

# Your First Job After Residency

## Choosing a Lawyer

- A. Get Representation:** No fair-minded person should discourage you from being represented. Your future employer probably had a lawyer draft the employment agreement and you will be at a disadvantage if you are not similarly represented.
- B. Choosing a Lawyer:** Choose a lawyer experienced in health care matters. Ask the right questions to find out if you are choosing the right lawyer for the task.
- What is the primary focus of their practice?
  - What do they spend most of their time doing?
  - What percentage of their practice involves representing physicians in contract negotiations (not malpractice)?
  - When was the last time they handled a similar matter?
  - Are they familiar with the issues unique to physicians, i.e. regulatory parameters for compensation, Safe Harbors, the Stark Law, managed care contracts, recruitment agreements, buy-in agreements, etc.?
  - What is their fee arrangement?

## Employment Contract

- A. The Compensation:** If the contract is for more than a year, ask to build in an increase. Will you be paid a fixed salary, compensation based on your production or RVUs, or will you be entitled to incentive compensation?
- Incentive compensation may not be based on referrals for Designated Health Services (as defined in Stark).
  - Incentive compensation *may* be based on your personal production. The method for calculating incentive compensation should be set forth in advance.
  - If you are a member of a group practice (as defined in Stark) you can share in the overall profitability of the practice; or, if you are employed by a hospital you may participate in the revenues through a faculty practice plan.
  - Are you entitled to any funds the practice may receive from government incentives?
  - How does your compensation package compare to market?
- B. Term of Employment:** The term of the employment relationship and what happens upon expiration of the contract should be explicitly stated.
- Can the agreement be terminated by either party prior to the expiration of the term and, if so, when and under what circumstances?
  - For what reasons can the employer terminate the agreement?
  - What are the consequences if you decide you want to terminate the agreement prior to the expiration of its term?
  - Will you be entitled to any bonus earned prior to termination after termination?
  - New force majeure provision.

- C. Responsibilities:** Your responsibilities should be outlined, specifically setting forth your work schedule, work locations and any call rotation and how it is allocated among the physicians in the practice.
- D. Outside Activities:** Should you be able to moonlight and retain income from writing, lecturing, inventions, legal consulting, etc., or should those revenues belong to your employer?
- E. Rights to Become a Shareholder or Partner:** Will you have the right to become an owner at some specified time, and, if so, have the terms and conditions of any buy-in been sufficiently described? Have you done your due diligence in terms of what it means to become a partner, such as debt of the practice and obligations to buy out other partners?
- F. Malpractice Insurance:** Are you going to be provided with claims made or occurrence based malpractice insurance? If claims made, who will be responsible for the cost of the "tail" in the event of termination of employment?
- G. Restrictive Covenant or Non-Compete:** Are the restrictions on your ability to practice upon termination of the contract something you can comfortably live with? The restrictions must be reasonable in both duration and geographic scope.
- H. Ancillary Services:** Do the owners of the practice have interests in related entities such as an ASC, real estate, or similar venture? Will you be able to participate in those ventures, and if so, when and at what cost?
- I. Miscellaneous Benefits:** Everything you expect to receive should be stated in the contract. Most agreements contain an "integration clause" which essentially states that any oral or other agreements are only valid if they have been integrated into the contract. You should consider the following:
- Continuing Medical Education - how much time off will you be permitted and what expenses will your employer pay for? Does your employer's reimbursement obligation cover travel, meals and lodging or only course tuition?
  - Vacation and Paid Leave.
  - Health insurance – for you or your family.
  - Disability insurance.
  - Life insurance.
  - Pension/Profit Sharing/401k Plan.
  - Parking.
  - Payment for dues, subscriptions, journals.
  - Time off for the Boards and/or payment of fees associated with Boards.