

# Practice Exit Strategies

By Justin S. Daniels

The moment you decide to make another physician a partner in your practice marks the beginning of a business marriage. New business partners, like newlyweds, pay scant attention to what might go wrong and how the ownership of the practice or its assets might be allocated in a business divorce. Business divorces remain a common feature in today's medical practice landscape. Physicians who ignore exit strategies at the outset only find out later that such an oversight often causes tremendous personal stress of dealing with an uncertain situation that could cost him or her ownership of the practice or hundreds of thousands of dollars in assets built over years of hard work. This article summarizes exit strategy issues that physicians should discuss prior to bringing on a new partner.

Management disagreement is usually the main culprit behind most business divorces. An LLC operating agreement or corporate shareholder agreement should address what happens when the practice owners cannot resolve a difference of opinion. Resolution strategies can include: (1) a neutral third party the partners trust to make a decision; (2) an outsider who sits on the board whose vote breaks any deadlock; or (3) a buyout. Most owners

should carefully consider a buyout. In situations where a third party determines a policy decision, the partner whose recommendation was not followed does everything in his or her power to sabotage the decision or undercut the support needed to properly execute it.

A Texas shootout buy/sell provision can facilitate a smooth exit strategy instead of the continued participation of a disgruntled partner whose business strategy was not adopted. The provision provides that in the event of deadlock either partner may offer to buy out the other partner. After such offer is made, the other partner has the right to either accept the buyout offer or agree to buy out the partner who made the offer pursuant to the terms of that offer. This provision, however, can benefit the partner who has the deepest pockets as he or she can make an offer that the other partner could not afford and is left to merely accept. This risk seems preferable to the continued involvement of a disgruntled partner who is merely distracting the business.

Partners should also consider what happens upon the death, disability or retirement of a partner. Three major issues arise in these contexts: (i) Who will purchase the partner's shares who is no longer with the practice?; (ii) What is the process for placing a value on those shares?; and (iii) What is the process for ensuring funds are available for purchasing the shares? Typically, an operating agreement or shareholder agreement provides that upon termination, death, disability or retirement that the practice or the other partner(s) shall purchase the shares. Fair market value determinations can take the form of an agreed upon price that the partners or board sets each year, a fair market value formula agreed upon by all the partners or the engagement of

an appraiser who will determine the fair market value of the shares. Lastly, the agreement may provide that the practice purchase insurance on each partner and such proceeds shall be used to purchase the shares upon the partner's disability or death. In the event of termination, death, disability or retirement, the agreement may also provide that a portion of the buyout purchase price be payable in the form of a promissory note to ease the financial burden on the practice and remaining partners if cash is not available to pay the entire purchase price immediately.

Business partners begin a relationship with the best intentions; however, business divorces will remain a fixture of the present landscape as long as business exists. Those who plan for such contingencies will be rewarded with an orderly separation that minimizes uncertainty, costs and stress. Those who think a business divorce will never happen to them often find the life lesson learned a stressful and financially painful one.

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