The right contract can help you reduce your workload and ease into retirement on your *terms.*

NEGOTIATING YOUR Semi-Retirement Package

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As physicians approach their 50s and 60s, many have achieved a measure of financial security and begin to contemplate retirement. But rather than retiring immediately, some physicians wish to ease into retirement, perhaps working fewer hours and taking less call while retaining voting rights for several years. If you are a shareholder in a small practice and are nearing retirement, it is important to make contractual arrangements that will enable you to accomplish your goals.

An excellent time to do this is when a new shareholder purchases equity in the practice. At that time, your desires are more likely to be viewed as legitimate succession planning as opposed to an attempt to wrest a good deal for yourself. Here's what you should consider.

Tailoring your buy-sell agreement

When you decide you're ready for semi-retirement, your attorney will likely draft "buy-sell" documentation that replaces the legal agreements you already have in place. In a corporation, the buy-sell documentation consists of a shareholders' agreement between the corporation and all of its shareholders, and an employment agreement between each individual physician and the corporation. In a limited liability company (LLC), the key document is the LLC operating agreement. Physicians in small practices may also have ancillary agreements with one another where each agrees to act in his or her official position as a director or officer. These agreements mandate the physicians' compliance with various corporate severance or deferred compensation arrangements. ➤

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If you are a shareholder in a practice and planning to retire in the next few years, speak with your attorney about negotiating a semi-retirement package.

Consider what type of semi-retirement arrangement would best fit you and your practice, such as working fewer hours or taking less call.

Your attorney will likely draft a buy-sell document, which is a legal agreement between a retiring physician, the other shareholders in the practice and the corporation.

Since the standard buy-sell agreement won't address all of your concerns, ask your attorney what provisions should be added to protect your needs as a retiring physician.

Although buy-sell agreements have been used for decades, the standard versions of these documents do not adequately address the special needs of physicians in their final years of practice. For instance, the typical buy-sell agreement fails to do the following:

- It does not enable you to work less prior to full retirement or provide any latitude in structuring the terms of such an arrangement.
- It does not insulate your retirement package against negative impact from a productivity-based compensation formula, such as when the pay-out is calculated as a percentage of your W-2 earnings in the year preceding retirement.
- It does not protect you from having to buy out another doctor who may elect to leave the practice during the years just preceding your retirement.

An appropriately structured buy-sell agreement includes provisions that address these problems. One basic provision is an option for you to convert to partial-retirement status. This enables you to enjoy a special deal vis-à-vis other shareholders as a transition to full retirement. This can include a significantly reduced work schedule, extended vacation, relief of weekend or night call or a combination of the above. This is typically accompanied by adjustments to the group's compensation formula so that the full-time doctors do not feel they are subsidizing your new lifestyle. Another potentially useful provision permits you to reduce your work hours over one to three years while continuing to receive an equal compensation share. The difference between your equal share of practice profits and a (smaller) productivity share will offset the buyout owed to you upon full retirement.

There is generally also a provision in the agreement to calculate and freeze your buy-out prior to your semi-retirement. A freeze provision is critical in groups where the compensation is calculated based on production and the buy-out for a retiring physician is a percentage or multiple of final year earnings. To make such an arrangement palatable to your younger partners, don't plan to remain in semi-retirement indefinitely. It typically lasts no more than four or five years, with any extension at the discretion of the younger group members.

KEY POINTS

- The standard buy-sell agreement doesn't enable you to work less prior to full retirement or prevent your pay-out from being calculated as a percentage of your earnings in the years you were less productive.
- It also does not protect you from having to buy out another doctor who may elect to leave the practice during the years just preceding your retirement.
- Make sure your contract includes provisions that allow you the flexibility and financial security you desire.

If you recruit a younger physician shareholder to succeed you, you should consider another important provision. The typical buy-sell agreement specifies that if any shareholder terminates association with the practice, the other shareholders will buy the shares of the terminating shareholder. This has the potential to wreak havoc on your retirement plans. The younger doctor could tender his or her resignation six months before your retirement date, thus simultaneously depriving you of your successor and saddling you with an undesired buy-out obligation. The contractual solution for such a situation is a provision to specify that if the younger shareholder leaves in the semi-retirement period, you can either buy out the younger one at reduced value or, in a two-doctor practice, simply liquidate or sell the practice at that time.

Standard buy-sell agreements do not adequately address the special needs of physicians in their final years of practice.

A win-win situation

You may wonder why the younger doctors in the group should agree to these special provisions. First, in a very small practice where an associate physician is receiving equity for the first time, the semi-retirement arrangement can be a precondition for the stock sale. In other words, if there is no partial-retirement provision, there is also no sale of shares to the associate physician.

Aside from such exercise of raw leverage, there may be other reasons for the younger doctors to accommodate you. For instance, if your semi-retirement is permitted, the younger doctors can take some of your patients. This helps them build their own practices and, if the compensation formula rewards productivity, provides them with more take-home pay.

By contrast, if you are forced to work full tilt until your retirement, this may make it harder for the practice to retain your patients when you leave; your abrupt departure makes it less likely that your patients will continue with another physician in your practice, since there has been no extended transition of the patient from you to your younger partners.

Younger physicians deserve time to consider and process your requests.

Finally, if you can't semi-retire, you may leave the group sooner rather than later, and your departure could be detrimental to the practice. For example, the group will lose your contribution to call coverage, practice management, and relationships with hospitals, payers and other important contacts.

Just remember, organizing semi-retirement plans takes time, and the younger physicians deserve – and will demand – time to consider and process your requests.

Accomplishing your goals

Though you may encounter obstacles while negotiating your semi-retirement package, the legal documentation does not have to impede the process. Recognizing the limitations of the standard buy-sell agreement is the first step to creating a document that addresses your concerns. If you incorporate the proper provisions, your buy-sell agreement can benefit you and your partners, and leave your patients in good hands. FPM

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If you reduce your workload, remind your partners that they too will benefit by taking on some of your patients and establishing continuity within the practice.

To make your transition to semi-retirement smoother for the practice, give yourself and your partners plenty of time to adjust to your new arrangements.