

PHYSICIAN PRACTICE RESOURCE CENTER

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Model Physician Employment Contract

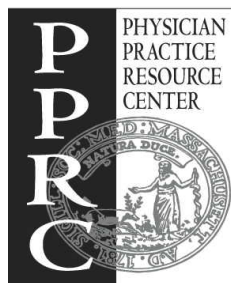
Model Physician Employment Contract

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Model Physician Employment Contract

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Prepared by the Massachusetts Medical Society
Physician Practice Resource Center

This information is intended for use as a general resource. It is necessarily selective and is not meant to be an exhaustive guide. This information does not constitute legal or business advice of the Massachusetts Medical Society (MMS). A private attorney should be consulted about all legal matters, including the application of laws to specific situations. This information is current as of January 2004. MMS accepts no responsibility for any of the information once it has been downloaded or copied off of the MMS website. To the extent that any information herein comes from a source other than MMS, MMS accepts no responsibility for the accuracy and scope of such information.

Choosing the Right Practice

Long before consideration can be given to signing an employment agreement, physicians must decide on the type of practice that fits them best, including: solo, small or large group, single or multi-specialty, hospital-based, and government or privately operated. There are advantages and disadvantages to working in each of these settings, so it is often helpful to develop a list to compare the characteristics of each of these different practice settings. Highly motivated physicians that are willing to accept a large amount of financial risk may prefer to set-up a solo practice, while others are more comfortable working for a hospital or group practice in a salaried position. One of the most important things for a physician contemplating an employment contract to consider is how well they believe their experience and personality will fit within the organization. Similarly, a group practice that is hiring a new physician should carefully consider the attributes of potential candidates and how well they will mesh with the culture of the practice. A well thought-out decision by both parties will make for a more successful relationship down the road and ultimately should help develop a more successful group practice.

Compensation

Physician compensation is a key issue for all physician employment contracts. The contract should specify the precise amount of compensation to be paid to the physician, e.g., \$_____ per month, or the formula to be used to determine compensation. Salary may constitute a stated monthly amount, a percentage of the income that the physician brings to the group, or a combination of salary and percentage of income. The contract may also state that the physician is to be paid either a (1) specific salary or (2) a certain percentage of gross revenues of the practice or of the physician's production, whichever is greater. If salary is based in any part on percentage of net or gross income, the contract must state, specifically, how net or gross income is determined. The contract must be clear as to that which constitutes "income." For example, income may include net collections for professional medical services and for writing or speaking activities regarding medical-related issues. Teaching fees are often excluded, but this should be addressed. Percentage-based salaries should be reviewed by an attorney to ensure compliance with health care laws, such as Stark.

If the compensation is based on a percentage of net income, the contract should specify what is subtracted from gross income to constitute "net income," e.g., (1) expenses for salaries and benefits of support staff personnel; (2) cost of utilities; (3) interest expenses in connection with the purchase of office equipment (perhaps including depreciation expenses); (4) cost of office supplies (both medical and administrative); (5) rent; (6) cost of malpractice insurance, etc. Since the physician's compensation will depend not only on the physician's productivity, but also on the practice's efficiency in billing and collections, the agreement should permit the physician to review the practice's finances. A quick review of the practice's accounts receivable should be an indicator of how efficient the billing and collections operation is, however a review of all financial statements is needed to have a complete understanding of the financial strength of the practice.

If the physician's salary is based on specific, guaranteed amounts, the contract should state the frequency of these payments, such as monthly or biweekly, and specify precisely when payment is to be made, e.g., within seven days after the close of that calendar month. Conditions regarding bonuses, if any, should also be specified. In most cases, the physician is not entitled to a bonus until he has generated practice income sufficient to cover the cost of the physician's salary, benefits and overhead. There is usually a revenue target, which can be a stipulated amount or a salary factor, such as twice the salary amount. After the target is achieved, the physician receives a percentage of any excess revenue. The bonus percentage often increases over time, in recognition of the physician's increasing contribution to the growth of the practice.

Sometimes compensation arrangements based on percentage of income call for specific payment in the form of an advancement each month for a certain number of months with an accounting at the end of that period. If the income actually received entitles the physician to more than the advancement amount, the physician receives the difference in a supplemental payment. However, if the formula determining the amount due to the physician is less than the advancement, the physician will pay back or owe the employer from future earnings. Such agreements require physicians to carefully budget their personal finances and monitor their expected ultimate pay.

The physician and employer may wish the contract to provide that the salary provisions and other clauses will be periodically reviewed and adjusted, e.g., yearly. Any oral promises regarding salary adjustment or future partnership in the practice should be stated within the contract. Clauses in the contract that do not obligate the employer to grant ownership to an employee, can still be helpful for purposes of stipulating the circumstances, timing, and method by which an employed physician can become a partner. In addition, contracts often automatically roll over to the next contract year so both parties involved should mark their calendars to make sure that renegotiations regarding salary and potential partnership occur well in advance of the "rollover" date.

Employer-Paid Benefits

In addition to compensation, employment contracts should set forth all of the benefits and other expenses which the employer has agreed to pay. Larger employers may cover these issues in an employment manual, applicable to all employed physicians. In that case, a reference to the employment manual (or specific company policy) is usually included in the contract. The expenses and benefits often addressed in employment contracts are listed below:

Business Expenses

The contract should specify those business expenses the employer will cover or reimburse, and note any limitations. Covered expenses may include:

1. Continuing Medical Education Costs including travel, food, lodging (not to exceed \$_____ per year).
2. Subscriptions to journals, costs of books, or a percentage of such costs.

3. In-State Medical Licensure Fees: The contract should state who will be responsible for payment of such fees.
4. Dues: district medical society, state medical society, AMA, state specialty society, national specialty societies, etc.
5. Equipment and Supplies: Contracts generally provide that the employer will furnish all equipment and supplies required to provide the medical services called for by the contract, with perhaps the exception of certain pieces of personal equipment (e.g. medical bag). The contract may require the employer to provide a computer for telemedicine, administrative work, or research.
6. Medical Staff Dues: Employer may agree to pay dues only for specified, mutually agreed upon hospitals.
7. Catch-all: The physician may wish the contract to state that the employer must pay all necessary business expenses of the physician. Some employers may require the contract to state that the physician must pay back any expenses deemed non-deductible to the employer by the IRS. However, such a provision may be unfair if there was a prior determination by the employer that the expense was a reasonable and necessary business expense. Furthermore, IRS audits generally occur a number of years after the relevant tax year. Therefore, liability for a significant amount of money could be incurred years later.

Relocation Expenses

The contract may specify that the employer is to reimburse the physician for relocation expenses. The contract should state the maximum amount payable, if any. The contract should also specify precisely what is covered, e.g., expense of moving household items, transporting the physician and family to the new location, packing and unpacking of household items, cost of insurance premium for full replacement value of household items, storage of household items, disassembly or installation of household items. In addition, some contracts specify that the employer will pay for living expenses up to a certain period of time while the physician finds suitable living arrangements.

A relocation expense provision will usually require the physician to submit appropriate receipts to the employer before the employee will be reimbursed. The contract should specify the number of days from receipt of written documentation of expenses that the employer will reimburse the employee. Some employers require a certain percentage of the reimbursed relocation expenses to be paid back to the employer if the physician terminates the contract within a specified period of time, typically 6-12 months.

Insurance Premiums

If the employer is paying health and/or dental insurance premiums, the contract should state whether coverage will include family members. The physician is wise to review the policies to determine the deductible amounts, and the type and extent of coverage to be provided. Life and/or disability insurance may also be provided, and the specifics regarding these types of insurance should also be stated. If the employer is paying less than the full premium, the physician's share should be noted.

Pension, Profit-sharing, Retirement Plans

The contract should specify whether the employer maintains any qualified pension and profit-sharing plans for eligible employees. The contract may state whether the physician is eligible for contributions to such plans, or under what circumstances such eligibility is granted. The contract may merely state that eligibility is determined by the terms of the plan. In either case, the physician should review the plan with an appropriate advisor.

Vacation, Continuing Medical Education, etc.

The contract should specify the number of paid vacation days to which the employee is entitled, whether such days may be carried over to the next contract or calendar year and whether there is a maximum number of days that can be accumulated. The number of continuing medical education days to which the physician is entitled should also be stated. Sometimes, the number of days permitted will be stated in the aggregate, e.g., "the employee shall be entitled on a non-cumulative basis to three weeks of time off per year which shall be used as vacation or continuing medical education time as employee may determine." The contract may require the physician to remit a request in writing to the employer for approval in advance of the vacation or continuing education leave.

Employed physicians may also wish the contract to state that they are entitled to a certain amount of time each week free from appointments and perhaps other practice responsibilities, for instance one half day. The contract may also set forth the holidays that the physician is entitled to take off or a mechanism for determining the holidays a physician may take.

The physician may wish to inquire about the vacation habits of the other physicians in the group, clinic, etc. A physician may be disappointed to learn that vacation terms exist on paper only, and that physicians are not really permitted to take vacation. (Of course, generally speaking, the physician's legal entitlement to vacation is governed by the contract's written terms. However, as a practical matter, contract renewal, termination and elevation to partnership or shareholder status may well be contingent on "fitting in.")

Sick Leave

The contract should state whether the physician is entitled to paid sick leave, and how such sick leave is calculated (e.g. based on months or years worked, or based on calendar or employment year). The contract should specify whether unused sick days may be carried over to the next year and whether there is a maximum number of days that can be accumulated. Finally, the contract should specify how sick leave days are treated when employment ends. Are such days forfeited, or will compensation be paid for sick days not taken? Is the policy different if employment is terminated because the employee physician has become a partner of the employer?

Disability/Pregnancy

In case of the physician's disability, a definition of which should be contained in the contract, the physician may wish the contract to provide that the employer will provide certain benefits.

These benefits may be a portion of salary for a certain number of months after the disability occurs. Temporary disability may also be provided. Frequently, the employer will self-insure the first few months of disability (often using the accounts receivable generated by the physician) and provide a disability insurance policy which "kicks in" after those first few (usually 3-6) months.

1. **Pregnancy Leave**

Under Massachusetts law, employers must give pregnant employees at least 8 weeks disability leave for pregnancy or disability relating to pregnancy. This leave may be granted without pay. The employee's position or a substantially similar position must be held open for this 8-week period. This law does not apply to parental leave to care for a newborn (see below). However see discussion under leave of absence.

2. **Parental (or Maternity and Paternity) Leave**

The parties may also agree that the contract should provide for parental leave, either with or without pay. If pay is provided it may be less than the normal salary. In any case, the length of paid (and unpaid leave) available should be spelled out in the contract. For example, physicians may be paid a certain amount per month for X months, followed by an optional unpaid leave for X months. Employers may not discriminate with respect to parental leave: any leave of absence given to women for maternity leave must also be available to men for paternity leave. Large employers (50 employees or more) are mandated to provide up to 12 work weeks in any 12-month period of unpaid family care leave to most of their employees.

Leave of Absence

The contract should specify the circumstances (if any) under which a leave of absence may be granted. The contract should specify whether the physician is entitled to allocate unused sick or vacation time, or continuing medical education time to leave of absence, and whether and under what circumstances such leave will be paid or unpaid. Parental leave (leave to care for a newborn or newly adopted child) may be covered under this provision, or separately. In either case it should specify any time limitations. The procedure for obtaining leave should also be addressed, e.g. how is advance permission obtained?

Wage Continuation or Severance Pay

The contract should state if there is any guaranteed wage continuation if the contract is terminated by the employer. Wage continuation or severance pay may constitute full salary and benefits for a certain number of weeks or months, a percentage of total salary (and sometimes benefits) paid to the employed physician in the past, or an amount determined by some other formula. Employers may require that wage continuation is not triggered until the physician has worked for the employer for a specified period of time. Employers deciding whether to provide wage continuation should consider that such pay may appease the terminated physician and avoid post-employment difficulties. Some employers may provide wage continuation upon the physician's death or retirement, although this is less common.

Model Employment Contract

The purpose of this Model Employment Contract is to provide physicians with information concerning issues commonly presented by employment contracts. Physicians are cautioned that in deciding whether to enter into any particular employment contract, they must make an independent decision based on their personal circumstances. Collective agreements on the terms of a contract, even non-price terms, can violate the antitrust laws.

This model is for general informational purposes only and is not intended as legal advice. Physicians needing legal advice should consult an attorney experienced in physician business matters for a personal legal opinion. The MMS Physician Practice Resource Center can assist you with finding an attorney. Please call 800-322-2303 ext. 7218 or ext. 7702, or email pprc@massmed.org for additional information.

How To Use This Model

In this model contract, model language is set forth on the left-hand side of the page with explanatory annotations on the right. This model was written for the employee-physician as well as the employer group. This model is not designed to be pro-employee, or pro-employer; it is designed to fairly highlight the concerns of both parties. Under this model, it is contemplated that the employee is not (yet) a shareholder or partner.

This model is not designed to be used verbatim, as the language in actual contracts will reflect the specific situations and negotiations between the parties. The purpose of this Model Employment Contract is to provide physicians with information concerning issues commonly presented by employment arrangements. As a “model,” this document does not discuss provisions often contained in employment contracts which are detrimental to physicians and/or groups and should be negotiated out of the contract if possible. However, such provisions may be discussed in the annotations.

Brackets [] are used to indicate optional language, or language indicating a subject of negotiation between the parties. (For example: Remuneration from medical-related teaching, lecturing, writing, directorships, etc. shall belong to the [employer or employee].) The language in brackets means that either the word employer or employee should be chosen.

Acknowledgements

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The Massachusetts Medical Society's Model Physician Employment Agreement

This PHYSICIAN EMPLOYMENT AGREEMENT (the "Agreement") is made by and between _____ MEDICAL GROUP, [INC.], a Massachusetts [Professional Corporation] [Partnership] (the "Employer"), and _____, [M.D.] [D.O.], a Physician licensed to practice medicine in the Commonwealth of Massachusetts (the "Physician"), and provides as follows:

1. **Employment.** Employer hereby employs Physician, and the Physician hereby accepts employment with the Employer, effective _____, (the "Effective Date"). The purpose of Physician's employment shall be to provide professional medical services on a [full or part] -time basis, in the specialty of _____, as set forth on the attached Schedule A to this Agreement, subject to all rules, regulations, operating practices and standards of Employer.

2. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for ____ years subject to earlier termination and to extension pursuant to this Agreement. The term of this Agreement may be extended by mutual written agreement of Employer and Physician.

3. **Physician Qualifications.** To be qualified to render services under this Agreement, Physician at all times during the course of this Agreement shall: (i) possess a valid and unlimited license to practice medicine pursuant to Chapter 112, Section 2 of the General Laws of the Commonwealth of Massachusetts; (ii) apply for, be awarded, and maintain membership in good standing on the Medical Staff of _____ Hospital (the "Hospital") with appropriate clinical privileges in _____; (iii) be board certified or board eligible in _____; (iv) possess a valid federal and state narcotics number or registration; (v) be, and remain, a participating provider in the Medicare and Medicaid programs; (vi) be or agree to be, and remain, a participating physician in any insurance coverage accepted by the Corporation, including contractual relationships with preferred provider organizations and health maintenance organizations; and (vii) qualify for coverage under the professional liability insurance coverage maintained by the Corporation in accordance with Section 8 of this Agreement.

Note: Part-time, non-exclusive employees could endanger a practice's status as a "group practice" for the purposes of qualifying for the physician services exception and the in-office ancillary services exception available under the Stark Law. To be a group practice in accordance with the Stark Law, at least 75% of the total patient care services of the group's members must be rendered through the group, and member physicians must furnish the full range of patient care services that they routinely furnish through the shared office space facilities, equipment, and personnel.

The contract should state its term, i.e., the time period for which it is to last, e.g., one year, two years, etc. The contract's beginning and ending date should be clear. The beginning date should be the actual date the physician begins providing services; an earlier date should not be stated (as that shortens the term). The contract may state that it is to automatically roll over to the next contract year, unless terminated sooner.

This represents the minimum qualifications required in the majority of employment contracts.

The contract may require that if the employee is not board certified, he/she must achieve board certification within a certain time frame.

4. Compensation and Benefits. During the term of this Agreement, Physician shall receive such compensation and employment benefits as are set forth on Schedule B attached to this Agreement.

5. [Shareholder] [Partner]. No later than 90 days before the end of the term of this Agreement, Employer and Physician shall discuss in good faith the Physician becoming a [partner or shareholder] of Employer and the terms therefore. [The parties agree that it is their current intent that upon the successful completion of [] years continuous employment pursuant to the terms of this Agreement, Physician shall be given the opportunity to become a [shareholder] [partner] of Employer.] [This provision is not meant to be nor should be construed as a guarantee that the employee will be offered an equity ownership interest. The employer retains discretion on whether or not to offer such equity ownership interest, as well as the terms of such offer.]

6. Medical Practice. During the term of this Agreement, Physician shall not, without the written consent of Employer, engage (directly or indirectly) in any activity which constitutes or relates to the practice of medicine other than for or on behalf of Employer.

7. Remuneration to Physician. All remuneration Physician receives due to the practice of medicine shall be promptly turned over to the Employer. Remuneration from medical-related teaching, lecturing, writing, directorship, etc. shall belong to the [Employer or Physician].

The [Employer or Physician] is entitled to any remuneration generated from intellectual property of any kind created by the Physician, including, but not limited to, inventions, patents, copyrights, software, etc. [Earnings from non-medical care activities will not be considered to be earnings from the Physician's professional activities and shall belong to the Physician.]

Many employment contracts use clauses such as, "It is expected that the employee will become a partner" or it is the employer's "intention that" employee becomes a shareholder. These phrases do not obligate the employer to make the employee a partner or shareholder. Nevertheless, the employee will want the contract to discuss whether the physician may or is likely to become an owner at the expiration of the agreement, although, the employer may not wish to include such a clause, in order to avoid creating "false hopes" on the part of the employee. The physician-employee should be given at least some idea as to whether and under what circumstances an offer for such status may be extended. A review of the physician's work should occur at least annually, so that both the employer and employee know where they stand.

Covenants not to compete *during the term of employment* are generally enforceable. If the employee is part time or anticipates moonlighting or working as a locum tenens, this needs to be stated. One approach is to permit outside work only after hours, or outside the service area. Another approach is to permit activities that do not interfere with the services of the employer.

See Schedule C for a discussion of covenants not to compete after termination of employment.

If it is anticipated that the employee will engage in outside medical activities, such as teaching, lecturing, writing and directorships, the parties should work out whether compensation from such activities belongs to the employer or the employee.

Generally speaking, the employer owns the copyright on materials created by the employee within his or her scope of employment, unless they have an agreement to the contrary. Giving the employee reimbursement for such creations would be an intermediate provision.

8. Billing. Physician shall not submit a billing or statement of charges to any patient or other entity for services arising from the practice of medicine, nor shall Physician make any surcharge or give any discount for care provided, without the prior written authorization of Employer. The Employer has complete authority to assign patients to various physicians, set fees, determine write-offs, etc. All accounts receivable generated for services rendered by Physician pursuant to this agreement are the property of the Employer and shall be promptly turned over to the Employer.

Note: Occasionally a third party may process and pay claims under the name of an individual physician rather than the group practice. Reimbursement should be turned over to the group.

9. Confidential Information.

a. For purposes of this Agreement, the term "confidential information" includes all such information that is by law so protected as well as any and all information that is maintained and designated as such by Employer, or any employee of Employer, including but not limited to the following: (i) Information regarding the identity, address, health plan or insurance status, medical history, diagnosis and treatment of Employer's patients (whether or not treated by Physician); (ii) the records and proceedings of quality assurance, peer review or utilization review evaluations; (iii) information about the financial operations, business plans, strategy of Employer and (iv) information agreed to be held as confidential with entities with whom the Employer has contracted.

See Schedule C for a discussion of the impact of agreements which include patient lists as confidential information.

b. Physician shall not, during the term of this Agreement or at any time thereafter, directly or indirectly use, permit others to use, or disclose any confidential information except as is necessary (i) in the course of performing duties as an employee of Employer, (ii) as may be required by law or by professional ethics or (iii) as provided under paragraph 14b. with respect to patients who wish to continue to see the Physician upon employment termination.

c. Employer and Physician each shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations at 45 C.F.R. Part 164, as amended from time to time.

10. Peer Review Information.

a. Physician shall execute and deliver authorizations and releases to peer review committees of other entities that will enable the full and timely disclosure to Employer's peer review committee, to the fullest extent permitted by law, of all medical professional information about Physician.

b. Physician grants immunity to the following persons and releases them from civil liability, to the fullest extent provided by law, for any action or disclosure with respect to Physician that is made (or omitted) in good faith which is related to the achievement or maintenance of the quality of patient care: [Shareholders, officers and directors] [Partners] of Employer; employees of Employer; any person supplying information to Employer; and any professional review organization approved or utilized by Employer. Physician shall, upon the request of Employer, execute a written statement of this release in favor of any of the foregoing individuals or organizations.

When a physician (or a medical group) is required to release others from liability for peer review activity, he or she should agree to do so only to the "extent provided by law," in order to avoid an unduly broad release.

11. Notification to Employer. During the term of this Agreement, Physician shall notify Employer immediately, or as soon as is possible, in the event that:

a. Physician's license to practice medicine in any jurisdiction is suspended, revoked, or otherwise restricted;

b. A complaint or report concerning Physician's competence or conduct is made to any state medical or professional licensing agency, including without limitation, the Massachusetts Board of Registration in Medicine;

c. Physician's privileges at any hospital, health care facility or under any health care plan are denied, suspended, restricted or terminated [for medical disciplinary cause or reason;]

d. Physician's controlled substance registration certificate (issued by the Drug Enforcement Administration or the Commonwealth of Massachusetts) if any, is being, or has been suspended, revoked, limited or renewed; or

e. There is a material change in any of the information which Physician has supplied to Employer concerning Physician's professional qualifications or credentials.

12. Professional Liability.

a. Patient care services performed during and within the scope of Physician's employment by Employer shall be covered by the professional liability insurance that is from time to time reasonably available to and carried by Employer with respect to its physician employees.

While the employer almost always pays for professional liability insurance during the term of employment, the contract should specify which party is obligated to pay for tail coverage, if applicable. Note that if the insurance is an occurrence policy, there is no need for a tail.

b. The [Employer or Physician] shall purchase extended reporting period coverage ("tail" coverage) for [] years after termination of Physician's employment. The Physician shall have the right to review the policy on a periodic basis. [Employer] [Physician] shall pay deductibles, as necessary, before and after contract termination.

There are no set rules regarding which party pays tail coverage. Sometimes the employer pays, sometimes the employee pays and sometimes the cost of the coverage is shared. This paragraph presents two options in this regard. Physicians obligated to pay for tail coverage should inquire into the cost of such coverage before signing the contract as tail coverage is likely to be costly.

[c. In the event that either the (i) Physician terminates his employment without cause or (ii) Employer terminates Physician's

employment for cause, the Physician shall obtain professional liability tail coverage insurance for acts or omissions of Physician during employment, for a period of no less than [] years. The Employer may obtain such tail insurance and deduct the cost of such coverage from any amount owed hereunder to Physician. In the event that employment is terminated for any reason other than those stated above in item 12c(i) or (ii), the Employer shall obtain the stated tail insurance at its expense.]

d. In the event that Physician knows of a professional liability incident involving Physician or receives notice of a claim or of an intended claim that alleges that Physician or any other of Employer's employees is or may be liable for a professional act or omission, Physician shall promptly notify Employer of such fact.

13. Termination. This Agreement, and Physician's employment by Employer, shall be terminated as follows:

a. Automatically, upon (i) Physician's loss, restriction or suspension of his or her professional license to practice medicine in the Commonwealth of Massachusetts; (ii) the Employer's inability to obtain malpractice insurance on behalf of the Physician, or if the cost of obtaining such insurance exceeds by [_____% or \$ _____] the cost of obtaining such insurance for other physician employees; or (iii) if the Physician's professional practice jeopardizes the safety of patients.

[b. Without cause, upon [90] days' prior written notice by either party;]

c. In the event of a material breach of this agreement by either party upon [thirty (30)] days prior written notice. If the breach is "cured" or corrected within the notice period, the contract remains in full effect. If the breach continues, the contract terminates upon the expiration date of the notice period.

However, malpractice insurers usually waive the cost of tail coverage when the physician reaches a certain age, retires or becomes disabled. Physicians should also find out if there will be any limitations on the ability to obtain tail coverage at a later date.

Some employers will wish the contract to contain a provision that states that it may be terminated, *without cause*, by either party upon a certain number of days prior written notice, e.g., 90 days. "Without Cause" means for any lawful reason, or no reason. This type of term essentially creates a contract which lasts only for 90 days (or whatever the stated period is), subject to potential renewal. If there is no "without cause" provision, the contract can be terminated only "for cause" or upon expiration of a stated term. Employee-physicians should consider whether they prefer the flexibility of termination without cause or require a more restrictive termination provision.

The contract should specify that it may be terminated (i.e., ended), by either party, upon a certain number of days prior written notice for good cause, or for material breach. Good cause or material breach means a substantial or legally sufficient reason for terminating the contract, depending on the particular case. The employer may be entitled to terminate the contract "for cause" in the event the physician violates a specific provision of the contract, i.e., is discovered to be billing patients outside the practice. The employee will most likely be justified in terminating "for cause" if the employer fails to pay the employee.

d. Upon the termination of this Agreement for any reason, Physician (or his or her estate) shall be entitled to receive such compensation as has accrued up to the effective date of termination. [The Physician is not entitled to a portion of any post-termination collections of accounts receivable attributable to the Physician's pre-termination services.]

Since the physicians is paid immediately upon commencement of employment and there is a lag before his/her services generate income to the practice, there is generally no compensation to the physician for revenue collected after the physician has terminated employment with the practice.

14. Patient Records upon Termination.

a. All original patient records are the property of the Employer. Upon termination of this Agreement, Physician shall return any such records as may be in Physician's possession to Employer, subject to the Physician's right to copies of records, as follows.

b. The Employer agrees to make available to the Physician or to his executors, administrators, heirs, successors and assigns, copies of any medical records relating to patients whom the Physician treated while employed by the Employer either (a) for which the Employer has received a signed request from the patient, or (b) which the Physician requests for any reasonable purpose, such as investigation audit, litigation or threatened litigation, medical research or case review. Any expenses related thereto will be borne by the Physician or by the Physician's executors, administrators, heirs, successors or assigns.

As of July 1, 2004 Massachusetts law permits physicians to charge patients \$0.50 per page for each of the first 100 pages of a medical record that is copied per request and not more than \$0.25 per page for each page in excess of 100 pages of a medical record that is copied per request; or a base fee up to \$15.00 per request.

c. The Physician shall have the right to inform his or her patients of the fact that the Physician is leaving the group, and to give his or her patients the opportunity to choose whether to remain with the group or go with the individual Physician. The notification shall be as specified in Schedule C and shall be paid for by [Employer/Physician]. The right to notify patients of a new practice does not extend to patients who were not treated by the Physician.

This is an "ideal" provision which is increasingly difficult to achieve in today's competitive marketplace. See Schedule C for further discussion.

15. Amendment. This Agreement may be amended or modified only by a written document signed by both parties hereto.

This is an important term which prevents either party from changing the contract without the written consent of the other.

16. Notices. All notices required by this Agreement shall be sufficient if delivered in writing either personally to the party to be notified or deposited in the United States mail, postage prepaid and return receipt requested, addressed to the party at the addresses set forth below.

17. Entire Agreement. This Agreement constitutes the entire agreement between Employer and Physician with respect to matters relating to Physician's employment, and it supersedes all previous oral and written communications, representations, or agreements between the parties.

This provision should cause the parties to be sure that their understandings are addressed in the agreement. Physicians are cautioned that with this type of clause, any oral (or written) promises regarding the arrangements (e.g., offer letters) which were made before the agreement was signed and are not set forth in the agreement, may be of no effect.

18. Assignment. [The rights and benefits of Employer under this Agreement shall be fully assignable and transferable, and all provisions herein shall inure to the benefit of and be enforceable by or against its successors and assigns.] Neither the rights nor the benefits of this Agreement may be assigned or delegated by the Physician [or the Employer], without the written consent of the other party.

An assignment of a contract is a transfer of the agreement by one party to a third party. For example, an assignment by an employer medical group may be a transfer of the obligations under the agreement to another employer medical group or IPA. In such circumstances, physician employees would find themselves working for another group. Similarly, if the employed physicians could make an assignment, they could transfer their duties to other physicians. In that case, the employer medical group would find itself in the position of employing different physicians than those with whom it contracted. This paragraph presents two options with regard to assignment. However, in this age of mergers, some employee-physicians might want to require assignment by the employer, so that when the employer merges or restructures, the employees will become a part of the merged or restructured entity.

19. Partial Invalidity. If any provision in this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

20. Arbitration. The parties shall attempt to resolve any controversy or claim arising out of or relating to this agreement, or the breach thereof, in an amicable way. Failing this, any remaining controversy or dispute in connection with this agreement shall be settled by arbitration in _____, Massachusetts. Such arbitration shall be governed by the rules of the American Arbitration Association. The award in any such arbitration shall be final. The judgment thereon may be entered in any court of competent jurisdiction.

If the parties desire an alternative to going to court, the contract should specify the manner in which disputes will be resolved. Since litigation is time consuming and expensive and creates ill will between the parties, it may be preferable for the parties to agree to bring all disputes to arbitration or another form of alternative dispute resolution (ADR). A provision requiring the parties to discuss disputes or to attempt informal mediation before a claim is filed may avoid both arbitration and litigation.

21. Governing Law. This agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

22. Counterparts. This agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same Agreement.

IN WITNESS HEREOF, the parties hereby execute this Agreement.

By: _____ Date: _____

Employer:

Address:

By: _____ Date: _____

Physician:

_____, MD

Address:

The end of the contract should contain lines for both parties' signatures and the dates of signature. The contract may not be enforceable until it is signed by both parties. Therefore, physicians should not act in reliance on a contract (e.g., sell your house, quit your current job, etc.) until the contract is signed.

SCHEDULE A

DUTIES OF PHYSICIAN

1. Physician shall provide professional medical service on a [full or part] time basis to patients of Employer in Physician's specialty. Required hours of practice shall be [____] days per week, [____] hours per day, [but may include holidays, Saturday, Sunday and evening hours, as determined by Employer.] Call schedules will be made on an equitable and rotating basis with other physician-employees.

The contract should specify the general times during which the employee may be required to provide call coverage, e.g., nights, weekends and/or holidays.

2. Physician shall provide appropriate supervision and review of services rendered by physician assistants and other non-physicians involved in the direct medical care of Employer's patients.

3. Physician will cooperate with the administration of the medical practice. Such cooperation shall include, but not be limited to, the following:

- a. Abiding by rules, regulations and guidelines provided by Employer.
- b. Abiding by all quality assurance and utilization review programs instituted by Employer, including specifically those programs required by managed care plans with which the Employer has contracted.

[4. Physician and Employer agree that Physician shall have the goal of seeing at least [_____] patient office visits per day, when consistent with appropriate professional standards.]

Some capitation contracts specify a minimum number of enrollees to be assigned to each physician. **Contractual requirements should never be put before quality patient care.**

[5. Physician shall provide services at the Employer's office located at _____ unless otherwise determined by mutual agreement of the parties.]

If a practice has more than one location, the Physician's specific location should be set forth, unless the Physician has agreed to "float".

SCHEDULE B

COMPENSATION AND BENEFITS

1. Physician shall receive a salary at the rate of [\$_____] per year, payable in equal semi-monthly installments, on the [first and 15th day] [15th and last day] of each month, subject to usual state and federal income tax withholding, employment taxes, and any other deductions which may be required by law or agreed upon by Employer and Physician.

Compensation and benefits are subject to negotiation between employer and employee. This schedule lists only those benefits which are frequently provided. See page 3 for a more comprehensive discussion of Employer Paid Benefits. A percentage based compensation arrangement should be reviewed by an attorney to ensure compliance with health care laws, including Stark.

2. Physician shall receive the following annual employment benefits:

- a. Paid time-off for vacation and continuing medical education of [____] weeks (____ working days).
- b. Paid time off for sick days of [____] weeks (____ working days).
- c. Health and dental insurance for Physician [and immediate family].
- d. [Term life insurance of \$_____ and long-term disability insurance.]
- e. Professional liability [and tail] insurance by [name of liability insurer] in the amount of \$_____ per occurrence and \$_____ aggregate limit.
- f. Professional dues for the Massachusetts Medical Society, the _____ District Medical Society, the _____ Hospital medical staff, and the _____ Specialty Society.
- g. Professional license fees.

SCHEDULE C
LETTER TO PATIENT INDICATING PHYSICIAN LEAVING GROUP

Dear [Patient]:

This letter is to inform you that as of [date], I will no longer be a member of [Name of Group]. This does not necessarily mean that you will lose me as your physician, as I am joining a new practice, the [Name of New Group], at the following address: [practice address & phone]

I am happy to provide your care through my new group, should you so desire. My new group has contracted with the following plans: [List Plans]

If your plan is not listed, you may discuss with your employer the possibility of your signing on with one of these other plans in order to continue to see me. Or, feel free to contact me and I will see about whether my new group can contract with your plan. Another option is to continue to see me on a private/full pay basis, although I understand that this may not, realistically, be an option.

Your final option is to continue your health care through [Current Group] and the group will see to it that you are transferred to another fully qualified physician. Please let [Current Group] know at your earliest convenience, which of the options outlined above, is best for you. I have enjoyed serving as your physician.

Sincerely,

NOTES

Massachusetts General Laws Ch 112 §12 prohibits provisions in physician employment agreements which impose a geographic restrictive covenant on the physician's right to practice medicine following termination of employment. Employer groups will often endeavor to limit a physician's ability to compete with the practice by treating patient lists as confidential information or by including nonsolicitation provisions which prohibit the physician from contacting patients the physician treated while employed by the practice.

Massachusetts courts have consistently favored patients' right of access to the physician of choice, thereby limiting the employer groups' ability to restrict competition by the departing physician. Further, the physician has an ethical obligation to notify patients. Opinion 7.03 of the Council on Ethical and Judicial Affairs of the American Medical Association states, "The patients of a physician who leaves a group practice should be notified that the physician is leaving the group. Patients of the physician should also be notified of the physician's new address and offered the opportunity to have their medical records forwarded to the departing physician at his or her new practice. It is unethical to withhold such information upon request of a patient. If the responsibility for notifying patients falls to the departing physician rather than to the group, the group should not interfere with the discharge of these duties by withholding patient lists or other necessary information."

Ideally, the parties should agree on the process up front, so that disputes can be avoided in the future. Unfortunately, it is increasingly more common for agreements to restrict the physician's ability to contact patients, placing the physician in the difficult position of choosing between breaching the employment agreement or carrying out an ethical obligation to notify patients.

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