



**Negotiating Your Best
Employment Agreement**

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MMS Finance Series

Current and Future Models of Physician Compensation



Component 1

Current and Future Models of Physician Compensation

www.massmed.org/phycompmodels

Component 2

Physician Employment Contract Basics

www.massmed.org/contractbasics



Today's Speaker



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Valerie is a partner in Posternak Blankstein & Lund LLP and co-chairs the Employment Law Group. Valerie represents employees and employers in diverse employment matters in the health care and other sectors, including discrimination, sexual harassment, reductions in force, reasonable accommodation, and wage and hour claims. Valerie assists clients with handbooks, non-competition and non-solicitation agreements, and other employment issues. Valerie has substantial expertise in plaintiff-side employment litigation representing executives, managers and professionals including physicians, nurses, and other medical professionals. She counsels them in the negotiation of employment contracts, non-competition covenants and severance packages. Valerie mediates cases for private parties, and has done so for the Equal Employment Opportunity Commission and the United States District Court of Massachusetts. She was trained in civil mediation by the Community Dispute Settlement Center in 2001. She is certified as a harassment prevention and disability discrimination trainer by the Massachusetts Commission Against Discrimination.

Valerie was named Massachusetts Super Lawyer in 2004, 2005, and from 2007 to 2017. She was named one of the "Top 10 Attorneys" in 2006 in *Women's Business* and one of "New England's Top Rated Lawyers" in 2013 by ALM. Valerie is a member of the Board of Trustees of the Justice Resource Institute, Inc. She was named a "2016 Top Woman Lawyer" by Massachusetts Lawyers Weekly. She is also a frequent expert contributor to The Boston Globe's "Job Doc" column.

WHO IS IN THE AUDIENCE?

- ☐ Residents looking for their first job?
- ☐ Newer Physicians (2 - 5 years of work experience)?
- ☐ Mid-career Physicians (5 - 15 years)?
- ☐ Senior Physicians (15 plus years)?

WHO HAS EXPERIENCE NEGOTIATING THEIR EMPLOYMENT?

- ☐ **Neophytes** – never negotiated any type of job.
- ☐ **Journeyman** – has some experience, but not comfortable with negotiation process.
- ☐ **Seasoned** – knows what to do and is at ease advocating for him/herself.

EMPOWER YOURSELF

- Know what you want.
- Know where you can compromise.
- You have worked hard and deserve to be rewarded.
- Have the self-esteem to go for what *you* want.
- Do not be afraid to ask!

IMPORTANCE OF GETTING IT RIGHT

- Your first job *will* have a big impact on your career.
- Accepting lower compensation now means *less money thereafter*.
- Take your time and carefully *evaluate* all offers.
- One week is acceptable to *consider* an offer.
- *Never sign a “standard contract.”*

BEFORE YOU SAY “YES”

- You have the most leverage *before* accepting a job.
- Thoroughly research your prospective employer.
- Ask lots of questions.
- Be respectful but firm.
- Speak with employees at your level, including former employees.
- Seek professional help (legal, accounting).

THEY WANT YOU!

- Once an employer has made a job offer, they want to hire you.
- Lots of time and effort went into this decision.
- Now it is your turn to get the terms and conditions you deserve.

HOW TO RESPOND TO PROBING QUESTIONS

- Politely answer the question with a question.

Examples:

Q. “What are your salary requirements?”

A. “What is the salary range for this position?”

Q. “When are you planning to start a family.”

A. “I am focused on my career at this time.”

Some questions are unlawful!

PRACTICE TYPES

- Solo
- Small Group
- Large Group
- Hospital or health system owned
- HMO
- Single or Multi-specialty
- Outpatient or hospitalist
- Government

COMPENSATION

What is the bonus methodology?

- Individual productivity (less expenses?).
- Share of practice income.
- Guaranteed salary.
- Incentive bonuses linked to reimbursement/other objectives.
- How/who calculates the numbers?
- You should have access to the financial data.
- The terms must be in writing.

COMPENSATION - continued

Understand the economics of the practice you're considering:

- Actual receipts
- Debt service
- Capital investments
- Billing and collection ratios
- Insurance contracts
- Overhead, including non-physician salaries and benefits.

COMPENSATION - continued

➤ RVUs

➤ Utilization

➤ Charges

➤ Quality improvement

➤ Net or gross collections

➤ Value based payments

➤ Patient satisfaction

WHAT ARE RVUS? (Relative Value Units)

- A barometer of practice efficiency and patient complexity.
- **RVU is the total of 3 components:**
 1. *Physician Work RVU* – time and clinical skill necessary to treat patient during an encounter;
 2. *Practice Expense RVU* – includes labor costs, expenses for building, equipment, etc.; and
 3. *Professional Liability RVU* – the cost of malpractice premiums.

CMS geographically adjusts each component to determine total RVU for each CPT code.

RELEVANCE OF RVUS

- Base salary typically requires a minimum number of RVUs.
- RVUs are used to calculate physician productivity and compensation.
- RVUs reward efficiency, but may penalize quality (i.e., more time spent with patients).
- RVUs, plus quality metrics, may be a reasonable compensation formula.

VALUE BASED PAYMENT

- “Quality of care” and “patient outcomes” are emphasized, not “fee for service” models that rely on volume of services rendered.
- CMS is already moving toward a value based methodology by implementing alternative payment models.

CONSIDER BENEFITS CAREFULLY

- Health
- Dental
- Vision
- STD/LTD
- Malpractice Insurance (tail)
- Relocation Expenses
- Parental Leave
(paid or unpaid)
- Professional Dues
- CME Reimbursement
- Vacation/Sick Leave
- Signing Bonus
- Student Loan Repayment
- Retirement
- Mortgage loans

Benefits are worth money!

OTHER ISSUES TO CONSIDER

- Number patients/procedures per hour, per day, per week.
- Call schedule.
- Management authority
- Other work (research, articles, speaking engagements).
 - Who gets the money from these activities?
 - Royalties?
 - Patents?

OTHER ISSUES TO CONSIDER - continued

- Work space
- Non-physician staffing
- Administrative duties
- Teaching duties
 - To whom does physician report?
 - Who reports to the physician?

EMPLOYMENT CONTRACTS

- Contract = Offer + Acceptance.
- Defined term (often 1 – 3 years).
- Job security is enhanced. Flexibility is diminished.
- Bonus/Incentives are spelled out.
- Termination is for “Cause,” a defined term which should be carefully negotiated.
- May include “restrictive covenants” if permissible in the jurisdiction.

AT-WILL EMPLOYMENT

- **At-will means:** Either physician or employer may terminate employment relationship at any time for any reason, without notice.
- Employees are **presumed** to be at-will.
- *Exceptions to at-will doctrine:*
 - *Discrimination/retaliation*
 - *Breach of “implied contract”*
 - *Breach of “public policy”*
 - *Whistleblower claims*

EVALUATION AND TERMINATION

- Process for evaluations.
- Termination:
 - notice and cure;
 - Reasons; and
 - appeal process.

For “Cause” termination - define narrowly to include:

- loss of license or medical staff privileges;
- loss of DEA registration;
- felony or *nolo contendere* conviction;
- use of illegal drugs/controlled substances and/or alcoholism (but consider “reasonable accommodations”).

ASSIGNABILITY

- What happens in event of a merger, acquisition, or consolidation?
- Are physician's services "assignable," "unassignable," or only assignable with written consent?

MALPRACTICE AND OTHER INSURANCE

- “Claims made” vs. “Occurrence” policies.
- Gap/Tail coverage – after physician leaves the practice.
- Employment Practices Liability.
- Comprehensive General Liability.
- Directors and Officers Insurance.

OWNERSHIP

- Any potential for future ownership/partnership?
- Spell out expectations in employment agreement:
 - Criteria for ownership.
 - Timing and methodology.
 - Determination of purchase price.
 - How long to pay off buy-in?
 - Income differences between junior and senior partners.
 - Capital requirements.
 - Governance.

These specific terms are usually spelled out in a detailed agreement.

GENDER EQUITY

- Women generally earn significantly less than men, even in medicine.
- Massachusetts Pay Equity Law (“PEL”) – effective July 1, 2018.
- Current law: Employer cannot discriminate on basis of gender.
- PEL expands this to include “comparable work” requiring “substantially similar skill, effort, and responsibility and which is performed under similar working conditions....”
- PEL includes all forms of remuneration.
- Employer may *not* ask about compensation history.

GENDER EQUITY

Bona fide reasons for compensation disparities:

- Seniority
- Merit based system
- Quality or quantity of production
- Geographic location
- Education and/or training.
- Experience
- Travel

Questions?

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