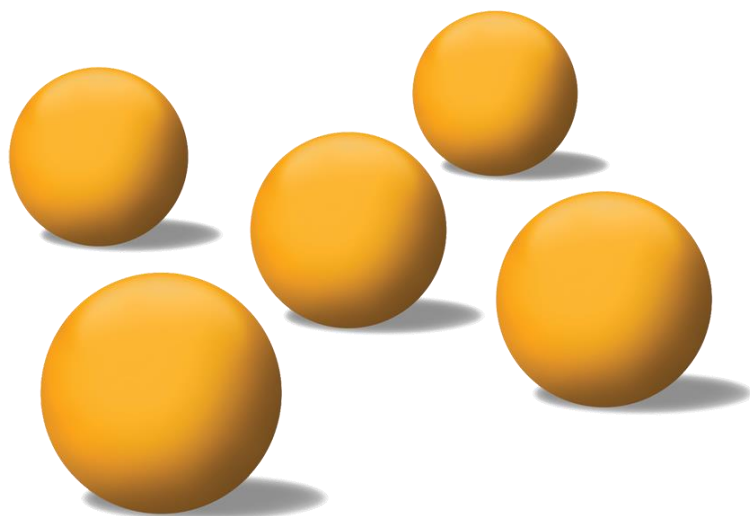


# Negotiating Physician Employment and Partnership Agreements



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# Financial Disclosure and Objectives

- I have no financial disclosures.
  
- Objectives
  - Describe basic components of employment contracts
  - Understand solutions for salary negotiations in contracts
  - Learn techniques for confidence in employment offers and/or negotiations



# Key Laws

1. Title VII of the Civil Rights Act of 1964
2. Equal Pay Act
3. Americans with Disabilities Act
4. HIPAA
5. State contract law



# Step One – Offer Letter

- Proposed start date
- Annual compensation
- Performance bonus (if applicable)
- Recruitment incentives – signing bonus, relocation assistance, retention payments, loans (if applicable)
- Hospital recruitment assistance (if applicable)
- Job responsibilities
- Benefits
- Buy-in opportunity



## Step Two – Employment Agreement

### ➤ Entry Provisions:

- Start Date
- Job responsibilities
  - Office location
  - Work days/hours
  - Call coverage
  - Moonlighting options
  - Obligation to comply with policies, procedures and directives of the practice
  - Hospital privileges



# Questions to Ask--Responsibilities

- What are work hours?
- What are locations?
- Where am I required to maintain privileges?
- What are call coverage duties?
- How are those duties shared?
- Is moonlighting allowed?
- Who retains the revenue?
- What is my paid time off?



## Step Two – Employment Agreement



### Entry Provisions:

- Representations and warranties of physician
  - State license/DEA certificate/State Controlled Substances certificate
  - No payor problems
  - No medical staff problems
  - Maintain liability insurance for past services
  - Board certified or board eligible
  - No criminal convictions
  - No medical malpractice issues



# Step Two – Employment Agreement

- Entry Provisions:
  - Required future disclosures by physician
    - Breach of representations and warranties
    - Arrests/Convictions
    - Lawsuits
    - Malpractice problems
  - Billing and collection provisions
    - All physician professional revenue belongs to the practice unless the practice otherwise consents
    - Which party bears coding responsibility?





# Step Two – Employment Agreement

- Entry Provisions:
  - Compensation terms
    - Base salary and/or production-based compensation
    - Bonus provisions
    - Recruitment/retention provisions (e.g., signing bonus, loan, relocation assistance, retention payments, etc.)
  - Benefits
    - Review terms of coverage policies
    - Expense reimbursement
    - Staff and equipment
  - Vacation
    - Number of days per year
    - Roll over
  - CME
    - Number of days per year
    - CME stipend



## Questions to Ask--Compensation

- What is yearly increase of salary?
- How often do other physicians in practice meet bonus goals?
- What is the average amount of incentive or bonus pay to physicians in the practice?
- What are repayment terms for signing bonus, relocation, etc.?
- Can such repayments be prorated?



## Step Two – Employment Agreement

- Entry Provisions:
  - Facilities and support by practice
  - Professional liability insurance
  - Confidentiality provisions
  - Indemnity
    - Covers physician's and practice's acts or omissions
    - Payment obligations under Hospital relocation agreement (if applicable)
    - Indemnity typically only applicable if no insurance coverage
  - Buy-in opportunity (non-binding)



## Step Two – Employment Agreement

### ➤ Exit Provisions:

- Termination provisions
  - Without cause (30 to 90 days notice)
  - With cause (15 to 30 day cure period)
  - Immediate termination by practice (breaches not subject to cure)
    - Loss of license, DEA certificate or malpractice insurance
    - Medicare or Medicaid problems
    - Harassment
    - Alcohol or drug abuse problems
  - By mutual agreement
- Option to limit physician's continued work for the practice during termination notice period



# Step Two – Employment Agreement

## ➤ Exit Provisions:

- Obligations upon notice of termination
  - No copying of medical records
  - No rescheduling patient services
  - No excessive vacation
- Obligations upon termination
  - Complete medical records
  - Cooperate on future lawsuits
  - Payment by departing physician of future practice expenses incurred solely for physician?



# Step Two – Employment Agreement

## ➤ Exit Provisions:

- Patient notices
  - Active patients
- Medical records access
- Restrictive covenants
  - Non-solicitation: covers employees and (maybe) referral sources
  - Non-compete: defined geographic scope; one to two years (not enforceable in Alabama)
- Termination of hospital privileges
- Post-termination compensation (ongoing collections and severance)
- Tail insurance
- Dispute resolution provisions
  - Lawsuit
  - Jury waiver
  - Mediation / Arbitration



## Questions to Ask--Termination

- What flexibility do I want/need in terminating agreement?
- How will notice period of termination affect my pay?
- What specific expenses might I be responsible for post-termination?
- Do I need a more specific definition of cause?
- What happens in event of death or disability?



## Questions to Ask--Termination

- When can I obtain patient records?
- Do I have to pay for copies?
- Will my current practice send a notice to my patients regarding my new employment?
- Have I obtained contact information so I can provide required notice to patients?
- If the practice provides notice, have I had opportunity to review?





## Step Three – Physician Buy-In

- Determine eligibility terms
  - Years of employment
  - Profitability
- Determine purchase price and payment terms
- Purchase Agreement
  - Number of shares/units purchased
  - Purchase price (paid at closing and/or over time)
  - Obligation to comply with governance documents (Bylaws and Shareholder Agreement if PC or Inc. or Operating Agreement if LLC)
  - Appointment to Board and/or officer position



## Step Three – Physician Buy-In

- Typically same or similar employment agreement
- Personal guarantees of debt?
- How are expenses handled?



## Questions to Ask—Buy In

- Is it lock step?
- How may buy-in be paid?
- Will I be equal or minority owner?
- Will I be required to make any personal guarantees of debts?

# Questions?

