

Court Rules that Earnout Violates New York Fee-Splitting Rules

Healthcare Law Update

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In a recently published [opinion](#), a New York appellate court found that an earnout based on future practice earnings that was negotiated as part of a practice sale violated New York's fee-splitting prohibition. In 2015, the plaintiff, a dental practice, entered into an asset purchase agreement to sell certain assets to the defendant, a licensed dentist who retained his own separate practice. The purchase agreement specified that part of the purchase price would be paid by the purchaser to the seller as a percentage of the monthly revenue generated by the practice assets that the seller sold to the purchaser.

In March 2020, the seller filed a lawsuit against the purchaser alleging breach of contract and unjust enrichment as a result of the purchaser's failure to pay the earnout portion of the purchase price to the seller. The purchaser filed a motion to dismiss, arguing that the arrangement violated the provisions of New York's Education Law that prohibits fee-splitting. The trial court denied the motion to dismiss. On appeal, the appellate court overturned the trial court's decision to deny the purchaser's motion to dismiss, finding that the earnout constituted a voluntary prospective arrangement for the splitting of fees in violation of New York law, and "a party to an illegal contract cannot ask a court of law to help him or her carry out his or her illegal object."

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