

■ Consultant's perspective

'Bottom line' powers protect the practice

Make sure your legal documents don't allow one partner to stymie the group

By Leif C. Beck¹, JD, CHBC

There are two contrasting concepts of group practice. One assumes that a group simply consists of a collection of individual physicians conducting their own practices within a single entity. The other treats the group as a means for physicians to work together, making the entity stronger than the sum of its provider parts. Larger practices naturally fall into the latter group.

The question of member v. group priorities becomes important when physician governance issues crop up: How should partners deal with a member whose actions put the group's finances at risk? How should the group handle a member who refuses to conform to majority-voted or delegated decisions?

Five examples

Having worked through such issues with many groups, the first questions I ask are: What do the legal papers say? How much authority does the corporate or partnership agreement give to the organization over directing, correcting, paying, and even retaining a member?

Partners and their advisors rightly try to avoid resorting to the legal papers. But it's critically important to recognize the bottom line: Who has what rights in case a problem cannot otherwise be resolved? Those papers, sometimes written years ago, can leave groups in difficult situations.

Consider the following scenarios which are all too familiar to group practice advisors:

1. One partner codes her services super-aggressively and her charge profile—far higher than that of the other members—kicks off a Medicare audit. The physician insists that his or her partners have no right to tell her how to handle the situation, although the entire group risks heavy fines.

2. The members decide by an eight to one vote to stop accepting consults at a certain hospital because they lack enough activity there to justify the time. The ninth partner continues to take consults and follow patients there, diverting time and attention from the group's agreed-upon priorities.

3. A senior partner exhibits terrible fits of anger, often directed at patients, hospital nurses, and office staff. He refuses to recognize that his behavior puts the entire practice at risk. He says it's none of their business because he's an excellent surgeon with a still-active practice.

4. A staffer complains that a partner sexually harassed her and the complaint appears to be justified. The group's harassment policy calls for sanctions for proven violations, including possible termination of employment, but the partners are reluctant to act against their colleague.

5. The group's compensation formula hasn't been reviewed for years and the practice's stagnant finances call for a change. All but two of the ten partners agree, but those two members absolutely refuse to budge.

Remove unanimity requirements

Working together for economic gain requires some level of compromise. But the amount the physician co-owners can deal with important group matters depends on two things: achieving consensus and requiring compliance.

That's where the legal documents come into play. They establish your power to obtain consensus, cooperation, and acquiescence. Check your agreements to see, whether without a unanimous vote, the group can do the following:

- Change the compensation formula
- Sanction a member by suspending him or her from practice, requiring a leave of absence, withholding pay, or imposing monetary fines
- Charge any Medicare, malpractice, tax, or other liability arising from a partner's actions back to his or her pay
- Terminate a member's employment (and hence co-owner status)

Without such provisions, your group may be nearly powerless against embarrassing, potentially group-threatening situations. If your documents adequately protect you from a partner stymieing the group, you have what I call "bottom line" authority. If not, look into amending your documents.

Next month: What you should do when one or two partners don't want—or flat out won't agree to—the amendments. ■

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