

Governing Documents Can Prevent Expensive and Damaging Disputes Among Medical Practice Owners

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For a medical practice, litigation of any kind can be expensive and cause significant distraction. When internal disagreements between physician-owners escalate into courtroom battles, the consequences can be far more damaging than those of a professional negligence or other outside claim. Ownership or management issues trigger most internal disputes, and the key to success is preventing these conflicts before they happen.

While medical practices commonly have employment agreements and handbooks to address employees' workplace issues, physician-owners frequently fail to implement documents that would help prevent potentially destructive and divisive litigation or disputes with their fellow owners. As a result, the practice, or a majority of its owners, are forced to deal with difficult members making unreasonable demands.

A governing document for the business (usually an operating agreement, shareholder agreement, or buy-sell agreement) can act as a prenuptial arrangement that contemplates later disagreements. The document should outline the legal details of the practice so that each physician-owner's rights and obligations are clearly defined. Critical elements and provisions include:

- Management and decision making (who can make ordinary-course decisions, the level of approval needed for important matters, and definitions for important matters)
- Restrictions on the sale of ownership (requiring other owners' consent, buyout provisions, or right of first refusal)
- The process for resolving deadlocks
- Removal of an owner in certain circumstances (unfit to practice, commission of bad acts, etc.),
- Non-competition and non-solicitation restrictions
- Establishing the sale price for an ownership interest upon one owner's death, disability, or retirement

It is in every physician owner's best interest to execute a governing document covering the above and other vital topics.

Once a governing document is executed, owners should review it periodically with an experienced attorney because situations, laws, and relationships often change. Waiting until a dispute arises before seeking legal review and consultation is a prescription for disaster. As America's foremost statesman advised, "By failing to prepare you are preparing to fail."

Bodman PLC can provide guidance on this matter and provide practical advice to meet your needs. To discuss these or any other legal issues affecting your organization, please contact Brandon Dalziel at (313) 393-7507 or bdalziel@bodmanlaw.com. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.