

## Unique Issues for Physicians in Marital Dissolutions

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Robert J. Mintz, Esq.  
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A few weeks ago I was researching some divorce issues for a physician client. I was looking at the financial impact of various settlement alternatives - the amount of continuing family support; how to divide marital property; and the procedures for determining the value of a medical practice. I was surprised about the general lack of clear and accurate information about such important matters. After all, the financial consequences arising from a divorce may be more severe and more probable than the risk of loss from a malpractice case and unfortunately there is no insurance available to cover potential losses from this type of disaster.

With this in mind and the understanding that libraries are filled volumes of cases and codes and that every state varies in their specific treatment of divorce matters, I think it's worth a try to present, in our asset protection column, some key issues on the topic with special importance to physicians. This month we can consider spousal support awards, then in future columns we'll cover other major items such as property divisions and valuing a medical practice.

### **Spousal Support**

Physicians as a group are generally highly compensated relative to the earnings of their spouse. It's probably a good guess to say that the greater the income of one spouse, the more common it is for the other to stay home with the kids - an option not often available in lower and middle income families.

This wide discrepancy in earnings becomes particularly significant in a divorce situation. An important factor in determining the amount of the spousal support award (alimony) is the difference between what each spouse earns. As a broad example, assume that Physician Spouse (PS) earns \$20,000 per month, Non Physician Spouse (NPS) earns zero. The court finds that an award creating a 60%-40% split of total income is appropriate. This would result in monthly alimony payments of \$8,000 by PS. If instead, NPS was working with an income of \$5,000 per month, then the award would be only \$5,000 (.40 x \$25,000 less \$5,000). The greater the earnings of the NPS, the less the award must be to create the intended balance.

The question of how much and for how long alimony is to be paid is usually based upon the judge's evaluation of particular factors which typically include the length of the marriage, the earnings of each spouse and the marital standard of living. Some states, such as California, specifically list the items which must be considered by the court in determining the amount of the support award. The California Family Code, as an example, enumerates more than fifteen factors which must be taken into account.

Whatever amount is ultimately decided is then subject to continuing supervision and modification after the judgment. If one spouse's needs increase or annual earnings go up or down, or either party's circumstances change, the amount of the award can be modified to be more or less based on the new circumstances, as determined by the court.

Like all litigation, battling in court over the amount of alimony can be time consuming, expensive and emotionally draining for both parties. Because the initial support award and subsequent modifications depend upon the court's discretion and the subjective evaluation of each spouse's needs and ability to pay, the results and the financial consequences to each side are never settled, fixed or finalized. This lack of certainty, for both parties, as to future income and obligations makes ordinary financial planning, decisions about savings, investments and life style difficult.

### **Written Agreements**

To avoid this extended period of financial limbo and allow each spouse to proceed with their life and their plans, well advised spouses often attempt to negotiate their own agreement on future support payments. Although neither side can accurately foresee all or much of what may occur personally or financially, the certainty of a specified arrangement is usually preferable to the uncertainty of relying on the vagaries of judicial process. Each side usually gets less than they want, essentially paying a premium in exchange for the certainty and stability of fixed payments over a predetermined number of years. In many states, California included, the law specifically allows the parties to reach their own agreements and removes from the courts the power to modify or extend

the support amount if the parties reach their own agreement and state clearly in writing that they do not wish the agreement to be subject to modification. This language must be very clear, and if both spouses desire to make a deal that will not be subject to change by a court, then there must be very specific language in the contract stating this intention.

Anything less than 100%, incontrovertible clarity in the agreement, may open the door to future litigation with one or the other spouse attempting to get more or pay less when faced with a claim of changed circumstances at a later date.

### **Conclusion**

Physicians confront a unique variety of complex financial issues when dissolving a marriage. Of particular note, if both parties to a divorce desire to establish a certain financial outcome, avoiding future litigation and disruption, it is important that the drafting of the settlement agreement accurately sets forth what each side is trying to accomplish. Naturally, these issues depend on the law of the state where you live and the matters here are intended for speculation and discussion purposes only. For accurate information and advice concerning your particular case you must consult with your own local attorney and advisors.

*Robert J. Mintz, JD, is an attorney and the author of the book *Asset Protection for Physicians and High-Risk Business Owners*. To receive a complimentary copy of the book call 800-223-4291 or visit [www.rjmintz.com](http://www.rjmintz.com)*

