### Not Full Time: “Mommy Daddy” Track; Itinerant Specialists; Semi-Retired

Daniel M. Bernick, JD, MBA  
Mark E. Kropiewnicki, JD, LLM

[dmbernick@healthcaregroup.com](mailto:dmbernick@healthcaregroup.com)  
[mkrop@healthcaregroup.com](mailto:mkrop@healthcaregroup.com)

The Health Care Group  
Plymouth Meeting, PA

[www.healthcaregroup.com](http://www.healthcaregroup.com)

---

### Financial 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 ophthalmologists and other physicians
- Publishers of the Goodwill Registry, used in medical practice valuation
- Handle and advise re: employment agreements, buy-ins, sales, valuations
Our Topic Today

- Part timers as a special type of hire
  - Younger docs with family responsibilities
  - Itinerant specialists
  - Older doctors phasing down
- How they are different from full-timers
- Compensation, termination, equity share and other terms

Why Allow Part Time Work?

- Many reasons
  - Only need a half doctor
  - The doctor is a known quantity, e.g., a former full timer – better half a loaf than none
  - Doctor is willing to work in a less popular office
  - Doctor is a subspecialist

Why Allow Part Time Work?

- More reasons
  - Doctor is a senior physician whose presence reassures patients or referral sources
  - Medical-only doctor who generates surgery
  - Doctor doesn’t want to be a partner
    - And that is fine with the current owner
    - He or she wants to remain in control
What are the drawbacks?

- It is more work to administer two half time doctors than one full time doctor
- Part-timers don’t have the volume or level of compensation to fund a buy-in or buy-out
  - And often don’t desire partnership at all
- They are not committed for the long term
- They absorb volume that could be used to hire a full-timer

Employee or Contractor?

- Both Practice and Physician may prefer contractor status
  - Practice can keep Physician out of fringe benefit plans, and does not have to pay employer payroll taxes
  - Physician can offset 1099 pay with business expenses

Employee or Contractor?

- Need to consider IRS audit risk, for contractor status
- Many or most of the indicia of employment status still present, even for part-timers
  - Practice provides equipment, staff
  - Sets hours, policies, etc.
- Practice could be held liable for payroll taxes, and 100% penalty if audited
Employee or Contractor?

- Avoid contractor status if:
  - There is a non-compete in the agreement
  - There is an exclusivity requirement
  - The candidate is working more than 2 days per week
  - Pay looks like a salary and bonus
  - Legally, employment is the safer option

Mommy or Daddy Track

- The younger part timer
- Could be a former full-timer who decides to spend more time with young children
- If so, will need to renegotiate the earlier, full time contract
  - How does it need to change?

Mommy Daddy Contract Duties

- Time commitment language will likely be more specific than in a full-time contract
  - Candidate seeks control over his or hours
  - Define the commitment as a number of "patient encounter hours" or "direct patient contact hours"
Sample Language

“Physician will provide 20-24 patient encounter hours per week, plus any necessary time for administrative practice responsibilities, including but not limited to patient phone conferences, chart completion, and staff meetings (regardless of whether Physician is scheduled to work that day).”

Hours and Days

- Specific hours and days can be by “mutual agreement”
  - It is not feasible to pre-specify the schedule
  - But part-timer will recognize that if he is too particular, the job may not be there anymore

Exclusivity

- Can your part timer take a second job?
- Only makes sense if the employee wanted full time employment with you, but you wouldn’t provide it
- Require a “right of first refusal”
  - Candidate may not take a second job without first asking for an increase in hours with you
**Exclusivity**

- Any second job must be non competitive, i.e., outside the non-compete area
- And not otherwise interfere with employee’s duties to your practice
- Even if non-competitive, there is a risk of disclosure of your trade secrets, to second employer

© Copyright 2014 • The Health Care Group, Inc. • All Rights Reserved

---

**Compensation**

- Pro-rate full time salary
  - If full time salary (5 days) is $160,000, then a half time job is $80,000
- Bonus: similar to full time doctor
  - 20-40% over 2.5x to 3.3X base
- This structure works well if candidate works a regular schedule, preferably half time or more

© Copyright 2014 • The Health Care Group, Inc. • All Rights Reserved

---

**Percentage of Collections**

- E.g. 40-50% of collections
- This provides good incentive to work
- And is generally well received by the associate
- The major drawback is that it may be too good for the associate
- If your overhead is 60%, you can’t afford to pay 50% of collections
- If your overhead is 50%, and you pay 50% of collections, you aren’t making any profit margin on the associate

© Copyright 2014 • The Health Care Group, Inc. • All Rights Reserved
Percentage of Collections

- Also: if your overhead is 50%, and you pay 50% of collections, there is no margin for future buy-in
- Candidate will not be able to buy-in without taking a big paycut
- A good range:
  - 31-38% of collections, including benefits:
    - Health care
    - Retirement benefits
    - Seminar costs
    - Dues, subscriptions, malpractice
    - Employer payroll taxes

Vacation/Seminar/PTO

- If candidate is getting a percentage of collections, this time is effectively unpaid
  - No work, no collections, no pay
- Even so, there need to be some parameters on time off
  - You need to be able to schedule patients and staff appropriately

Vacation/Seminar/PTO

- If candidate is getting a pro-rated, guaranteed salary, pro-rate paid time off
  - Pro-rate the number of days off, not the pay
    - The pay is already pro-rated
  - If full timer gets 15 days of paid vacation, a half timer gets 7.5 days
**Pro-Rate Fringe Benefits?**

- If candidate is getting a percentage of collections, charge the benefits against the compensation package, so that you don’t need to worry
- *i.e., “Physician will be entitled to total compensation of 35% of collections, including W-2 pay and the following fringe benefits and expenses….”*

---

**Pro-Rate Fringe Benefits?**

- If candidate is getting a guaranteed salary, consider prorating benefits, at least for more significant items, such as health, seminar (retirement will self pro-rate, based on pro-rated salary)
- Consider a fixed “allowance” towards benefits and expenses that is based on pro-ration of the cost of a full timer’s benefit package

---

**Other Contract Terms**

- Termination: same as in full time contract
  - For “cause” or on 30-90 days’ notice, without cause
- Non-compete: same as full timer
  - Any second job must be outside of the radius
- Non-solicitation: same as full timer
Future Partnership Discussion?

• This is likely too remote to deserve much discussion
• Discussion should wait until candidate is full time, and has demonstrated commitment to the practice
• And has enough production to make buy-in feasible

The Itinerant Subspecialist

• E.g. general ophthalmology practice needs a part time retina or plastics specialist
  • May visit only a half day or day per week
  • No expectation of partnership
  • Specialist has several other places of employment

The Itinerant Subspecialist

• These relationships are usually structured as contractor deals, for a % of collections
  • Typical % of collections: 40-55%
    • You are competing with other practices for the specialist’s attention
    • Specialist must incur travel time (unpaid) to go back and forth from your office
    • Anything you keep looks like “found money”
      • You didn’t have this revenue before
The Itinerant Subspecialist

- Specialist may want a different deal
- He wants to see patients at your office, but
  bill under his corporation, his numbers
- He will bill and collect for himself, and
  keep 100% of the revenue
- ..., but pay you some rent for the space,
  and some $$ for support services

The Itinerant Subspecialist

- This “independent practice” alternative
  relieves the general ophthalmologist of
  any responsibility for the specialist’s
  malpractice, or billing problems
- But is much less lucrative, for the general
  ophthalmologist/host, compared with
  keeping 45-60% of the specialist’s
  revenue

The Itinerant Subspecialist

- There are legal limits on what the
  independent practice can pay the general
  practice host practice
- The specialist cannot pay more than fair
  market value rent, for the space, and FMV
  reimbursement, for the support service
- Anything more would be a “kickback”
The Semi-Retired Doctor

- Example: had his own solo practice, but sold to a group, and now wants to work a day or two per week, for the group
- Attractive attributes:
  - His presence in the practice is reassuring for his old patients
  - Steady player, efficient, he knows the patients
  - He may want to be a medical ophthalmologist
    - Serves up surgical candidates to the younger docs

The Semi-Retired Doctor

- Another example: group founder has been bought out (gave up his stock), but wants to continue working 1 or 2 days per week
- This doctor may be important in terms of community or referring relationships, or in terms of the group wanting to show consideration for the doctor's long service to the practice

The Semi-Retired Doctor: Contract Terms

- Contract terms will be comparable to those for the Mommy Daddy track doctor
- But some extra consideration may be needed on compensation terms, and/or termination protections
Compensation for the Semi-Retired Doctor

- A founder who has been bought out, or a solo who sold to his associate physician, may expect to be paid a percentage equal to his revenue less the overhead rate
- E.g., if overhead has historically been 50%, he wants to be guaranteed 50% of collections
- Essentially comparable to a shareholder
- But what then is left to the Practice to compensate it for the risks of ownership?

Possible resolution: allow a margin for profit to the Practice of 5-10%
- If overhead has historically been 50%, pay the semi-retired doctor 40-45% of collections
- Caveat, for medical ophthalmologists:
  - A higher % may be appropriate here because the doctor's receipts will be substantially reduced, as a result of giving up surgery

Other Contract Terms for the Semi-Retired Doctor

- A founder who has sold his shares feels vulnerable
- He is subject to termination, like an associate
- An associate physician can be terminated without cause, on 60 or 90 days notice
- Should a senior physician be treated differently?
Other Contract Terms for the Semi-Retired Doctor

- Term and termination protections for this doctor are variable, and depend on specific circumstances
- For example, a doctor who sold his practice might make such protections part and parcel of the sales deal
  - E.g., a 2-3 year, post sale, no cut contract

Other Contract Terms for the Semi-Retired Doctor

- But absent special circumstances, the Practice should avoid multi-year, no cut contracts with any physician, including a semi-retired physician
- Circumstances can change from year to year
  - Need to remain flexible, if arrangement is to continue

Term, Termination for the Semi-Retired Doctor

- Reasonable provisos:
  - Either party can terminate without cause on 180 days’ notice, at any time
  - No termination mid-contract (except for cause), but contract runs from year-to-year and can be non-renewed by either party (1 year, renewable deal)
Other Contract Terms for Semi-Retired Physician

- Is a non-compete appropriate?
  - Yes. The Practice needs protection
- Should a founding physician be paid his deferred compensation, while still working?
  - May be problematic
  - Dr needs to give up his patient volume, to fund the deferred comp payments
  - May be legal problems, under federal tax law

Not Full Time: “Mommy Daddy” Track; Itinerant Specialists; Semi-Retired

Daniel M. Bernick, JD, MBA
Mark E. Kropiewnicki, JD, LLM

dbernick@healthcaregroup.com
mkrop@healthcaregroup.com

The Health Care Group ®
Plymouth Meeting, PA

www.healthcaregroup.com

© Copyright 2014 • The Health Care Group, Inc. • All Rights Reserved