

# Dealing With The Disabled Physician: It Could Be You

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Death and taxes are the two certainties of life, but statistics show that the likelihood of becoming disabled is greater than dying (at least in the short run). Then why is it that medical practices seem to devote more time and effort to structuring death buyout arrangements than addressing how to deal with a disabled physician? Much of the cause can be blamed on the complexity of the issues involved.

Practices have basically two choices for addressing physician disability - they can have a written disability plan in advance, or they can try to cope with the situation on an ad hoc basis. The group that plans ahead is much better equipped to weather the temporary or permanent loss of a physician producer. A written plan will also help to avert unpleasant, and sometimes adversarial, discussions about compensation for the disabled physician. Moreover, by planning in advance the practice can make sure that physicians in the practice who become disabled are treated in a consistent manner. Unequal treatment is simply ammunition for a lawsuit.

The written disability plan can take several forms. Some practices have a freestanding "Physician Disability Plan;" others incorporate the disability provisions into the physician's employment contract or physician compensation plan. It really doesn't matter too much where the disability provisions reside; however, putting them in a document that covers all physicians in the practice - instead of each individual employment contract - gives the practice greater flexibility and ease in making modifications to the plan from time to time. Nevertheless, in our experience, the disability arrangements are most frequently found in an employment contract, so for purposes of this discussion we will use that context.

The employment contract should define the term "disability." The contract also should provide a method of resolving any disputes as to whether a

physician has become disabled. Generally, the medical practice should have the right to require an examination of the affected physician by an independent physician. Occasionally, it may be necessary to resort to a second opinion, or another physician to resolve conflicting opinions. Arbitration provisions can furnish a last resort for dispute resolution on this issue.

Once the fact of the disability has been established, the employment contract should spell out the compensation to which the disabled physician is entitled. The decision of how much of the physician's normal compensation should be paid will vary from practice to practice. A larger practice can afford to pay a greater percentage of lost earnings for the disabled physician since it can spread the cost over a large base of physicians.

For productivity based compensation systems, the disability provisions should take into consideration both division of income and allocation of overhead expenses. In many cases it may be appropriate to simply continue the compensation arrangement in force until the receivables are collected and paid out to the disabled physician.

The employment contract also should spell out who is entitled to terminate the contract based on the physician's disability and when that right may be triggered. If the disabled physician is an owner of the practice, the termination of employment will usually trigger a buy-out of the physician's ownership interest.

Finally, if the practice intends to obtain disability overhead insurance on its physicians it should make certain that its disability arrangements do not vitiate or reduce the expected coverage. This result occurs more frequently than one would think. Therefore, a careful review of the insurance policy is warranted.

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