



# The Physician Practice Buy-Sell Agreement

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## The Buy-Sell Agreement

Regardless of how large or small your practice is today, it is imperative to have a well-written and updated buy-sell agreement. The purpose of the buy-sell agreement is to establish who owns the group and the circumstances under which owner physicians might have their ownership position bought out. It is also crafted to ensure an orderly transition of ownership should someone leave the group.

You need to make sure the shares end up being held by those who are supposed to own them. If there is no agreement, or the agreement is out of date, it may end up in unnecessary litigation. These type lawsuits are among the worst and the most costly. They can even result in otherwise successful groups breaking up.

## Voluntary & Involuntary Provisions

All buy-sell agreements should include a provision that says partner owners can't sell their shares to someone else without a provision for first right of refusal.

Even with the provision, there are issues that surface such as when a physician is leaving the group and advances the argument that another party is willing to pay a higher price, and then tries to get the group to match that offer. There also must be pre-determined time constraints for the group to decide. The agreement obviously must clearly lay out the circumstances where repurchases may (or may not) happen.

## Death

If a physician in the group dies, most groups do not want the heirs to end up owning shares. In some states such as Texas, there are prohibitions against non-physicians owning an interest. It is much better to establish the requirement up-front. There also should be a time frame such as sixty days, for the settlement to be finalized.

## Disability

It is important to determine how your group defines disability. The time frame for disability claims is critical and questions such as permanent or partial disability, or when the clock starts post-disability, must be addressed.

## Pending or Potential Malpractice Litigation

It is imperative to know any potential claims that are on the horizon, both reported and not yet reported.

## Termination

This is a big issue and needs to be integrated with the employment agreement. For cause should be defined as much as possible.

## Retirement and Part-Time

Many physicians choose to go part-time for a while instead of full retirement, for a variety of reasons including maternity leave, caring for a family member or an extended vacation. Being as specific as possible is best.

## Bankruptcy

The personal bankruptcy of a physician owner does not mean the physician can't continue practicing but it could mean their shares end up in the hands of the creditors. Also, it is not uncommon for the group to be a creditor in these situations.

## Divorce

Divorce is always messy. The physician spouse typically includes the physician ownership in the group as part of the "division of assets" discussion. Most agreements (and the law in some states) require group owners to be a physician. But, spouses can be physicians so it is reasonable to include a buy-sell covenant that provides the divorcing shareholder to maintain this asset in his/her portfolio.

## **Mandatory Repurchase Buyout Provision**

This is a critical component of any buy-sell agreement and usually surfaces in two forms: either the person who is leaving does not want to be bought out, or they want to be bought out and do not want the group to "sit" on the shares.

There can be big implications if the group does not have the right to repurchase the shares. Physicians usually do not want former group members to continue being owners after they have left. The person who is no longer with the group could still have a right to books and records and even to distributions.

The agreement has to make it clear that if the group has the right to buy the shares back, and the physician has the obligation to sell them back.

The buy-out price should not be a fixed amount based on an old prior period valuation. So many things change over time. Instead of having a fixed buy-out price, it is far better to agree to evaluate it periodically, usually once a year or triggered at a major event such as the death of a physician owner. Other triggers, for example, could be an increase year over year of 25% of gross revenue, the loss of a major managed care contract that results in a substantial reduction in revenue, etc. Another factor could be the depreciated value of the group's physical assets or a substantial increase in accounts receivable (as in bad debt expenses are increasing at an alarming rate).

## **Other Buy-Sell Issues**

In addition to making sure the agreement is appropriately crafted, physicians should make a commitment to review it semi-annually and to have a set amendment process. If disputes do arise, resolution is usually achieved with mediation, although a binding arbitration provision is common too.

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