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Congratulations, You've Been Offered a Physician Partnership! But What Are You Signing?

Joining a medical practice as a partner is a significant milestone in a physician's career. After years of training, clinical practice, and proving your value, you've been offered the opportunity to become a shareholder in your group. It's a moment of pride, but also one that warrants careful legal and financial scrutiny.

Before signing a shareholder agreement (also referred to as a partnership agreement), it's crucial to understand what rights, obligations, and potential limitations come with your new status. These agreements are legally binding documents that govern the internal operations of the practice, delineate the relationships among physician-owners, and can have long-term impacts on your financial future and professional autonomy.

Below are key terms and provisions every physician should pay attention to when reviewing a shareholder agreement.

Ownership Structure and Equity Buy-In

Shareholder agreements often include details on how ownership shares are distributed and the terms of any required capital contribution or buy-in. When reviewing these provisions, it's important to consider several key questions, including:

- What is the purchase price of your shares, and is that price based on a fair, reasonable, and objective or independent assessment?
- Are you able to pay your buy-in over time or is it due in a lump sum? Can you pay the buy-in out of future compensation payments?
- If you leave the practice before the buy-in is paid, do you have to pay the balance or any penalty?
- Additionally, what class of shares are you receiving? Some practices issue multiple classes of shares with different voting rights or entitlements to profit distributions, which can significantly impact your role and financial return as a partner.

Governance and Voting Rights

Equity ownership doesn't always translate into an equal voice in decision-making. The shareholder agreement should clearly define the voting thresholds required for major decisions by the shareholders, such as mergers, acquisitions, the admission of new partners, the termination of partners, or changes to the compensation model. It should also outline the role of the board of directors or managing partners, including the extent of their authority over the practice's day-to-day operations. Additionally, the agreement may specify limitations on your ability to participate in governance, particularly if full voting rights are contingent on having been a partner for a certain period of time or if senior partners have tiebreaker or veto voting rights.

Compensation and Profit Distribution

The shareholder agreement should provide clear details on how physician compensation is structured and how net profits (or losses) are allocated. It's important to understand whether compensation is based on productivity, seniority, an equal distribution among partners, or a mix of the foregoing. In addition, the agreement should address how ancillary revenue is handled (such as office-based lab tests or X-rays) and how midlevel provider net profits are allocated among partners. Many agreements include specific formulas for determining how compensation and profit sharing or bonus pools are calculated. Additionally, the shareholder agreement should explain how expenses, such as general overhead expenses (e.g., rent, staff salaries, and the cost of information technology hardware, software, and services) and expenses attributable to the physician shareholders (e.g., malpractice premiums, health and dental insurance, CME) are divided among the partners. This section is critical to evaluating whether the financial terms of the partnership will be beneficial over the long term.

Buy-Sell Provisions and Exit Terms

What happens when you or another partner decides to leave the practice? Buy-sell provisions in the shareholder agreement govern how ownership interests are bought back, at what price, and the time frame for receiving the payments. It's essential to understand the valuation methodology used to determine the buyback amount, i.e., whether it's based on book value, fair market value, a share of accounts receivable, or a predetermined formula. The shareholder agreement should also clarify the payment terms, such as whether the practice must pay the buyout in a lump sum or through installments. Additionally, consider the various triggering events that may initiate a buyback of your ownership interest, such as retirement, death, disability, voluntary departure, or expulsion, as each of these circumstances may result in different financial outcomes.

Noncompete and Restrictive Covenants

Most physician shareholder agreements include covenants that restrict your ability to compete with the practice after your departure. It's important to examine the geographic scope and duration of any noncompete clause to determine whether it is reasonable and enforceable under state law. In Connecticut, for example, a physician noncompete agreement is considered unreasonable and unenforceable if it restricts a physician's competitive activities for a period of more than a year or in a geographic region of more than 15 miles from the primary site where such physician practices.[1] In Massachusetts, noncompete clauses restricting the practice of medicine after the termination of physician's employment or partnership are void and unenforceable.[2] In addition, confidentiality and nonsolicitation clauses may limit your ability to treat former patients or encourage any coworkers to join you at your new practice location. These provisions can significantly affect your professional options if you choose, or are required, to leave the practice.

Mandatory Capital Contributions, Financial Obligations, Personal Guaranties, and Indemnifications

Some agreements require shareholders to contribute additional capital to cover operating losses, practice expansions, or new investments. It's important to understand whether and under what circumstances you could be obligated to contribute more money after your initial admission as a partner. In some cases, you may also be asked to provide a personal guaranty for practice debts or obligations, such as bank loans or office leases, potentially exposing your personal assets to financial risk. Any personal guaranty should be limited based on your pro rata ownership interest and should be several (meaning you are liable only for your portion of the debt). You should also avoid agreeing to broad indemnification provisions that would hold you responsible to the practice for any damages, costs, or liabilities arising out of any of your acts or omissions. Overall, you should carefully assess and be comfortable with the extent of the financial risk you are assuming.

Dispute Resolution Mechanisms

Disputes among partners are not uncommon, so it's important to look for provisions in the shareholder agreement that address how conflicts will be resolved. Many agreements require mediation or arbitration before litigation can be pursued, which can significantly influence the time and cost involved in resolving a dispute. You should also pay attention to jurisdiction and choice of law clauses, as these determine where and under what legal framework any dispute will be handled. Additionally, the agreement should include mechanisms for resolving deadlocks, such as tiebreaking procedures or buyout rights, to prevent prolonged impasses that can disrupt the practice.

Financial Statements and History

Before committing to being a partner, it is important to request and review the practice's historical financial performance. Having access to accurate, comprehensive financial statements enables you to make an informed decision about the stability and profitability of the practice you are being asked to join. Request and carefully examine the practice's financial statements for at least the past two to three years, including income statements, balance sheets, and cash flow statements. These documents provide insight into revenue streams, operating margins, debt levels, and overall fiscal health.

Conclusion: Don't Sign Blindly

Partnership is a tremendous opportunity, but to ensure it's a step forward and not a pitfall you need to know exactly what you are committing to in the documents you will be required to sign.

Becoming a partner is more than a title; it's a legal and financial commitment. Physician shareholder agreements vary significantly from practice to practice, and what works for one physician may be a poor fit for another. Before signing, you should consult with a healthcare attorney who can review the agreement, explain your rights and obligations, and negotiate more favorable terms if necessary. Day Pitney healthcare attorneys have extensive experience reviewing physician shareholder and partnership agreements.

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[1] Conn. Gen. Stat. § 20-14p.

[2] Mass. Gen. Laws Ch. 112, § 12X.

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