New Associate Employment Contracts: What’s “Normal”?  
Daniel M. Bernick, Esquire, MBA*  
The Health Care Group ®  
Plymouth Meeting, PA
www.healthcaregroup.com

* Financial Interest

Financial Interest Disclosure
We have the following financial interests or relationships to disclose:
• Shareholders of and Consultants with The Health Care Group, Inc. and Health Care Consulting, Inc.
• Shareholders of and Attorneys with Health Care Law Associates, P.C.

Who We Are
• Business and legal advisors to physicians  
• Publishers of the Goodwill Registry, used in valuation of ophthalmology and other medical practices  
• Handle and advise re: practice buy-ins, buy-outs, sales, mergers and valuations
Preconditions for Employment

- State medical license, DEA Number
- Hospital and ASC privileges
- Insurable for malpractice at standard rates
- Credentialed by major payors

Representations by Employee

- No applicable prior non-compete
- No prior malpractice insurance "tail" issues
- No prior disciplinary issues or sanctions

Term and Termination

- Term: The Duration of Employment
  - Typically 1-3 years
  - Or no defined end date (continues until termination or resignation)
  - Evergreen clause – auto renewal
Term and Termination

• "At Will" Versus "For Cause" Termination
  • “At will” – aka "no cause" or "without cause"
    • 30-90 days advance notice, for any reason
  • “For Cause” – **immediate** termination

“Cause” Provisions

• Employee ceases to be licensed to practice
  medicine in the state
• Employee fails to maintain full active and
  unrestricted privileges at required hospital(s) / ASC(s)
• Commission or conviction of criminal offense
• Exclusion or sanction by Medicare or Medicaid
• Embezzlement or other fraud

More “Cause”

• Employee becomes ineligible for malpractice
  coverage (at standard premium rates)
• Drug/alcohol problems
• Jeopardy to patients
• Dishonest, unprofessional or unethical
  behavior
• Other acts that are “materially detrimental to
  reputation or character of Practice or
  relationships with staff or referrers”
More Cause

- Generic “material breach” of Employee’s obligations as specified in the contract
- Normally, the Employer provides 10-30 days’ advance written notice of the breach and opportunity to “cure” (fix the problem)

Duties

- Exclusive employment
- “Full time” or number of days/week
- Accept all patients assigned
- Comply with Practice and facility policies
- Provide call coverage

Duties (cont’d)

- Work cooperatively with staff and referrers
- Properly document services rendered
- Work to develop new sources of business
- Reassign all claims to employer
- Avoid all acts that might injure Employer reputation
Outside Income

- Permitted or not?
  - Speech and article fees
  - IMEs
  - Moonlighting

Rules for Outside Income

- If allowed at all:
  - Performed on Employee’s "own time"
  - No use of Practice resources
  - Does not interfere with Practice duties
  - Subject to Board approval

Employer Rights

- To designate hours, locations, and assignment of patients
- To set fees and bill
- To establish policies
- To direct staff
- To determine resource allocation
Periodic Evaluations

- What are the typical criteria?
  - Commitment of employee's time and energy
  - Employee's productivity, efficiency and contributions to the bottom line
  - Employee's acceptance of the practice burdens and responsibilities
  - Good relationships with staff, referrers
- The above (plus Board certification and years of service) are also the minimum criteria for co-ownership

...An Unstated Expectation Can Never Be Met...

Compensation

- Base Salary
  - Competitive in the marketplace
    - Taking into consideration the geographic area
  - "Reasonable" in light of the "total package"
    - Other factors: potential for bonus, potential opportunity for surgery or other procedures
Compensation

Base Salary Range Is Variable
Range Of Starting Base Salaries:

- General Ophthalmologist
  - $140,000 - $210,000
  - (Average Hire - $160,000)
- Glaucoma Specialist
  - $150,000 - $225,000
  - (Average Hire - $170,000)
- Retina Specialist
  - $220,000 - $340,000
  - (Average Hire - $250,000)

Compensation

- Signing Bonuses
  - Not usually needed
  - Possibly pay a signing bonus if needed to get the right candidate to sign quickly
  - Repayment if candidate does not begin employment or voluntarily leaves in first year

Compensation

- Bonuses
  - Incentive based on employee's production
    - based on personal production (no ancillaries or drugs)
    - threshold collections = 2X to 3.3X Base Salary
    - bonus = 20% - 40% of excess collections
Business Expenses

- Standard
  - Professional society dues
  - Journal subscriptions
  - Hospital / ASC staff fees, licenses
  - CME allowance (usually $2,500 - $3,500)

Business Expenses

- Other Business Expenses (As Negotiated)
  - Board review and exam fees
  - Car allowance / mileage allowances
  - Cellular phone
  - Moving expenses ($5,000 – $10,000)
  - Entertainment

Business Expenses

- Malpractice Insurance
  - Occurrence versus claims made insurance
  - "Tail" responsibility options
    - Employer pays
    - Employee pays
    - Employer and employee split 50 / 50
    - Whoever terminates pays
Fringe Benefits

- Health Insurance
  - Individual or family coverage?
  - As made available to staff?
- Group Term Life Insurance
- Group Disability Insurance
- Retirement Plans

Leave Types

- Separate Paid Leave for: Vacation, Sick Leave, CME, etc.
- Versus combined "Paid Time Off" (PTO) for all leave

Typical Leave Allowances

- Vacation – 3 weeks
- Continuing Medical Education (CME) – 1 week
- Disability / Sick Leave / Maternity Leave – 5 to 30 paid days, plus unused Vacation / CME
- PTO Alternative: 25 to 30 days total PTO
Restrictive Covenants

- Enforceability Varies from State to State
  - E.g., not allowed in CA or MA
  - Special buy-out rules in TX
  - Most states a “reasonable” non-compete is allowed

“Reasonableness”

- Time: 1-3 years after termination
- Restricted Area: Practice’s core service area
  - E.g. 5 miles around each office
  - “Smith County’”

“Reasonableness”

- Reasonably necessary to protect employer’s legitimate interests
- Does not deprive the community of an important subspecialty service
- Employee will still be able to earn a living
Restrictive Covenants

- Remedies for Breach / Damage Provisions
  - Injunctive relief:
    - Court orders the associate to obey the contractual promise
  - Liquidated damages: E.g. $300,000; 1 year’s pay

Non-Solicitation Clause

- Supplements non-compete
- No expropriation/use of patient list to solicit patients
- No verbal solicitation of patients
- No hiring away of staff
- No solicitation of referral sources or contracts

Confidentiality Clause

- All charts and lists are Practice property
Future Partnership

- Should it be discussed in the contract?
- In a side letter?
- Timing
- % of stock to be sold
- Valuation, cost, post-tax vs. pre-tax

Co-ownership In Other Entities

- Rights / Obligations to Buy Into Other Entities
  - Optical, ASC, Equipment Leasing Company, Real Estate Company, Etc.

Negotiations

- Choose the Appropriate Advisor
- Negotiate in Good Faith
- Get to Know Your Future Partner on a Business Level
- Remember, you are negotiating with what you hope (?) will be a future partner
New Associate Employment Contracts: What’s “Normal”? 

Daniel M. Bernick, Esquire, MBA* 

The Health Care Group © 
Plymouth Meeting, PA 

www.healthcaregroup.com 

* Financial Interest