



# Helping Fellows Negotiate their First Employment Contract

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# Top Employment Contract Considerations



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## ***Practice Options***

Today's Fellows have many practice options including private practice and hospital-employment. Each brings its own set of unique challenges, opportunities, pros and cons.



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## ***Compensation & Benefits***

Today's Fellows will be evaluating many competing offers and, when facing moderate historical compensation and significant debt, the dollars will be attractive. However, there is more to the agreement than base salary.



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## ***Workload/Call Burden***

Today's Fellows often seek work life balance. And as surgeons, they know that the work comes with variable hours and call obligations. Understanding expectations on the front end is critical to satisfaction.

# Top Employment Contract Considerations



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## ***Partnership***

Today's Fellows who pursue private practice may have a long-term goal of being a shareholder in a practice one day. Understanding the path to partnership will help distinguish among otherwise similar offers.



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## ***Other Considerations***

Today's Fellows will quickly realize that the right choice is not all about the money. There are numerous factors that they should consider when selecting their next step.



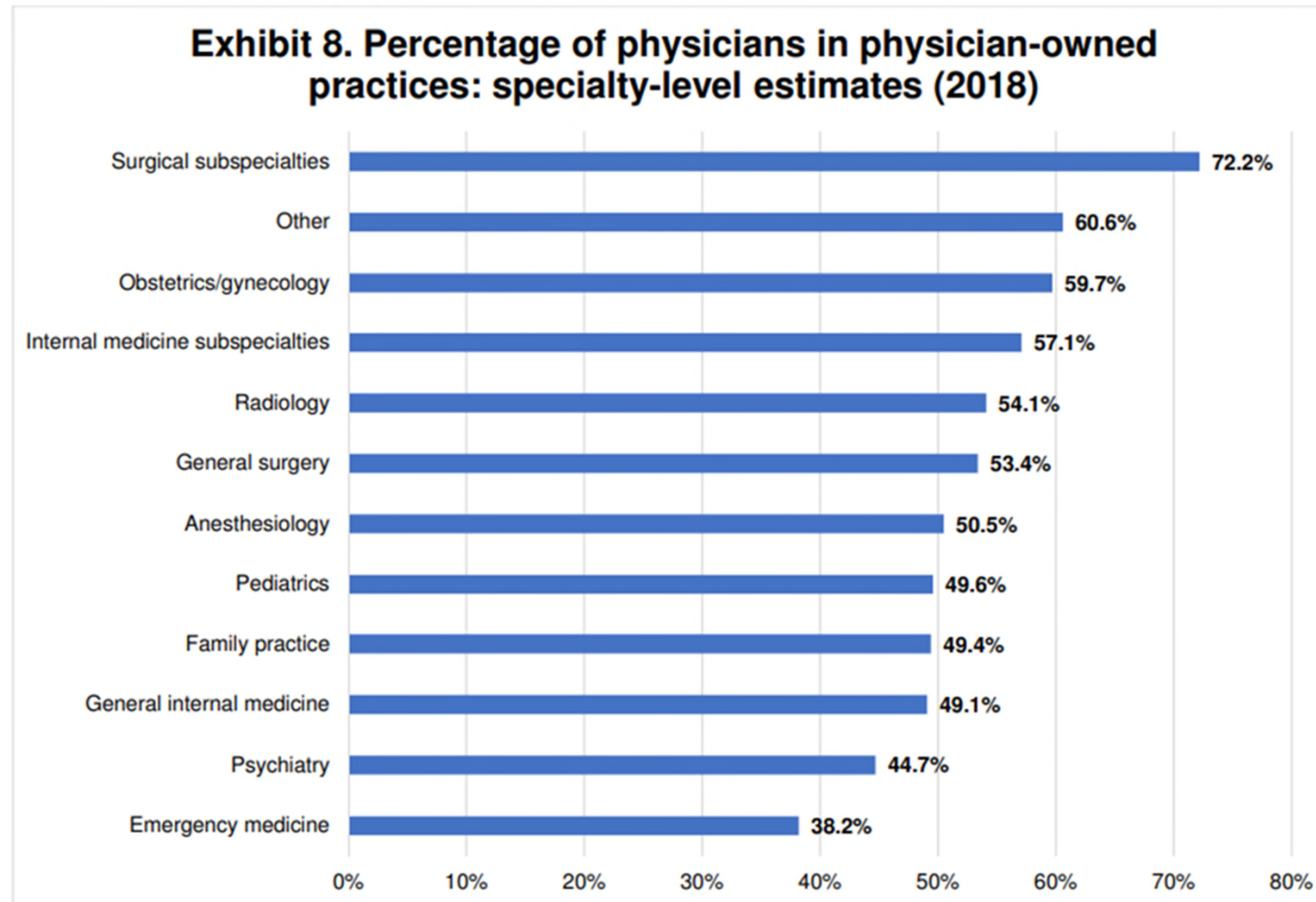
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## ***Legal Considerations***

Today's Fellows will be presented with numerous documents ranging from Letters of Intent to formal contracts. Understanding the purpose of each, and what they do, and don't do, will be critical. Additionally, executed agreements will have numerous legal provisions of which the Fellow should be aware.



# Practice Options



Source: Author's analysis of AMA 2018 Physician Practice Benchmark Survey.

Source: <https://www.ama-assn.org/system/files/2019-07/prp-fewer-owners-benchmark-survey-2018.pdf>

**Exhibit 9. Distribution of physicians in physician- and hospital-owned groups by practice size (2018)**

	<b>Wholly owned by physicians</b>	<b>At least some hospital ownership</b>
<b>Number of physicians in practice</b>		
Less than 5	53.5%	16.2%
5 to 10	21.2%	24.8%
11 to 24	11.0%	20.0%
25 to 49	5.7%	12.3%
50+	8.6%	26.8%
	100%	100%
<b>N</b>	1902	811

Source: Author's analysis of AMA 2018 Physician Practice Benchmark Survey.

Source: <https://www.ama-assn.org/system/files/2019-07/prp-fewer-owners-benchmark-survey-2018.pdf>

# Practice Options



	Private Practice	Hospital/Health System
Ownership Opportunities	Yes, but timing, cost varies by practice and shareholders	Rare
Management Opportunities	May progress based on capability and interest, ownership willingness	Maybe depending on interest, capability and influence
Practice Size	Varies but most are smaller	Varies but many are quite large
Infrastructure	Larger practices tend to have greater infrastructure	Many have robust infrastructure
Influence	Greater ability to influence practice operations (staffing, purchases, etc.)	Operations, financial decisions often decided by the health system
Market Leverage	Depends on size, specialty & market	Tend to have greater leverage by including all services in payer negotiations
Work Life Balance	As employed physician, often protected. Shareholders responsible for overall success which includes time spent on staffing, finances, regulatory requirements, etc.	Primary responsibility is seeing patients and appropriate documentation of visits

# Compensation & Benefits



# Compensation & Benefits



# Compensation Structures

- Salary
- Salary with bonus
  - Production – RVU based, net collections, gross billings, patient encounters, quality\*
- Draw
- Income guarantee
- Net income
- 100% productivity
- Other

\*Use of Value-based quality measures is increasing

# Compensation & Benefits - 2019



	MGMA	Merritt Hawkins
Signing Bonus	65%	71% (\$2,000 - \$32,692 - \$225,000)
Relocation Package	60%	98% (\$2,000 - \$10,393 - \$30,000)
Loan Forgiveness	86% (\$25,000 - \$200,000)	31% (\$10,000 - \$101,571 - \$300,000)
Continuing Medical Education Allowance		98% (\$1,000 - \$3,620 - \$35,000)
Insurance – Tail Coverage	9%	
401(k)	96%	

<https://data.mgma.com/DataDive/Documents/2019%20Physician%20Placement%20Starting%20Salary.pdf?>

[https://www.merrithawkins.com/uploadedFiles/MerrittHawkins\\_2019\\_Incentive\\_Review.pdf](https://www.merrithawkins.com/uploadedFiles/MerrittHawkins_2019_Incentive_Review.pdf)

# Compensation & Benefits

- How is compensation structured while Fellow builds network and becomes established in the medical community?
- Is there a base or guarantee during the ramp up period?
- How are bonuses structured?
- What is the entity's benefits package and how does it compare to other offers? Consider:
  - Retirement plan structure – access, matching, ability to shelter tax free
  - Health insurance – individual/family, how much paid by entity, premiums, coverage and deductibles
  - Malpractice coverage – premiums paid by entity, charged back to physician, inclusive of tail coverage, quality of coverage provider
  - Continuing education allowance – dollars and time
  - Time off – vacation, ability to roll over, sick leave, maternity/paternity leave
  - Death/disability insurance
  - Loan forgiveness – resulting tax consequences

# Workload/Call Burden

## Workload/Call Burden

- Scheduled patient clinic hours
- Anticipated OR hours
- Time required for documentation/training, etc.
- Frequency of call coverage for practice
- Frequency of unattached call for facility
- Distribution of holiday, night call
- Ability to cover call for another provider (addtl \$\$)
- Severity of call
  - Hospital type (trauma center, academic medical facility, etc.)



# Partnership

# Why Partnership?

- Ability to own all or a portion of a business
  - Feeds entrepreneurial spirit
- Ability to influence direction, key decisions of the practice
- Potential access to additional revenue streams
  - Employed providers, non-physician practitioners
  - Ancillary services
  - Ambulatory surgery centers
  - Real estate



## Why Not Partnership?

- Owners' compensation fluctuates based on practice performance
- Responsibility for sound decisions/financial management of the practice
- As owners, typically can't "just do what I love and see patients"

## Partnership Considerations

- What is the current complement of shareholder versus employed physicians?
- What is the practice's succession plan? How old are the current physicians?
- Is there a defined partnership track? If so, what does it look like?
  - Years of service
  - \$\$/volume thresholds
- Is there a defined buy-in formula? If so, what does it look like? What is being bought into?
- What is the compensation formula for shareholders generally like?
  - Note that compensation formulas in private practices are almost never based on ownership percentages
  - Different ways of allocating revenue (charges, collections) and expenses (variable, fixed allocations, direct) that impact final income
  - Answer to the comp formula influences buy in formula and amount

# Other Considerations

## Other Considerations

- What is the culture of the entity?
- Where is the opportunity located geographically?
  - Is this location a long-term fit or a stop along the way?
- What is the supply and demand for the Fellow's surgical specialty?
  - Try to understand the count and age of same specialty physicians
  - How long has the organization been recruiting for the current position?
    - Is the organization in growth/expansion mode? Replenishing departures?  
Obtaining its first provider?
- What is the insurance payer market like?
  - Little payer influence? Heavy value/risk based?
- Family considerations
  - Recruiters will also be recruiting the spouse and family – happy families help with physician retention

# Legal Considerations

## Letter of Intent

- Purpose: Vehicle to negotiate major points of the deal before incurring significant legal fees associated with preparation of an employment contract
- Usually non-binding during the negotiations, and binding agreement may be required before production of employment contract
- Non-binding agreements are just that – parties can walk away.
- Binding agreements are often subject to certain terms – for instance, the physician’s ability to obtain state medical license or be enrolled with key payers
- Letters of Intent should generally not be used as the basis for big life changes such as turning in notice, putting house on the market, etc.
- Usually worthwhile to have advisory review – consultant, accountant, attorney

# Employment Agreement

- Purpose: Document that captures the terms agreed upon via the Letter of Intent; outlines the terms applicable to both parties
- Always worthwhile to have advisory review – consultant, accountant, attorney.
  - Attorney review is heavily based on the legal considerations, may include some financial/operational consideration based on attorney experience with medical entities.
  - Consultant/accountant review is typically focused on the financial/operational considerations. May have some familiarity with the legal but is not the same as a legal review.
  - Advisors may help narrow down the pros and cons of competing offers

# Key Areas of Employment Agreement

- Effective date
- Duration/Term
- Expectations regarding clinic hours/production requirements
- Compensation including compensation formula, bonus formula, quality measures, etc.
- Benefits including allowances, what is provided and what is charged to the physician
- Handling of overpayments and audit recoupments
- Non-compete provisions
- Non-solicitation provisions
- Termination provisions
  - For cause/not for cause – often handled differently



## Final Considerations

- Know the employer type and limitations of same
  - Stark/Anti-kickback discussions today
  - Not everything can be negotiated
- Ask questions
  - Use advisors to understand what is being said, left unsaid, what needs to be considered
  - Be selective as to using advisors to speak on recruit's behalf
- Negotiation tone can dictate the tone of the go-forward relationship
- Significant opportunity awaits as Fellows embark on this next step of their career

# Questions?

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