Valuation of a Medical Practice for Divorce in Missouri –

Personal v. Enterprise Goodwill

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There are many purposes for valuing a medical practice, such as selling the practice to another physician or acquisition of the practice by a hospital. However, there is one purpose for which most physicians never want their practice to be valued – divorce. According to the Missouri Department of Health & Senior Services, there were 22,328 divorces in Missouri during 2009. Undoubtedly, a few of those divorces involved physicians who owned a medical practice.

One of the issues that must be dealt with when valuing a professional practice for divorce is the treatment of goodwill. The *International Glossary of Business Valuation Terms* defines goodwill as that intangible asset arising as a result of name, reputation, customer loyalty, location, products and similar factors not separately identified. In a professional practice, goodwill can be present in two distinct forms: personal goodwill and enterprise goodwill. Personal goodwill is that goodwill the attaches to the persona and the personal efforts of the individual. It is generally considered to be difficult, if not impossible, to transfer. Enterprise goodwill is the goodwill that attaches to the business enterprise.

Factors Considered In Determining Personal Goodwill

What factors should one consider in determining if goodwill is personal goodwill or enterprise goodwill? In *Lopez v. Lopez*, a 1974 California case, the factors considered in...
determining the presence of personal goodwill were:

- Age and health of the professional
- Professional's demonstrated earnings power
- Professional’s reputation in the community for judgment, skill and knowledge
- Professional’s comparative professional success
- Nature and duration of the professional’s practice, either as a sole proprietor or as a contributing member of a partnership or professional corporation

In addition to the factors listed above, the following factors can be relevant in determining goodwill and should be considered in allocating the goodwill between personal and enterprise goodwill:

- Marketability of the practice
- Types of clients and services
- Location and demographics
- How the fees are billed
- Source of new clients
- Individual practitioner’s amount of production
- Workforce and length of service
- Number of other professionals in the community competing in the same service or specialty

**Goodwill & The Courts**

How do the courts treat goodwill for divorce? Do courts make a distinction between personal goodwill and enterprise goodwill? Like most things in life, it depends. Here, the key factor in determining the treatment of goodwill is the jurisdiction of the divorce proceedings.
Courts in a few states, such as Wisconsin, Utah and Oklahoma, have never included goodwill as an asset to be divided in the marital estate\(^8\). Other courts, like those in New Jersey, Maryland and Kansas, have always included all goodwill as a divisible marital asset, regardless of the nature of the goodwill\(^9\). Many states, including Missouri, differentiate between enterprise goodwill, which is considered a divisible marital asset, and personal goodwill, which is not a marital asset.\(^10\)

The case most often cited in Missouri regarding goodwill in a professional practice is the 1987 Missouri Supreme Court case of *Hanson v. Hanson*.\(^{11}\) The case was a consolidation of two appeals resulting from different approaches taken with respect to goodwill by the Circuit Courts of Boone County and Cole County. The husbands in the consolidated cases, Drs. Hanson and Graham, were in fact partners in an oral surgery practice located in Jefferson City, Missouri. Drs. Hanson and Graham hired Elmer Evers, C.P.A., to value their individual ownership interests in the oral surgery partnership. Mrs. Hanson and Mrs. Graham hired Stephen Smith, C.P.A., as their business valuation expert.

In the Hanson divorce case, the Circuit Court of Boone County valued the oral surgery practice at $324,862, including approximately $234,000 of goodwill. In the Graham divorce case, the Circuit Court of Cole County, hearing virtually identical evidence from the same business valuation experts, valued the oral surgery practice at $90,280, including $0 for goodwill.

On September 15, 1987, the Missouri Supreme Court held that goodwill in a professional practice, defined to mean the value of the practice which exceeds its tangible assets and which results in the tendency of clients/patients to return and recommend the practice irrespective of the reputation of the individual practitioner, is a martial asset subject to division in a dissolution
proceeding. However, the existence of goodwill is shown only when there is evidence of a recent actual sale of a similarly situated professional practice, an offer to purchase such a practice, or expert testimony and testimony of members of the subject profession as to the existence of goodwill in similar practices in the relevant geographic and professional market. Goodwill cannot exist and be subject to division in a dissolution proceeding if it may not be sold.

The Missouri Supreme Court noted the only evidence during the Graham trial regarding goodwill came from Mr. Evers, who testified that based upon his experience, similar practices to the oral surgery practice owned by Dr. Graham in the same geographic area were sold without payment for goodwill. The Missouri Supreme Court affirmed the trial court's valuation of the oral surgery partnership of $90,280, a value that included $0 for goodwill.

As for the Hanson trial, the Missouri Supreme Court noted that in addition to Mr. Evers' testimony on goodwill, which was similar to his testimony in the Graham divorce, evidence was presented from Dr. Thomas Coyle, an oral surgeon practicing in nearby Columbia, Missouri. Dr. Coyle testified that he paid nothing for goodwill when he formed a partnership with an established oral surgeon already in practice or when he purchased his partner's interest in the practice upon the partner's retirement. Based upon this evidence, the Missouri Supreme Court remanded the Hanson case to the Circuit Court of Boone County with the directions to assign no value for goodwill to Dr. Hanson's partnership interest.

Conclusion

With increasing frequency courts are being asked to determine whether certain intangible assets, such as goodwill, should be classified as marital property and therefore subject to division. For those professionals living in Missouri, the Missouri Supreme Court has provided guidance in the form of *Hanson v. Hanson*. Should you unfortunately find yourself in
the middle of a divorce, you need to make sure your attorney and business valuation expert are familiar with the Hanson case.

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3 International Glossary of Business Valuation Terms 2001 as adopted by the American Institute of Certified Public Accountants, the American Society of Appraisers, the Canadian Institute of Chartered Business Valuators, the National Association of Certified Valuation Analysts, and the Institute of Business Appraisers
5 Id.
6 In re the Marriage of Lopez, 113 Cal. Rptr. 58 (38 Cal. App. 3d 1044 (1974))
8 Hitchner, supra note 4, at 835.
9 Id.
10 Id.
11 Hanson v. Hanson, Graham v. Graham, 738 S.W. 2d 429 (Mo. 1987).