EMPLOYMENT-AGREEMENT ISSUES

8 employment-agreement issues gastroenterologists should understand

LEGAL CORNER

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Gastroenterology employment agreements often include complex compensation models, restrictive covenants, and operational expectations, with risk-shifting provisions on malpractice, compliance, and termination. A focused review of the following eight topics can help align expectations and mitigate avoidable risk when entering into an employment agreement.

1. COMPENSATION STRUCTURE

Gastroenterologists should understand how their compensation is structured, as many employment agreements combine a base salary with productivity-based incentives that can materially affect overall earnings. Review the proposed base salary, any guarantee period during which the salary cannot be reduced, and whether any additional pay is offered for weekend or on-call coverage. Some agreements also offer potential ownership opportunities in an ambulatory surgery center or endoscopy center, as well as the potential to buy into other ancillary investments in which the practice's owners may have an interest, which may include practice-related real estate or a management service organization.

Review the terms of any signing, retention, or relocation bonus, including any repayment obligations, prior to signing. Where compensation is formula-based, the formula should be clearly explained and illustrated.

Many agreements allow gastroenterologists to increase their compensation based on individual production, based on collections or work relative value units (wRVUs). Clarify any applicable productivity thresholds and how services are valued. For wRVU based compensation models, confirm the conversion rate paid per wRVU. Agreements should also address whether compensation may be reduced for missed targets and allow an opportunity to remedy shortfalls before any reduction takes effect. For collection based compensation models, confirm the right to receive post termination collections and negotiate a defined payment period.

2. RESTRICTIVE COVENANT

Gastroenterologists should understand any restrictive covenant provisions, as they can limit (i) the ability to engage in outside business or professional activities during the term and (ii) the post-termination practice opportunities. Restrictive covenants may restrict the ability to practice within a specified geographic area for a defined period of time (also known as a "non-compete"), which, to be enforceable, must be reasonable in scope and duration. What constitutes "reasonable" can vary significantly depending on the relevant market. Some non-competes also restrict post-termination work within a certain number of miles from multiple employer practice locations, even if the physician did not provide significant services at all those locations. Non-solicitation provisions should be reviewed carefully, as they may extend beyond a physician's own patients to referral sources and employees, or in some cases, to broader networks regardless of direct contact.

3. DUTIES AND CLINICAL EXPECTATIONS

Typically, gastroenterologist employment agreements include provisions that set out your duties, which are usually drafted from the perspective of the practice. These provisions will often grant the employer broad discretion over a gastroenterologist's day-to-day responsibilities. Where possible, physicians should seek specificity, as excessive administrative work can result in decreased productivity, and in turn, decreased compensation.

Employment agreements should define expected work hours (including minimum clinical hours), days of the week, on call responsibilities, paid time off, and holidays. They should also describe the scope of administrative responsibilities. For call coverage, physicians should understand whether call is hospital or practice based, whether additional compensation is provided, and whether the obligations are defined or left ambiguous. If call obligations are "equitably split," physicians should review how rotation is handled as participants join or leave. New hires sometimes face disproportionate call requirements.

Agreements should identify required practice and hospital sites and any travel expectations. Commuting to distant locations can reduce patient facing time, affect productivity and compensation, and potentially implicate post termination restrictions. Where possible, physicians should limit the locations where they could be required to provide services. Note that some practices may expect full discretion to require physicians to work at any location where the practice currently (or in the future) provides services. Physicians should also assess whether minimum productivity expectations are imposed and whether the practice will provide the resources necessary to meet them, such as adequate endoscopy suite access, sufficient block time, and administrative support.

4. TERM AND TERMINATION

Term and termination provisions shape position stability and exit flexibility. Physicians should consider the initial term, any auto renewal provisions, and the notice required to prevent renewal. Note that if an agreement permits the practice to terminate the physician without cause with 90 days' notice, even a multi-year term may functionally operate as a short term 90-day arrangement. Without-cause termination rights should be mutual. For-cause termination triggers should be clearly defined with cure opportunities (ways to resolve issues) where appropriate and should include a provision that the physician can terminate if the practice breaches. Physicians should be aware of any repayment obligations that may apply

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to retention or relocation bonuses in the event of a termination of employment. They should also understand any circumstances that will trigger that obligation. Agreements should also address the timing of payment for any earned productivity or incentive compensation following termination.

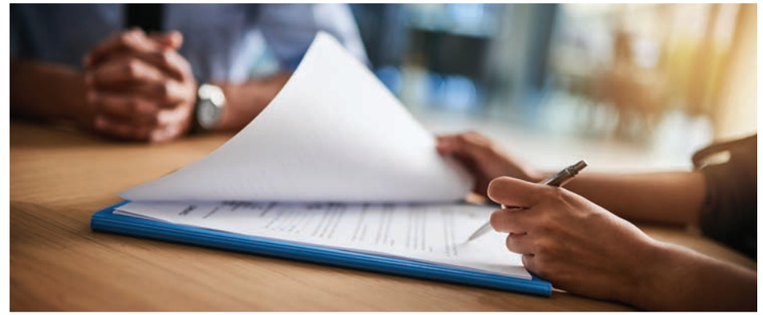
5. MALPRACTICE INSURANCE

Review malpractice insurance provisions carefully. Claims made policies are generally less expensive at the outset but do not cover claims filed after employment ends unless tail coverage is purchased and in place. Occurrence insurance includes coverage for claims made post termination. Physicians should confirm the type of coverage provided and who is responsible for paying for tail, including whether that obligation changes depending on the reason for termination.

Agreements should also address the allocation of payment responsibility for tail coverage upon termination of employment if the malpractice insurance policy is converted from occurrence based to claims made. Physicians with an existing tail obligation when leaving one practice and joining another, should consider negotiating with the new employer to cover that cost.

6. BENEFITS AND PROFESSIONAL SUPPORT

Employers typically provide that core benefits such as health insurance and retirement plans can be modified, reduced, or even eliminated in the future with limited or no participant input. Make sure that any language permitting reductions to core benefits provide that they will only apply if uniformly applicable to all physicians, and require at least 90 days' advance written notice of any change. Physicians should negotiate upfront individualized fringe benefits such as enhanced paid time off (PTO), holidays, continuing medical education (CME)



leave, and CME budgets (including travel and lodging, if applicable).

7. COMPLIANCE AND REGULATORY PROVISIONS

Employment agreements often include broad representations and warranties, including those related to regulatory compliance, which, paired with a broad indemnification provision, can create significant liability for the physician if any of those provisions are incorrect. Make sure that those are all accurate, before agreeing to them. The breadth of the indemnification obligations resulting from such a breach may come as an unpleasant surprise to the physician and can be expected to encompass all costs and expenses related to such breach. Physicians should seek to narrow overly broad representations and warranties and, where possible, limit indemnification obligations through qualifications or exceptions. At a minimum, the provision should exclude losses covered by insurance.

8. OWNERSHIP

Gastroenterologists should discuss any interest in immediate or future ownership opportunities where appropriate. These opportunities might include equity in the practice, practice-related real estate, a management service organization, or an ambulatory surgery center. Candidates who are not in a position to negotiate definitive arrangements should understand that outlining the material terms of potential arrangements—such as buy-in cost, valuation, and timing—can be helpful. Keep in mind that even non-binding terms may create momentum and increase the likelihood that ownership opportunities are ultimately honored.

In all cases, clarity is essential. Physicians should also be aware that practices may offer quasi- or phantom-equity arrangements that function primarily as retention or incentive tools. Physicians interested in equity participation should communicate that interest explicitly.

CONCLUSION

These eight topics highlight some major areas of concern when reviewing your employment agreement. This article does not delve deeply into the options available, and it doesn't capture every issue that may materially affect your employment arrangement. Additional issues may be relevant depending on the facts, as well as your goals and career stage. Prior to entering into negotiations, we strongly recommend that you retain counsel with experience in representing gastroenterologists in negotiating employment agreements so that a thorough review is performed.

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