Physician Practice Employment Agreements & Restrictive Covenants

a presentation for

New Jersey Medical Group Management Association

“Tune Up Your Practice For Healthcare Reform”

2011 Practice Management Conference- Atlantic City

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by:

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OVERVIEW

- Basic Pre-Employment Checklist
- What constitutes an “employment agreement”?
- Anatomy of Employment Agreements
- Duties & Responsibilities
OVERVIEW

- Compensation/Benefits
- Perks
- Ownership Opportunities
- Termination
- Post-Termination Restrictive Covenants & Additional Concerns
- Questions & Answers
BASIC PRE-EMPLOYMENT CHECKLIST

- Check in NJ BME database or “Health Care Profile”:
  - http://12.150.185.184/dca/about.jsp
  - Unrestricted license in NJ?
  - Shows malpractice Case Settlements
- Check to see if Physician is Debarred from Medicare & other federal programs:
  - http://oig.hhs.gov/fraud/exclusions/exclusions_list.asp
- Physician to provide Inquiry with National Practitioner Databank (“NPDB”) & Healthcare Integrity and Protection Data Bank (“HIPDB”)?
  - http://www.npdb-hipdb.hrsa.gov/
- Google search on Physician
BASIC PRE-EMPLOYMENT CHECKLIST

- Check reference with past employer(s).
  - By law, facilities must advise if Physician was terminated due to patient care issues.
- Ask if Physician:
  - Problems with any payors?
  - Board Certification(s)?
  - Any professional association sanctions?
- What is the Credentialing process with Payors & how long will it take?
- What staff privileges will be needed initially?
BASIC PRE-EMPLOYMENT CHECKLIST*

- Does Physician have any current contractual or other restrictions?
- Understand Physician’s related party referral practices (e.g., does family member own a facility which they refer to (e.g. blood lab?)
- Will employee fit into culture of practice?
- Is there a Physician recruiter involved? Who pays?

*Note: this is a very basic checklist and does not include every issue that should be addressed before hiring an employee.
WHAT CONSTITUTES AN “EMPLOYMENT AGREEMENT”?

- Does not have to be written.
- Consider implications of verbal agreement vs. written agreement.
- Consider which employees will have written employment agreements
- “Employment at will” doctrine
- “Formal Contract” vs. “Letter Agreement”
ANATOMY OF EMPLOYMENT AGREEMENTS

- The Parties
- Effective Date/Term
- Duties & Responsibilities*
- Compensation*
- Fringe Benefits/Perks*
- Record Keeping
ANATOMY OF EMPLOYMENT AGREEMENTS

- Billing Practices
- Patient Charts & Records*
- Malpractice Ins.*
- Representations & Warranties
- Indemnification
- Performance Standards
ANATOMY OF EMPLOYMENT AGREEMENTS

- Inventions & Intellectual Property
- Proprietary Information
- Termination*
- Dispute Resolution
- Post-Termination Restrictions*
ANATOMY OF EMPLOYMENT AGREEMENTS

- Ownership Opportunities*
- “Boilerplate”
  - Choice of Law
  - Jurisdiction
  - Notices
  - Dispute Resolution Mediation/Arbitration
  - Modifications
  - Entire Agreement
DUTIES & RESPONSIBILITIES

- Job Description
- Location of Services
- Work Schedule
  - Full (entire professional time) vs. Part-time
  - Hours required
- Night & Weekend Call Schedule
- Patient Assignment
- Administrative Responsibilities
- Moonlighting?
COMPENSATION/BENEFITS

- Base Salary/Increases
- Bonuses/Incentives
- Pension & Profit Sharing Plans (401(k))
- Paid Time Off (PTO) – Vacations, CME & Sick Days
- Disability Compensation
COMPENSATION/BENEFITS

- Insurance
  - Malpractice
    - Occurrence vs. Claims Made ("tail")
    - Who pays?
  - Medical/Dental
  - Life/Disability
  - Automotive
“PERKS”

- Moving Expenses
- CME
- Phone/Beeper/PDA
- Auto Allowances
- Dues/Fees
  - Hospitals & IPAs
  - Associations & License
- Subscriptions & Periodicals
OWNERSHIP OPPORTUNITIES

- How long until Ownership (Trial Period)?
- What is the Process for Consideration?
- Eligibility Requirements
- Firm Commitment?
- Ownership
  - Buy-In (Financial Terms)
  - Documentation
  - Buy-Out Responsibilities
TERMINATION

- Defined or Open-Ended?
- Expiration of Term
- Without Cause
  - Notice
- With Cause
  - Defined
  - Notice
  - Right to Cure
POST-TERMINATION
RESTRICTIVE COVENANTS

- What is a Restrictive Covenant?

- Types of Restrictions
  - Non-compete
  - Non-solicitation
    - Patients
    - Employees
    - Referral Sources
  - Non-disclosure
  - Staff Privileges
POST-TERMINATION
RESTRICTIVE COVENANTS

- Are They Enforceable?
  - Protect Legitimate Business Interests?
  - Not Impose Undue Hardship?
  - Not Injurious to Public at Large?
  - “Blue Pencil” Language
POST-TERMINATION
RESTRICTIVE COVENANTS

- Remedies in the Event of Breach
  - Injunction
  - Liquidated Damages
  - Damages
  - Buy-Out Provisions
SELECTED ADDITIONAL POST EMPLOYMENT CONCERNS*

- Patient Records
  - Ownership
  - Right to copy
- Return of Property (keys, passcodes, laptops, phones, Blackberrys, etc.)
- Right to deposit payments for someone no longer with Practice (power of attorney)
- Limit Forwarding of Mail (& e-mails)
- How do you handle Patient inquires?

*Note: This is a few of the post-employment issues that should be considered by a practice.
QUESTIONS & ANSWERS
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