or your lawyer can engage a company to conduct a search of the patent records to determine if any similar software is patented. If so, stop—end of story. You will not be able to obtain a patent for your software, and if the person who patented similar software learns that you are selling yours, that inventor will be able to stop you from selling your product. If, however, the search reveals that your software is original, you may want to patent it.

If you are willing to take the risk and you do not need any financing to market your new product, then you may not have to bother with an analysis. If, on the other hand, you are risk-averse or you hope to obtain financing to start up the business, you will have to deal with the intellectual property analysis. Of course, if you jump right in, you may find that someone has already invented the software and may stop you from marketing yours.

Financing a new business is very different from financing the purchase of a building. If you purchase a building, the bank can analyze the value of the building and base its loan on that value. If you develop a new software product, a bank has no way of analyzing its value, so it cannot determine whether it should loan you money, or if it will.

This means that you will have to find investors. They can be friends and family who believe in you, or they can be professional investors, venture capitalists, who may have a better idea than you of

the value of your product and may be willing to invest in it in exchange for a percentage of the company you form to develop and market the software. Negotiation with investors, especially venture capitalists, gives rise to a myriad of legal issues that are far beyond the scope of this article and are best left to experienced business lawyers.

Once you have patented your intellectual property and worked out your investor issues, be sure you consider your employer–employee requirements. Prepare employment contracts, or if you do not wish to have employment contracts, ensure that you have

agreements in place in which your employees consent to maintain the confidentiality of proprietary information, not to compete for a set period of time and not to solicit customers or employees of the business if they leave. Now you can open up for business!

### Conclusion

Every business or investment opportunity will present its own set of challenges and legal issues. An experienced business lawyer can help you evaluate the opportunities and help you work through the due diligence process to ensure that you have as much informa-

tion as possible to make the best business decision possible.

—Mary Lou Bowers, MBA, President and CEO, and Rhonda M. Gold, RN, MSN, Director, and Stanley S. Jutkowitz, JD

Mary Lou Bowers, MBA, and Rhonda M. Gold, RN, MSN, are members of the advisory board for *Clinical Oncology News* and represent The Pritchard Group, LLC ([www.thepritchardgroup.net](http://www.thepritchardgroup.net)). Stanley S. Jutkowitz, JD, is a business and real estate attorney with the national law firm of Seyfarth Shaw, LLP, in Washington, D.C. He has been practicing law for 30 years.

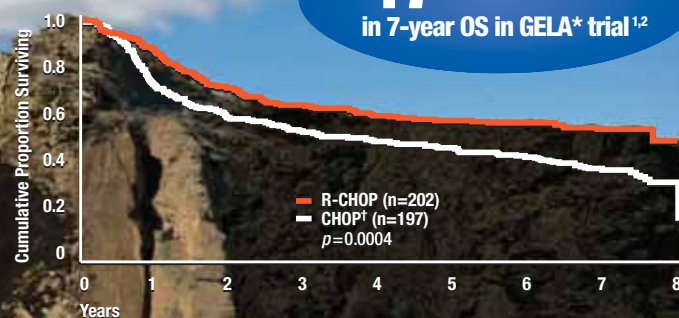
For previously untreated diffuse large B-cell, CD20-positive NHL in combination with CHOP or other anthracycline-based chemotherapy regimens

When planning a treatment course for DLBCL

## Take the essential path toward improved survival

RITUXAN+CHOP is proven to prolong survival in DLBCL

47% INCREASE  
in 7-year OS in GELA\* trial<sup>1,2</sup>



• At 7 years, 8 cycles of RITUXAN+CHOP increased overall survival (OS) from 36% to 53% compared with CHOP alone<sup>1</sup>

• At 5 years, 8 cycles of RITUXAN+CHOP increased OS from 46% to 58% compared with CHOP alone<sup>2</sup>

### BOXED WARNINGS and Additional Important Safety Information

The most important serious adverse reactions of RITUXAN are **fatal infusion reactions, tumor lysis syndrome (TLS), severe mucocutaneous reactions, progressive multifocal leukoencephalopathy (PML), hepatitis B reactivation with fulminant hepatitis, other viral infections, cardiovascular events, renal toxicity, and bowel obstruction and perforation.** The most common adverse reactions of RITUXAN (incidence  $\geq 25\%$ ) observed in patients with NHL are infusion reactions, fever, chills, infection, asthenia, and lymphopenia.<sup>3</sup>

**RITUXAN in Combination with CHOP Chemotherapy for DLBCL:** The following adverse reactions, regardless of severity, were reported more frequently ( $\geq 5\%$ ) in patients age  $\geq 60$  years receiving R-CHOP as compared to CHOP alone: pyrexia (56% vs 46%), lung disorder (31% vs 24%), cardiac disorder (29% vs 21%), and chills (13% vs 4%). In the GELA LNH 98-5 study, a review of cardiac toxicity determined that supraventricular arrhythmias or tachycardia accounted for most of the difference in cardiac disorders (4.5% for R-CHOP vs 1.0% for CHOP).<sup>5</sup>

The following Grade 3 or 4 adverse reactions occurred more frequently among patients in the R-CHOP arm compared with those in the CHOP arm: thrombocytopenia (9% vs 7%) and lung disorder (6% vs 3%). Other Grade 3 or 4 adverse reactions reported more frequently among patients receiving R-CHOP were viral infection (GELA LNH 98-5 study), neutropenia (GELA LNH 98-5 and MInT studies), and anemia (MInT study).<sup>5</sup>

Please see brief summary of prescribing information on adjacent page.

Attention Healthcare Provider: Provide Medication Guide to patient prior to RITUXAN infusion.

\*GELA (Groupe d'Etude des Lymphomes de l'Adulte) LNH 98-5 trial: A Phase III trial of 399 previously untreated elderly (age  $\geq 60$  years) DLBCL patients.<sup>1,2</sup>

†CHOP: Cyclophosphamide, doxorubicin, vincristine, and prednisone.

References: 1. Coiffier B, Feugier P, Mounier N, et al. Long-term results of the GELA study comparing R-CHOP and CHOP chemotherapy in older patients with diffuse large B-cell lymphoma show good survival in poor-risk patients. *J Clin Oncol*. 2007;25(suppl 18S):443s. Abstract 8009. 2. Coiffier B, Feugier P, Mounier N, et al. Long-term results of the GELA study comparing R-CHOP and CHOP chemotherapy in older patients with diffuse large B-cell lymphoma show good survival in poor-risk patients. Paper presented at: 43rd American Society of Clinical Oncology Annual Meeting; June 1-5, 2007; Chicago, Ill. Abstract 8009. 3. Coiffier B, Lepage E, Briere J, et al. CHOP chemotherapy plus rituximab compared with CHOP alone in elderly patients with diffuse large-B-cell lymphoma. *N Engl J Med*. 2002;346:235-242. 4. Data on file, Genentech, Inc. 5. RITUXAN® (Rituximab) full prescribing information, Genentech, Inc., 2008.

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**Rituxan**  
Rituximab  
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