

4. Failure of Multiple Physician-Owned Practices to Have Appropriate Buy-Sell and/or Shareholder Agreements in Place

Many successful medical practices are run on a handshake or a long-forgotten and now archaic agreement, but when problems or changes in circumstances arise, the results can be catastrophic and quite lucrative for the legal profession.

For the sake of example, assume that Doctor A and Doctor B are lifelong friends who have practiced together 25 years and share 50% each ownership of a medical practice without current legal agreements. Their spouses have also been best friends.

They have always worked approximately the same and have always been paid the same. A couple of years ago, they were offered \$3,000,000 for the practice, which involved signing 5-year non-competes and 5-year employment agreements. They also own the practice real estate together in a separate company under which they have signed a \$2,000,000 mortgage on real estate now worth only \$1,500,000.

If Doctor A becomes disabled, they may not be able to agree on how much Doctor B should be paid to administer the practice. Disagreements may also arise regarding the hiring of a replacement doctor or doctors.

They may also not be able to agree on a price or terms for Doctor B to buy Doctor A out.

Often disabled physicians believe they will be returning to work. Meanwhile, their partners see the writing on the wall and take a more skeptical view of their capacity for recovery. The practice can be significantly damaged during this period of time until the disabled physician's status on returning to work is absolutely confirmed.

What if Doctor A becomes a drug addict or begins having an affair with medical practice personnel that could cause obliteration of the practice? How can Doctor B force Doctor A to leave or to even behave? How can Doctor B protect the practice and himself from responsibility for Doctor A's misconduct?

What if Doctor A dies? Doctor A's widow may believe that the practice is worth \$3,000,000 and will be voting Doctor A's stock unless or until she is bought out. How can Doctor B convince Doctor A's widow and her lawyers and valuation experts that the practice has lost significant value because of Doctor A's death? How can Doctor B run the practice if Doctor A's widow will not agree to any significant changes in situations where such changes become necessary?

How can Doctor B attract a new doctor to the practice if he has to disclose that he is not getting along with the 50% widow owner of the practice?

The list of examples goes on and on. It does take time and money to put together an appropriate Buy-Sell/Employment/Shareholder document package. Almost no two are the same as circumstances change. However, it is a valuable investment that every practice should make.

In addition, applicable state law and/or Medicare law often requires that compensation be based upon methods determined in advance that do not take into account the referral of patient services. As mentioned under number 2 above, the referral of a patient within a group practice for certain testing or other "designated health services" under the Stark Law can be a felony unless there is a properly documented method of sharing that qualifies under the Stark Laws. Failure to have this in writing in advance of a particular calendar quarter can constitute a felony offense.