

Understanding Succession Planning

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Introduction:

Dr. Smith has been practicing as a solo practitioner in New York for many years - although he currently has a very successful practice, due to personal circumstances, Dr. Smith is ready to retire. As retirement approaches for Dr. Smith, what are his options with respect to his medical practice? Dr. Smith has essentially 2 options: he can either sell his practice or just close shop¹. Although Dr. Smith would ideally like to sell his practice, the unfortunate reality is that his practice will not be worth as much to a potential buyer since the potential buyer does not know Dr. Smith's patients and there will likely be attrition with respect to patients of the practice. Unfortunately many physicians find themselves in a similar situation; however, this can be avoided by planning ahead.

Succession Planning - Overview:

In sum, the best way for a physician to maximize the purchase price for his/her practice is to have a physician who is already associated with the practice purchase the practice. Since the physician associated with the practice is familiar with the specialty, patients and location, your practice will ultimately be most valuable to that individual. As such, in the event you are currently a solo practitioner, the best advice is to hire a physician who will ultimately buy-in as an owner of the practice, and who will then buy your interest in the practice when you are ready to retire. Although this process is certainly doable, it takes time and therefore physicians must start planning at least 10 years in advance.

In addition to hiring a physician with the intent that one day that physician will purchase your share of the practice, it is imperative that physicians take steps in order to ensure that their practice is valuable in order to guarantee a higher purchase price. Essentially the most important assets of a practice are the space (lease), equipment, employees and patients. As such, physicians need to make sure that they secure a good lease which is long term, and which has the ability to be assigned. This also applies to equipment, as well as an EMR system. Furthermore, with respect to patients, physicians should continue to treat their patients until they are ready to retire. When a physician "winds down", he/she decreases his/her patient base, which may ultimately decrease the value of the practice.

Forming an Entity:

Although many physicians operate their practices as solo practitioners using their own personal tax id numbers, it is recommended that physicians form a business entity. Forming a business entity is not only recommended as it relates to succession planning, but also with respect to general asset protection as the individual physician's liability and exposure is minimized. Specifically, in the event a physician operates his/her medical practice through a business entity, the physician's creditors would only be able to go after the business entity and not the individual physician. With respect to a business entity, in New York State, a physician must conduct his/her practice through a professional entity including for instance a professional service corporation ("PC"); a professional limited liability partnership ("LLP"); or a professional limited liability company ("PLLC"). All of these professional business entities offer protection from a legal perspective, however, each of these entities has different tax implications. Therefore, it is advisable that you speak with your healthcare accountant with respect to which entity is most conducive to your medical practice.

¹ In the event a physician chooses to close his/her practice, New York State has many requirements that must be adhered to. For instance, the physician must transfer his/her records to another physician who will serve as the custodian of records. Furthermore, the physician must notify his/her patients that he is closing the practice amongst other things in order to avoid being charged with abandonment.

Hiring a Physician:

As noted above, in order to maximize your succession plan it is recommended that you hire a physician with the goal that one day that physician will become an owner of the practice. Prior to hiring a physician you want to make sure to check all references in order to ensure that such individual will be a good fit with the practice as this individual will have access to the practice's confidential information and will have direct contact with patients of the practice. As such, it is crucial that a solid employment agreement be in place which outlines the relationship of the parties, and protects the practice with respect to its confidential information and patients. For instance, it is recommended that the employment agreement contain a restrictive covenant provision and non solicitation provision which prevents the employee from opening a competing practice in the same vicinity as the practice, as well as soliciting patients, employees and referral sources in the event employment is terminated.

The Buy/Sell Agreement:

In the event the physician employee is a good fit with the practice, you may consider offering the physician an opportunity to become a shareholder/partner/member (depending on the type of entity) of the practice. Prior to offering the physician employee this opportunity, you must consider what the physician's buy-in will be, which is based upon the value of the practice. It is recommended that you speak with a certified healthcare accountant or appraiser with respect to such valuation. As noted above, in the event your practice is lucrative and has a high valuation, the physician employee may be more willing to pay top dollar in order to have an ownership interest in the practice. In the event the practice is not financially sound and is not valuable, a physician employee will not want to pay a high amount for ownership. In the event the physician employee accepts the offer for an ownership interest in the practice, you need to make sure that you enter into an agreement with the physician (ie a Partnership Agreement, Shareholders' Agreement or Operating Agreement depending on what type of entity the physicians render services through) which outlines the terms of your relationship as owners of the practice, including but not limited to what the buy-out would be in the event one of the physician owners retires, withdraws, becomes disabled or dies for instance. As such, you have the ability to structure the arrangement whereby the buy-out for retirement may be significant and higher than if the practice was sold to a physician not associated with the practice. Furthermore, you would have the option to structure the arrangement whereby you would have the ability to work part-time upon retirement if you so desire.

Asset Planning:

Also, when planning for retirement, and in general, it is recommended that you have a will identifying how your assets will be distributed upon death. Furthermore, it is advisable that you have a living will which expresses your desires with regard to health care treatment if you become mentally incapable and/or physically incapable of expressing those desires, as well as health care proxy which allows you to designate a person to make health care decisions for you if you cannot make them for yourself.

Conclusion:

Retirement can be a very exciting and scary time for physicians as there are many decisions that need to be made. To that end, it is in the best interest of the physician to retain a team of professionals specializing in health care – attorneys and accountants– to help prepare for the future. As noted above, this process takes time and you must plan ahead in order to capitalize on retirement.

About the Authors:

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