

Summary of Significant Factors Determining the Permissibility of Participation in Partnership

ISSUES	POSITIVE FACTORS	NEGATIVE FACTORS
<p><i>Purpose of the Partnership</i> Does the partnership agreement expressly state that the partnership has a charitable purpose and that the charitable purpose will take precedence over all other concerns, including profit motives, where conflicting interests arise?</p>	<p>Express charitable purpose and charitable override in the partnership agreement.</p>	<p>No express charitable purpose and no charitable override in the partnership agreement.</p>
<p><i>Voting Power</i> Does the partnership agreement give a nonprofit or the for-profit a majority vote in the partnership's board of directors?</p>	<p>A nonprofit controls a majority of the votes on the board.</p>	<p>The for-profit controls a majority of the votes on the board, or alternatively, there is a 50-50 split of nonprofit and for-profit controlled votes on the board.</p>

(over)

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<p><i>Other Assurances or Indicia of Control</i></p> <p>Which partner can initiate significant actions?</p> <p>Which partner can block such actions?</p> <p>What are those actions from the standpoint of advancing nonprofit or for-profit interests?</p> <p>Which partner has the right to select the chairman of the board and to set the board's agenda?</p> <p>Does the chair have the power to break a tie vote?</p> <p>Are there clauses in the foundational documents providing for dilution of nonprofit control if a nonprofit's shares of ownership fall below a certain share?</p> <p>Is there evidence that partnership decisions are being referred to the for-profit partners for approval?</p>	<p>A nonprofit can initiate actions in furtherance of its charitable purpose and can block actions in furtherance of any for-profit purpose or actions with any potential for private inurement or private benefit;</p> <p>A nonprofit has the right to select the chairman of the board and to set the board agenda;</p> <p>A nonprofit-appointed chair has the power to break a tie vote;</p> <p>A nonprofit retains its control despite any possible dilution of its ownership share;</p> <p>The partnership is independent of any informal control by the for-profit partner.</p>	<p>A nonprofit cannot initiate actions in furtherance of its charitable purpose and cannot block actions in furtherance of any for-profit purpose or actions with any potential for private inurement or private benefit;</p> <p>A nonprofit does not have the right to select the chairman of the board and to set the board agenda;</p> <p>The chair is appointed by the for-profit, or is appointed by a nonprofit but has no right to break a tie vote;</p> <p>A nonprofit loses control with dilution of its ownership share;</p> <p>There is evidence that partnership decisions are being referred to the for-profit partner for approval.</p>
<p><i>Influence of and Control Over the Manager and Executives</i></p> <p>Is the partnership managed by a company that is owned or affiliated with the for-profit or nonprofit partner?</p> <p>Is the entity employing the executives of a company which is owned or affiliated with the for-profit or nonprofit partner?</p>	<p>The management company is affiliated with a nonprofit partner or is an independent nonprofit;</p> <p>The entity employing the executives is affiliated with a nonprofit partner or is an independent nonprofit.</p>	<p>The management company is affiliated with the for-profit partner or is an independent for-profit;</p> <p>The entity employing the executives is affiliated with the for-profit partner or is an independent for-profit.</p>

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<p><i>Right to Terminate Manager or Executives for Violation of Non-Profit Duties</i></p> <p>Does a nonprofit have the right to unilaterally terminate the manager or the executives if the manager or executives default on their nonprofit duties?</p>	<p>A nonprofit has the right to unilaterally terminate the manager or the executives if the manager or executives default on their nonprofit duties.</p>	<p>A nonprofit does not have the right to unilaterally terminate the manager or the executives if the manager or executives default on their nonprofit duties.</p>
<p><i>Right of Dissolution</i></p> <p>Does a nonprofit have the right to dissolve the partnership if participation in the partnership will hinder its tax-exempt status?</p>	<p>A nonprofit has the right to dissolve the partnership if participation in the partnership will hinder its tax-exempt status.</p>	<p>A nonprofit does not have the right to dissolve the partnership if participation in the partnership will hinder its tax-exempt status.</p>
<p><i>Alternative Dispute Resolution Clause</i></p> <p>Do the conflict resolution provisions of the partnership agreement require precedence of exempt purposes over business purposes in any mediation or arbitration?</p>	<p>The conflict resolution provisions of the partnership agreement requires precedence of exempt purposes over business purposes in any mediation or arbitration.</p>	<p>The conflict resolution provisions of the partnership agreement does not require precedence of exempt purposes over business purposes in any mediation or arbitration.</p>
<p><i>Duties of Manager</i></p> <p>Does the management agreement expressly bind the manager to a charitable purpose duty?</p>	<p>The management agreement binds the manager to an express duty to serve the charitable purpose.</p>	<p>The management agreement does not bind the manager to an express duty to serve the charitable purpose;</p> <p>There is such a clause, but the manager appears to primarily serve a for-profit purpose.</p>

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<p><i>Control Over Partnership Distributions</i></p> <p>Are distributions expressly or effectively controlled by the for-profit or nonprofit partner?</p> <p>Is a preference given to distributions to cover the tax liabilities of the for-profit partners?</p>	<p>Decisions over distributions are either joint or are expressly or effectively controlled by a nonprofit partner;</p> <p>There is no preference given to distributions to cover the tax liabilities of the for-profit partners.</p>	<p>Decisions over distributions are expressly or effectively controlled by the for-profit partner;</p> <p>There is a preference given to distributions to cover the tax liabilities of the for-profit partners.</p>
<p><i>Capital Contributions</i></p> <p>Does a nonprofit partner (or its subsidiary) or the for-profit partner (or its subsidiary) have the right to request that all of the partners make additional capital contributions?</p> <p>Do the for-profit partners have the right to make capital contributions when nonprofit partners do not, thereby diluting nonprofit partners' share percentage?</p>	<p>A nonprofit partner or its subsidiary has the right to request that all of the partners make additional capital contributions.</p> <p>The for-profit partners do not have the right to make capital contributions and dilute nonprofit partner's share when nonprofit partners do not.</p>	<p>The for-profit partner or its subsidiary has the right to request that all of the partners make additional capital contributions.</p> <p>The for-profit partners have the right to make capital contributions and dilute a nonprofit partner's share when a nonprofit partners do not.</p>
<p><i>Individual Ownership Interests</i></p> <p>Do the foundational documents permit ownership interest to be sold to individuals, including physicians and management-level employees?</p>	<p>Individual ownership of interest by physicians and management-level employees is permitted.</p>	<p>Individual ownership of interest by physicians and management-level employees is not permitted.</p>

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<p><i>Employees</i></p> <p>Are the executives employed by the for-profit partner (or its subsidiary) or a nonprofit partner (or its subsidiary)?</p> <p>Are said executives provided with an incentive compensation plan based on profitability?</p> <p>Are the remaining employees of the partnership employed by the for-profit or nonprofit partner, and is there proper distinction, accounting and reimbursement of hours worked on behalf of the for-profit and the partnership?</p>	<p>The executives are employed by a nonprofit partner, its subsidiary or an independent nonprofit;</p> <p>The executives have no incentive compensation plan based on profitability;</p> <p>The remaining employees are employed by a nonprofit, its subsidiary or an independent nonprofit;</p> <p>There is proper distinction, accounting and reimbursement of hours worked on behalf of the for-profit and the partnership.</p>	<p>The executives are employed by the for-profit partner, its subsidiary or an independent for-profit;</p> <p>The executives have an incentive compensation plan based on profitability;</p> <p>The remaining employees are employed by the for-profit; there is no proper distinction, accounting and reimbursement of hours worked on behalf of the for-profit and the partnership.</p>
<p><i>Symmetry or Asymmetry of Non-Compete Clauses</i></p> <p>Do the non-competition clauses create equal barriers to competition by the parties? If they do not, are the nonprofit or the for-profit activities advantaged?</p>	<p>The non-competition clauses are equally restrictive on the partners or are less restrictive of competing activities by a nonprofit partner.</p>	<p>The non-competition clauses are less restrictive of competing activities by the for-profit partner.</p>
<p><i>Branding Campaign</i></p> <p>Does the partnership involve a for-profit brand-name recognition campaign paid for by the partnership?</p>	<p>There is no for-profit brand name recognition campaign; if there is a campaign, it is financed strictly by the for-profit partners.</p>	<p>There is a for-profit brand name recognition campaign financed by the partnership.</p>
<p><i>Business Plans</i></p> <p>Do the partnership's business plans adopt a nonprofit partner's or the for-profit partner's goals and strategies, and with what apparent intent?</p>	<p>Business plans adopt nonprofit partner's goals and strategies, apparently with a nonprofit intent.</p>	<p>Business plans adopt for-profit partner's goals and strategies, apparently with a for-profit intent.</p>

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<p><i>Partnership Law Conflict</i></p> <p>Is there a conflict or a potential conflict between the charitable purpose provision of the foundational documents and state law, which may or may not define a partnership as a “for-profit” entity?</p>	<p>There is no conflict between the charitable purpose provision of the foundational documents and state law.</p>	<p>There is a conflict or a potential conflict between the charitable purpose provision of the foundational documents and state law.</p>
<p><i>State Law Override</i></p> <p>Does the confluence of applicable state law and the presence or absence of a particular charitable override provision increase or decrease the likelihood that a charitable purpose provision of the foundational documents would be enforced over any duties (especially fiduciary duties to the for-profit partners) imposed by state law?</p>	<p>There is a high likelihood that a charitable purpose provision of the foundational documents would be enforced over any duties imposed by state law.</p>	<p>There is a low likelihood that a charitable purpose provision of the foundational documents would be enforced over any duties imposed by state law.</p>

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<p><i>Charity Care</i></p> <p>Is there sufficient tracking and accounting of indigent care after the formation of the partnership?</p> <p>Are there structural incentives for limiting charity care (i.e. executive compensation plans mandating that debts and charity care must be maintained with less than 1% negative variance from budget)?</p> <p>Is the net effect of the partnership or joint venture the increase or the reduction or elimination of certain charity and community services previously provided by a nonprofit?</p>	<p>There is sufficient tracking and accounting of indigent care after the formation of the partnership;</p> <p>There are no structural incentives for limiting charity care; and</p> <p>The net effect of the partnership or joint venture is the increase of charity and community services from those previously provided by a nonprofit.</p>	<p>There is insufficient tracking and accounting of indigent care after the formation of the partnership;</p> <p>There are structural incentives for limiting charity care; and the net effect of the partnership or joint venture is the reduction or elimination of charity and community services from those previously provided by a nonprofit.</p>

