

Have an Annual Year-End Practice Meeting and Make the Most of It

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Our ophthalmology clients often ask if they should have an annual year-end practice meeting. Our answer is almost always, “Yes, and make the most of it.”

Most ophthalmology practice entities are still professional corporations, despite the recent emergence of professional limited liability companies and professional limited liability partnerships as alternatives. For reasons discussed below, ophthalmology practices that are professional corporations typically do have an annual year-end meeting.

However, we recommend that ophthalmology practices that are not professional corporations also have an annual year-end meeting even if not required to do so for legal, tax, or other reasons—and capitalize on it to benefit the practice and to plan for next year and beyond.

The annual year-end meeting offers a unique opportunity to look ahead and plan the practice’s course and objectives for the next year and beyond.

Use Your Annual Year-End Meeting and Practice Advisors Well

In most annual year-end meetings, ophthalmology practices and their ophthalmologists usually focus on what happened during the past year rather than discussing and planning for what is going to happen next year. Practices should use the annual year-end meeting as an opportunity to look ahead and plan for the next

year and beyond with a primary focus on the operational, financial, legal, and tax issues likely to face the practice.

Most ophthalmology practices have an attorney and an accountant (and perhaps a retirement plan, insurance, or other advisor) in attendance. However, many practices often fail to take full advantage of the expertise of their advisors. For

continued on page 24

continued from page 21

Physician practices should consult with their legal counsel for further guidance regarding these requirements. **AE**

(For a concise summary of requirements and additional resources, see “Washington Watch.”—Ed.)

Notes

ⁱ 74 Fed. Reg. 42,740-42,770 (Aug. 24, 2009). The IFR adds a new subpart D to Part 164 of 45 C.F.R.

ⁱⁱ 45 C.F.R. § 160.103 (2008).

ⁱⁱⁱ 74 Fed. Reg. 42,741-42,743.

^{iv} The HIPAA Privacy Rule discusses the permitted uses and disclosures of PHI.

^v 74 Fed. Reg. 42,767 (emphasis added).

^{vi} 74 Fed. Reg. 42,769.

^{vii} A breach shall be treated as discovered on the first day on which the breach is

known to the covered entity or business associate, or which, by exercising reasonable diligence, **would have been known** to the covered entity or business associate. 74 Fed. Reg. 42,768.

^{viii} HITECH Act, Section 13401.

^{ix} As stated in Section 13404(a) of the HITECH Act, “[t]he additional requirements of this subtitle that relate to privacy and that are made applicable with respect to covered entities shall also be applicable to such a business associate, and shall be incorporated into the business associate agreement... ”

^x Physician practices should consult with legal counsel regarding the amendment of their BAAs.

^{xi} Physician practices and their business associates should consult the HITECH Act for the complete privacy and security requirements.

^{xii} HITECH Act, Section 13405.

^{xiii} *Id.*

^{xiv} *Id.*

^{xv} *Id.*

^{xvi} *Id.*

^{xvii} HITECH Act, Section 13406.



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continued from page 22

example, many accountants simply prepare the practice's financial statements and report what has already happened rather than give regular and continuing advice or an interpretation of the practice's financial results. Similarly, most attorneys are used to dealing with only the practice's crisis of the day and often don't have the time, inclination, or ability to be good business advisors.

The primary role of the practice's attorney and accountant should be to provide expert advisory help and guidance to the practice. The practice's attorney and accountant (and any other important practice advisors) should be part of the practice's regular advisory team, gathered together at the annual year-end meeting (at least) to provide their collective expertise and advice for the ultimate benefit of the practice and its business.

Unfortunately, some ophthalmology practices meet with each of their various advisors separately. We believe the practice is better served by a collaborative effort, such as in a meeting where they get a chance to brainstorm and feed off each other's ideas and generate ideas, solutions, and plans in a joint effort to offer advice that perhaps none of them would have thought of independently.

Regardless of the subject involved, well-chosen practice advisors have most likely dealt with similar issues in their own practices or in other ophthalmology and professional practices. The opportunity and ability to draw on their experience and expertise is invaluable.

An annual year-end meeting that encompasses good planning; gets doctors, the practice administrator, and advisors on the same page; and allows time for thinking about where the practice is going in the long run is an opportunity that no practice should pass up.

Review Practice Financial Results

The practice's financial statements and results should be one of the first agenda topics for the annual year-end meeting. Do this early in the meeting; the current year's financial

results will often be the basis for subsequent discussion of everything else on the agenda.

All too often, we find that the annual financial reports are given only cursory attention and only the most obvious information—gross revenues, gross expenses, and physician compensation—is discussed in detail. The financial statements should be compared with at least the prior year's. Only by comparing results can practice owners truly begin to understand how well (or poorly) the practice is doing. Similarly, by including expense percentages for each line item in the financial statements, the practice can compare these figures not only to the prior year's but also to statistical benchmark data from outside sources.

One piece of important financial information that we rarely see covered in sufficient detail at annual year-end meetings is accounts receivable. We believe this is because almost all ophthalmology practices report their financial statements using the cash method of accounting (as is to be expected for a service business such as an ophthalmology practice), and there is no need to separately report accounts receivable on the practice's financial statements when using the cash basis. Nonetheless, the practice's financial statements (or a separate report) should include a detailed analysis of the accounts receivable. There are a number of aspects of the practice's accounts receivable to analyze; include them all in the ongoing analysis, and review the analysis at the annual year-end meeting, if not monthly.

Maintain Corporate Formalities

If the practice entity is a professional corporation, an annual meeting is usually required and essential in order to make sure that the professional corporation continues to be treated as a separate entity for tax and liability purposes. Simply put, to be entitled to the tax benefits and limited liability protection of a professional corporation, the profession-

al corporation must look like a bona fide corporation, distinct and separate from its individual owners. The annual meeting and the minutes of the meetings of the corporation's shareholders, board of directors, and officers reflecting and recording corporate action and decisions are important to maintaining corporate formality.

These six main decisions or resolutions are typically handled at the annual year-end meeting:

- Declaration of year-end bonuses for the corporation's physicians.
- Authorization of the corporation's profit-sharing plan contribution (pension contributions are normally required and formula driven and do not require a separate resolution).
- Declaration of corporate dividends.
- Base salaries for the corporation's physicians for the upcoming year.
- Appointments of corporate officers and directors.
- Authorizations of various (usually major) actions the corporation will undertake (including contracts that the corporation will undertake).

Of course, countless other topics relate to tax, legal, and other issues that might also be appropriately handled at the annual year-end meeting, depending on the circumstances.

Beyond the financial and legal/tax issues, however, there are many more important issues that should be topics for the practice's annual year-end meeting. Here are some prime topics that every ophthalmology practice should regularly consider.

Review of inter-doctor arrangements. At least annually, practice owners should review the arrangements they have among themselves. This would include income division, governance, and buy-in and pay-out arrangements. If those arrangements no longer make sense, the annual meeting is an appropriate time to discuss and change them. The best time to make necessary changes is when no one is in the process of retiring or otherwise leaving the practice.

Discussion of organizational structure and governance. If the number of owners in the practice has increased significantly, it may be worth streamlining the practice's management structure. It may be time to appoint a physician-manager or an executive committee. Also review the practice entity's governance documents (such as its bylaws, its partnership or operating agreement, etc.). Have there been changes to state law that might require a change to those documents? Are there practice decisions that should require a super-majority vote? If so, make sure to document those changes in the minutes of the meeting and make the appropriate amendments to the governance documents.

Evaluation of current associates. Many non-owner ophthalmologists believe they are on the "partnership track." Their employment agreements may even contain provisions for future co-ownership. If the practice is having problems with an associate, deal with it formally at the annual year-end meeting, if not sooner. Waiting until the associate expects to be offered co-ownership to tell him or her that there are deficiencies does not allow for an opportunity to correct problems and may open the practice up to unnecessary problems or lawsuits. Complete formal written evaluations of the associate with constructive criticism as appropriate. If an associate will soon be due for co-ownership, the practice owners should authorize moving forward with the necessary agreements and other appropriate calculations and documents.

Review of clinical volumes. Look at the total number of patients and RVUs. Compare the number of procedures the practice performed this year with prior years. Assess whether the practice is continuing to attract new patients and whether there are trends in the types of patients seen. Look at referrals that you outsource to other practices: Are there sufficient volumes to consider adding a new service? Analyze referral sources: Have physicians who used to refer regularly stopped sending patients? If so, one of the prac-

tice owners should investigate further and see what might be done to correct the problem.

Review of provider staffing needs. Discuss whether patient volumes warrant recruiting a new ophthalmologist. Also consider whether any of the practice's ophthalmologists are planning to retire in the next year or two. Depending on the specialty and the time of year a search starts, recruiting for an associate may take 18 months or more. Adding an ophthalmologist trained in a subspecialty may be appropriate, or hiring an optometrist may be a better option.

Review of employee benefit plans. Many ophthalmology practices do not regularly reconsider their employee benefit plans. Sometimes a simple change, such as increasing co-pay or deductible levels for health insurance plans, can result in significant savings. The practice may also save costs through instituting a Flexible Spending Account (FSA), a Health Savings Account (HSA), or a High-Deductible Health Plan (HDHP). However, know what is competitive in your marketplace for employee benefits; drastic cuts in benefits may lead to unwanted staff turnover.

Review of operational systems. Ophthalmology practices often wait until their computer, billing, or telephone system has reached full capacity or will no longer be supported to think about purchasing a new system. By then, it may be too late. The practice owners should review the state of the practice's current systems and new technology that may make the practice more productive or that may be required (EMR/EHR). These big-ticket items require a fair amount of research before acquisition. It is best to have as much lead time as possible.

Review of space needs. Just as with operational systems, planning for space requires a lot of research and lead time to get it right. Similarly, practices tend to wait until there is no more space before beginning to plan. Anticipate space needs for the coming two to five years. If more space is needed, consider moving the business office to less expen-

sive space to free up more room for clinical activities. Determine whether there is an opportunity to add adjacent space to the current location. Is it appropriate to consider a satellite office? Sometimes a satellite office is the best option for covering the practice's market area.

Review and approval of budgets. Prepare budgets prior to the annual meeting for review by the practice owners. Start with an operating budget for the coming year. Be sure to include anticipated changes in patient volume and/or reimbursements. Also, take into account changes likely to occur in expenses. Next, prepare a capital equipment budget. Include new clinical equipment as well as those items that may need to be replaced. Also include office system equipment, such as telephone, billing, and computer systems.

Summary

Ophthalmology practices can profit greatly from an annual year-end meeting. The annual year-end meeting allows you to take care of the necessary (and perhaps boring) details of running a practice. However, it can, and should, be much more. By also using the annual year-end meeting wisely and taking advantage of having the practice owners, the practice administrator, and the practice advisors all together at one time, the annual year-end meeting offers a unique opportunity to look ahead and plan the practice's course and objectives for the next year and beyond. **AE**



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