Employment Contracting and Practice Buy-In Guidance

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Today’s Objectives

• Understand the types of employment settings available
• Introduce the mechanics of a typical employment agreement
• Provide guidance to assist you in negotiating a “fair” and “reasonable” agreement
• Learn about the mechanics of a practice buy-in arrangement and relevant corporate guidance
Types of Employers

- Groups (single or multi-specialty; large or small)
- Solo Practitioner
- Hospitals
- Academic Entities
- Other private, nonprofit or government health care entity
The Anatomy of an Employment Agreement

• Term
• Duties and Responsibilities
• Exclusivity
• Compensation
• Malpractice Insurance
• Non-Compete/Non Solicitation
• “Other Provisions”
• “Legal Mumbo Jumbo”
Term

• Term length, if any
  – At-will
  – Fixed term
    • Automatic renewal
    • Renewal options

• Termination
  – For cause
  – No cause
  – Mutual vs. unilateral termination rights
    • Clinical Privileges

• Personal Considerations
  – Job Security, Location (Non-Compete)
Duties and Responsibilities

• Clearly and specifically delineated
• On call duties/practice hours (is it equitable with similarly situated physicians?)
• Professional standards and certifications
• Practice locations
• Required to participate in Medicare and Medicaid and provide charity care
Exclusivity

• External professional activities – research, moonlighting, etc.
  – Is it permitted?
  – Liability insurance – are you covered?
  – Can you keep these fees? All revenue for professional services will likely be considered the “Employer’s.”
Compensation

• Fair market value comparison – Stark Law/Regulatory Req.
  – Specialty and regional considerations
  – Resources
    • Third Party Sources
    • Blended Averages
• Base salary
• Productivity-based compensation models
• Recruitment Incentives (repayment obligations)
Malpractice Insurance

• Type (claims made v. occurrence coverage) and amount of coverage
• Who will pay for the coverage?
• “Tail” coverage is necessary
  – Allocation of payment upon termination
  – For-Cause vs. Voluntary
  – Failure to Renew
Non-Compete

- Application upon Termination of Contract
  - For Cause
  - Voluntary Termination
  - Failure to Renew
- Frequently stated in terms of time and geography
- State Law governs enforceability
- Negotiate Carve-Outs
  - Time, Geography, Activities, Employers
Non-Solicitation

• Non-solicitation of patients and employees
  – Public information
  – General advertising
Other Provisions

• Benefits
  – Life, AD&D Disability, Medical/Dental/Vision, Maternity Leave
• PTO – Vacation
• Allowance for CME
• Coding responsibility – Compliance
• Confidentiality (patient and business)
• Dispute Resolution
“Legal Mumbo Jumbo” Provisions

- Assignment
- Representation and warranties
- Other
  - ✔ Governing law
  - ✔ Waiver of breach
  - ✔ Notices
  - ✔ Change in law
  - ✔ Severability
  - ✔ Attorneys’ Fees
Practice Buy-In Considerations

- Conditions to Buy-In
- Common Entity Structures
- Due Diligence
- Management Structure
- Transfer Restrictions and Mandatory Sale
- Profit Distributions
- Exit Strategy
Conditions to Buy-In

• Minimum revenue and/or new patient benchmarks
• Term to execute/achieve benchmarks
• Date certain or at the “whim” of the existing owners
• How is purchase price determined
  – Formal Appraisal
  – Formula Method
Common Entity Structures

- C corporation
- S corporation
- PC
- LLC/LLP
- Partnership

Each structure has its own tax consequences and ownership liability
Due Diligence

• Financial statements and tax returns
• Key contracts / Related Party contracts
• Personal guarantees and additional capital contributions
• Ownership structure and succession plan
• Prior and current malpractice/legal proceedings
• Insurance coverage
• Audits
• Legal Opinions regarding structure, distribution of revenue, production formula, ancillary business revenue
Management Structure

• Decision makers
  – Day-to-Day Operations
  – “Big Ticket” Decisions
• Anti-Dilution / Admission of new owners
• Capital calls
Transfer Restrictions and Mandatory Sale

• Ownership restrictions imposed by operations of law (PC and S Corp)
• Ownership restrictions imposed by contractual restrictions (shareholder’s agreement/operating agreement)
• Valuation upon transfer/mandatory sale
• How is the purchase price paid?
Profit Distributions

• Corporation must be pro-rata per ownership percentage
• LLC/Partnership can be disproportionate
• Review operating agreement or partnership agreement to ensure you will participate equally in profit distributions
Exit Strategy

• Put/Call rights for owners
• Deadlock resolution
• Who funds your retirement?
Questions?

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