



Physicians Beware: The Buy-Sell Agreement and the Damages of its Absence in a Medical Practice

By: Patrick Phancao, J.D.



Truth be told, a buy-sell agreement is applicable to all sorts of businesses. However, because of the high income resulting from a physician's "sweat" equity, coupled with the fact that family heirs are not allowed to own a medical practice; this article is specifically dedicated to physicians. Let's jump right in...

Imagine the intense years you spent in Medical School, slaving away as an intern, the dreaded hours at the hospital; you finally get to open up a practice with a partner. Lo and behold, your reputation follows, your office starts to create a solid patient based clientele, and you finally generate a solid income stream for you and your family. Just as things are starting to settle down, you hurt yourself on a weekend activity. As a surgeon, imagine a hunting accident causing you to lose feelings on your operating hand. What about suffering a stroke, and thus preventing you from being fully functional, or a car accident taking your life away prematurely? Now I promise this is not the way I think. But unfortunately, these random accidents happen to physicians all the time. This is where a buy-sell agreement can make or break the family members and the partners left to deal with these issues.

Buy-Sell Agreement Definition:

First of all, a buy-sell agreement is nothing more than an executed contract where all the owners agree as to how the practice will be valued at the time of one of the partner's death or disability, and how the stock ownership will be purchased. Without such an agreement in place, the accidents mentioned above could bring a thriving business in the middle of a complicated legal proceeding.

Benefits:

Some physicians who see themselves as healthy and not susceptible to accidents also stand to benefit from such arrangements. Think of a younger and older doctor join-

ing forces, the terms of how to purchase the other party's interest out in case of a mishap can be negotiated from the beginning in fairest terms for both sides.

Just as in any type of business, it is essential that "the show must go on." Any industry must have a continuous, orderly manner of conducting its practice. The medical one carries a burden that reaches beyond financial gains or losses. Therefore, a patient wants to have the comfort of knowing that his / her physician's office can easily and without hassle continue a treatment that needs to be followed closely.

As mentioned previously, unlike a business involving widgets, a physician's "asset" lies in his knowledge and experience. A doctor's set of skills is hardly something that can be passed on to heirs. Because the sweat equity will have generated some income stream, it is only fair that a financial pay-out be agreed upon for the family members that would be left behind.

In the event of an incapacity or premature death of one of the key physicians, his / her early exit can force a practice to associate itself with unwanted seed capital. Having seen this happen on more than one occasion, I can tell you this is not a position you want to find yourself in. Again, a buy-sell agreement would prevent finding yourself in such predicament.

The necessary components to a buy-sell agreement:

There are many workings within a successful implementation of a buy-sell agreement. The first one is to make sure to have it funded. This translates to having a reputable insurance policy in place. The premiums you end up paying to have this contract in place will well be worth its weight in gold.

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Naturally, not all buy-sell agreements are created equal. Some key clauses you want to ensure your attorney includes in it are: The cost of buying out the partner's share in case of incapacity / death, a provision to buy out the ownership interest over time in the event of insufficient capital, the care of the family members left behind, and early buy-out options. These are just some of the issues you will want to address.

A buy-sell agreement can often be seen as the estate plan of the business. Not always the most appealing side of being a responsible person, but its benefits are priceless!

About the Author:

Patrick Phancao is an Estate Planning Attorney licensed in CA, FL, and the U.S. Patent & Trademark Office. He is the cofounder of Asset Protection & Elder Law Center in Irvine, CA, and is a member of WealthCounsel and NAELA. His entire focus is ensuring that his clients and their families are protected from unnecessary legal and tax issues regarding their assets. Mr. Phancao takes great pride in putting his client's "voice" in their estate plan, creating a lifetime legacy for future generations that reach far beyond mere wealth. Should you have any questions regarding this article, please visit www.apelcenter.com, and simply request the absolutely free report on your particular legal concern. Should your need be pressing, simply call 714-966-2646.