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Newsletter, April 2018

Legal Structure for a Group Practice

In this article, I talk a little about the legal structure of a group practice. A group practice is not a bunch of solo practices sharing the same office. A group practice is a single entity, usually a corporation, that owns the combined practices of its members, including patient records, accounts receivable and goodwill. A Shareholders Agreement is the key legal document for the group, because it allocates the rights and obligations of its members in relation to the group, including how they enter and exit the group, and how they share in the money, expenses and liabilities of the group.

Central Management -- Board of Directors. All group practices need a central body to make decisions. In a corporation, this is the Board of Directors, which controls and manages the practice. No doctor/ shareholder individually should have the right to direct the management of the practice except through representation on the Board of Directors.

Personal Guaranties. Most group practices have a guaranty problem. They lease their office space from landlords, and sometimes they get bank financing. Banks and landlords demand personal guaranties from the individual doctor / shareholders.

It's only fair that either all shareholders deliver a guaranty, or no shareholder gives a guaranty. It's not fair that some shareholders are burdened with guaranty liability, but others go free. The problem frequently arises because shareholders come and go. Many practices don't require that new doctors buying-in to the practice sign the guaranties, for fear that the doctors will walk. And doctors who leave the practice might not be able to get off the guaranties, because the bank or landlord won't let them. I advise that the practice be strict with everyone. Require that all shareholders sign on, and require that the banks and landlords cancel the guaranties of shareholders who leave the practice. The latter may require difficult (but creative!) negotiation with the bank or landlord.

Buy-Sell. All group practices need a Shareholders Agreement with buy-sell provisions. The Shareholders Agreement covers disqualification (loss of license), death, disability, disputes and deadlocks, divorce, plus other contingencies. On the occurrence of one of these events, the practice can buy-back the shares of the affected doctor / shareholder.

The buy-out price is crucial. A high buy-out price gives the exiting doctor a windfall. A low buy-out price is unfair and leads to litigation. The trick is finding a procedure that ensures a fair price – for example, using a neutral appraisal process to fix a price. A group practice also can use an accounting formula to fix the buy-out price. Next consider payment terms, which are almost as important as the

price itself, because payment up-front in one lump sum is much better than payment by promissory note over a long period of time.

I talk a lot about buy-sell on my website. Sometimes I learn new variations on a familiar theme. Recently a client shared with me its structure for a death buy-back: At death, the buy-back price is the payout amount of the life insurance policy that the practice maintains on behalf of the shareholder. The variation is that each shareholder decides on the amount of his or her life insurance policy, and the practice deducts the cost of premiums from the shareholder's compensation. Here the shareholder chooses, and pays for, the amount of his or her death buy-out. You get what you pay for. I like this structure.

Non-Competition Clause. It is legal for a practice to impose a non-competition clause when it buys out a shareholder. That said, each practice must think hard whether a non-competition clause is worth all the hassle involved. As I get older, I tend to think not.

Notice to Patients at Departure. I advise that every Shareholders Agreement require notice to patients when a doctor departs the practice. If a doctor / shareholder were to leave the group practice for any reason, the practice should give notice to the doctor's patients using a script of notice provided in the Shareholders Agreement. The patients are given the choice to go with the departing doctor or be assigned to another doctor at the practice. The CA Medical Board requires a patient notice, and scripting it in the Shareholders Agreement will save a lot of money in lawyers' fees down the road.

Remember, in almost all cases, the group owns the patient records, accounts receivable, and all goodwill associated with a doctor's medical services. Put otherwise, the group owns the practice, and the doctor is an employee / shareholder of the group. A departing doctor has no right to the patients; the doctor may only give notice to the patients, and allow them to transfer their medical records over to the departing doctor. Unless some contract says otherwise, the practice keeps everything else.

I'm done. Jokes are next ↓

To every kid who bought a mail-order toy advertised on the back inside cover of a comic book:

By 1880, popular publications were jammed with blind ads promising dubious solutions to everyday problems. Dupes who sent fifty cents to a sham exterminator for 'a sure way to get rid of rats' got a postcard with the obvious advice 'Catch and kill them.' The same four bits got you a 'cure for the liquor habit' ('Stop drinking'), the 'best way to raise potatoes' ('With fork, at table'), and the secret of 'how to break a kicking cow' ('Sell her to a butcher'). Newlyweds who mailed \$1.25 for a 'fine set of parlor furniture' got tables, chairs, and a sofa barely big enough for a dollhouse. Housewives unable to resist the dazzling ad for a 'sewing machine for \$2.00' were crestfallen to receive only an envelope containing a darning needle.



---My Adventures with Your Money, T.D. Thornton