

# Physician Employment Contracts



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# Landing the Offer –Goals



- Begin the job search process by outlining your goals
  - Geographic location
  - Type of practice (single specialty group, multispecialty group, employee of HMO, academic setting, solo practice)
  - Compensation
  - Amount of time to be spent at the job as compared to personal matters
  - Whether eventually becoming an owner or partial owner in a practice is important

# Landing the Offer – CV



## ■ Prepare a clear, well organized CV

- Name, address, phone, email address
- List educational history starting with the most recent
- Status of your license and whether you are board eligible or board certified
- Work experience including the title of the position, the name of the employer, and your responsibilities
- Medical committees, articles published, honors or awards, academic appointments
- Three or four professional references
- No typos!
- Good quality white bond paper for hard copy (not photocopy paper)

## ■ Format that can be easily emailed without losing its formatting

- Beware of metadata!
- Check formatting on different computers with test emails
- Name the file something that is useful from the employer's perspective ("Joe Smith CV" not "Resume")

# Landing the Offer – Job Market



- **Gain an understanding of the job market in your specialty**
  - Most physicians will have a number of opportunities to practice in just about any geographic location (with the possible exception of popular vacation spots)
- **Possible sources for job opportunities:**
  - Friends and colleagues who may already be in the work force
  - Your specialty's professional organization
  - Classified ads in professional journals
  - Telephone yellow pages (if you have a narrow geographic region)
  - The internet, including professional organization web pages
  - Professional directories
  - Physician recruiters

# Landing the Offer – Recruiters



- **Make an informed decision before engaging the services of a physician recruiter**
  - You will likely receive numerous inquiries from physician recruiters
  - There are two to three hundred physician recruitment firms in the country and another 3,500 to 4,000 in-house recruiters, according to the National Association of Physician Recruiters (as reported in "Sourcing Physician Candidates" Group Practice Journal, March/April, 1996.)
  - "In-house" recruiters are employees of your potential employer and have the employer's best interests at heart
  - They will have the authority to screen out candidates but will not likely have the final say with respect to your potential employment if you get to the interview stage
  - "Out-of-house" recruiters work to place you in a position but are not employees of the employer, they are paid substantial fees by employers for their services (\$20,000 for example)

# Landing the Offer – Recruiters Cont'd



- Two types of out-of-house recruiters:
  - Contingency Recruiter
    - The recruiter does not get paid if the recruiter does not succeed in placing a physician. A contingency recruiter is not bound to any one employer and accordingly would have an incentive to show you as many positions as the recruiter thinks you might be interested in
  - Retained Recruiter
    - The client (the potential employer) pays even if the position is not filled. If you work with a retained recruiter the recruiter will push you first to any positions which the recruiter has been retained to fill. The recruiter may not tell you about other openings the recruiter has available until he is sure that he cannot place you in one of his retained positions.
- Both types of out-of-house recruiters are working to fill a position. They may not have your best interests at heart. The recruiter's principal loyalty will be to the potential employer, which is the recruiter's client

# Landing the Offer – Recruiters Cont'd



- Be careful about giving information to out-of-house recruiters about yourself over the telephone unless you are sure you want to work with the recruiter
  - They may be building a “resume” to circulate to potential employers. Since you will not have had a chance to proofread the “resume”, the “resume” may contain errors
  - They may contact the employer down the street (or in your home town) you were going to submit a resume to and then try to collect a fee when you and the employer get together and strike a deal on employment
- If you know you want to practice in a given city you probably will not need the services of an outside recruiter since it would be fairly easy to ascertain the identity of potential employers and contact them directly
- It will decrease the odds of you obtaining a signing bonus if the employer has to pay an outside recruiter a fee of \$20,000 (or some other substantial sum)

# Landing the Offer – Recruiters Cont'd



- Some employers refuse to work with outside recruiters
  - To access these potentially good employment opportunities you would need to contact the employer directly (or they might contact you)
- On the other hand if you have trouble finding an appropriate position, a recruiter can help you, and the fee would typically be picked up by your future employer

# Landing the Offer– Recruiters Questions



- If you choose to work with a recruiter or multiple recruiters you should choose the recruiter or recruiters carefully:
  1. How long has the recruiter been in business as a physician recruiter?
  2. How many physicians has the recruiter placed within the last year?
  3. Who will pay the recruiter's fee? How much is the fee? How is it calculated?
  4. Is the recruiter a retained recruiter (i.e., retained by a particular employer or groups of employers)? Is the recruiter in fact employed by your employer (an "in house" recruiter)?
  5. Does the recruiter specialize in a particular geographic area?
  6. Will the recruiter guarantee that she will submit your resume to only those potential employers which you have approved?
  7. Does the recruiter belong to the National Association of Physician Recruiters (and does the recruiter subscribe to the NAPR's code of ethics)? Request that the recruiter forward a copy of the code of ethics to you.
  8. Obtain references and verify the recruiter's references by contacting them directly.

(Source: "Is Your Recruiter Working for You?" Life in Medicine, September, 1994)

# Landing the Offer – Recruiters



- Recruiters sometimes pay referral fees (\$500, for example) to persons who refer candidates to them if the recruiter is successful in placing the candidate
  - If you get a recommendation from someone as to who to use as a recruiter, you might also inquire as to whether that person would earn a referral fee
- The National Association of Physician Recruiters has available a list of its members and a copy of its code of ethics at [www.napr.org](http://www.napr.org) (1-800-726-5613)

# Landing the Offer – Interview



- ❑ Prepare for the interview by researching the employer ahead of time to the extent possible
- ❑ Anticipate questions that the potential employer might ask
- ❑ Ask questions at the interview to assist you in evaluating the opportunity and to show your interest in the practice
- ❑ Some employers will give you a "standard" version (i.e. without your name filled in) their contract at the interview, especially if they feel it is likely they will make an offer to you
- ❑ The initial draft of the contract is typically prepared by the employer utilizing language which favors the employer
  - ❑ More than one draft of the contract may be exchanged by the parties before a final version is signed
- ❑ An offer of employment may be made during the interview or after the interview

# Why is a Written Contract Usually Utilized?



- Physician employment contracts became commonplace because employers wanted restrictive covenants (also known as practice restrictions), which restrict physicians' rights to practice medicine in a given geographic area for a given amount of time

# Why is a Written Contract Usually Utilized?



- Reducing the employer's and employee's agreement to writing clarifies the benefits and responsibilities of the employment relationship
  - Both the employer and the employee are making a substantial investment in the employment situation
- Serves as evidence of the parties' agreement in the event there is a lateral dispute
- Provides a good opportunity to clarify and document any special terms

# Sections of the Contract



- “Integration” or “Merger” clause
- “Restrictive Covenant” or “Practice Restriction”
- Malpractice Insurance
- Term of the Contract
- Status as “Employee” or “Independent Contractor”
- Duties of Employee
- Duties of Employer
- Compensation
- Termination
- Buying an Ownership Interest in the Practice

# “Integration” or “Merger” clause



- Paragraph which states that the written contract is the entire agreement between the parties and there have been no other representations or promises made
- It is typically the last paragraph of the contract
- Any prior promises made by the employer (oral or written) would not typically be enforceable in the absence of fraud if the contract contains a merger or integration clause
- You should be sure to have written into the contract any promises the employer has made to you... **“Get it in writing”**

# “Restrictive Covenant” or “Practice Restriction”



- ▣ Clause in contract which restricts your right to practice medicine in a given geographic area for a given amount of time after you leave the employer
- ▣ Courts will usually enforce if ancillary to a valid employment contract and if the geographic and time limits are reasonable
  - ▣ What is considered “reasonable” for a geographic area depends on the type of setting, whether the area is rural or urban
  - ▣ These clauses are not enforceable in some states
- ▣ Employers want to protect themselves from physicians gaining a patient base through them and then opening competing practice
- ▣ As a physician, try to remove the restrictive covenant from the contract
  - ▣ If you cannot get it removed ask employer to waive it for an initial period or that the covenant not apply if you are terminated

# Malpractice



- Two types of insurance: “Claims–Made” v. “Occurrence Based” Insurance
  - “Claims–Made” Insurance coverage is triggered by the date the insured receives a claim
  - “Occurrence Based” Insurance is triggered by the date on which the incident occurs
- Under a “Claims–Made” policy you need to have Tail Insurance
  - Tail Insurance provides additional time in which to report a claim

# Malpractice Insurance– Cont'd



- ▣ Who will pay for tail insurance if you leave the practice if the malpractice insurance is provided in the form of a claims made policy
  - ▣ If you are covered by a claims made malpractice policy and you leave the employer you would typically not be covered if you are later sued for malpractice based on care given while employed by the employer unless you or your employer purchase tail insurance
- ▣ Will the employer cover the cost of any malpractice verdict or settlement in excess of the malpractice insurance limits (in legal terms will the employer “indemnify you”)

## Sample Otolaryngology

Malpractice Insurance Premiums – A \$1,000,000/\$3,000,000 Policy with a Mature Premium



### ■ ACTUAL PREMIUMS WILL DIFFER

- No surgeries– \$16,088 per year
- Minimal risk with no major surgeries– \$46,688
- No elective surgeries– \$59,288
- Head and neck surgeries– \$66,488
- All– \$102,488
- Seven years until premiums mature
- Tail Insurance is the Premium x 2.18
- Cost will vary with geographic location and insurance provider

# Status as “Employee” or “Independent Contractor”



- If status is “Independent Contractor” you will have to pay a tax that the employer would pay in a normal employment situation
  - At 15.3%, the self employment tax includes both the 7.65% social security and Medicare tax the employee normally pays on a certain part of the employee’s income and the 7.65% the employer pays
  - Reduce the Independent Contractor compensation level by 7.65% to make an “apples to apples” comparison between an Employee’s pay and Independent Contractor’s pay

# Duties of Employee



- ▣ Traditional outpatient practice during “normal” business hours, evening and weekend hours, “hospitalist”, employee of HMO, academic setting
- ▣ Number of patients which must be seen or the number of patient contact hours
- ▣ Days and hours you will be required to work each week
- ▣ Administrative duties
- ▣ Location(s) where you would be required to perform your services
- ▣ Call and hospital rounds
  - ▣ It is possible the employer contemplates rounds to be unevenly distributed among physicians– consider having language included in the contract to address whether duties will be shared on a pro rata basis or, alternatively place a limit on frequency of these duties
  - ▣ Call duties will be easier to handle if the employer has a nurse triage system to handle many of the after hours calls from patients by protocol

# Duties of Employee Cont'd



- Rounds for nursing home patients handled on a pro rata basis?
- Hospital rounds and hospital admissions
  - Rounding group for weekends?
  - Hospitalist to handle all inpatient care for your patients?
  - Who admits one of your patients who presents at the emergency department during office hours and needs to be admitted?
- A vague reference to the employer being able to assign you additional duties at the employer's discretion may not be the best language from the employee's perspective

# Duties of Employer



- Office building, office for physician to use to do paperwork, number of exam rooms, equipment, supplies
- Support personnel
  - Will you have your own nurse?

# Compensation



- Will vary from place to place and will depend in part on the duties
- Figures shown in different salary surveys will vary in part due to the physicians being surveyed
  - MGMA and AMGA focus on group practice physicians and group practices and are sometimes cited in employment contracts
- A starting salary or compensation should reflect any added duties such as a disproportionately large share of call or hospital
- Starting salaries may be higher than compensation for some physicians who have been at the employer for several years so you should know what other physicians in your field at the employer are making

# Compensation Cont'd



- **Signing Bonuses** are often available
- Should look beyond starting salary and signing bonus (if any) if you have the intention of staying long term with the employer
- Systems for determining compensation include a straight salary with no bonus potential, a combination of a base salary plus a bonus based on production or some other criteria, and compensation based purely on how productive you are
- Incentive compensation based purely on production with no minimum salary guarantee is probably not a good arrangement for a new physician because it may take the new physician a while to establish an efficient work style and to establish a patient base

# Compensation Cont'd



- ▣ A combination of a base salary plus a bonus based on production is probably the best situation for an initial employment situation because it provides the employee with a measure of security while rewarding the employee if the employee is productive
  - ▣ Be sure to include in the contract a description of how the bonus will be calculated and include sample calculations
- ▣ Don't confuse a salary with a draw
  - ▣ A draw merely allows you to take a certain amount from the employer at regular intervals
  - ▣ However if your production is not sufficient, using the applicable formula, to support the amount you have drawn from the employer, you will later owe the employer a refund
  - ▣ This could be particularly troublesome if you are just getting started in practice and perhaps work a little slower than some of the more experienced physicians

# Compensation Cont'd



- Repayment of student loan debt
  - Will most likely be taxable income to the physician
- Ask to review data on the range and average compensation for physicians at the employer to see how your compensation might fare over the long term
- Fringe Benefits
  - Many offer a tax advantage since they can be provided in a tax deferred or tax free manner
  - Can be worth 20% or more of cash compensation
  - Attach a copy of the description of the benefits to the contract and incorporate them into the contract

# Compensation Cont'd



- Life, health, dental, disability insurance
  - Does the health and dental insurance cover your dependents?
  - Is both short and long term disability insurance provided?
  - Does it have "own occupation" coverage?
  - Are benefits paid on a pre-tax or post-tax basis?
  - At what percentage of prior compensation level?
  - Umbrella liability policy

# Compensation Cont'd



## ■ Retirement Plan

- 401 K plan whereby you can contribute pretax dollars to your own 401 K account
  - The employer may or may not match a portion of your contribution
- Defined benefit plan whereby after so many years of service the employer pays you a certain percentage of your pay

## ■ Parental leave (paid or nonpaid?)

## ■ Paid sick days

## ■ Vacation time

## ■ Paid holidays

## ■ Time to attend professional meetings

# Compensation Cont'd



## ■ Professional Expenses

- Professional license fees, DEA registration dues for memberships in professional associations, continuing professional education expenses, automobile expense

## ■ Moving Expenses

# Term of the Contract



- Beginning and ending date of employment

# Termination



- Should include a provision that gives you an adequate notice period before termination
- If possible, limit circumstances under which you can be terminated to specific causes
  - Loss of license for example
- Make sure you have the ability to leave the position (upon giving proper notice) without a penalty

# Buying an Ownership Interest in the Practice



- ▣ There is a trend toward physicians becoming employees of hospitals, HMOs, or practices without the opportunity to become a partial owner
  - ▣ A significant portion of the practicing physicians in the US are employees of hospitals, group practices, managed care plans or other employers
    - ▣ This figure includes both physicians who are in a permanent employee status and those who may at some later point buy into the practice for which they are now working
  - ▣ Being an employee is attractive to some physicians because they like the concept of not having to worry about the “business side of medicine”
    - ▣ Becoming an employee without the opportunity for becoming an equity holder in the medical provider may ultimately result in less physician control over the practice of medicine
    - ▣ Becoming an employee is also not a guarantee of job security and employed physicians may make less money than self- employed physicians

# Buying an Ownership Interest in the Practice– Cont'd



- Will you have an option to purchase an ownership interest in the practice after a certain time period, or will you be a permanent employee?
  - An option to purchase means you will have the right to purchase the practice when the conditions described in the option have been met
- Cost of the “buy in”
- If the cost is not a fixed dollar figure, would the cost be calculated using a specific formula?
  - If so, what would the cost be today if the formula were applied to current data?

# Buying an Ownership Interest in the Practice– Cont'd



- What would you be purchasing if you buy into the practice?
  - Benefits of being a partial owner in a practice might include the right to a share of any year end profits, the right to a vote as to how the practice is managed, the right to a share of the proceeds of any sale of the practice or practice assets, a higher level of base compensation, and a bit more job security
  - Will you be on equal footing with all other physicians in the practice or would the older physicians have a superior type of ownership interest that gives them rights which you would not have?

# Buying an Ownership Interest in the Practice– Cont'd



- ❖ Possible drawbacks of being a partial owner can include, depending on how the arrangement is structured, the requirement that you assume liability for a portion of the practice's debt, an expectation that you would work longer hours, the cost of the buy in, and different treatment with respect malpractice tail insurance if you leave the employer
- ❖ Will you need to use your own funds (or obtain a loan from a third party) to fund the buy in or will the buy in be funded through a payroll deduction arrangement?
- ❖ Will you be required to execute additional agreements (a shareholder's or buy sell agreement) at the time of the buy in?
  - ❖ What are the terms of the agreement?
- ❖ How will your compensation be structured after the buy in?
- ❖ Does the practice currently owe money to a third party or one of the equity holders in the practice?
  - ❖ If so would you be required to become a cosigner on the promissory note?

# Additional Contract Terms



- ❑ Hospital privileges – is there a requirement that you maintain privileges at certain hospitals
- ❑ Employee manuals, handbooks, organization bylaws
  - ❑ Are they incorporated into the contract by reference?
  - ❑ If they are and the employer has the right to change them without your approval, the employer can effectively unilaterally change the contract terms
- ❑ Indemnification clauses whereby the employer requires that you indemnify the employer should not appear in the contract
- ❑ Include a clause in the contract that gives you the right to inspect the books and records of the employer
  - ❑ You need to know whether the employer is financially sound

# The Negotiation and Evaluation Process



- If you receive an offer and written contract from the potential employer, don't be afraid to negotiate, in a pleasant and professional manner, the terms of the contract
- You should interview at more than one place in the general geographic region in which you want to locate
  - Compare the positions to one another
  - A good source of questions to ask a potential employer is the employer's competitors since the employer's competitors will likely be aware to some degree of the employer's reputation

# The Negotiation and Evaluation Process– Cont'd



- Have an attorney well-versed in professional employment matters review the contract
  - If the attorney is experienced in physician employment matters he or she can assist you in evaluating the employment position, explain the contract, and provide suggested changes
  - Some people prefer to handle the communicating the needed changes to the employer while others find it helpful to have the attorney handle the communication
    - An attorney can raise issues you would like to have addressed but would not feel comfortable raising on your own

# The Negotiation and Evaluation Process– Cont'd



## ■ Negotiating is a give and take process

- You probably will not get everything you ask for so it is a common negotiating technique to ask for some things you are willing to give up in addition to things which you really want or need
- On the other hand if you ask for too much you stand the chance of killing the deal
- You need to be aware of your bargaining strength (i.e. how badly does the employer want to hire you, do you have other acceptable opportunities, does the employer perceive that you have other acceptable opportunities)

## ■ Both you and the employer may use various negotiating techniques

- The employer may be willing to increase the amount of the initial offer
- Good cop (you) / bad cop (your spouse, your attorney, your high student loan debt) strategy
- Time – the employer may make you wait to get a response to a request for a higher salary or some other term in order to "soften you up", same technique can be used by the physician

# The Negotiation and Evaluation Process– Cont'd



- Know who makes the decisions with respect to hiring
  - An in-house recruiter will certainly have input into the decision making process but an administrator, department head, or board of directors may be the ultimate decision maker
- If the employer has signed thirty other physicians this year and the employer utilizes a "standard contract", there will still be room for negotiation on items that are important to you
  - You will probably not be given a "blank slate" to draft a contract, as could be the case if a solo practitioner or a small group is looking at adding another physician

# Special Considerations for Persons who Must Find a Position Which Satisfies a Visa Requirement



- The positions that will meet visa requirements are more difficult to find
  - You will likely have to take it upon yourself to make a concerted effort to locate a position and sell yourself to the potential employer
- You will have less negotiating power than someone who does not have the visa requirement
- There are specific issues that must be addressed in your employment agreement in order to satisfy the requirements for obtaining an H-1B visa

# Information to Obtain Regarding the Employer



- **The employer itself should be willing to provide you with much of the information you would need:**
  - Policies and bylaws for employer
  - Financial statements and reports depicting employer's financial status
  - Mean and range of compensation for all physicians in your specialty at the practice
  - A description of any pending litigation and contingent liabilities
  - Description of major contracts

# Information to Obtain Regarding the Employer– Cont'd



- An indication as to whether the employer has recently been or is currently being investigated for violation of Medicare fraud and abuse laws
- Investigated for violation of Medicare fraud and abuse laws
- Whether the employer has a "corporate compliance plan" in place to ensure compliance with Medicare fraud and abuse laws
- A history of the organization
- An overview of the business structure of employer
- The turnover rate for physicians and staff

# Information to Obtain Regarding the Employer– Cont'd



- Business practices with respect to managed care
  - Does it own its own HMO?
  - Is it a part owner of an HMO?
  - Does it have contractual arrangements with one or more HMOs?
    - Are they profitable?
- If the employer is not a hospital, does it have a symbiotic relationship with a hospital?
  - Has it been formalized as PHO?
  - How is the relationship working?

# Information to Obtain Regarding the Employer– Cont'd



- **Has there been a sale or affiliation of the practice with a physician practice management company or other entity?**
  - If one has occurred in the past you should find out the particulars of the arrangement
    - Who was the buyer?
    - Is there a right to repurchase if the buyer does not live up to its end of the bargain?
    - Was it a move by the older physicians in the group to cash in the good will they had built up in the practice (did the money paid go directly to physicians or was it reinvested in the clinic in needed technology)?
  - Is there any talk of a sale at this point in time?
    - Are the majority of the physicians in favor of a sale or against it?
    - Would new physicians receive a share of the sale proceeds?
  - Hospitals, practice management companies, insurance companies, HMOs, and other physician practices all sometimes purchase physician practices

# Information to Obtain Regarding the Employer– Cont'd



- Physician control of medical care delivery versus control by Wall Street, hospitals or insurance companies is a continuing issue
  - The trend in medicine towards loss physician of control of the practice has many parallels in other professions and markets, including optometry (Lens Crafters), dentistry (Orthodontic Centers of America, Inc.), pharmacy (Walgreens), and retailing (Wal-Mart)
- Talk to physicians who have not been a part of the “interview team”
- Read the local newspaper; Google
- Ask the employer’s competitors what the strengths and weaknesses of the employer are and compare the answers you get with what you hear from the employer and what you perceive to be true

# Keep in Mind the “Big Picture”



- A well drafted contract will not make a bad employment situation perfect, but it can provide you with a certain measure of protection if things do not go as planned
- The process of evaluating the contract and asking the potential employer questions about the position allows you to make an informed decision regarding the potential employer, which will hopefully increase your opportunity for a successful employer–employee relationship over the long run
- Negotiating a contract is typically a give and take process
  - Each side typically asks for a little more than it will settle for knowing that it will have to give some things up in the negotiation process

# Keep in Mind the “Big Picture” – Cont’d



- How tough a stance you can take in the negotiation process depends in part upon how many other options you have available to you, whether your potential employer perceives that you have other options available to you, and how badly the potential employer needs your services
- The key is to make an informed decision and to negotiate the things that are the most important to you to the best of your ability

*The information supplied is intended to be general in nature and is not intended to be specific legal advice. For specific legal advice, please seek the advice of an attorney.*

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