



## Physician Employment Contracting Basics Webinar

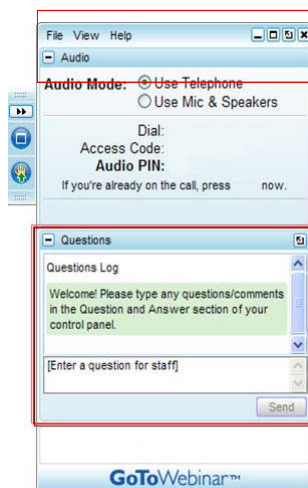
Friday, November 16, 2012

12:00 pm – 1:00 pm

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## Faculty Introduction

### **Presenter**



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# Faculty and Planner Disclosures

The faculty and planners of today's webinar have indicated the following relationships to disclose.

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Healthcare Financial Management Association and  
Massachusetts Medical Society

## Physician Employment Contract Basics

November 16, 2012

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## OVERVIEW

- More physicians being employed
- Thoughts about negotiations
- Contract Nuts and Bolts

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## INCREASE IN EMPLOYED PHYSICIANS

- One study of independent physicians shows:
  - 57% in 2000
  - 49% in 2005
  - 43% in 2009
  - 39% in 2012
  - 36% in 2013 (est.)
- 2% annual decline in independent physicians now is expected to be 5% annually

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## Polling Question #1

Are you currently:

- a. A resident or otherwise in training
- b. Already in private practice but looking for a change
- c. A manager or administrator employing physicians
- d. An accountant or consultant
- e. Other

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## NEGOTIATIONS – BEFORE YOU BEGIN

- Consider what factors are important to you --
  - Type of practice?
  - Compensation? Lifestyle? Location? Collegiality?
  - Are you willing to accept financial risk?
  - Long-term commitment or temporary stop?

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## NEGOTIATIONS

- Offer letter/term sheet
  - Understand that the initial offer letter or term sheet is the start of negotiations and may be binding
  - See if language obligates you to sign their standard employment contract
  - General terms may be acceptable but the devil is in the details
- Oral agreements may be binding contracts, but are not enforceable if it cannot be fully performed within a year.
- Read the document carefully. Ask questions.
- ***Insist on an explanation you can understand.***

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## NEGOTIATIONS, cont.

- There are many styles for employers
- Some employers insist on standard employment contract
  - “everyone else has signed it”
  - Is that uniformity? Or inflexibility?
- Some employers will start with a lower/salary benefit offering with expectation that you will push for more
- Employer may see you as pushy or a troublemaker; you may view them as inflexible
- Remember – there are two sides to every story and negotiation. No one side is correct. Does this signal one personality or employer’s culture?

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### NEGOTIATIONS, cont.

- You must be comfortable with the process and ultimately the employer
- If you cannot discuss an issue now, it's unlikely you will be able to so when things are uncomfortable
- If they say "you can trust me," don't. If they say "don't worry about it," do.
- View it as a potential marriage? Or a negotiation game?
- *Get any important commitments in writing in the final contract.*

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### NEGOTIATIONS, cont.

- Knowledge is power – gather as much as possible
  - Ask to talk to other physicians about that practice
- Determine what customary compensation and benefits package is for your position
  - Ask colleagues—look for local, as well as national, figures
  - Check with professional associations (e.g., AAMC)
  - Research online
- Use facts to support your positions

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### **NEGOTIATIONS, cont.**

- Understand what employer's interests and needs are
  - What extras do you have to offer?
  - e.g., team-oriented physicians more valued under ACO/global budgeting arrangements
  - Effective use of non-physicians
- Give and take
  - Be prepared to concede on points that matter less to you
  - But don't hesitate to fight for points that matter more to you
- *Read the entire contract. Ask if you do not understand*

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### **WHO IS THE EMPLOYER? SUPERVISOR?**

- Be sure you know what entity actually employs you
  - Hospital? Department group? Physician organization?
- Be sure you know who your supervisor is
- Ask for periodic performance reviews

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## **INDEPENDENT CONTRACTOR vs. EMPLOYEE**

- State presumes you are an employee and not an independent contractor
- Significant tax and legal implications
- Does the hospital/employer control the time, place and manner of the services?
  - Where are services to be provided?
  - Who determines the schedule?
  - Who supervises and controls the services provided?
  - Who provides the supplies?

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## **TYPICAL QUALIFICATIONS/ REPRESENTATIONS AND WARRANTIES**

- Licensed to practice and hold a DEA certificate
- Board certified, or will become board certified by certain date
- Member of hospital medical staff – not a guarantee that you will be approved to join staff
- Not excluded from federal programs
- Participate with insurers
- Data on resume is true and complete
- All disciplinary actions, convictions, malpractice cases, student loan defaults, etc. have been disclosed

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## **DUTIES AND RESPONSIBILITIES**

- Type of work – general internal medicine vs. specialty
- Administrative duties? Marketing? Teaching? Research?
- Location – are there multiple sites now? Or planned?
- Who decides days and hours in office
- Scheduling on-call – “equal” vs. “equitable”
  - # of days per week vs. specific days (e.g. weekends, summer)
  - On-call for practice vs. hospital ED coverage
- Employer typically will want to maintain flexibility

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## **DUTIES AND RESPONSIBILITIES, cont.**

- Equipment, facilities and staff
  - usually “adequate and reasonable”
  - Is some unique equipment important to you?
  - Who hires and fires RNs? NPs? Administrative assistants?
- Scheduling vacations – based on seniority? Rotation? Black-out periods?

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## **COMPENSATION**

- All billing and income will be assigned to employer
- Various options for compensation
  - Set amount per month
  - Percentage of billings or income/collections
    - How are these terms defined? Gross charges vs. cash?
    - Are expenses considered?
  - Hybrid – fixed amount plus a productivity bonus
  - Increasingly compensation looks at metrics such as quality and patient satisfaction
    - Insurer incentives/pay for performance

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## **COMPENSATION, cont.**

- What is income measurement period – does it extend beyond first contract year to consider delay in collections?
- When becoming an owner, will you be buying a share of your own productivity bonus by paying for your share of accounts receivable?
- Frequency of payment
- Increases in base salary

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## **COMPENSATION, cont.**

- Ask for periodic reports of your productivity under the incentive plan
- Ask for access to the books and records to confirm data
- Liability for recoupments by insurers, IRS
  - Employer should be responsible for its billing errors
- Learn about kickback, Stark self-referral, false claims laws
- <https://oig.hhs.gov/compliance/physician-education/index.asp>

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## **BENEFITS**

- Professional expenses – typically, state licensing fee, CME, journals, national and local professional society memberships, medical staff dues, phones
- Relocation expenses
- Health, dental and disability insurance
  - What is your share of premiums
  - Individual, 2-person, or family plan
- Retirement plans
  - Is there an employer contribution
  - Vesting period

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### **BENEFITS, cont.**

- Vacation/sick leave/paid time off
  - Can unused time be accrued to following year?
- Disability insurance
  - Elimination period? 60 days? More?
  - Taxable if employer paid
- Leave of absence
- Severance pay

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### **Polling Question #2**

Do you understand the difference between claims-made and occurrence malpractice policies?

- a. Yes
- b. No
- c. Sounds familiar but not sure

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## MALPRACTICE INSURANCE

- Covers a *claim made* during the period vs. an *occurrence* during the period
- Who pays for tail insurance upon termination if claims made policy?
- Who is liable for any retroactive assessments?
- Coverage limits
  - Standard minimum is \$1 million per claim and \$3 million annual aggregate
  - \$3m/ \$6m becoming more common

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## RECRUITMENT ARRANGEMENTS

- Types of payments
  - Signing bonus
  - Relocation expenses
- Hospital-funded income guarantee – advances to meet guaranteed income level with pay-back or work commitment over a term of years
  - Complicated legal analysis - consult an attorney

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## Polling Question #3

I am interested in:

- a. Clinical Practice Only
- b. Some outside writing
- c. Some moonlighting, such as ED or nursing home work
- d. Some research
- e. Unsure

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## OUTSIDE ACTIVITIES

- Who owns intellectual property rights, e.g. books or inventions
- Consulting
  - Advisory boards
  - Expert witnesses
- Moonlighting – other practices, EDs, nursing home
- Ownership/investments in businesses
- Does employer have the right to approve?
  - Doesn't compete or interfere with employer
  - Approval not to be unreasonably denied or delayed
- If approved, who does the income belong to?

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## FUTURE OWNERSHIP/PARTNERSHIP

- Future prospects to be partner/owner of group practice?
  - Get a general statement of time of decision and general formula for any buy-in
- Ask for performance reviews every 6 or 12 months

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## TERM AND TERMINATION

- Is there a fixed termination date
- Auto-renewal (“evergreen”) provision – put in calendar!
- Termination rights
  - With cause (“detrimental to practice,” theft, loss of license)
    - Rarely occurs
    - Immediate vs. short notice and cure period
    - Get a notice and cure provision where possible
  - Without cause with notice period
    - *Notification period of without cause termination is the real contract term*

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### **TERM AND TERMINATION, cont.**

- What happens upon early termination?
  - Repay pro-rated moving expenses or recruitment bonus?
  - Receive pro-rated productivity bonus?
- May depend upon who terminates and why
- Insist on better terms if employer terminates early without cause
- If physician owns the office space – make sure lease is coterminous with employment contract
- Are hospital medical staff privileges terminated, too?

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### **CONFIDENTIAL INFORMATION**

- Employer will include a provision that all patient information, including name, address, insurance info, medical history:
  - Is strictly confidential
  - Belongs to the employer
  - During the contract term and any time thereafter cannot be used, directly or indirectly, by physician, or disclosed to others, other than to fulfill employment duties or as required by law.

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### **CONFIDENTIAL INFORMATION, cont.**

- Patients should be notified that physician is leaving employer and given new contact information so they can follow
  - AMA Code of Medical Ethics Opinion 7.03
- Best to agree now with employer on the form of a simple, plain vanilla notice letter to patients
- Who pays for printing and postage – may depend upon on who terminates contract or where physician will practice
- Who pays for copying patient records when authorization received? Usually physician, but what if patient requests?
- Physician access/copies for audits, investigations, litigation

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### **NON-COMPETE**

- Any restriction on practicing within an area for a defined time and area is permitted after an employment or professional relationship in prohibited in Massachusetts – Mass. Gen. Laws Chapter 112, Section 12X
- Arguably is permitted in limited circumstances in context of practice acquisitions
- In other states, non-compete must be reasonable in time and area and necessary to protect employer's valid business interests

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### **NON-COMPETE, cont.**

- Similar indirect restrictions also are prohibited:
  - Pay a share of income
  - Forfeit deferred compensation
  - No soliciting of patients or encouraging them to transfer medical records
- Restrictions on hiring employees of employer?

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### **DISPUTE RESOLUTION**

- Employers typically do not want a jury and prefer arbitration
- Mediation can work in favor of the physician – quicker, cheaper

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## INTEGRATION CLAUSE

- Provides that the contract supersedes all prior oral or written agreements, including letters, emails, and oral representations
- *If it is important to you, make sure it is in the final contract!* (not an email or MOU, etc.)
  - Memories fade and are rewritten with time
  - People who make promises leave their position or die
- If potential employer is upset about your lack of trust on this, then maybe the marriage is not meant to be.

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## Questions?

### Presenter



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Submit your questions using the Questions pane.

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