Restructuring Medical Practice Ownership

Founding members can maintain control even as they add new physicians to the practice ownership **By Terrell J. Isselhard, JD, and Christina M. Mermigas, JD**

MANY SOLE practitioners and small medical practice groups are concerned that if they add new physicians to the ownership of the practice, they will lose control of their business (the manner in which the practice is managed). However, there are several legal techniques that can be implemented so the major decisions and primary management of the practice remain with the original founders.

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As practices grow in size, physicians grow older and possibly the original founders may wish to reorganize or sell the practice. Many physicians are told they need to maintain at least 51% ownership in order to maintain control of the practice. This is a false assumption. In most medical practice groups there are two levels of physicians: (1) the owners of the practice (generally equal owners) who manage the practice and receive personalized compensation based on productivity; and (2) the associate physicians who receive a base or formulaic salary and who may be striving for ownership opportunities (of which are generally outlined in associates' employment agreements). The transition from associate physician to owner via a buy-in may take place over a period of years. During such time, the shift of management and decision making can play a major role in practice culture and structure.

Defining and Implementing Classes of Ownership

In order to attract new physicians to join a practice, medical groups may wish to create two classes of ownership. One class of ownership would have voting control over major financial and corporate decisions (selling the practice, opening a new office, elevating physicians to full voting status and other significant business and professional issues). The second class would have limited voting rights on possibly day-to-day operating procedures (hiring/firing and revising company policies). Therefore, in this business model, there would be three classifications of physicians employed by the medical group—the ownership/equity class members, limited voting class members and the associate class with no voting rights.

If the legal entity is a medical corporation, voting and non-voting stock can be issued. The voting stock would be owned by the founders/senior members and the non-voting stock would be issued to the physicians with limited voting powers. If the legal entity is a limited liability company, the operating agreement can be drafted to achieve the same results. A properly drafted operating agreement or shareholder's agreement will also provide instructions for transferring control and equity in the event there is a death of an owner, thereby avoiding patient abandonment and preserving the practice's value.

Proportioning Sale Proceeds

It is important to recognize that all ownership interests (voting and non-voting) are equity interests and will receive a proportionate percentage of the sale proceeds upon the sale of the practice. For example, if the practice's stock is comprised of 10% voting shares and 90% non-voting shares, the non-voting stockholders (90%) would normally receive 90% of the proceeds on any sale of the practice. In order to avoid this situation, language can be drafted in the corporation's governing documents that would grant the voting shareholders the right to receive a preferred or additional portion of the sale proceeds.

Summary

There are many opportunities to grow the practice. With proper advice, the control of the practice can be maintained by the founding members in order to preserve the culture of the practice while at the same time allowing junior physicians an opportunity to have a lesser ownership position. As the junior owner physicians' practice develops, they can be elevated to the higher status or can remain at the secondary level if they have no interest in acquiring full ownership and management control. The proposed plan for elevation of junior physicians among levels will provide business continuity and a seamless succession plan for a medical practice.

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