



Do I Need a Partnership Agreement?

Last time (November, 2008), we looked at how to select the right partner and make your pharmacy partnership work. The next step is to create a partnership agreement. First, you may want to know: Is an official partnership agreement really necessary, and if so, what is its purpose?

The answer to the first question is “Yes.” A partnership agreement protects your rights and interests (and those of your partner) and allows for easier decision-making under a variety of circumstances that you may face over the course of your partnership.

As for its purpose, a winning partnership agreement clearly defines the duties, obligations, rights and commitments of each partner in the business. The secret is to craft an agreement that is thorough and fair for both partners, following these three main steps.

STEP 1 Decide which type of partnership agreement you wish to enter.

The two basic types are **general** and **limited** partnerships. In a **general partnership** all partners share the management of the business and each is personally liable for the debt and obligations of the business. This means that you are responsible for and must assume the consequences of the other partner’s actions.

In a **limited partnership**, you could be a general partner who controls and manages the business and may be entitled to a greater share of the profits, while your partners are limited and contribute only capital. In this case, the limited partners take no part in control or management and are liable for debt to a specified extent only.

STEP 2 Determine key points that your partnership agreement will cover. Some of these may include:

Division of profits and losses: You and your partners could have different ideas about how profits and losses should be divided up and distributed, and each of you will have different financial needs, which you must decide on and establish in your agreement. It is important that you determine at the outset whether profits and losses will be allocated in proportion to a partner’s percentage interest in the business. As well, you need to determine the timing as to when each partner is able to withdraw profits. For example, will each partner be entitled to a regular draw (a withdrawal of allocated profits from the business), or will all profits be distributed at the end of each year?

Management duties: You may not want to make meticulous lists detailing every management duty, but it is important to create clear guidelines for major duties in your partnership agreement. Create a master list of management duties. For example, who will keep the books? Who will do the marketing? Who will hire employees? Who will negotiate with vendors?

Partnership decision-making: How do you divide responsibility for decision-making? Over the course of a day a pharmacy owner has to make scores of decisions. You should carefully think through the types of decisions a pharmacy owner faces and establish a decision-making process for your business. Daily decisions need to be made and there is no formula for this. In one extreme you may want to require a unanimous vote by all the partners for every business decision. This can make for very slow and cumbersome decision-making. One practical solution is to require a unanimous vote for major

decisions, but allow individual partners to make minor decisions on their own. In that case, your partnership agreement will have to describe what constitutes a major or minor decision.

Admitting new partners: Eventually, you may want to expand the business and bring in new partners. Agreeing on a procedure for admitting new partners will make your lives a lot easier when this issue comes up.

Withdrawal or death of a partner: At least as important as the rules for admitting new partners to the business are the rules for handling the departure of an owner. You should set up a reasonable buyout scheme in your partnership agreement.

Buy/Sell: Comprehensive buy/sell provisions should be outlined, in the event that one partner wants out. It is also important to have a clear process for determining the value of the business and how a buyout can be executed.

Competition clause: A prohibition against each partner becoming involved in a competing business is important, as this protects your business.

Resolving disputes: If you and your partners become deadlocked on an issue, do you want to go straight to court? It might benefit everyone involved if your partnership agreement provides for alternative dispute resolution, such as mediation or arbitration.

STEP 3 Have a lawyer review your partnership agreement.

The list above is not comprehensive. In order for the partnership agreement to be fair it is best for each partner to have his or her own lawyer review the agreement. This ensures that there is no bias.

Think of a partnership agreement as something you are going to pull out when “things are not going as planned.”

NEXT TIME, we’ll focus on obtaining financing for your new venture. □

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