Issues & Updates

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Does Your Practice Need a Code of Conduct?

By: Mark E. Kropiewnicki, Esquire, LLM

What do you do? One of your senior partners wanders in an hour late for patient hours on Tuesday. She also told the staff to reschedule all of her patients for Thursday and Friday, as she will be going out of town. Maybe that is not all that bad (staff and patient phone calls and inconvenience aside), since she does not respond to pages when she is on weekend call anyway, and she really is hard on staff when she is stressed.

(Continued on page 2)

Importance of Employee Handbooks

By: Jennifer B. Cohen, Esquire

An employee handbook is an important communication tool between an employer and its employees and should be implemented whether you are a large multi-specialty practice with hundreds of employees or a solo practice with only a few employees. Here are 5 reasons why every (*yes, every!*) practice should have an employee handbook:

Employee Expectations. One of the primary purposes of an employee handbook is to properly set employee expectations. Employee handbooks provide an orientation tool to new employees, providing the practice's background and policies, which can be used as a resource to consult for answers to questions, prior to approaching management.

(Continued on page 3)

Inside this Issue

Does Your Practice Need a Code of Conduct? 1

Importance of Employee Handbooks 1

Am I Making Money on my Associate Doctor 6

The Associate Employment Contract 11

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Does Your Practice Need a Code of Conduct?

(Continued from page 1)

You consider reminding her that if she spreads her time off throughout the year like the rest of the partners, she would not be so stressed, but you decide it is not worth having "that argument" again.

If this scenario seems even a little familiar, you have got plenty of company. Most practices just hire physicians and hope they produce, but fail to set any real expectations for performance - clinical or personal. No wonder your practice has raised some high-maintenance (i.e. spoiled) physicians.

Every organization must have rules. Think about it. You probably have rules about how physicians buy into and are bought out of the practice, how your stock is valued, how everyone is paid, and even who votes at your meetings. But, you probably do not have any rules on the expected conduct – clinical or non-clinical – for your associate or your partner physicians.

Without a Code of Conduct, what do you do with your senior partner? Talk to her? Your staff clearly doesn't want to - she's the boss. You can talk to her, but you would rather not repeat any of your previous conversations on this topic. Without any rules for conduct, how can she be in violation of anything? And without any rules, there are no repercussions, either for initial or repeated problems, short of ganging up on her and firing her - which you probably already would have done, if you really thought she was that bad.

For a practice to profit as a business, it must function as one unified working unit rather than numerous physicians going in different directions. A Code of Conduct facilitates such internal harmonization and coordination. It establishes uniform, reasonable expectations for all physicians (from associates to partners) from general behavior to productivity to maintaining high standards of care. An effective Code of Conduct should also have rules on expense reimbursement, corporate credit card use, membership dues, sporting and related expenses, conferences, travel and entertainment expenses, spousal travel, and charitable contributions.

How do you establish a Code of Conduct?
A good first step in establishing a Code of Conduct is to get the physicians together for an office meeting or, better yet, a weekend retreat. Without day-to-day office distractions, you can talk sensibly and arrive at a consensus on what reasonable behavior is. Using an outside facilitator can help move the process along.

There is no established definition for reasonable behavior; each practice is unique and each will have its own tolerance for accepted conduct. Your Code of Conduct should reflect your practice's culture or "norms." For instance, a low tolerance for behavior which is deemed to be especially harmful would be reflected in rapidly escalating financial penalties for repeat violations.

Sample Rules of Conduct
The following are some simple, sample rules that may be incorporated into your Code of Conduct. Your rules will need to be more detailed, specific and tailored to your practice:

- Address physician concerns regarding staff behavior with the staff member in private;
- Communication is clear, open, and direct;
- Display respect for the dignity of others;
- Use appropriate channels to express dissatisfaction or grievances with staff;
- Begin patients hours on time except for emergencies;
- Do not change/cancel patient schedules except for emergencies; and
- Call response must be timely (specify expected response times to typical medical problems).

Sample Prohibited Behaviors
The following are typical prohibited behaviors. Your list of prohibited behaviors will need to be more detailed, specific and tailored to your practice:

- Using foul or abusive language;

(Continued on page 3)

Does Your Practice Need a Code of Conduct?

(Continued from page 2)

- Being disrespectful or uncourteous;
- Intimidating staff;
- Sexual harassment; and
- Derogatory, degrading or offensive comments.

If the physicians find it difficult to precisely define unreasonable behaviors, a therapist, patient advocate, attorney or practice management consultant may be able to help create a clear definition.

Enforcement
Once you have established the rules, put some "teeth" into the policies. On the first offense, perhaps give only a warning. For every infraction thereafter, the penalty could be docking a physician's pay. For example, start with a $1,000 fine, increasing up to $5,000 or more, or whatever amount you feel is appropriate, for physicians that routinely breach the policy.

Your Code of Conduct should specify the process for handling disruptive behavior. Set guidelines for staff to air a grievance or report a complaint. How should fairness issues be addressed? Is there any due process? Will your practice give the offender any options? How will the defense of the offender be dealt with? If you're unsure how to proceed, seek the advice of legal experts or risk management advisors.

When taking any action, create or collect appropriate documentation, such as any formal grievances and past performance reviews. Make sure you gather specific information and any available data on the effect that the disruptive behavior is having on the practice, whether it is personal friction or financial ramifications. Now you can take the next step toward responding, as documented in the Code of Conduct.

Be prepared for the situation where the offending physician has psychological, substance abuse, or other problems that the practice cannot handle. Instead of firing the physician, create options, such as using a therapist, or perhaps a leave of absence.

Summary
In a group practice, success is dependent on the group working as a team. Your group practice is only as competent and as strong as your weakest link. Without rules, expectations are not clear, and the practice will likely flounder when disruptive behavior occurs. By contrast, with well-thought out rules, a swift and reasonable remedy usually can be fashioned for any "incident". By clarifying expectations and having all group members sign off on your Code of Conduct, you increase the odds that expectations will be met. And, if performance falls short, your practice has a system in place and can react appropriately.■

Importance of Employee Handbooks

(Continued from page 1)

Legal Protection. In most states, employment is “at will.” This means that either the employee or employer is permitted to end the employment relationship at any time, for any reason, with or without notice. Having an employee handbook with a disclaimer that employment is considered “at will” protects the employer from later allegations of implied contract and wrongful termination.

Basis for Discipline/Termination. While the employee handbook is not a contract, it does set out the policies and expectations of the employer. Distributing, and having your employees sign off on having read and understood such policies, is the first step in showing that employees were aware of a given policy should they violate it. This gives a reasonable basis for disciplinary action (up to and including termination) in the case of a violation.

(Continued on page 4)

Importance of Employee Handbooks

(Continued from page 3)

Management Guidance. In line with "legal protection" and "basis for discipline/termination" described above, employee handbooks provide guidance to managers so they can appropriately handle employee issues consistently. This, in turn, will protect the practice against claims of discrimination.

Handling Disputes Internally. A properly drafted employee handbook provides contact information for the appropriate individual within the practice to approach should an employee have questions beyond what is answered in the handbook or wishes to air a grievance. Making clear that there is an internal chain of command that should be utilized may stress the notion that problems should be resolved internally; this may dissuade disgruntled employees from hastily contacting a government agency or attorney when a problem arises.

You should include:

Introductory Statement. Here, you should include that your handbook is not a contract, it supersedes any previous handbooks, that all policies are subject to change, and employment is "at will." This important disclaimer is for the protection of your practice.

Standards of Conduct. Document your expectations regarding professionalism and how your employees should conduct themselves, including dress code and ethics.

General Employment Information. Consider outlining employment eligibility; employment classification (i.e., full-time versus part-time versus per diem, etc.); introductory period timeline and requirements; compensation, including overtime pay; pay schedules; time keeping records; and meal/break time during working hours. Also, be clear that you, as the employer, will make all required deductions for federal and state taxes as well as voluntary deductions that employees elect in order to participate in the practice's benefit programs (further discussed below), if any.

Work Schedules. Clearly set out expectations for business hours, attendance, punctuality, and how absences should be communicated to the practice. It is particularly important that these expectations are clearly set as you may encounter issues in this area more frequently than others.

Benefits. Provide employees with a general overview of benefits offered by the practice, including health care, dental, vision, life insurance, disability, etc. Because these benefits change so frequently, don't discuss specific entitlements but do discuss eligibility criteria. If you want to include more comprehensive information, consider making reference to an external document describing the current year's plan or simply include a contact person that employees may contact for more information.

Harassment and Discrimination. Employers are required to comply with equal employment opportunity laws, which prohibit harassment and discrimination, including the Americans with Disabilities Act. Your employee handbook should include a section about these laws, outlining what the laws say and your practice's commitment to complying with them.

Harassment and Discrimination. Employers are required to comply with equal employment opportunity laws, which prohibit harassment and discrimination, including the Americans with Disabilities Act. Your employee handbook should include a section about these laws, outlining what the laws say and your practice's commitment to complying with them. Further, include information regarding how employees are expected to comply; for example, what behaviors should be avoided?

Drug and Alcohol Policies. Employees who abuse drugs and alcohol oftentimes are less productive and have greater absenteeism. Drug and alcohol testing policies can be beneficial, but if they are not done correctly, can lead to significant legal ramifications. The first step is to have a drug and alcohol policy, which should specify what tests will be conducted and when as well as consequences of positive tests and the practice's commitment to confidentiality.

Confidentiality. As a health care provider, your employees have access to protected health information, which is governed by state and federal

(Continued on page 5)

Importance of Employee Handbooks

(Continued from page 4)

law. Your employee handbook should include expectations related to confidentiality, generally, and HIPAA requirements, specifically, to ensure that all employees understand their obligations under the law.

Leave. This section should outline sick, vacation, and personal leave (note that you may choose to combine all of these into a single "paid time off" category) as well as jury duty, military leave, bereavement leave, and unpaid leaves of absence. Note that leave policies can be tricky, as some are required while some are purely discretionary. Whether leave is required or discretionary depends on federal, state, and, sometimes, local law.

Performance Reviews. Include a policy providing for performance reviews so that employees understand when and in what manner their performance and compensation will be discussed. Performance reviews (which should be conducted no less frequently than annually) benefit the employee as well as the practice; they are an important training and coaching tool, providing an opportunity to acknowledge employees' value to the practice, discuss and track employees' strengths and weaknesses, and provide feedback for improvements. They also provide an opportunity for employees to make managers aware of concerns they may have so that grievances can be resolved.

Discipline and Termination. Your handbook should outline example offenses that will be met with disciplinary action. Of course a few pages cannot predict every employee-related occurrence that your practice may encounter, but you should strive to give examples of what actions may lead to discipline as well as which may result in immediate termination. Use permissive language like "may," "typically," and "generally," which will give your practice flexibility while also providing useful guidance to managers so that discipline can be fairly and consistently applied.

Heed these tips for a comprehensive, successful employee handbook:

Short and Sweet. Include enough detail as to completely set forth each party's responsibilities but be careful not to overwhelm the reader. In the same vein, do not include so much detail, such that small changes in your practices will necessitate frequent updates. You want your employee handbook to be usable; use simple language and avoid legal jargon.

Beware the Form. Sure, template employee handbooks are available online (for free and for purchase). As a matter of fact, we at The Health Care Group have a model employee handbook, entitled "Model Medical Practice Personnel Policy Manual & Workplace Harassment Training Compliance Plan," which can be purchased through our online store. But – beware the form. "Template" and "model" documents are just that – templates and models. They are not intended to be your final handbook that gets distributed to your employees. Make sure that your handbook is customized to the medical industry, generally, and your practice, specifically.

Acknowledgement. Your employee handbook should include an acknowledgement form which should be signed by every employee. The employees' signatures on this form verify that each has received, read, and understands the policies contained in the handbook. This provides some legal protection, should an employee, later, claim ignorance as to his employment status or a specific policy.

(Continued on page 9)

Am I Making Money on my Associate Doctor?

By: Daniel M. Bernick, Esquire, MBA

The answer is (drumroll)…..it depends how you see things.

"Wait a second," you say. This can't be a subjective analysis. We are talking about numbers.

Well yes, we're talking about numbers, but numbers can be calculated in different ways.

Take a solo specialist physician who generates $900,000 in annual receipts from professional and ancillary services. He has no associate MD or mid-level provider. Assume further that this solo practice has expenses (rent, utilities, payroll, etc.) of $540,000 (excluding doctor compensation, benefits, and expenses). $900,000 less $540,000 leaves $360,000 available for the owner's W-2 salary, benefits and expenses, including retirement, health, payroll taxes, CME costs, society dues, licensing and hospital privilege fees, journals, and malpractice insurance. The practice has an overhead rate of 60% ($540,000 divided by $900,000).

The solo specialist is getting booked too far out, such that some PCP referrers are getting frustrated that they cannot get their patients seen by the specialist. The specialist therefore decides to explore the possibility of hiring a new associate doctor, to accommodate demand and shorten wait times.

The office manager is tasked with doing a pro forma to see whether such a hire makes financial sense. After checking bulletin boards and talking with recruiters, she estimates that a starting salary of $200,000 will be necessary to attract a quality candidate. She further estimates that the benefits package for year one will total $42,500, consisting of malpractice insurance, health insurance, CME costs, dues and journals, payroll taxes, and retirement plan contribution. She has further learned that incentive bonuses are typically offered, in addition to salary. A competitive bonus, she believes, will be 35% of associate revenue generated in excess of 2.5 times the associate's base salary.

The practice has sufficient exam rooms and equipment to accommodate another doctor, but some additional staff will be needed, and some extra supplies cost. She estimates the added overhead at $120,000 for the first year. After year one, she estimates that there will be no additional staff needed, but there will be further increases in supplies cost as the associate's production grows.

The office manager has also projected some production numbers for the new associate. She knows that in the first year the associate's production will be constrained by credentialing delays, and the normal lag between date of service and date of payment. She also estimates that the new doctor will not be able to see patients as quickly as the senior doctor, and that there may be some reluctance by existing referrers to allow their patients to be seen by the new doctor.

All things considered, the office manager is projecting first year production for the new associate of only one-half of the owner's production of $900,000, or $450,000. She further estimates that of the $450,000, only $350,000 will be "new revenue," with the remaining $100,000 "cannibalized" from the owner's existing production.

After year one, the office manager projects steady increases in associate production, with

(Continued on page 7)

Am I Making Money on my Associate Doctor?

(Continued from page 6)

the senior doctor's revenue remaining constant at $100,000 less than his existing level of $900,000.

Based on these numbers, and spreading overhead costs over the two doctors, the office manager produces the following profitability analysis:

DIAGRAM #1	Year 1	Year 2	Year 3
OVERHEAD ALLOCATED PER CAPITA			
Associate Revenue	450,000	550,000	650,000
Associate Compensation	(242,500)	(261,250)	(298,500)
Overhead Allocation @ 50% of Total	(330,000)	(340,000)	(350,000)
Net Profit	(122,500)	(51,250)	1,500
Cumulative Profit	(122,500)	(173,750)	(172,250)

Senior doctor is shocked. He knows he should hire the new doctor, to preserve his existing referral relationships, but the pro forma shows a cumulative loss of $172,250 for the first three years! How can he sustain such a loss?

But is there really a loss? Note that under this first approach, the office manager has allocated 50% of total overhead costs to the new doctor, from day one. But in the first year, the associate's production will be only half of senior's production. Is it reasonable to allocate 50% of total overhead costs to the new doctor, even though his revenue and patient flow are far lower than senior's? Isn't it true that because of his lower volume, the new doctor should be allocated less overhead than the senior doctor? After all, if he sees fewer patients than the senior doctor, the new doctor will consume less staff time, supplies, and other practice resources.

So our long-suffering office manager goes back to her calculations. This time she allocates all overhead based on the relative production of the two doctors. Here is what she comes up with:

DIAGRAM #2	Year 1	Year 2	Year 3
OVERHEAD AS % OF RECEIPTS			
Associate Revenue	450,000	550,000	650,000
Associate Compensation	(242,500)	(261,250)	(298,500)
Overhead Allocation Based on Relative Production	(237,600)	(277,037)	(313,793)
Net Profit	(30,100)	11,713	37,707
Cumulative Profit	(30,100)	(18,387)	19,320

(Continued on page 8)

Am I Making Money on my Associate Doctor?

(Continued from page 7)

Now it appears that in the first three years, the owner will eke out a tiny profit of about $19,000. However, that is not much encouragement. $19,000 of profit after all the hassle of recruiting and on-boarding a new associate? Why bother?

But consider this. Are we making the correct comparison? We have been focusing on the new doctor, and considering him as a "profit center." He doesn't look very profitable.

But what if we compared the owner's position, in a "before versus after" analysis? The office manager comes back with yet another spreadsheet, as follows:

DIAGRAM #3	Year 1	Year 2	Year 3
OWNER POSITION: BEFORE AND AFTER NEW HIRE			
Existing Owner Compensation (before hire)	360,000	360,000	360,000
New Owner Compensation (after hire)	347,500	408,750	451,500
Delta	(12,500)	48,750	91,500
Cumulative Delta	(12,500)	36,250	127,750

A cumulative profit of $127,750 over three years. Not so bad!

How can it be that in the first two analyses, the new doctor was perceived as something between a big loss and a tiny profit, whereas in the third analysis the new owner actually makes some significant money?

The answer lies in how we perceive "ownership" of the overhead.

In the first two scenarios, we treated the new doctor as having to bear a full load of overhead, either an equal share (first scenario) or production share (second scenario). Effectively, we treated the new doctor as "owning" a full share of overhead from the moment he walked through the door. Conversely, we viewed the owner doctor as "downloading" a full share of overhead on that new doctor, the minute he walked through the doorway.

In fact, the reality is this: until the new doctor becomes a partner, he or she is not strongly bound to the practice, and is thus a "flight risk." And if that doctor leaves the practice, 100% of the overhead will be back on the owner's plate.

Put another way, the new doctor arguably should be associated – at least for the first few years – only with the MARGINAL increase in overhead that accompanies his or her on-boarding and continued association with the practice. It is projected that there will be a year one increase in overhead of $120,000, in our analysis, plus subsequent increases for increased supply costs, because of the new doctor. Hopefully, these extra costs could be eliminated if the new doctor left. (That is not always the case, such as

(Continued on page 10)

Importance of Employee Handbooks

(Continued from page 5)

Follow the Rules. You have finished drafting an employee handbook, reviewed it with your employees at an employee meeting, and gotten your employees to acknowledge receipt…now what? Read it and follow it.

Living Document. Review and update your employee handbook frequently to ensure that your practice's policies are properly articulated and remain in compliance with federal, state, and local laws.

Ask for Help. Contact knowledgeable legal counsel to draft or review your employee handbook to ensure that it complies with all federal, state, and local guidelines and your practice is adequately protected. ■

Get Your Copy and Fine Tune Your Existing Manual or Implement a New One Today

It is important that all of the issues are covered and that your practice follows its own policies rather than taking an ad hoc approach to discipline, wage determinations and the like. This Manual presents the issues that you need to address in formulating your own manual, such as confidentiality, termination, and how you handle harassment. An effective manual increases your office efficiency, and improves job satisfaction. Get the guidance you need and fine tune your existing manual or implement a new one today. Check out our online store.

http://www.healthcaregroup.com/model-medical-practice-personnel-policy-manual-workplace-harassment-training-compliance-plan-details.html

Am I Making Money on my Associate Doctor?

(Continued from page 8)

with improvements to the building or new equipment purchases needed to accommodate the new doctor.)

These MARGINAL changes in overhead, plus the cost of compensation to the new doctor, are balanced by the extra revenue that can be generated if the new doctor joins. Here is the analysis:

DIAGRAM #4	Year 1	Year 2	Year 3
OVERHEAD AND REVENUE AS MARGINAL			
Baseline Owner Compensation	360,000	360,000	360,000
Plus Marginal Revenue Increase	350,000	450,000	550,000
Less Marginal Overhead Increase	(120,000)	(140,000)	(160,000)
Less Associate Compensation	(242,500)	(261,250)	(298,500)
Net New Owner Compensation	347,500	408,750	451,500
Change in Owner Compensation	(12,500)	48,750	91,500
Cumulative Change in Owner Compensation	(12,500)	36,250	127,750

As you can see, the final numbers, in terms of the owner's financial position, are identical to the "before and after" analysis prepared by the office manager. This last "marginal" analysis is simply a more detailed inspection of the reasons for the "before versus after" change in the owner's compensation.

Arguably, this "before versus after" or "marginal" analysis is the appropriate approach to use in making our hypothetical hire decision. Simply put, will the owner be better off if he hires, or does not (considering just the short-term-financial ramifications)? The baseline for comparison is the owner's pre-associate status quo, and not his position after a full load of overhead has been allocated to the new doctor.

Does there ever come a point where it is appropriate to allocate a full share of overhead to the associate? Yes. Once the associate becomes a partner, he is committed to the practice, and must accept a share of total overhead, whether an equal share, production share, or combination of the two. And, until he or she produces enough revenue to support such a full share of overhead, he should remain an associate.

It can also be argued that a "permanent associate" physician should be allocated a full share of overhead, after a number of years, as if he or she were a partner. The theory here is that the associate, having remained with the practice for ten years or more, is more or less a permanent fixture in the practice, and as such should "carry his own weight," in terms of a full share of overhead. ■

The Associate Employment Contract

By: Joseph W. Gallagher, Esquire, LL.M

It is important to remember that the initial employment agreement with a practice can be the basis for a hopefully long, productive and fulfilling relationship. Therefore it is essential that your initial employment agreement cover all the reasonable contingencies -- from your first day of employment to the time of "partnership."

WRITTEN EMPLOYMENT AGREEMENT

Too often employment relationships have been run on a handshake to the great detriment of both practices and new doctors. The trust implied in a handshake agreement is admirable, but not advisable when your career is at stake. Thus, it is essential that all agreed terms and provisions be placed in writing. New employment arrangements are so detailed and complex that even well-intentioned people will forget some of the exact terms that may have been verbally agreed upon. Moreover, time and experiences often distort perceptions of past discussions and agreements.

Contract negotiations can be viewed as the final step in your interview process. You should take this opportunity to carefully consider whether the proposed arrangements truly make sense for the practice and the associate.

Physician employment agreements need not be comprised of incomprehensible legal gobbledygook; they can and should be presented in plain English that is easy to read and free of ambiguity. In fact, we recommend that practices set out the employment terms in an easily understood letter agreement. Such letters are legally binding and usually more comprehensible than the typical "formal" contracts we often see.

Below is an overview of the key elements of most new physician employment contracts. This is not a comprehensive review, but it should provide you with a good idea of the broad contractual issues that will be involved in your employment agreement.

EMPLOYMENT TERM

The employment agreement should clearly show the length of time the physician will be employed by the practice. Traditional terms of employment range from 1 to 3 years, though most trend toward an employment period between 2 and 3 years. Employment may be contingent upon the physician gaining staff privileges at the practice's hospitals and outpatient surgical facilities, appropriate state and DEA licenses, acceptance into the practice's major payor programs, and qualifying for malpractice liability insurance coverage.

The agreement may explain that employment is "at will" which means that either party may end the employment whenever it wishes, with a notice period specifically set. Notice periods typically run from 30-90 days. Most employment agreements will also allow the practice to immediately fire an associate under certain "for cause" circumstances, which supersedes the "at will" notice provision. These are usually egregious specific "for cause" situations which include loss of license or hospital/ASC privileges; suspension, exclusion, or other sanction from or under the Medicare/Medicaid or similar programs; ineligibility for standard premium professional malpractice insurance coverage; conviction of a felony or other crime; and divulging confidential patient information. However, the agreement may also include less specific "for cause" situations such as dishonesty; refusal to follow direction; and a general termination "for (any other) cause".

Some agreements will have a specific evaluation period set out. Typical criteria include: commitment of time and energy to the practice; and level of productivity, efficiency to the practice.

(Continued on page 12)

(Continued from page 11)

COMPENSATION

Base Salary: The employment agreement should plainly spell out the total compensation the associate will be paid during the initial (and in some cases entire) term of employment. A $10,000-$15,000 annual increase in base salary is not uncommon for each subsequent year of employment (subject of course to practice finances and the employer's performance expectations).

Base plus Incentive: Incentive compensation provisions are quite typical in new employment agreements and, when combined with base pay, can be an important part of your total compensation arrangements. An often used incentive compensation arrangement is based on being paid a percentage of the gross income the practice actually collects for the professional services the associate generates in excess of 2 to 3 times the practice's cost to employ him/her. For example, if base salary is $200,000, the associate might be entitled to an incentive compensation bonus of 25% of actual collections for his/her services in excess of $500,000 ($200,000 times 2.5).

The practice may also pay you a discretionary bonus, based on the practice's subjective assessment of overall contribution to the practice's success by the associate.

Straight Production: Instead of base salary (or base coupled with an incentive), some practices prefer to compensate associates on a percentage of production (which can be measured in terms of charges or collections for services); given the uncertainty of just how busy the associate may be, it is understandable why these percentage deals may create some angst; on the other hand, in the right practice, the deal can be quite rewarding compared to a base salary approach. Percentage deals require careful review along with an advisor who is familiar with the typical finances of the practice; you are going to need to see historical data and other reports from the practice to gain a comfort level with this type of arrangement.

BUSINESS EXPENSES

The practice generally will pay some or most of employment-related general business expenses. You simply need to make sure there is a clear understanding what the practice will pay for and what it will not pay for. Expenses to consider include professional liability (malpractice) insurance premiums; professional society dues; professional journals, books and subscriptions; hospital staff fees; professional travel and continuing education costs; and sometimes, an allowance for promotional activities with referral sources, as well as work-related automobile or cellular device expenses. Most practices will pay the entire cost of malpractice insurance. Some practices may also include reimbursement for board certification testing fees and/or study courses. Regarding the other business expenses, the practice may require that they be approved in advance or that they not exceed an agreed dollar amount per year.

FRINGE BENEFITS

As to fringe benefits, once again, you simply need to make sure there is a clear understanding what the practice will pay for and what it will not pay for. Most practices offer a range of fringe benefits to its employee-doctors, including: basic health insurance; group term life insurance; coverage under the practice's retirement plan(s); and perhaps disability insurance.

VACATIONS, PROFESSIONAL ABSENCE & SICK PAY

During the first year of employment, two to

(Continued on page 13)

(Continued from page 12)

three weeks of paid vacation time is a typical range. One additional week of paid time off is generally provided for professional education, professional society meetings, or to take board examinations. These weeks may be combined into total paid time off. The amount of paid vacation and professional time off usually increases with the length of employment.

The employment agreement should also explain in detail how much sick pay (if any) the associate will receive during each year of employment. Five to twenty days of paid absence for illness or disability is a typical range. At a minimum, pregnancy-related leave must be treated as any other disability under the practice's sick and disability leave policy, although state and local laws may provide for even more leave.

RESTRICTIVE COVENANTS

In our work with practices all over the country, the overwhelming majority of written employment agreements contain a "no compete" clause or restrictive covenant in one form or another in those states where they are allowed. In fact, restrictive covenants often receive as much attention and negotiation as base pay or incentive bonus arrangements.

What Is a Restrictive Covenant? A restrictive covenant is a contractual obligation by which an employee promises not to take competitive actions against his or her employer in a designated geographic area and for an agreed period of time. While some maintain a level of skepticism about the enforceability of restrictive covenants, they have been upheld in most states if reasonably drawn and if the practice has a legitimate interest to protect. Although reasonableness ultimately depends on the circumstances of a particular relationship, a number of guide posts have been established through the years that are useful in developing an enforceable restrictive covenant.

Reasonableness: Reasonableness is often a “balancing test” in the eyes of the law. First, the covenant has to be necessary to protect an employer's legitimate rights; second, the covenant cannot be overbroad so as to interfere with the employee's rights; and third, the negative impact on the public's interest must be minimized.

How Long? The restrictive covenant should be effective only as long as necessary to protect the practice's interests and moderate the risk of injury. Typically, a covenant which attempts to exclude an associate from practicing in the restricted area for a period of more than two years could be considered unreasonable. A doctor returning to the practice's patient-drawing area after two years is unlikely to retain the same drawing power. A longer covenant would, in all likelihood, be unreasonable and thus unenforceable.

How Wide? Establishing a reasonable geographic boundary can be tricky depending on the surrounding territory -- e.g., an office in the center of a large city, versus a suburban location, versus a rural setting. The covenant has to be worded to cover the area actually served by the practice. It is not advisable for a practice to stake out an area that envelops every last patient -- the better approach is to establish a boundary that takes into account about 80% of them. Covenants that merely create a flat mileage radius may be too expansive since the entire patient population rarely comes from such an evenly drawn boundary.

NON-SOLICITATION COVENANT

Regardless of whether or not the employment agreement contains a restrictive covenant, it should include a separate non-solicitation covenant. The purpose of a non-solicitation cove-

(Continued on page 14)

The Associate Employment Contract

(Continued from page 13)

nant is to prevent the associate from soliciting the practice's referral sources and patients before or immediately after employment with the practice terminates. A non-solicitation covenant is usually used in addition to, not instead of, a restrictive covenant. It is meant to prevent solicitation even if the associate has moved beyond the geographical limits contained in a restrictive covenant.

FUTURE CO-OWNERSHIP

We typically recommend that the employment agreement include an outline of the buy-in, income division and future co-ownership arrangements. Look for at least a broad outline of the process and factors the practice will use to evaluate potential for co-ownership. It should also include a specific date by which the practice will initiate the future co-ownership discussions, and another date by which the practice's current owners will make a firm decision about offering co-ownership.

The general co-ownership terms should include an explanation of how the price of an equity interest in the practice will be determined, the formula to be used to set the dollar value of the equity interest, and how much of an equity interest you are to purchase.

In addition, if part of the buy-in is to be through a partner compensation plan, the future co-ownership provision should set out the rough details of how this would be accomplished.

CONCLUSION

The written employment agreement should clearly and unambiguously deal with all the pertinent details of your employment relationship with the practice. After all, it will be the underlying basis for a long-term, productive and successful work (and eventual co-ownership) arrangement. The employment agreement should properly recognize and balance the legitimate needs and interests of the employee-doctor, while also protecting the practice's legitimate needs, interests and investment in the associate.■

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