



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?

- 
- Who are the current payers?
 - What are the patient demographics?
 - 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?



Before You Contract

(cont'd)

Build Your Team

- Retain an experienced lawyer
- Find a mentor
- Talk with peers
- Listen to your family or significant others



Initial Considerations

Written vs. Verbal Agreements

- Reduce potential for mistakes
- Reduce potential for misunderstanding
- Reduce potential for amnesia
- Negotiation
- No harm in trying
- Never overestimate mind-reading abilities



AMA Resources

Model Physician Employment Agreements:

- Model Annotated Physician-Hospital Employment Agreement
- Model Annotated Physician-Group Practice Agreement
 - An overview of each and sample copy can be found in your folders
 - Members-only resources





AMA Resources

(cont'd)



AMA Physician Profiles

- Credentialing profiles required by most states
- AMA members receive unlimited free profiles a year (\$35 value each)



Succeeding in Medicine

- Online guide developed by AMA physicians to assist as you transition into practice and grow in your career.



Important Contract Terms

- Fringe Benefits
- Compensation
- Physician Duties
- Employer Duties
- Equity Status Opportunities
- Term
- Termination
- Covenants not to compete/confidentiality
- Other Issues



Unique Benefits

- License Fees
- Professional Society and Medical Staff Dues
- Midweek time off (administrative duties, sleep before call)
- CME - time and money
- Professional Liability Insurance
- Payment of Student Loans



Physician Duties

- Hours (patient visits per day/enrollees assigned)
- Services
- Administrative Responsibility
- Billing and Compliance (including participation in managed care contracts)
- Compliance with professional standards, employer rules



Shareholder or Partner Status

- Is the employee expected to become an owner?
- When? Under what circumstances?
- Review process?
- Buy-in price and terms



Term

- Unless otherwise specified, employment contracts are usually terminable “at will”
- Law may limit initial term (CA has 7 year maximum)
- Typical: initial term and provision for extension
- Leave time before termination date to renegotiate



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
- Without cause - for any (lawful) reason or no reason
- Hearing rights?
- Performance evaluations?



Termination

(cont'd)

- Notice to patients - who will provide it and what will it say?
- Access to patient lists and records
- Patient request, malpractice claim, administrative proceeding
- Will physician have to pay?
- How much?



Covenants Not to Compete

- Covenants not to compete during agreement are generally valid (moonlighting, teaching, research)
- Covenants not to compete after termination are disfavored by CEJA and may be unethical if overreaching. They are void in CA, unless coupled with a sale of a bonafide equity interest in the practice.



Confidentiality Clauses

- Confidentiality clauses are generally enforceable.
- Protect ability to communicate professional announcement of new position to patients (some practices consider patient list to be a “trade secret”)



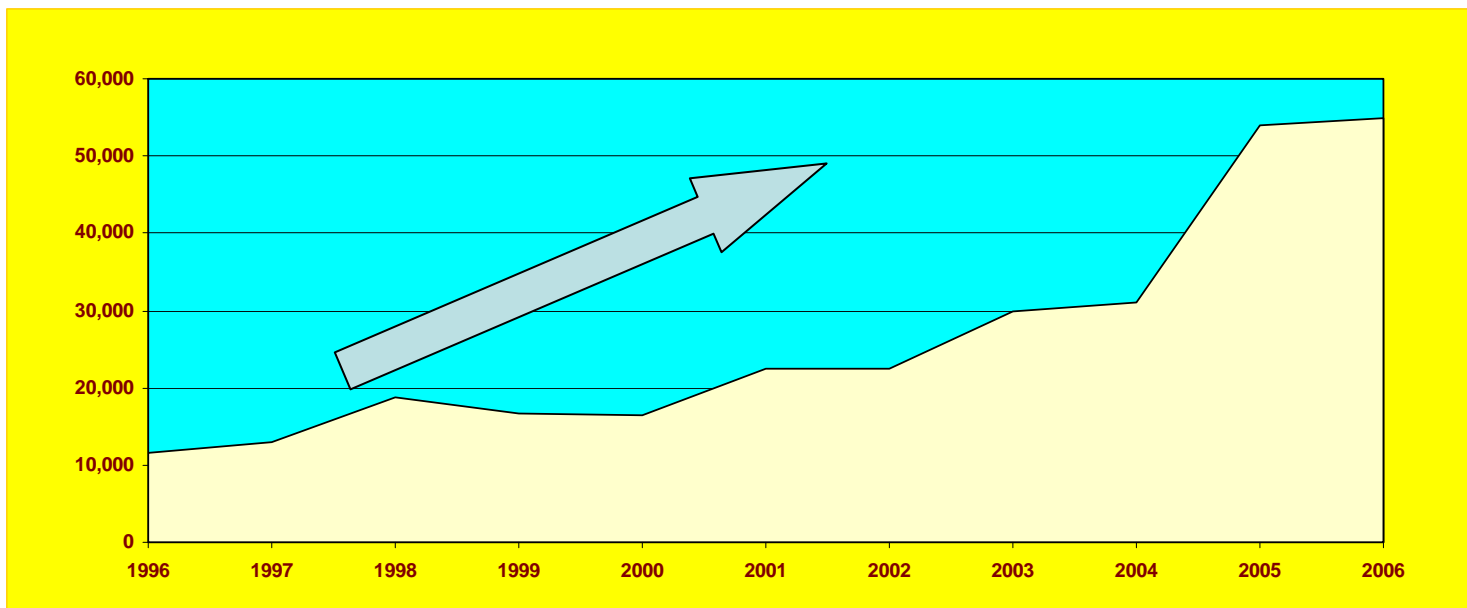
Other Issues

- Membership on IPA and Payor Panels (need for assistance/right to rescission)
- Intellectual Property Ownership (who gets it)
- Peer Review (scope of obligation/ requirement to release from liability)
- Indemnification (avoid it)
- Corporate Practice of Medicine (refuse it)
- Recruitment Contracts (get a lawyer)

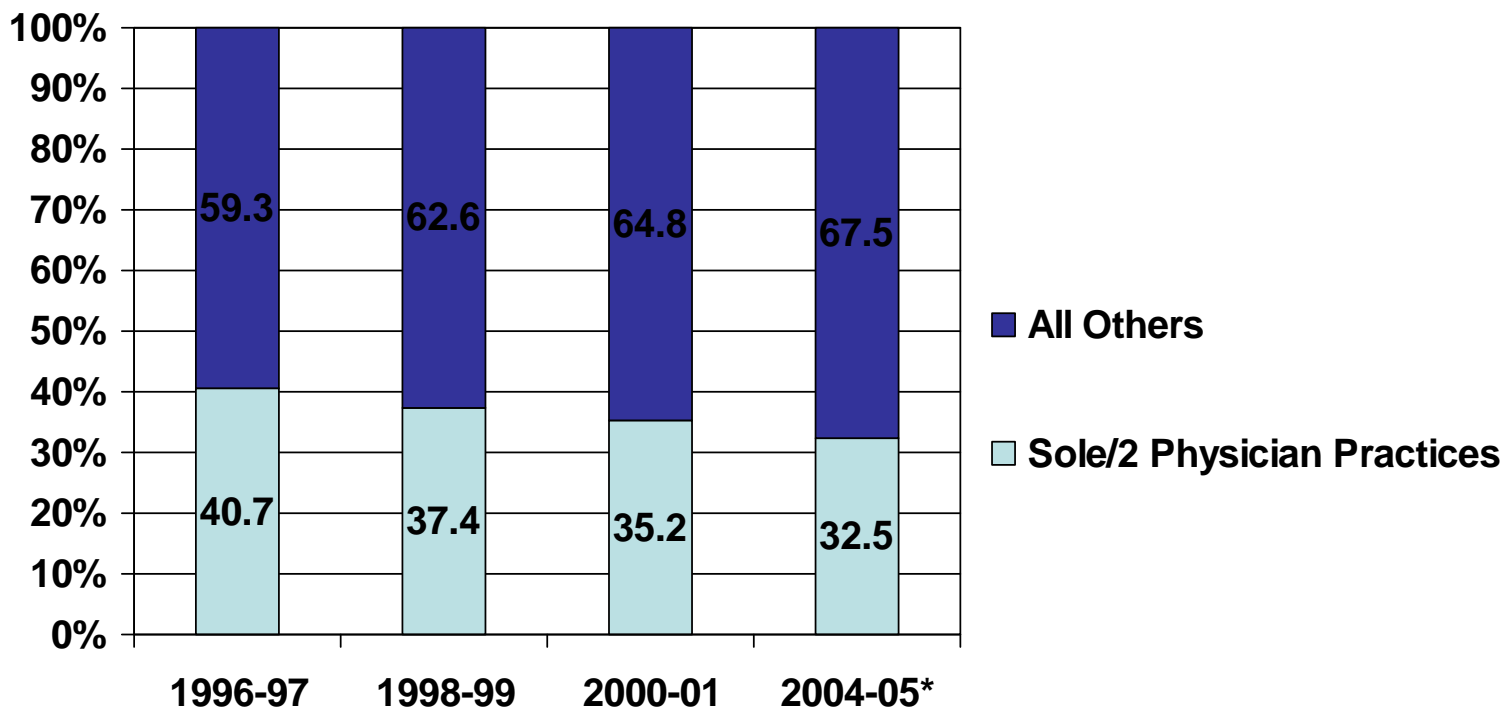


Hospital Employment: The Growing Reality

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



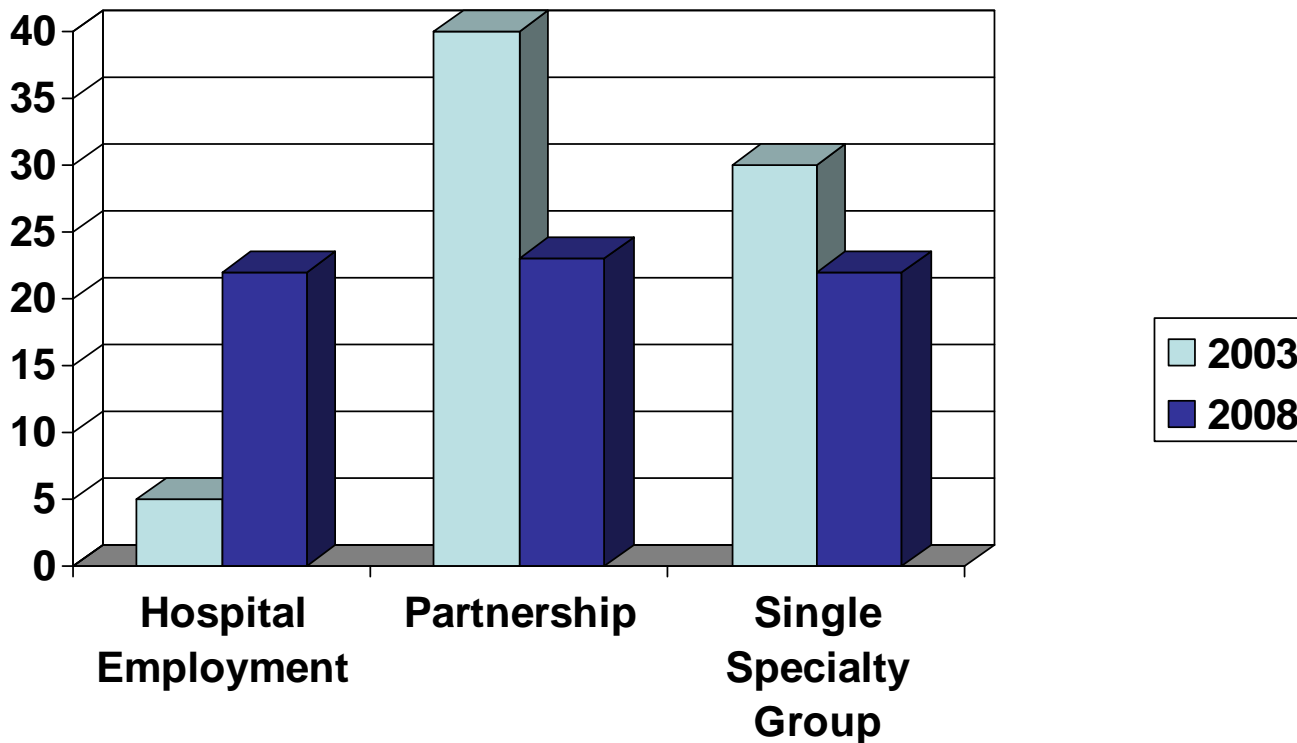
Physicians in Solo/Two-Physician Practices vs All Other Practice Settings, 1996-97 to 2004-05



*Change from 1996-97 is statistically significant at $p < .001$.
Source: HSC Community Tracking Study Physician Survey.



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 Employment: Legal Considerations

1. Antikickback Statute (42 U.S.C. 1320a-7b)
2. The Stark Law (42 U.S.C. § 1395nn)
3. The Internal Revenue Code Section 501(c)(3) for non-profit employers
4. Corporate Practice of Medicine
5. State mini-kickback and self-referral statutes



Hospital/Physician Employment: Contract Model

1. Supplements Employment Contract Model published in 2008
2. 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?



Key Provisions & Concepts: Termination

- How easy/hard is it to unwind
 - For “cause”
 - Without cause
 - Ongoing obligations and impact
 - Restrictive Covenants
 - Pro-rated compensation
 - Managed care participation
 - Practical (assets, start-up, patients, PLI)



Key Provisions & Concepts: Termination

(cont'd)

- Practical unwind
- Due process
 - AMA Policy (H265.998)
 - Corporate reality/mentality
 - NPDB reportability
 - HCQIA immunities
 - State peer review protections



Key Provisions & Concepts: Medical Staff Correlation

- Due Process
- Peer Review
- Quality/Economic Credentialing
- Unbiased Officers/MEC



Key Provisions: Restrictive Covenants

- Non-Compete
- Non-Solicitation
- Confidentiality, Non-Disclosure, Trade Secrets
- Intellectual Property
- Indirect Non-Compete
- Clean Sweep



Key Provisions: Compensation

- Trend is to use RVUs or wRVUs
- Issues:
 - Base salary or pure production
 - Some other measure than RVUs
 - Fair market value measure
 - What to do with ancillaries
 - How long are amounts/formulas fixed
 - Is physician being paid for all services



Managed Care Contracts, Discounted Fees & Bundled Payment

Physician acknowledges and agrees that Employer shall have the right to negotiate and contract for his or her services at discounted rates with any self-insured employer plan or third party payor plan; provided, however, all such contracts shall be held in Employer's name and Physician shall not be a party to such contracts. Employer shall make all reasonable efforts to obtain membership for the Physician in all health maintenance organizations (HMOs), preferred provider organizations (PPOs), physician-hospital organizations (PHOs), independent practice associations (IPAs), and any other managed care organizations with whom the Employer contracts...



Managed Care Contracts, Discounted Fees & Bundled Payment

(cont'd)

The Employer shall make its best efforts to ensure that the Physician is eligible to participate in all managed care contracts in which the Employer participates. Employer shall notify Physician of any agreement as to which fees for Physician's services shall be negotiated and/or bundled; and in such discounted or bundled fee arrangements, under no circumstances shall Physician be required to accept fees which are discounted at a rate proportionately greater than the discount given to such plans by Employer or take greater risk than Employer.




Caveats


- Look really, really, really carefully before you leap
 - Know the financials (yours and theirs)
 - Know the politics
 - Know the philosophy and the reality
 - Collaboration versus dictatorship
- Consider the long-term picture
 - What do you think is going to happen to “preserved compensation” when reimbursement continues to decline
 - Who controls the dollar
- Protect, protect, protect
 - AMA Annotated Model Physician-Hospital Employment Agreement



Contact Us



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Access these member-only resources at:
www.ama-assn.org/go/contractevent



