

*Negotiate With  
Confidence: Know  
What's in Your Contract*

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# Before You Contract

## Consider Your Goals

- Where do you want (are you willing) to live?
- What type of practice do you want to have?
  - Generalist vs. subspecialty
  - Outpatient vs. inpatient
  - Full time vs. part time
  - Small group vs. large group
  - Administrative vs. patient care
- How much money do you want (need) to make?

# Before You Contract

*(cont'd)*

## **Investigate Your Options**

### **Is your potential employer economically viable?**

- Does the practice have a strategic plan?
- Have you reviewed the books?
- How is the group managed?

### **Is your potential employer stable?**

- Is a key physician about to move or retire?
- Does the practice have a track record?
- Do you like (want to work with) these people?
- Investigate how many doctors have rotated through the physician-owned practice without becoming a partner and why.

# Before You Contract

*(cont'd)*

- Retain an experienced lawyer. Why?
  - Will know the market;
  - Help you understand what you can or cannot negotiate.
  - Give you an informal opinion he opportunity
- Talk with peers
- Talk with potential colleagues
- What's your spouse or companion think?

# Initial Considerations

## Get it in writing

- Clarify your concerns up front--Reduce potential for amnesia
- Don't assume the employer has thought all the issues through
- Never overestimate mind-reading abilities

# AMA's "How to" Manual

## New chapter: "Hospital-Physician Employment Agreements"

- Written by three seasoned health care attorneys with extensive experience representing physicians in hospital-employment negotiations.
- **Discusses (among other things)**
  - How physicians can determine which, among competing hospitals, is the better employment option
  - How to evaluate common compensation methodologies, e.g., base salary with productivity bonus; WRVUs ancillary revenues, and bonuses; productivity-only-based compensation;

# Important Contract Terms

- Fringe Benefits:
  - Vacation;
  - Sick leave;
  - Pension;
  - Vacation;
  - PTO;
  - Life insurance
  - Company car
  - Sick leave;
  - Parking;
  - On-site exercise;
  - Accident/disability insurance

# Important Contract Terms

- Fringe Benefits:
  - License Fees
  - Professional Society and Medical Staff Dues
  - Midweek time off (administrative duties, sleep before call)
  - CME - time and money



# Important Contract Terms

- Compensation:
  - Signing bonus;
  - Income guarantee
    - Usually runs from 1 to 2 years
    - How long will you have to repay amounts due—maximum of four years is not unusual;
    - What is the formula used to determine your obligation;
  - Relocation expenses?

# Important Contract Terms

- Compensation formulae:
  - Market salaries are available by specialty and geographical area;
  - Make sure it's clear—understand any and all deductions;
  - Straight salary only?
  - Salary plus productivity bonus becoming more prevalent
    - % of collections?
    - % of gross charges?

# Important Contract Terms

- Compensation formulae:
  - Salary and productivity
    - Patient encounters?
    - Work RVU? (the trend)
  - “Productivity is not “quality.” But a bonus may be based on performance based on:
    - quality measures;
    - patient satisfaction surveys;
    - peer review activities;
    - administration, e.g., medical directorship
    - Committee work.

# Important Contract Terms

- Compensation formulae:
  - What revenue and/or quality benchmarks will you need to meet in order to achieve your bonus?
  - Make sure you have examples of how the bonus and compensation formulae function.
  - Is there a profit sharing program, and will your share be commensurate with your efforts?

# Important Contract Terms

- Compensation formulae:
  - What revenue and/or quality benchmarks will you need to meet in order to achieve your bonus?
  - How otherwise will your bonus be calculated, e.g., % of a base salary?
  - Make sure you have examples of how the bonus and compensation formulae function.
  - Is there a profit sharing program, and will your share be commensurate with your efforts?

# Important Contract Terms

- Equity opportunity

- Typically not available as a hospital or other lay entity employee;
- 2-3 year average when it is addressed, recognizing the patient base that you will have built.
- In negotiations, understand the buy-in price and terms. (The employer should not postpone thinking about the price and terms of the buy-in are usually linked to other considerations).
- Traditionally, physicians have opted for lower compensation in return for a lower buy-in amount as you initially build your practice. A review of your work with the practice should occur at least annually, to minimize misunderstanding about potential equity status.

# Important Contract Terms

- Equity opportunity--performance measurement
  - Quality metrics;
  - Patient encounters per day;
  - Administrative duties;
  - Make sure time periods of evaluations are strictly followed;
  - Performance evaluations should be presented in writing with discussion and signature and comment by the physician to minimize confusion.

# Important Contract Terms

- Physician Duties:
  - Extended hours;
  - On-call duties—watch out for “equal” call
    - Stipend
    - Restricted
  - Administrative duties;
  - Supervision—increase in pay?



# Important Contract Terms

## Term:

- How long will the agreement be in effect—typical to have a clause allowing for the possibility of extension.
- Will it contain an evergreen/rollover clause that will lock you in if you are not paying attention?
- Will there be a contractually required renegotiating period that will help ensure that you will have time to secure other employment if the employment agreement is not renewed?

# Termination

- Automatic - loss of license, loss of DEA certificate, exclusion from Medicare, etc., death, permanent disability
- For cause - material breach of contract, medical disciplinary cause or reason, fraudulent behavior
  - Opportunity to “cure?”
  - Is it reciprocal?
- Without cause - for any (lawful) reason or no reason
  - Reciprocity?
- Hearing rights?

# Termination

*(cont'd)*

- Notice to patients - who will provide it and what will it say?
- Access to patient lists and records

# More provisions

- The Physician agrees that, for a period of \_\_\_\_ [months or years] after this Agreement has been terminated [voluntarily or involuntarily] by the [Employer or Physician] [ for cause or for any reason] the Physician will not, directly or indirectly, solicit or accept employment with the same or similar duties than under this Agreement, with any person, medical group or any other entity that is a competitor of the Employer, or enter into competition with the Employer, either by himself or herself, or through any entity owned or managed, in whole or in part by the Physician [within a \_\_\_\_-mile radius of the Employer's facility where the Physician worked or within the [county(ies) or city(ies) of \_\_\_\_\_].

# Covenant not to compete

- May not be lawful in your state;
- In other cases, covenants not to compete may be unlawful unless supported by additional value, e.g., sale of goodwill when you buy into a practice;
- In states where they are not per se unlawful, covenants not to compete must still be reasonable with respect to geography and duration;
- In some states, judges will re-write covenants to comport with their sense of reasonableness.

# Covenants Not to Compete

- During employment are generally valid. Typically cover activities like moonlighting, teaching, research.

# Confidentiality Clauses

- Confidentiality clauses or “trade secrets” clauses are generally enforceable.
- Some practices protect their patient lists as “trade secret”).
- You will typically see a “non-solicitation” clause, which may also prevent you from marketing yourself to your prior patients at the practice.

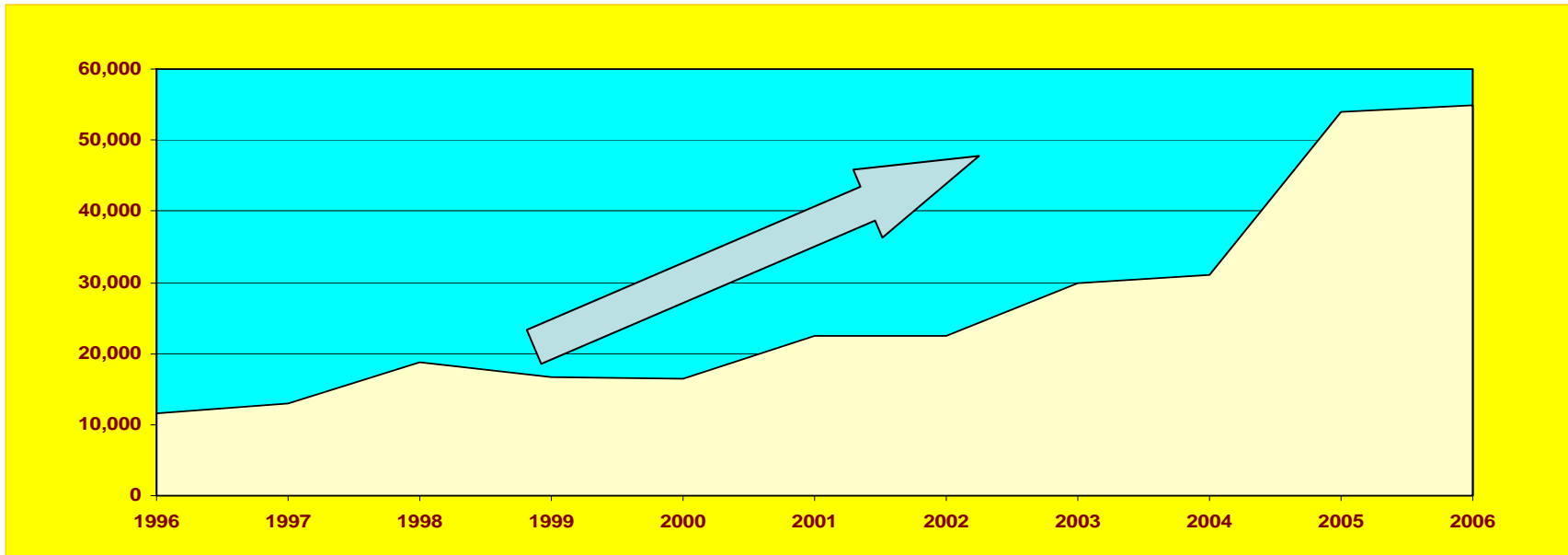
# Other Issues

- Intellectual Property Ownership (who gets it)
- Peer Review (scope of obligation/ requirement to release from liability)
- Indemnification (avoid it)

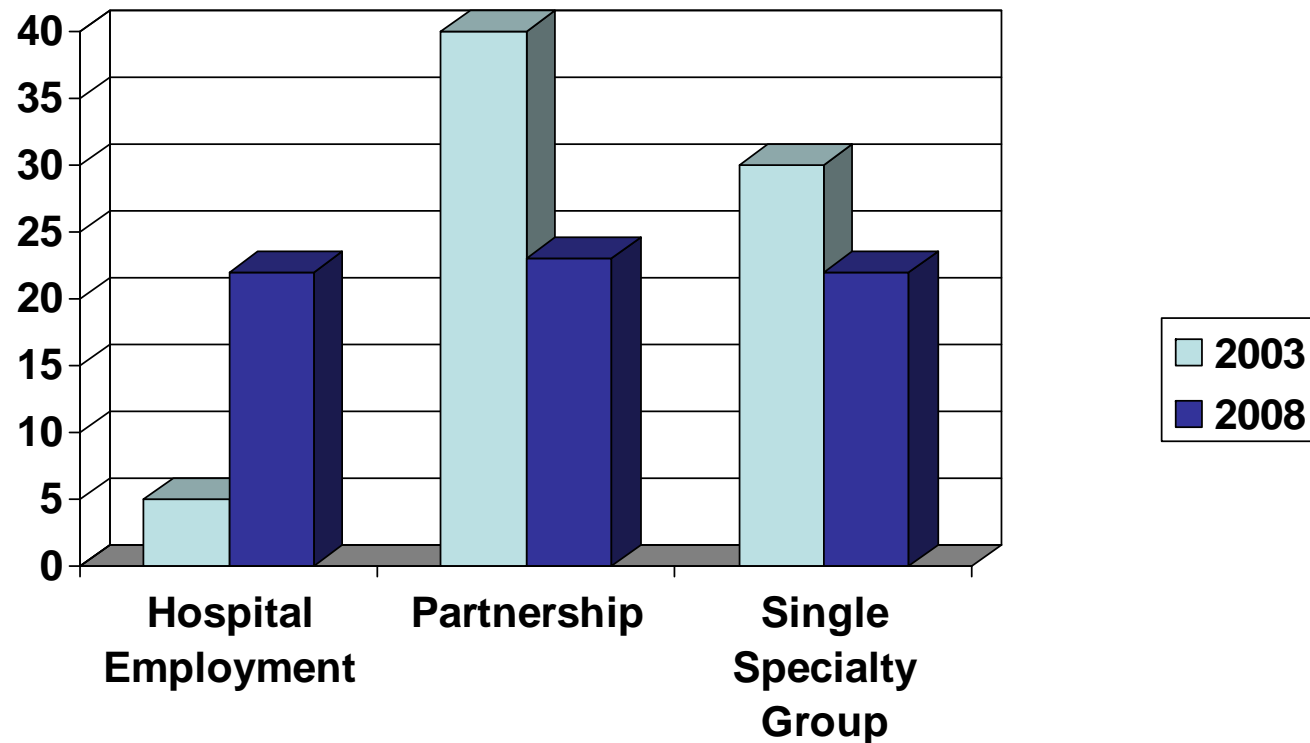


# Hospital Employment: The Growing Reality

*(Physicians in Groups of 5 or More Employed by Health Systems)*



# Survey of Final Year Residents



*Source: Merritt, Hawkins & Associates, Inc., 2008 Survey of Final Year Medical Residents*

# Hospital Perspective

- Facing pressure to integrate
  - ACO's
  - Bundling
  - Global payments
  - Securing referrals and patients
  - Gainsharing
- What is the simplest structure for hospitals—physician employment

# Hospital/Physician Employment: AMA Model Contract

- Supplements AMA's Model Employment Contract
- Hospital Employment has substantially different implications and requirements
  - **Loss of independence—lack of physician governance**
  - **Poor physician group management**
  - **Status of local environment**
    - a. **Hospital competition**
    - b. **Leverage of groups in negotiations**
  - **Compensation issues**
    - a. **Fair market value requirements**
    - b. **Loss of ancillary income**
    - c. **Impact of physician shortages**
  - **Financial strength of hospital**
  - **Physician friendly? Protection from new hospital leadership**
  - **Getting away from a deal gone bad. Non-competes and other restrictions**

# Key Provisions & Concepts: Autonomy

- Who controls decision-making?
  - Clinical?
  - Administrative?
  - Assets and support services?
- Where, how, and how strong is physician's (s') voice?
  - Governance
  - Deadlock?

# Contact Us

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Access these member-only resources at:  
[www.ama-assn.org/go/contractevent](http://www.ama-assn.org/go/contractevent)

