Associate Employment Agreements: What’s Fair, Reasonable, and Competitive

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* Financial Interest

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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
- Credentialed by major payors
- Insurable for malpractice at standard rates

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
  - Definite start date
  - Usually no defined end date is preferable for the employer (no contract lapse)
  - Start dates are often conditioned on certain events occurring, but must start by a certain date
  - Evergreen agreements
Term and Termination

"At Will" Versus "For Cause" Termination of Employment

- Immediate termination "for cause" versus termination "at will" upon some reasonable notice period being given by either party
- The broader (i.e. less specific) the "for cause" provision, the more protection afforded to the employer

Types of Specific "For Cause" Provisions Include:

- If the employee ceases to be licensed to practice medicine in the state
- If the employee becomes ineligible for malpractice coverage (at standard premium rates)

"For Cause" (continued):

- If the employee fails to maintain full active and unrestricted privileges at required hospital(s) / ASC(s)
- If the employee is absent due to illness or disability for a period of time (usually 3 - 6 months)
Term and Termination

- Termination *without cause upon written notice by either party*
- How long is fair?
- What’s normal?
- Typically 30 - 90 days notice

Exclusive Employment

- Speech honoraria?
- Legal reviews?
- IMEs
- Moonlighting?
- Other?

…An Unstated Expectation Can Never Be Met…
**Periodic Evaluations**

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

**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 - $200,000
  (Average Hire - $160,000)
- **Glaucoma Specialist**: $150,000 - $210,000
  (Average Hire - $170,000)
- **Retina Specialist**: $210,000 - $325,000
  (Average Hire - $240,000)
Compensation

• Signing Bonuses
  • Not usually needed
  • Possibly pay a signing bonus if needed to get the right candidate to sign quickly
  • Short windows of time for candidate to sign
  • 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
  • Other incentive formulas
    • based on increased practice net income
    • purely discretionary

Business Expenses

• Standard
  • Professional society dues
  • Journal subscriptions
  • Hospital / ASC staff fees, licenses
  • CME allowance (usually $2,500 - $3,500)
  • Pager, cell phone
### Business Expenses

- **Other Business Expenses (As Negotiated)**
  - Board review and exam fees
  - Car allowance / mileage allowances
  - Cellular phone (non-business use)
  - 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
  - Trends and pitfalls

### Fringe Benefits

- **Health Insurance**
  - Individual or family coverage?
- **Group Term Life Insurance**
- **Disability Insurance** (group or individual)
- **Retirement Plans**
  - Eligibility for participation (timing of start date)
  - Type of plan (in addition to or in lieu of salary)
Leave

- Paid Leave for Each: Vacation, Sick Leave, CME, etc.
- Versus "Paid Time Off" (PTO) policy
  - Combined total leave policy
- Usually permit 3 to 4 weeks of Vacation / CME Leave (or 20 to 30 days PTO) in first year, increasing thereafter

Leave

- Broken Down: Vacation/CME/Disability
  - Vacation – 3 or 4 weeks standard for first year
  - Continuing Medical Education (CME) – 1 week standard for first year
  - Disability / Sick Leave / Maternity Leave – 10 to 30 paid days common, plus unused Vacation / CME
  - Alternative, 20 to 30 days of Paid Time Off (PTO)

Restrictive Covenants

- Enforceability Varies from State to State
- Must be reasonable with respect to:
  - Time – up to 2 years, maybe 3
  - Place – geographic range of the restriction
  - Scope – what you are contractually prohibiting
- Must not be harmful to the Public Interest
  - Not enforcing a monopoly position
  - Not preventing needed services from being provided
Restrictive Covenants

• Remedies for Breach / Damage Provisions
  • Injunctive relief
    • Court orders the associate to obey the contractual promise
  • Liquidated damages
    • Financial payment in lieu of honoring the restriction
  • Other court ordered damages

Non-Solicitation / Confidentiality Covenants

• Soliciting Distinguished from Advertising
• Enforceability of Such Clauses
• Should be Supplemented with Confidentiality Clause
  • All charts and lists are Practice property

Co-ownership

• Purchase of an "Equal" Interest
  • Senior doctor's protection
• Method and Structure for the Buy-in
  • "Hard" assets
  • Accounts receivables
  • Goodwill
  • Pre-tax vs. post-tax payments
Co-ownership In Other Entities

- Rights / Obligations to Buy Into or Be Bought Out of Other Entities
  - Optical, ASC, Equipment Leasing Company, Real Estate Company, Etc.
  - In employment contract or a side letter?

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

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