

NEGOTIATION OF A HOSPITAL BASED PHYSICIAN EXCLUSIVE CONTRACT

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I. OVERVIEW OF EXCLUSIVE CONTRACTING FOR PHYSICIANS AND HOSPITALS

- A. Benefits of Exclusive Contracting for Hospitals and Physicians**
- B. Trends in Exclusive Contracting**

II. CRITICAL LEGAL ISSUES TO BE CONSIDERED IN ALL EXCLUSIVE HOSPITAL CONTRACTS

A. State Law, Anti-Trust and Other Legal Challenges to Exclusive Contracting

1. Are exclusive contracts permitted?
2. Are exclusive privileges prohibited by the Hospital Bylaws?
What happens to Physicians who are on staff?
3. What causes of action may a Physician assert who is excluded from the Hospital staff after the granting of an exclusive contract?

- 1. Private Inurement
- 2. Private Benefit
- 3. Excess Benefit Transaction/Intermediate Sanctions
- 4. Private Use Considerations

- 1. Anti-Kickback Law
- 2. Stark Law
- 3. state physician self-referral laws.

**D. Careful Drafting of
Exclusive Contracts is Important**

III. FACTUAL BACKGROUND AND FORMAT FOR NEGOTIATION OF EXCLUSIVE RADIOLOGY SERVICES AGREEMENT

- **A. Factual Background to Contract Negotiation**
- Memorial Hospital (the “Hospital”) and Radiology Associates, P.C. (the “Group”) have entered into contract negotiations to make the Group the exclusive provider of radiology services at the Hospital and its various outpatient facilities in Central City. The Hospital is a 250 bed community hospital that aspires to become a leading tertiary care provider in its service area. The Hospital competes directly with University Medical Center, a prestigious teaching hospital associated with the Medical School, and St. Jude’s Hospital, a religiously affiliated hospital which is viewed as the leading heart hospital in the area.

- The Group has been the sole provider of radiology services at the Hospital for the past 15 years, but has never had a contract with the Hospital. Recently, 3 radiologists on the faculty of Medical School have approached Gordon Green, the CEO of the Hospital, about joining Hospital's medical staff. One of these radiologists is considered a national expert in teleradiology. Mr. Green has not formally responded to these physicians, but he is concerned that the Group has not hired a new doctor in over 8 years and several of its members are approaching retirement age.

- The Group currently uses space at the Hospital for office use and anticipates that this arrangement with the Hospital will continue after execution of an exclusive contract. In addition to providing services at the Hospital, the Group practices at an MRI Center located 9 miles from the Hospital in which it has a 1/3 ownership interest. The Group also performs reads for several multi-specialty groups that operate their own x-ray, CT scan and mammography facilities. The President of the Group, Dr. Marcia May, began a one year term as president of the Hospital's medical staff on January 1, 2004. The Group has traditionally been among the most profitable radiology practices in the region, but it is currently experiencing difficulty obtaining adequate medical malpractice insurance coverage. Premium increases are expected to sharply reduce the radiologists' net income.

