

How to Navigate Partnerships

It's important for physicians to enter partnership agreements 'similar to a prenuptial' agreement **By Jonna D. Eimer, JD**

WHEN STARTING a physician practice, forming the partnership can often feel like entering into a marriage. And, like a marriage, these partnerships can be very harmonious. Sometimes, however, these relationships can sour and even become quite ugly. In the worst case scenarios, the partnerships may break apart, and the partners may even end up in litigation. To avoid such messy and expensive consequences, it is important that physicians enter into the appropriate agreements, similar to a prenuptial agreement, to plan for important events in the life of the physician partnership.

Many practices today are organized as professional limited liability companies or professional corporations. The main governing document for a limited liability company is the operating agreement, and for a corporation, it is the shareholders agreement.

These are the primary documents that dictate how the practice is managed and how business decisions are made. If the entity is a limited liability company with a manager, the agreement should describe what powers the manager or managers have and what powers remain with the members.

Shareholder Arrangements Require a Close Look


The agreement may also provide that day-to-day

decisions can be made by a manager or an officer alone, but material decisions may require the approval of a certain percentage of the members or shareholders. Some significant decisions may require a majority or even a supermajority, such as 75% of the shareholders or members, to approve an action. These material decisions may include a sale of substantially all of the assets or interests of the practice, entering into loan agreements, making real estate purchases, signing equipment leases, admitting or terminating members or managers, and other significant decisions affecting the practice. Some important decisions may even require the unanimous consent of all the owners to proceed. If there is an even number of owners, this main agreement may also address how deadlocks are handled. Is an outside mediator called in to handle the dispute or is this handled some other way? The operating agreement or shareholder agreement should also provide for how transfers of ownership interests are treated. In most small businesses, like physician practices, there are restrictions on a member's ability to transfer his or her interests. The agreement usually requires a certain vote of the managers or members to approve a transfer of interests.

Examine Partnership Issues Before Opening a Practice

In the case of a physician practice, there is the additional requirement that any owner or manager also must be a licensed physician. The document should also describe how distributions are handled and how to deal with withdrawals, retirements, or the death or disability of physician owners. It may also include restrictions on an owner's outside business interests as well as confidentiality and other restrictive covenants, depending on the applicable law. Finally, the agreement should also discuss the eventual dissolution of the practice and the final wind-down of the business.

While physicians are often excited in the early stages of opening a practice, this is exactly the right time to approach these difficult questions. These complicated issues should be contemplated by the operating agreement or shareholders agreement of the physician practice as much as possible in these early stages. While the agreement may not be able to predict every issue the business may face, it is definitely easier to confront these issues early on, while calmer heads still, hopefully, prevail.

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Jonna Elmer, JD, an attorney at Chicago's Roetzel & Andress advises physicians to take a closer look at partnerships and shareholder arrangements before pursuing them. "While the agreements may not be able to predict every issue the business may face, it is definitely easier to confront these issues early on."

