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### Professional Service Agreements for Hospital-Based Physicians

In this article, I outline Professional Service Agreements for hospital-based physicians. I cover the fundamental terms of the contract, namely, (1) defining the medical services to be provided as against the payment of compensation, (2) exclusivity, and (3) term & termination.

Hospital-based physicians usually provide the physician services within a particular hospital department, for example, radiology, emergency medicine, anesthesiology and more. The physicians depend on the hospital for most of their referrals, and the hospital depends on the physicians to run the department.

**The Exchange: Services for Money.** At the heart of most contracts is a single exchange. In a Professional Service Agreement, the exchange is physician services for money.

**Services.** Both the hospital and the physician group must pay attention to the definition of “Services.” The physician group wants to provide all physician services within the department, because that’s where the money is. Each side, however, wants to shift less profitable work to the other, for example, administrative work and supervision of staff. *Note:* If the physician group performs some of these ancillary services for the hospital, the hospital should indemnify the physicians from related claims, especially peer review.

**Compensation.** Frequently the physician group’s compensation is its right to bill for the services it provides to hospital patients. In the alternative, the hospital can pay the physician group based on RVUs or the like. Sometimes the hospital uses a recruitment agreement to pay a revenue guaranty or subsidies to the physician group; see my article, Physician Recruitment Agreements.

*Note:* If the physician group bills for its own services, the Professional Service Agreement should obligate the hospital to timely provide all requisite documentation and information needed for billing. The physician group also might seek an indemnity from the hospital that its data about patients is accurate (including that each patient, in fact, has insurance).

The hospital and physician group must be very careful to account for all compensation or other benefits that pass between them, otherwise they might have a Stark Law or Anti-Kickback problem. Identify all potential excess benefits that the hospital might pay to the physician group, or vice-

versa. Be sure that all transactions between the parties are fair market value, and exactly match services to compensation. No side may pay any of its profits to the other. Pay special attention that fair compensation is paid for shared equipment, facilities, personnel, administrative services, etc.

**Exclusivity.** Both sides care very much whether the physician group will be the exclusive provider for the department. If the relationship is exclusive, then the Professional Service Agreement might include a non-solicitation covenant against the hospital that prevents the hospital from hiring any group physician for a few years after termination of the Professional Service Agreement. The following considerations also apply in an exclusive relationship:

- The physician group should be able to name one of its own as the department director.
- Consider whether the hospital intends to expand the applicable department, and whether exclusivity extends to the new operations.
- In California, the hospital must determine if exclusivity violates Welfare and Institutions Code § 14087.28. Under this law, if a hospital contracts with the Medi-Cal program, it may not have exclusive contracts with physicians (other than for radiology, anesthesiology and pathology). The key to this analysis is the nature of the hospital's contractual relationship with Medi-Cal.

**Term & Termination.** Different circumstances demand different term & termination provisions. Sometimes a party needs a longer term to recover up-front costs, at other times a party wants the flexibility of at-will termination, for example, on 90 days notice. Most Professional Service Agreements have some combination of a term of years and/or at-will termination + termination for breach with a cure period + immediate termination for serious breaches that cannot be cured.

Term & termination are highly negotiated. Pay attention to the breaches that receive immediate termination as opposed to those that permit cure. The most important of these is the retirement, withdrawal or termination of a group physician – is this classified as grounds for immediate termination of the contract by the hospital, or can the group appoint a substitute physician within the cure period?

Thank you for staying with me to the end. Call me if you want to talk more.

## Winston Churchill

- From now on, ending a sentence with a preposition is something up with which I shall not put.
- Nancy Astor: Sir, if you were my husband, I would give you poison. Churchill: If I were your husband I would take it.
- We make a living by what we get, but we make a life by what we give.
- There is no such thing as a good tax. Likewise... If you have ten thousand regulations, you destroy all respect for the law.
- Some see private enterprise as a predatory target to be shot, others as a cow to be milked, but few are those who see it as a sturdy horse pulling the wagon.

