# Use the "Pause" and Review Your Practice Agreements

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**ON MARCH 22,** Governor Cuomo put New York State on "Pause," closing all non-essential businesses statewide. As of this writing, upstate New York has just begun its multi-phase reopening.

Physicians have been hit particularly hard by the COVID-19 pandemic. While some serve bravely on the front lines while battling a new and unknown virus without adequate supplies of personal protective equipment, others were suddenly left with empty schedules as patients were unable or unwilling to be seen in the office. Revenue disappeared almost overnight, and overhead and staffing personnel had to be drastically reduced wherever possible.

During this time, physicians saw some of the best qualities of their partners. Many such partners readily acquiesced to numerous and unexpected necessary changes, whether it be adjusting their work schedules to implement telemedicine, or drastically adjusting practice routines and physical office layouts to ensure patients and staff felt as comfortable as possible. Ultimately, many voluntarily took significant pay cuts. However, some partners did not.

As attorneys to physicians, we know that legal agreements are often meant to be signed, put in the file and often never looked at again. When the parties to such agreements all mutually agree to modify their relationship, then the changes sometimes needed for a practice or an individual are easily made. However, when a party does NOT agree to a change, whether it be a clarification to avoid misunderstandings or a substantive change needed because of the pandemic, those agreements may need to be dusted off to determine the relative rights and obligations of the parties.

That is, when the written words really matter, what do they say? It is at that time when practices often regret not having regularly reviewed their legal agreements to ensure they are updated as the practice has changed over time. Here are a few examples.

Shareholders Agreements and Bylaws – This Agreement is between the practice and ALL of its shareholders. For a partnership or a professional limited liability company, shareholder agreements and bylaws are typically bound up into a partnership or operating agreement. Critically, these documents typically define the events, the occurrence of which obligates an individual physician owner to sell their equity and for the practice to be obligated to buy it. Typical events include death, permanent disability and termination of employment. However, other events to address include partial disability, opportunities/obligations to become part-time (including call and coverage obligations), and closure/modification of practice locations. In addition to the obligation to buy/sell, the purchase price must be addressed, whether it be absolute or formulaic.

Here may be the first place to begin your review. The value of an equity interest in a medical practice is likely very different now than it was even just one year ago. Does your document account for this? Also, the tax implications of how the purchase/sale is accomplished must be discussed so all parties understand the intent and ramifications. For this reason, it is not uncommon to create a separate deferred compensation arrangement that is taxed as ordinary income to the departing physician and fully deductible to the practice. Does your agreement keep the departing physician responsible for his/her billing in case of audit or investigation?

Employment Agreements / Member Services Agreements – This is the Agreement between the individual physician and the practice. Typically, this can only be amended with the agreement of both the individual physician and the practice. From the practice perspective, this document should be as flexible as possible. From the individual perspective, this document provides individual protective "rights", including the conditions of termination and on what notice. Instead of having a compensation formula within the employment agreement, better to make reference to a separate document more readily amended — or even better — a "plan" that can be modified as determined by the managing Board or delegated to an even smaller set of leaders such as a compensation committee.

Finally, commonly overlooked is a discussion about the requisite votes to modify these agreements. Collectively, we are referring to the "rule books" for how decisions are made amongst partners and between the partnership and the individual. Too often, practices discover after the fact that this is more difficult than presumed because of one or two recalcitrant holdouts.

Like we are doing with the coronavirus, take a small pause now and avoid a bigger problem later.

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