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12 tips for negotiating physician employment agreements

Until they become partner-owners, most physicians have an employment relationship with their physician group. When it's time to negotiate or renegotiate an employment contract, there are critical issues that must be understood and settled. A physician's contentment and career success will depend on it.

A written physician employment agreement is a binding contract that supersedes all prior oral assurances. The goal is to make sure each physician understands and is comfortable with every contract provision. Here are 12 common provisions that should be included in your practice's contracts and some tips on what to expect from each one:

1. Contract term. Contracts should extend for a fixed period of years, typically two or three. At the end of that period, the contract will either automatically renew or expire, which will require renegotiation.

The contract should discuss malpractice insurance coverage for the physician's acts while with the practice.

2. Conditions of termination. A balanced contract allows either party to terminate it "without cause" upon advance notice, typically one or two months. In addition, the practice will want to be able to terminate "for cause" in cases such as a physician's loss of medical license, failure to obtain hospital privileges or debarment from Medicare.

3. Description of responsibilities. The physician's professional and administrative duties should be described in reasonable, specialty-specific detail,



avoiding phrases such as "perform usual duties of a physician." Include the physician's typical schedule, where he or she will work, and call expectations.

4. Compensation. This provision explains whether the physician will be compensated by a guaranteed salary, on the basis of productivity (or other criteria), or a combination of both. Your CPA can help you develop a formula for the productivity calculation.

5. Employee benefits. Along with providing details on compensation, the contract should describe any benefits offered by the practice, such as health care coverage, retirement plans, profit sharing, vacation, long-term care, disability income and personal leave.

6. Relocation loans. The practice may choose to loan the physician funds to cover any relocation expenses. Make sure the contract outlines the purpose of the loan, its terms and interest, and repayment/forgiveness conditions.

7. Reimbursement of practice expenses.

Practices generally pay for a physician's practice expenses, such as license fees, professional dues, and CME and travel costs.

8. Malpractice insurance. The contract should discuss malpractice insurance coverage for the physician's acts while with the practice (which normally pays the premiums). It also should indicate who will pay for malpractice "prior acts" or "tail" coverage after the physician leaves.

9. Potential practice buy-in. If the physician is likely to become a practice partner, make sure you summarize the terms of this "buy-in" transaction, such as how soon it might occur, prerequisites for exercising the option and the buy-in price.

10. Restrictive covenants. It's common to restrict the physician's ability to compete with the practice after he or she leaves. Restrictions typically include

the geographic area, time period and range of activities. The physician's negotiating goal is to keep the area, period and range of activities for noncompetition as minimal as possible.

11. Ownership of patient records. Law usually holds that patient records remain the property of the practice. The physician should negotiate reasonable access to the records in the event of a malpractice action or a credentials committee investigation.

12. Employee handbooks, policy books, codes of conduct/ethics, standards of care. When evaluating the contract, the physician should have access to documents detailing policies and procedures.

Depending on the physician's prominence in the local market, it may be possible to negotiate and adjust the language of many of these provisions. The help of a qualified health care law attorney will make the process much easier. ☺

Staff engagement leads to staff loyalty

In 1943, Abraham Maslow set out his "hierarchy of needs," a theory that all human behavior is a response to a variety of needs ranging from survival to love and belonging, and self-esteem to self-actualization.



The lesson that medical practices need to understand is that employees are motivated by more than monetary compensation. Well-run practices also meet many of those other needs, thereby creating a critical component of any successful organization — the engaged employee.

Tailor-made

Employees who believe an organization has their best interests at heart and will help meet their personal needs are typically quite loyal to that employer. Granted, up to a point, money is essential; but money alone won't offset major shortcomings in the satisfaction of other important needs.

While physician practices should do all they can to offer reasonable, market-level compensation, they

should also offer employees *nonmonetary* rewards that are tailored to each individual. To do this, you'll need to learn the specific motivations to which each employee seems to respond.

After all, people's habits and behaviors vary: What satisfies and inspires one person may be irrelevant

Exit interviews provide valuable feedback

What's the opposite of an engaged employee? A departing one. If one of your staff decides to voluntarily leave your practice, be sure to conduct an exit interview to find out why. Questions that can help you understand just what went wrong may include:

- ⊕ What influenced your decision to leave?
- ⊕ How could the practice have made your job more rewarding?
- ⊕ How has management responded (or failed to respond) to your concerns?

Although exit interviews can provide valuable feedback, the information may come too late. If you want to retain your best employees, make sure you perform regular performance reviews. Doing so gives you and your employees the opportunity to discuss how they're doing and find ways to boost satisfaction with their work.



to another. Maslow's theory, mentioned above, is that humans have various "needs" to live a fulfilling life. These include:

- ⊕ Biological and physiological needs, such as air, food, drink and shelter,
- ⊕ Safety needs, such as security, order and protection from the elements,
- ⊕ Belongingness and love needs, such as relationships, family and affection,
- ⊕ Esteem needs, such as healthy self-esteem, achievement, independence and managerial responsibility, and
- ⊕ Self-actualization needs, such as realizing personal potential, self-fulfillment and personal growth.

Imagine the different ways in which an employee might find these types of satisfaction at your practice. Money works best for the first category of needs. Job security and stability contributes to meeting a person's safety needs. Many people are able to meet many of their belongingness and other social needs through their work.

Esteem needs could be satisfied by offering praise to employees who have done a good job or gone out of their way to help other staff members. And self-actualization needs can be met through promoting employees to new positions.

The Gallup Q¹² survey

For help understanding the engagement level at your practice, check out Gallup's Q¹² survey. This scientific tool measures the degree of employee engagement present in an organization. The survey is made up of 12 questions that relate to job factors over which managers have some influence. Here are four of the most critical:

1. Do I know what's expected of me at work?
2. In the last seven days, have I received recognition or praise for doing good work?

3. At work, do my opinions seem to count?
4. In the past year, have I had opportunities at work to learn and grow?

When administered to employees and scored properly, the survey indicates employee perceptions of their employers' people-related management practices. For more information on Q¹² and its application to your practice, go to gallup.com/consulting. (Under "Management Consulting" near the bottom of the page, click on "Employee Engagement.")

A variety of opportunities

Physician practices have a wide variety of opportunities to build the loyalty of their employees. You just need to understand the specific motivators of each employee and address his or her needs for professional recognition and fulfillment. Indeed, by understanding and embracing the full range of human needs, your practice can not only strengthen employee engagement, but also provide better health care services to your patients and, quite possibly, boost your bottom line. 🍀

Protect your practice

Use a buy-sell agreement to minimize disputes

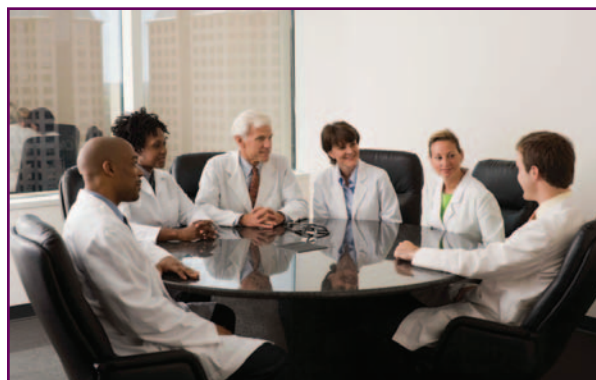
In the wake of health care reform, you might find your practice flooded with new patients. With all those extra patients, you may want to hire one or more physicians to help with the workload.

If you do, and these physicians intend to take an ownership share of your practice, make sure each one signs a buy-sell agreement. Why? Because it can protect your practice from disgruntled physicians and minimize disputes should they arise.

A different world

When developing a buy-sell agreement, remember that the world today is much different than it was when you started practicing medicine. Young physicians carry heavy debt loads when they finish training, so they typically can't afford to immediately buy in to a practice.

They'll also have multiple practice opportunities, so competition for them will probably be fierce. Moreover, younger doctors may view working at your practice simply as a source of income,



not as an investment opportunity or a piece of their retirement portfolio. Because of these differences, you may find issues arising over division of income, asset valuation and retention of control.

The nitty-gritty

Framing the buy-sell agreement starts with defining and appraising the practice's assets. Tangible assets include items such as equipment, supplies and leasehold improvements. The stock price of the practice is usually based on these assets. The new physician pays his or her share either up front or over a few years with interest.

Intangible assets, on the other hand, are composed primarily of accounts receivable. A new physician doesn't pay for these assets out of his or her pocket, but through a process called "income shifting." That is, the physician's net income is reduced during the first few years with the practice.

For example, a physician might start with a 40% reduction in the first year and 30% in the next, followed by 20% and 10% in the next two years, leaving the buy-in complete. This payment method helps ease the financial burden on the young physician.

A piece of the pie

There are many accepted methods for dividing practice income among partners, such as equal allocations and productivity. To preserve harmony, consider using the allocation method. Or use the relative productivity method (measured by services personally performed by the physicians) as the basis for apportionment. Some practices use a hybrid of these formulas, such as 50% equally and 50% by productivity.



Other considerations

There are numerous other contract terms you should consider. For example, terminating a physician "without cause" usually isn't a good idea, because it can breed acrimony and lower morale. Furthermore, even "with cause," termination frequently requires either unanimity or a supermajority of the vote.

Senior doctors often wish to retain rights to the practice name, tangible assets and location if there's a mutually agreed practice split-up. It's reasonable to allow these rights to expire after a new physician has been with the practice for a specified time, such as five years.

In addition, a new physician may be asked to sign as a guarantor of existing practice debt that's been personally guaranteed by the partners. That is fair, and so is a provision indemnifying the physician against liability for practice actions that occurred before he or she joined.

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Control of the practice

Practice owners are understandably concerned about the locus of power and control over the practice. The percentage division of stock doesn't have to be the same as the percentage division of control or the percentage division of profits.

A partnership agreement — separate from the buy-sell agreement — can provide otherwise, according to the wishes of the owners. It's common to subject critical decisions, such as adding partners, or selling or merging the practice, to a supermajority vote.

Nothing to play around with

Beyond the points brought up here, there are many laws and legal doctrines that affect the terms of a buy-sell agreement. These include statutes that govern your practice's form of organization, confidentiality laws, and noncompete and liquidated damages clauses. So make sure you work with your health care consultant and an attorney to draft an agreement that will not only protect your practice and comply with the law, but also help minimize disputes. ☺



The pros and cons of leaving insurers' provider panels

Many physicians are seeing fewer advantages to remaining on an insurance company's provider panel. They're opting instead to become out-of-network providers for the same insurer. Why? Well, in addition to avoiding billing and payment headaches that come with health plan relationships, out-of-network status can lead to higher reimbursement rates. But there are risks to consider as well.

The pros

One advantage of being an out-of-network provider is that out-of-network health insurance benefits often pay better than comparable in-network rates. Plus, your practice avoids the time and expense of submitting claims and arguing over reimbursements. Last, patients may value the more direct contact without an insurer intervening.

The cons

Before you leave a network, however, consider the disadvantages:

- ⊕ Plan enrollees using a nonparticipating provider often have higher deductibles, copays and coinsurance payments,
- ⊕ Enrollees may rely on the plan's provider directory to choose physicians (so new patients may not be able to find you), and
- ⊕ Some insurers include antiassignment clauses in member contracts requiring that reimbursements go first to the member.

And don't forget that existing patients may be confused and upset by the change in status.

The legal issues

You also need to consider some sensitive and unresolved legal issues in becoming an out-of-network physician. For example, must physicians inform patients that the practice is no longer in the health plan's provider network? The consensus is "yes."

Should you inform patients that your services may be more expensive than those from an in-network provider? Doing so is unnecessary and could cause problems.

In addition, most states, as well as Medicare, have prohibited balance billing (the practice of billing patients for the difference between a health care plan's payment and a physician's full charges) by in-network providers. But rarely do they apply this prohibition to out-of-network physicians. Medicare does impose a 15% cap on balance billing by "nonparticipating" physicians.

Without a contract, most courts impose a reasonableness standard on payment amounts. Some courts have held that a plan can't unilaterally pay an out-of-network provider the same amount he or she previously received when in-network. Moreover, most court decisions have supported a payor's refusal to honor an assignment of benefits to an out-of-network provider.

Proceed with caution

Before rushing to leave a payor's provider panel, take a few precautionary steps. Seek advice from peers who are experiencing the same practice concerns. And, if the option is available, a capitated contract might resolve many billing and reimbursement issues. ⊕

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