

# **EMPLOYMENT CONTRACT ISSUES**

American Society of Regional Anesthesia and Pain  
Medicine

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# TOPICS

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- Compensation
- Term and Termination
- Schedule
- Benefits
- Professional Liability Insurance
- Restrictive Covenants
- Private Practice Buy-In and Governance

# COMPENSATION

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- Base
- Incentive/Bonuses
- Transition from WRVUs to Higher Base/Lesser Quality Incentive

# BASE

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- Total
  - Term
  - COLA
  - Evergreen
- Budget/Cash Flow
- National Comparability

# INCENTIVE - BONUS

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- Types
  - Discretionary
  - Collections/WRVUs – activity
  - Profits – revenue less overhead
  - Pay for Performance
  - Bundled Payment Groups (Capitation?)
- Hospital Employed Physician
- Private Practice
  - Employee
  - Owner/Partner

# OWNERS: SHAREHOLDERS, PARTNERS, LLC MEMBERS

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- Collections vs. Profit Production
  1. Collection
  2. WRVUs
- Profits Per Capita
- Profits Per Unit
- ASC Facility Profits
  1. AKS
  2. Stark

# PROFIT=COLLECTIONS MINUS OVERHEAD

<p><b>Personal</b></p>	<p>Compensation Benefits Malpractice Dues, CME, entertainment Benefits Unique Expense (cars)</p>
<p><b>Fixed/Per Capita</b></p>	<p>Rent Administrative Professional fees Major equipment leases (?)</p>
<p><b>Variable</b></p>	<p>Billing Clinical staff Supplies Major equipment leases (?)</p>

# COLLECTIONS

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- ❑ Cash vs. accrual
- ❑ Variances
  - First year
  - Incident to
  - Practice changes
  - EHR transition
  - Scheduling/Patient Availability
- ❑ Past performance of practice
- ❑ New vs. replacement position
- ❑ National standards – reality check
- ❑ Force Majeure – COVID

# WRVU

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- Personal vs. Incident to
- CMS revisions
- Intervening factors
- National standards – reality check
- Practice History or Projections

# NEW PAYMENT METHODOLOGIES

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- Healthcare Reform
- Pay for Performance (P4P)
- Global Payments
- ACOs
- Return to Salary
- Value Based Enterprises (VBEs)

# TERM AND TERMINATION

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- Term
  - Fixed
  - Evergreen
- Termination
  - At-will (30-60-90 day notice)
    - severance
  - For-cause
    - Specific events
    - Subjective events – e.g., failure to perform
    - Notice and cure
- Clean sweep
- NPDB Reporting – Medical Staff vs. Employment
  - Resignation

# SCHEDULE

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- Locations
  - Hospitals
  - Offices
  - To Be Determined?
- Office hours
- Call coverage
  - As determined
  - Equitable
  - Maximum

# BENEFITS

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- Business expenses
- Health and welfare
- Qualified retirement plans
  - Entry
  - Vesting
  - Contribution
    - Employer
    - Employee
  - Summary Plan Description (SPD)
- Relocation expenses (IRS Non-Deductible)

# PROFESSIONAL LIABILITY INSURANCE

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- Claims made vs. Occurrence
- Tail

# MISCELLANEOUS

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- Intellectual property
- Moonlighting
- Arbitration
- Attorneys' fees

# RESTRICTIVE COVENANTS

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- Restriction on practice with purpose of providing former employer time to rebuild business relationships free from unfair competition by departing physician.
  
- Components
  - Geographic scope
  - Time period
  - Prohibited activities
  - Prohibition of practice/resignation of privileges

# RESTRICTIVE COVENANTS

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- Enforceability
  - Jurisdiction (state)
  - Local competition environment
- Enforceable if:
  - Incident/ancillary to employment
  - Restrictions reasonably necessary to protect a legitimate business interest
  - Restrictions are reasonably limited in duration and geographic extent
  - Public policy exception

# RESTRICTIVE COVENANTS

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- Beware certain triggers
  - Unilateral termination/termination without cause
  - Non-renewal of contract by employer
  - Termination associated with failure to become an owner
  - Breach by employer
- Negotiate exceptions based on individual needs and circumstances.

# PRIVATE PRACTICE ISSUES

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- Practice Buy-In
- Governance

# PRACTICE BUY-IN

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- Letter of Intent
- Guaranteed eligibility
- Price
- Established process or protocol

# GOVERNANCE

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- Voting rights
- Voting complications
  - Super majority
  - Separate groups or offices
- Deadlock resolution
- Senior physician rights

# LAST WORDS

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- ❑ Don't sign a "Letter of Intent" that establishes the terms and *then* call your lawyer.
- ❑ Keep at least two options open as long as possible.

# QUESTIONS?

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**National Data**

	<u>10<sup>th</sup></u>	<u>25<sup>th</sup></u>	<u>75<sup>th</sup></u>	<u>90<sup>th</sup></u>
Total Compensation	\$360,000	\$395,000	\$432,000	\$612,000
<u>WRVUs</u>	2,163	5,388	7,516	8,817