LEGAL ISSUES FOR MEDICAL RESIDENTS

Presented by:

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Licensure Application Tips

• Fully disclose all background information, even if it’s negative.
  – It’s always better to be completely honest. They will always find out if you attempt to cover anything up.

• Have someone other than yourself review your application.

• Submit your application at least 90 days prior to employment. Better safe than sorry!

• If you are called for a board appearance regarding your application, retain an attorney to represent you.
Licensure Application Tips, cont.

• Get documents from residency programs now
  – These tend to disappear or be difficult to locate in the future
  – Obtain and keep forever copies of:
    • Certificates of completion
    • Evaluations
    • Recommendations
WARNING: Hiring Application Services

• Do not let the service fill out your application completely on its own

• Review application before it is sent

• Get copies of everything
Credentialing

• Find out credentialing timeline from employer/facility
• Try to get credentialed at least 90 days before employment begins
• Be aware of contracts that are contingent upon credentialing
Physician Employment Agreements
Duty to Read

- Parties have the duty to actually read the contract
- Courts will assume that both parties have read and understood the contract
- Get a clarification in writing if you are unsure of a particular provision’s meaning
Compensation

• Nearly all compensation is subject to tax, fraud and abuse, and anti-self-referral laws

• Must be fair market value
  • Fair market value determined by comparing entire compensation package
Methods of Compensation

• Flat salary

• Guaranteed salary

• Modified flat salary with productivity basis
Partnership / Buy-ins

• Option to buy into group:
  • “Buy-in" clause or "partnership" arrangement
  • Draft these options separately, if possible
  • Often not reached or offered
Benefits

• Bonuses
  • Sign-on bonus
    • Put bonus into bank (may need it if contract is terminated early)
    • May have to repay entire bonus or prorated amount if contract is terminated early
Benefits

• Additional Perks
  • Paid time off
    • Are CME and vacation days together?
    • Are holidays included?
    • Are you realistically going to get to use all of it?
  • Health/Dental/Disability/Retirement plans
    • Spouse or family coverage
Non-Compete

- Prevents departing physician from competing with employer in specific geographic area for specific period of time
- Enforceable in many, but not all states
- Agreement may contain an option to “buy out” of restrictive covenant
Other Restrictive Covenants

• Non-solicitation
  • Patients
  • Employees
  • Referral Sources
  • Liquidated Damages Clauses

• Non-Disparagement
Outside Employment

- Can be prohibited by some employers
- May require the income be turned over to the employer
- Physician should negotiate to minimize the employer's control over outside employment and income
Research and Writing Activities

- Generally, the results and the written materials belong to the employer.
- A written agreement can give the physician the ownership rights to these materials.
Termination

• Without cause termination
  • No formal reason
  • Notice period usually between 30 to 180 days
• This means your contract is only as long as the notice period
Termination

• Termination with cause
  • Common reasons to terminate the contract:
    • Loss of hospital privileges
    • Exclusion from the Medicare/Medicaid program
    • Conviction of a crime
    • Suspension of a medical license
ALWAYS request a signed copy of the contract!
Professional Liability Insurance
Malpractice Insurance

- Most employers provide professional liability insurance when physician works for employer
  - Should indicate “claims made” or “occurrence based”
Claims Made

• Covers the physician only if claim is brought within policy period

• Most employers provide claims made
Occurrence based

- Covers the physician for any alleged acts that occurred while the policy was in effect, even if the claim is brought well after the policy expires
Tail Coverage

• Additional tail coverage is needed to cover claims made after policy expires
  • Agreement should outline who pays for tail coverage and how long it needs to be maintained
  • Proof of tail
Basic Asset Protection
!!!!WARNING!!!!

• DO NOT OPERATE A PRACTICE AS AN UNINCORPORATED SOLE PROPRIETORSHIP
Insurance Coverage

• Insurance coverage through a reputable carrier with appropriate limits is the best asset protection you can get
  – Malpractice insurance
  – Premises liability insurance
  – Umbrella coverage
  – Excess/Secondary coverage
Business Entities

• Why form a company?
  – Offers protection for your personal assets

• Caveat:
  – Must observe the “corporate form”
    • i.e. treat it like a business and not your piggy bank
Layers of Protection

- Using multiple business entities can add additional layers of protection
- Place all significant assets in separate business entities
  - Expensive equipment
  - Building and/or property
Spouse or no Spouse

- Depending on the law in your jurisdiction it may be advantageous to own your practice with a spouse or even children
- However, there is considerable disagreement among asset protection planners on the subject
Other Methods of Asset Protection

- Have your spouse sign for a child’s driver’s license
- Carry sufficient auto insurance
- Disability insurance
- Avoid excess liability in other business endeavors
Common Regulatory Pitfalls
Health Care Clinic Act

• Purpose: To require non-healthcare provider owners of health care entities to have the clinic licensed through the Agency for Health Care Administration (AHCA)

• Applies: If ANY portion of the business is owned by a non-exempt person
Exemptions
A Practice Owned By:

- Acupuncture Physicians
- Allopathic Physicians
- Osteopathic Physicians
- Chiropractic Physicians
- Podiatric Physicians
- Naturopaths
- Optometrists
- Dentists
- Massage Therapists
- Nurse Practitioners
- Other Providers

Licensed Under Chapter 464, Florida Statutes
Requirements for a Health Care Clinic License from AHCA

• Clinic must have a medical director
  – Medical director duties:
    • Ensure medical professionals are properly licensed and certified
    • Ensure record keeping compliance
    • Report noncompliance
    • To review clinic billings for fraud
Traps for the Unwary

• If a non-exempt person owns the clinic, practice, or facility
• If a non-physician controls all major decision making for the clinic, practice or facility
• If all financial matters are controlled by a non-physician.
• If a corporation or LLC owns the clinic, practice or facility
HCCA Consequences

- Third-degree felony with each day of operation
- If an individual has an interest in more than one clinic, AHCA may revoke the license for all of the clinics
- Administrative fines of up to $5,000 per day
- Potential recoupment of claims made to third-party payors
Stark Law

• Physician Self-Referral Prohibition
• Physician prohibited from referring to an entity in which he/she has non-exempt financial interest

• Two-Way Street
  – Provider receiving the referral is prohibited from accepting it
Stark Law

Stark Law prohibits referral to entities for the provision of designated health services such as:

- Clinical laboratory services
- Physician, occupational, & speech-language pathology services
- Radiology & other imaging services
- Radiation therapy services & supplies
- Durable medical equipment & supplies
- Parenteral & enteral nutrition supplies
- Prosthetics, orthotics & prosthetic devices
- Home health services
- Outpatient prescription drugs
- Inpatient & outpatient hospital services
Real-Life Example:

• A physician practice owns a Durable medical equipment (DME) provider and refers its patients to the DME company for supplies and equipment.

• Result: This is a Stark violation as the physician has a financial interest in the DME company and is in a position to influence referrals.
Stark Law Consequences

• Denial of Medicare/Medicaid/third-party payors payment
• Civil penalty of up to $100,000 for the DHS entity, referring physician or both
• If the violation is knowing it can subject a provider to criminal and civil liability under the False Claims Act
Anti-Kickback Statute (AKS)

- Under the Anti-Kickback Statute, it is illegal to knowingly or willfully:
  - Offer, pay, solicit, or receive remuneration directly or indirectly, in cash or in kind, in exchange for referring and individual, or furnishing or arranging for a good or service for which payment may be made by a federal healthcare program
AKS Problem Areas

- Free supplies or equipment – manufacturers may offer free supplies or equipment
- Waiving co-pays
- Offering transportation to appointments
- Offering free or reduced priced medications
Real-Life Example:

- USA Health Alliance and Sacred Heart Hospital were accused of illegally paying physicians in exchange for referring cardiac patients to Sacred Heart Hospital, a former member hospital of the USA Health Alliance.

- A qui tam lawsuit was brought forth alleging Sacred Heart Hospital limited the opportunity to work at the Heart Station, a center where patients receive non-invasive procedures such as stress tests, to those cardiologists who referred cardiac business to Sacred Heart Hospital.

- The suit also alleged that cardiologists were rewarded with a percentage of time at the Heart Station based on their contributions to the hospital's yearly gross revenues, and these physicians earned additional income for treating patients at the facility.
Real-Life Example:

- Result: The government claimed Sacred Heart Hospital’s use of Heart Station panel time to induce lucrative cardiac referrals violated the federal Anti-Kickback Statute.

- Claims submitted to Medicare/Medicaid violated the False Claims Act.

- The two hospitals agreed to pay $108 million to settle claims they violated the Anti-Kickback Statute and the False Claims Act.
Anti-Kickback Statute (AKS) Consequences

- Considered a felony for anyone who receives a form of payment in return for referring a patient for Medicare/Medicaid/Etc. covered services

- Imprisonment up to five years

- Exclusion from Medicare/Medicaid/Etc.

- Possible fine of up to $25K for ea. violation
Anti-Kickback Safe Harbors

- Safe Harbors Include:
  - Investment interests in certain entities
  - Space and equipment rental agreements
  - Personal Services and Management Contracts
  - Sales of practices
  - Employment relationships
  - Group Purchasing Arrangements
  - Health Plans and Managed Care Plans
  - Warranties
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