TOOLKIT

EVALUATING + NEGOTIATING PHYSICIAN EMPLOYMENT OFFERS

LAW OFFICE OF SCOTT WEAVIL

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SCOTT WEAVIL

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Dear Reader:

Today, more and more physicians find themselves employed by hospitals and groups rather than as equity owners in medical practices. As employees, physicians have less control over their day-to-day practices and careers, heightening the importance of choosing a practice that is a good fit for the physician and securing favorable employment terms through the physician's employment contract.

This guide was developed as resource "toolkit," providing information and checklists to assist physicians in evaluating and negotiating employment offers. I hope you find it helpful.

Sincerely,

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Introduction

The Changing Healthcare Landscape

The economics of medicine are in flux, and hospital administrators and employers of physicians are facing unprecedented pressure to deliver high-quality care while continually reducing costs. There is growing uncertainty over the Affordable Care Act and government-sponsored healthcare in general, and there are no guarantees that tomorrow's healthcare landscape will at all resemble that of today. While a retooling of our healthcare system is overdue and likely to yield tremendous benefits in the long term, the transitional period is likely to be turbulent, especially for physicians, who face the prospects of downward pressure on compensation and benefits and upward pressure on workloads.

The Employee-Physician

In this rapidly evolving environment, more doctors than ever before find themselves employed by hospitals and groups rather than as equity owners or partners in a practice. With this shift, compensation models and expectations have changed; so, too, have most doctors' relationships with their practices. As employees rather than owners, physicians have less control over their practices, placing a premium on evaluating potential employment opportunities.

A Shift in Perspective

If you are securing your first position as a attending physician, you must shift your perspective. After training, the focus transitions from your growth and development to your performance and profit generation. You cannot simply assume that a given group will nurture your technical skills or assist in your career development. You have to do your homework and verify that the employment opportunity is a good one and the right one for you.

Your Goals

Before evaluating, negotiating, or accepting an employment offer, you should have a clear picture of your professional and financial goals. Below are a few considerations to jumpstart your thinking:

- What type of practice do you want to join? Do you want to work for an academic institution, a hospital group, a physician-owned private group or some other type of practice?
- If you want to work for a private group and eventually become an equity owner or "partner,"[1] what level of economic value would you like to realize from partnership?
- Do you want to remain on salary, seek to push the compensation envelope with high production in a productivity-based compensation structure, or split the middle with a base salary combined with a productivity bonus?

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[1] Technically, physicians who are part owners in a practice are usually "unit holders;" however, the terms "partners" and "partnership" are rooted in tradition and more commonly used outside legal documents when referring to physician ownership in a practice entity.

- Do you value compensation or work-life balance? Are you sensitive to night shifts or a demanding call schedule?
- How important is cultural fit and camaraderie among physicians? Would you be willing to accept less compensation for a better work environment or is that not a priority?

Only you can decide what considerations are most important to you.

Offer Evaluation Framework

For purposes of evaluating and negotiating a particular employment offer, the offer can be divided into three primary components, each important:

1) The ***physician employment agreement*** and its terms, which defines your relationship with your practice;
2) The proposed ***compensation package*** (the "business deal"); and
3) The ***employer's business position, practice culture and reputation as an employer.***

Taking those components in turn, this guide sets out a systematic way to evaluate and negotiate employment offers. Because contract terms and compensation packages are more susceptible to structured analysis, they are discussed in disproportionate detail in this guide. Often, however, the business and practice culture information that you obtain by investigating the employer are just as valuable for making a sound decision, if not more so. Ignore that information at your peril.

Negotiations

Be prepared to ask questions about and request changes to the contract and compensation package that you are initially offered. The physician employment agreement, including its compensation component, is not a standardized contract; rather, it is a highly negotiable document that, in almost all instances, is intended to be negotiated to tailor fit your needs and those of your employer. A minority of employers may have standard contracts that they refuse to negotiate. In those cases, an unwillingness to consider changes may indicate an employer's general inflexibility and view that employee-physicians are fungible labor. Keep in mind that the contract often sets the tone for your employment.

Retaining a Legal Advisor

Although this guide endeavors to provide a general overview of the major considerations for evaluating and negotiating offers, it is intended as background information, not as a substitute for the individualized analysis of an experienced attorney.

Sometimes, physicians are hesitant to retain an attorney for fear of being perceived as pushy or contentious. An experienced attorney will not make the negotiation process acrimonious; instead, he or she will focus on establishing a dialogue with your prospective employer, with the goal of asking questions and establishing common ground. An attorney simply provides a set of legal eyes that can help you by:

- Making sure that it meets your needs by promoting and protecting your interests;
- Bringing knowledge of what is "market" with respect to legal terms;
- Applying knowledge of the day-to-day practice of medicine to specific contract provisions;

- Anticipating issues based on experience with common stress points; and
- Identifying important omissions (frequently, terms left out of the contract are just as important as those that are included, and an attorney may be better positioned to spot important omissions).

In addition, some advisors may be able to provide advice on compensation. The Medical Group Management Association (MGMA) and the American Association of Medical Colleges (AAMC) compile and report on physician compensation for private-practice physicians (MGMA) and medical school faculty (AAMC) through fee-based services. If you are not certain of the "business deal," working with an advisor who has access to these proprietary data sets and knows what is market for compensation is a good idea. You can be certain that your prospective employer will be consulting those same data in formulating your compensation offer.

Finally, in an experienced attorney you will find a seasoned negotiator, readily able to articulate sound rationales for contract changes in your favor. An attorney can also provide a buffer, removing you from the frontlines of zero-sum negotiations, such as those that surround compensation. If a "bad guy" is needed, an attorney is happy to play the role and take the blame, allowing you to enter into a new relationship with your needs met and your new employer's enthusiasm about recruiting you undiminished.

The bottom line is that your prospective employer uses an attorney for its contract negotiations, and you should, too.

Working with Your Legal Advisor

Most attorneys are happy to work with you by providing a level of service that meets your needs. For example, attorneys are typically willing to provide full-service assistance (negotiating the contract on your behalf after receiving instructions from you), more limited assistance (such as reviewing the agreement and summarizing it for you during a telephone call), and anything in between. Attorneys typically charge by the hour or use flat fees. Flat rates can be an appealing option because they provide certainty as to cost.

When working with your attorney, make sure he or she is aware of your goals and objectives; you do not want to be working at cross-purposes. Also, ask questions about anything that you do not understand, and be sure to mention anything important that you discussed with the prospective employer that does not appear in the contract. Finally, if you are retaining an attorney in a more limited-assistance capacity, take copious notes on everything of interest in the contract and on anything that can assist your negotiations.

How To Use this Guide

This guide is intended to provide a basic framework for evaluating and negotiating physician employment offers. The toolkit is divided into six sections or "tools," with a summary guide and corresponding checklist for major employment agreement terms, compensation and employer due diligence. For convenience, the summary guides appear first and all the checklists are grouped together at the end. A description of each tool and how to use it follows:

Tool 1: Summary Guide – Physician Employment Agreement provides a high-level overview of common provisions included in physician contracts. Read this section first for a bird's eye view of the contours that shape the employment contract. If you are short on time or simply want to begin evaluating an offer as quickly as possible, begin with the corresponding checklist, *Tool 4: Checklist – Physician Employment Agreement.*

Tool 2: Summary Guide – Compensation provides a brief summary of various compensation models, as well as considerations for evaluating compensation. If you are short on time or simply want to begin evaluating a compensation package as quickly as possible, begin with the corresponding checklist, *Tool 5: Checklist – Compensation.*

Tool 3: Summary Guide – Due Diligence discusses additional factors that should be investigated in evaluating an offer, including potential employer's business position, practice culture and reputation as an employer. If you are short on time or simply want to begin diligence as quickly as possible, begin with the corresponding checklist, *Tool 6: Checklist – Due Diligence.*

Tool 4: Checklist – Physician Employment Agreement is a checklist comprising the common physician contract provisions discussed in *Tool 1: Summary Guide – Major Employment Agreement Terms.* Using the checklist is helpful to organize your thoughts around the basic terms of the agreement. A space for notes is provided for that purpose. The checklist may also assist in identifying omitted provisions.

Tool 5: Checklist – Compensation is a checklist designed to help you summarize the "business deal" and evaluate offered compensation, a process discussed in *Tool 2: Summary Guide – Compensation.* A space for notes is provided for that purpose.

Tool 6: Checklist – Due Diligence is a checklist designed to help you collect and summarize due diligence information, a process discussed in *Tool 3: Summary Guide – Due Diligence.* A space for notes is provided for that purpose.

Limitations

This guide is intended to be a starting point, providing context for evaluating and negotiating physician employment offers. The information provided is general in nature, is intended for background informational purposes, and does not constitute legal advice. Retain an attorney specializing in physician business transactions to assist in evaluating and negotiating employment offers.

Tool 1. Summary Guide – Physician Employment Agreement

Introduction

This summary guide to major contract terms provides descriptions of basic contract provisions that are typically found in physician employment agreements. For the corresponding checklist, see *Tool 4: Checklist – Physician Employment Agreement.*

Job Requirements

Parties The parties to the contract are the persons or entities making the agreement. You will be one of the parties, and your employer and, in some cases, associated entities, will also be party to the agreement.

Start Date The start date is the date that you are scheduled to begin work. Make sure that the start date gives you sufficient time to obtain a medical license in the state where you will be working, as well as any required privileges and other credentialing.

Term Length The length of the contract term is the length of time from the start date until the contract's scheduled end date. Typically, the length of the initial term will be one to three years. After the initial term, many contracts automatically renew for additional one-year terms through an "evergreen" clause. There are a few things to keep in mind about the length of the initial term:

- Usually, the initial term will be the length of time over which any signing bonus, reimbursement of relocation expenses and other incentives for joining the group are forgiven. If you leave the group prior to the end of the initial term, you may incur repayment obligations depending on the circumstances and the terms of the contract.
- In a practice that uses a performance-based compensation model for its experienced physicians, the initial term is usually the length of time that a new physician will be paid a salary or guarantee before being transitioned to performance-based compensation.
- In a private group (a non-hospital group), the group may consider you for equity ownership or partnership after the initial term. Normally, you want to be considered for partnership after two years, but anywhere from one to five years is common.

Board Certification Timeline The board certification timeline is the length of time provided under the contract for you to become board certified. You want the contract to give you as long as possible to become board certified, preferably three to five years, although shorter timeframes are common.

Practice Location(s) The contract should specify the practice location or locations where you will be expected to work regardless of whether your employer currently has multiple practice sites. You do not want to plan on working in one clinic, and later, for whatever reason (such as the group opening a new office), get assigned to a different clinic without your consent.

Duties The contract will set out your work responsibilities. Usually, you will be expected to work full time. If the contact has a stated workload, that is often an indication that new physicians have struggled with workload expectations in the past.

Call Coverage There are a few things to keep in mind about call coverage:

- Some groups require hospital call, while others allow home call. If home call is allowed, there will be a limitation on how far away from the hospital you are allowed to be while on call. That distance will usually dictate where you can live.
- In most contracts, there will be a provision requiring you to take call in equal measure with the other physicians in the group. Under this arrangement, be aware that your call burden may increase under certain circumstances, such as if a doctor leaves the practice or goes on leave. If you are sensitive to additional call, you may want to negotiate for a provision requiring you to take no more than a certain number of call shifts over a given period.

Compensation and Other Financial Incentives

Compensation For information on compensation, see *Tool 2: Summary Guide – Compensation.*

Signing Bonus Many groups will pay a signing bonus as an incentive for joining the practice. The contract may set forth circumstances under which a signing bonus is repayable (for example, if you leave the group prior to the end of the contract term). Some groups may not offer a signing bonus upfront but may provide it if requested.

Relocation Expenses Many groups will provide reimbursement for relocation expenses. Some groups may not offer reimbursement upfront but may provide it if requested.

Student Loan and Housing Assistance Some employers, particularly (but by no means only) rural ones, may provide student loan assistance and/or housing down payment assistance in order to attract practitioners. Some groups may not offer these types of assistance upfront but may provide it if requested.

Benefits

Generally Although typically mentioned in the employment contract, many of the benefits offered will be governed by separate plan documents or policies. If you have questions about a particular benefit program, you should ask for the relevant summary plan descriptions (SPDs) or policy. An employer will usually maintain the same benefits for all employee-physicians, and it is a good idea to negotiate for a provision in your contract stating that you will be eligible for all benefits maintained for employee-physicians.

Retirement Plan Your employer will likely provide an employer-sponsored retirement plan, such as a 401(k) plan. Typically, employers do not match physician contributions.

Health Insurance Employers commonly provide health insurance options for you, your spouse, and your dependents. Larger groups may provide life, disability, dental, and disability insurance options.

Disability Insurance If your employer does not provide disability insurance, get coverage on your own. From an actuarial perspective, disability is much more likely than death for physicians at the outset of their careers.

Family Leave Policy If maternity, paternity or other family leave is a concern, you should review your employer's policy. Many groups' policies require you to be employed for a certain period of time before you will become eligible for paid leave. While federal and state laws provide for leave under certain circumstances for covered employers (for example, the Family and Medical Leave Act (FMLA) only applies to employers with fifty or more employees), those laws, with some state and local exceptions that provide for relatively insubstantial wage reimbursement, do not provide for paid leave.

Vacation and Sick Days Policy Review the policy. New physicians should negotiate for at least three weeks' vacation.

Board Certification and Related Expenses Usually, your employer will pay for expenses associated with board certification, such as examination registration fees, travel and lodging expenses, and the cost of a review course.

CME Expenses Typically, groups will reimburse for CME expenses (registration fees, along with lodging and travel expenses) up to a certain amount.

Other Expenses Many groups will pay for your membership dues to appropriate organizations, as well as journal subscriptions and medical license renewal fees. Some groups will provide an allowance for CME and other qualifying expenditures (for example, personal electronic devices for work use) and let you chose how to use it.

Malpractice Insurance

Coverage Limits Typically, physicians should have coverage limits of at least $300,000 per occurrence and $1,000,000 in the aggregate.

Types of Coverage There are two types of primary coverage: occurrence and claims-made coverage.

- With occurrence coverage, you are insured for any occurrence that happens while the policy is in effect, regardless of when a claim is made against you. Occurrence policies are often considered superior to claims-made polices, but they are expensive and, as a result, uncommon.
- With claims-made coverage, you are covered for claims made while the policy is in effect, meaning that a claims-made policy will not cover you if a claim is made beyond the policy period, even if the occurrence happened during the policy period (for example, after you leave the group and are no longer covered by its policy). If your employer has

claims-made coverage, you will need to obtain a tail insurance policy when you leave the group.

Tail Insurance Tail insurance covers you and your former employer for claims brought after you leave the group (and consequently no longer have a claims-made primary coverage policy in effect) with respect to occurrences that happened while you were with the group. Tail coverage is necessary if you had claims-made coverage but not if you had occurrence coverage.

Responsibility for Tail Purchasing tail insurance is expensive. As a result, employers frequently use responsibility for paying for the tail to incentive behavior under the contract. Generally, your employer should pay for the tail if the contract is fulfilled to term, you quit for cause, you are terminated without cause, you are terminated for death or disability or, in the case of a hospital group, the group's contract with the hospital is terminated. In fairness, you should probably pay for the tail if you quit without cause before the contract's scheduled end date or you are terminated for cause.

Contract Termination

Termination Termination refers to ending the contract.

Relevant Notice Periods Certain actions under the contract, including termination, typically require written notice a specified length of time prior to an event. For example, most contracts automatically renew through an "evergreen" clause for an additional year unless you or your employer provides notice not to renew sixty to ninety days prior to the contract's scheduled end date. The required period may be shorter or longer. In the event that you want to leave the group or renegotiate your contract, it is important to give the required notice. Similarly, if you decide to quit or your employer decides to terminate your employment, a specified notice period is usually required.

Termination Rights Under circumstances specified in the contract, you and your employer will have rights to terminate the contract prior to its scheduled end date.

- Typically, you will be able to terminate the contract either "for cause" (that is, for a reason recognized in the contract, such as your employer failing to meet its obligations) or "without cause" (that is, for any reason not recognized in the contract or for no reason) by providing notice as specified in the contract. Before terminating without cause, carefully consider the consequences under the contract because doing so often triggers obligations on your part.
- Similarly, your employer will also be able to terminate the contract for or without cause. Pay particular attention to the circumstances that are specified in the contract as grounds constituting for cause termination because for cause termination often triggers obligations on your part. Some common examples of for cause termination follow:
  - material breach of the contract, including any rules, policies, guidelines, handbooks, etc. incorporated by reference;
  - loss of privileges or other required credentialing; and

    - conduct damaging to your employer's reputation.
- Also, pay attention to your employer's rights to terminate in the event of your death or disability, or, in a hospital group, if the group loses its contract to provide services to the hospital. If termination under those reasons is considered for cause, it may trigger obligations on your part.

Financial Obligations upon Termination

In many cases, terminating the contract prior to its scheduled end date results in obligations for either you or your employer, depending on which party terminated and under what circumstances. Specifically, you should analyze under what circumstances you would be required to purchase tail coverage or incur any repayment or other obligations.

- Generally, you should not have obligations upon termination if the contract is fulfilled to term, you quit for cause, or if you are terminated without cause.
- On the other hand, most contracts will impose obligations on you if you quit without cause or you are terminated for cause.

In the event of termination due to your death or disability, you should be released from any financial obligations stemming from termination because the group is in a better position to bear the loss and, presumably, you already have adequate incentives to avoid death and disability to the degree that those events are within your control. Similarly, in the event that you are terminated from a hospital group because the group loses its contract to provide services to the hospital, you should also be released from any financial obligations stemming from termination because that is an event beyond your control as an employee-physician.

Other Provisions

Non-Solicitation Covenant

There are two forms of non-solicitation covenants, and your contract may contain either, neither, or both. The first form is a promise not to solicit the employer's employees for employment for a specified period of time after leaving the group. The second form is a promise not to solicit the employer's patients or referral sources for a specified period of time after leaving the group.

Non-Competition Covenant

Non-competition covenants prohibit you from competing with the employer for a period of time after you leave the group. In California, non-competition covenants are generally unenforceable in the physician employment context for non-owner employee-physicians. In other states, non-competition covenants are regularly enforced, with courts looking to the activity restricted, the geographic area in which the activity is restricted, and the duration of the restriction. Because the law surrounding non-competition covenants is in perennial flux, and because a non-competition covenant can have a tremendous impact on your life and livelihood (for example, forcing you to move to be able to practice medicine), if your contract has one, you should always try to have it removed. If your employer will not eliminate the provision, seek counsel on the provision's enforceability and be sure to think through all possible consequences, especially in light of the fact that most new physicians do not find a permanent professional home in their first placement.

Restrictions on Outside Activities

Many employers include contract provisions restricting physicians from working as doctors outside of their employment ("moonlighting"). If you plan on doing so (for example, by engaging in online consulting), be sure to seek an exclusion from your employer for any anticipated outside activities.

Restrictions on Where You Can Live

If you are allowed to take home call, you will be required to be within a certain number of minutes or miles of the hospital, which will effectively determine where you can live. Whether you take home or hospital call, your contract may have an additional provision specifying where you can live.

Access to Medical Records

Most employers will include a contract provision stating that the group retains ownership of all medical records. Make sure that you will be afforded sufficient access to medical records so that you can defend yourself in the event that a claim is made after you leave the group for something that occurred while you were with the group.

Dispute Resolution Method

Many contracts will provide that disputes arising out of the contract are to be resolved by binding arbitration rather than by recourse to the courts.

Merger Clause

Your contract will likely have a merger clause, providing that there are no additional agreements outside of the contract. This means that oral promises and agreements are not legally enforceable.

Partnership Consideration

If you are joining a physician-owned private group, usually, your goal will be to become an equity owner or partner in the practice. If that is the case, the contract should explicitly state that you will be formally considered for partnership after a certain length of time, preferably two years.

Tool 2: Summary Guide – Compensation

Introduction

This summary guide to compensation provides descriptions of basic compensation principles and considerations for evaluating compensation packages. For the corresponding checklist, see *Tool 5: Checklist – Compensation.*

Compensation Basics

Compensation Structures

There are three basic compensation structures:

- You can be paid a flat salary.
- You can be paid a flat salary or guarantee (a minimum guaranteed compensation amount, which you may exceed based on productivity) for a length of time, after which your compensation shifts, in whole or in part, to productivity-based compensation.
- You can be paid a base salary or guarantee with bonuses for productivity above a certain threshold (a hybrid model).

Compensation Mechanics

The contract should specify when and, for base compensation, how much you will be paid.

Bonuses & Additional Pay

Bonuses for meeting quality metrics and additional pay for participating on committees and taking on other additional administrative responsibilities are common in all three structures.

Compensation Adjustments

Some contracts may include a term providing a mechanism for your employer to request compensation adjustments based on prevailing market rates and your workload (for example, shifts worked, patient panel size, and productivity) annually or at another specified interval. Typically, such a term provides that you and your employer will negotiate in good faith with regard to any adjustment for a specified period of time, and if no agreement is reached, the previous compensation terms will remain in place.

Salary / Guarantee / Base Compensation

Compensation Amount

To assess the fairness of a salary, guarantee, or base compensation amount, consult data on prevailing market rates. MGMA, the Medical Group Management Association, has a fee-based service that tracks and provides reports on compensation for private practice (that is, non-academic) physicians. The American Association of Medical Colleges (AAMC) does the same thing for medical school faculty. Your prospective employer (or its compensation consultant) is likely to use this data in formulating your offer. Advisors specializing in physician business transactions will often have access to the proprietary MGMA and AAMC datasets. If your attorney does, use the data to inform your negotiations. If your attorney does not have the data or if you are not using a legal advisor, consider asking your prospective employer what data it used and how it formulated your offer from that data.

In addition, if your compensation does have a production component, be sure to evaluate your base compensation amount in light of the amount that you are likely to receive as production pay.

Productivity-Based Compensation

RVUs

A relative value unit, or RVU, is a measure of value initially developed for Medicare reimbursement. RVUs comprise three parts, but for purposes of physician compensation, the focus is on physician work RVUs or wRVUs. (For convenience, the "w" is often dropped in informal discussions about physician compensation. This guide follows that convention.) Medicare establishes the RVU value for all CPT codes. Your employer will use the values established by Medicare in determining your RVUs.

For context on RVU values for typical cases, the American Association of Professional Coders (AAPC) website has an RVU calculator that allows you to enter CPT codes and view the corresponding RVU values.

Basic RVU Compensation Formula

For RVU-based compensation, the practice will calculate your compensation by multiplying the total number of qualifying RVUs by a specified dollar rate per RVU. (As discussed below, the number of qualifying RVUs and the specified dollar amount may be determined by reference to RVU thresholds.) The resulting product will be your productivity-based compensation or a portion thereof. For any productivity-based model with a formula-compensation component, ask to see examples of how the formula would work under various scenarios.

$______ / RVU

Given that the dollar amount per RVU is a component of the basic compensation formula, pay close attention to the specified dollar amount per RVU. As with base compensation amounts, to evaluate whether the specified amount is fair, consult appropriate market data, such as that provided by MGMA, on the prevailing median rate per RVU.

RVU Thresholds

Many employers will use annual RVU thresholds as a key component of productivity compensation. For example, in a hybrid model with a salary and productivity-bonus component, you may be paid a specified amount per RVU over a threshold number of RVUs. In those instances, it is helpful to know how that threshold compares to median annual RVU production for your specialty based on MGMA or other data so that you can estimate the expected amount of your performance-based compensation. Similarly, you should consider asking your prospective employer about the median production of physicians in the practice and of physicians in the practice in their first year on production.

Clawback Provisions

Although most production models use annual productivity thresholds, many employers will provide monthly or quarterly payments in advance based on estimates of how your productivity will ultimately compare versus the annual threshold. (For example, a first quarter payment may divide the annual threshold by four for purposes of determining your first quarter performance pay.) This is done so that your pay is more evenly spaced out. Be aware, though, that if you receive advance performance pay but ultimately do not have the requisite annual performance, you will likely owe the practice the amount of any overpayment via a clawback provision. This scenario could happen, for instance, if you exceeded estimated RVU productivity for the first half of the year but had a slow second half. If performance payments are made on an annual basis, there should be no need for clawbacks as the payments will be made on actual numbers, not estimates.

Practical Considerations for Productivity-Based Compensation

Beyond concerns with mechanics, there are some practical considerations you should keep in mind in connection with productivity-based compensation:

- In a pure productivity-based compensation model, physicians effectively lose paid vacations and sick days. In addition, doctors would not be compensated during any short-term disability.
- Many physicians find it necessary to track their own productivity independent of their employer due to discrepancies. If this is the case at your prospective employer, be aware that this is additional work for you and also usually involves disputing your employer's total and advocating for your tally on a monthly or quarterly basis.
- The way cases are assigned can have a large impact on productivity-based compensation (for example, being assigned only low RVU value cases would lower your anticipated compensation). Especially if your employer is a physician-owned group, try to assess whether cases are assigned equitably.
- For emergency medicine physicians, hospitalists and others that work shifts, consider how your shift schedule could affect your productivity (e.g., working a typically slower shift will lower your production).
- For new (if not all) physicians, it is almost always advisable to negotiate for a guaranteed base salary to provide certainty as to a minimum level of compensation.

Tool 3: Summary Guide – Due Diligence

Introduction

This summary guide to due diligence sets forth some basic considerations for evaluating a prospective employer's business, as well as its practice culture and other intangible "soft factors." For the corresponding checklist, see *Tool 6: Checklist – Due Diligence.*

Business Evaluation

Generally

Whether you are considering permanent employment as an employee-physician or an employer where you eventually hope to become a part owner of the practice, the business prospects of the group are very important for your economic security and career satisfaction. If you are considering joining a group with the goal of becoming an equity owner or partner, you should examine the practice's business prospects even more closely, because as an eventual owner, those prospects will determine how lucrative the practice is for you.

Business Evaluation

Prior to joining a physician-owned practice with the goal of becoming a partner, carefully examine the group's business and finances. Ascertain the mechanics of becoming an owner of the practice, including any required buy-in contribution and if that contribution is financed by the group or otherwise. Request corporate documents and financial statements and ask if there are any pending legal matters or government investigations involving the practice. Also ask about upcoming capital expenditures, such as upgrading facilities or medical equipment or buyouts of physicians preparing to retire.

Management

Evaluate the management of the prospective employer. Effective group management often determines the profitability of a group and the success of new doctors. Consider whether the group employs a professional manager that is easy to work with and has the confidence and support of the physicians in the practice.

Market & Business Outlook

Work to understand prevailing market conditions and trends. In evaluating a potential employer, consider the group's current position in the marketplace and where the market and the employer are going in the future. Things to consider include the following:

- Patient and community demographics;
- Current payers and the payer mix; and
- The strategic direction of the group.

The group should have a strategic plan for where it would like to be in the short, intermediate, and long term. You should ensure that the group is executing on its goals and that its goals align with your goals.

Practice Culture, Including Physician Growth & Development

Practice Culture

Often, the "soft factors" determine whether physicians find satisfaction in their day-to-day work. The most advantageous, physician-friendly employment agreement cannot substitute for a practice that fits your personality and goals. Think about whether the personality mix in the practice fits with your personality. Are there cordial interactions among physicians? Do the doctors socialize outside of work?

Physician Growth & Development

Consider whether the employer is dedicated to helping new physicians grow and succeed. How does the group mentor new physicians? How will it help you develop referral relationships? Will the group advertise that you have joined and encourage primary care doctors and other referral sources to make referrals to you?

Reputation as an Employer, Including Partnership Prospects

Reputation

Gather all the information that you can about what it is like to work for the group from current employee-physicians. For example, it can be helpful to ask about workload expectations and new physicians' ability to meet them, physician turnover and overall satisfaction. Also, consider asking the group to put you in contact with physicians formerly employed by the group; those doctors can provide a wealth of insight: Do they speak positively about the group? What do they perceive as the group's strengths and weaknesses?

Partnership Prospects

In a physician-owned practice with the goal of becoming a partner, you should investigate your prospects of making partner. The experience of past new physicians who have joined the group is likely to be the most reliable predictor of what your experience with the group would be like. Things to consider include the following:

- How are cases assigned;
- How are employee (staff) physicians treated compared to owner (partner) physicians; and
- When did the practice make its last partner, and how long did that person work in the practice before making partner?

Tool 4: Checklist – Physician Employment Agreement

Contract Provision	Notes	
Job Requirements		
Parties		
Start Date		
Term Length		
Board Certification Timeline		
Practice Location(s)		
Duties		
Call Coverage		
Compensation[1] and Other Financial Incentives		
Signing Bonus		
Relocation Expenses		
Student Loan / Housing Assistance		
Benefits		
Retirement Plan		
Health Insurance		
Disability and Life Insurance		
Maternity / Paternity / Family Leave Policy		
Vacation and Sick Days Policy		
Board Certification and Related Expenses		
CME Expenses		
Other Expenses		
Malpractice Insurance		
Coverage Limits	*Occurrence:*	*Aggregate:*
Type of Coverage		
Responsibility for Tail (Claims-Made Coverage) in Different Situations		
Termination		
Days' Notice for Terminating / Renegotiating		
Employer's Termination Rights		
Financial Obligations upon Termination (Tail and Reimbursement Obligations)		
Other Provisions		

[1] For the compensation checklist, see *Tool 5: Checklist – Compensation.*

Non-Solicitation Covenant	
Non-Competition Covenant	
Restrictions on Outside Activities	
Restrictions on Where You Can Live	
Access to Medical Records	
Dispute Resolution Method (e.g., Arbitration)	
Partnership Consideration (Private Group)	

Tool 5: Checklist – Compensation

Consideration	**Notes**
Compensation Basics	
Compensation Structure	
Compensation Mechanics	
Bonuses & Additional Pay	
Compensation Adjustments	
Salary / Guarantee / Base Compensation	
Compensation Amount	
Median Compensation for Specialty (MGMA Data)	
Productivity-Based Compensation	
$______ / RVU	
Median $______ / RVU for Specialty	
RVU Thresholds for Productivity Bonus or Other Pay	
Median Annual RVU Production for Specialty (MGMA Data)	
Median Annual RVU Production for Employer[1]	
Clawback Provisions	

[1] Consider also asking for the median RVU production of physicians in the practice in their first year on production.

Tool 6: Checklist – Due Diligence

Consideration	Notes
Business Evaluation	
Business and Finances	
Practice Management	
Market & Business Outlook	
Practice Culture	
Cordial interactions among physicians?	
Physicians socialize outside work?	
Physician Growth & Development	
Dedication to helping new physicians grow and succeed?	
Good mentoring and development of referral relationships?	
Advertises new physicians?	
Employer Reputation	
Physicians currently employed by group are positive about group?	
New physicians' ability to meet workload expectations?	
Low physician turnover?	
Physicians formerly employed by group are positive about group?	
Private Groups; Partnership Prospects	
How are cases assigned?	
How are employee (staff) physicians treated compared to owner (partner) physicians?	
When did the practice make its last partner?	
How long did that person work in the practice before making partner?	
How many physicians have been hired in the last 5-10 years, and where are they now?	

About

Serving physicians throughout the United States from his office in California, Scott Weavil exclusively focuses on physician business transactions.

Scott graduated from Duke University and Vanderbilt Law School, where he served as managing editor of the Vanderbilt Law Review. After clerking for the Delaware Court of Chancery, he began his career as a mergers and acquisitions attorney at Skadden, Arps, Slate, Meagher & Flom in New York and Wilson, Sonsini, Goodrich & Rosati in Palo Alto. He is admitted to practice in California and New York. His interest in representing physicians stems from watching his wife, an obstetrician, and her peers struggle through contract negotiations and difficult job placements.

Scott lives in South Lake Tahoe, California with his wife, Mandi, and their daughter, Dottie. He enjoys skiing and mountain biking.

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