Negotiating Nurse Practitioner Employment Agreements
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General Considerations

- Full-Time vs. Part-Time
- Private Practice vs. Hospital-based
- Get to know the prospective employer
  > What are their specialties?
  > Who are the physicians?
  > Who are the other nurse practitioners?
  > What hospital(s) is the group affiliated with?
  > Who is running the show/is anyone running the show?
  > Ancillary businesses?
  > Where is the practice located? How many offices does it have?
  > Who are the practice's patients?

General Considerations

- Discuss mutual expectations
  > The employer’s expectations of the nurse practitioner
  > The nurse practitioner’s expectations of the employer
  > The employer’s expectations for the future
    - New offices
    - New affiliations
    - New physicians
    - New nurse practitioners
Introductory Paragraphs

- Identifying Information:
  - Name, address and organizational status of parties
- Recitals
- Reasons and intentions for entering into this Agreement
- Set forth the parties’ intentions to enter into and be bound by this Agreement

Term

- Critical dates related to duration:
  - Execution Date
  - Effective Date
  - Date upon which the nurse practitioner will begin to provide services
    - May differ from Effective Date
    - May have “pre-work” obligations
  - Termination Date

- Length of term:
  - Fixed Period of Time
    - Number of years
    - Based on term of some other factor (such as a limited term provider contract)
  - Non-fixed period
    - Less common
    - Date of termination will be defined in the Agreement based on other factors
Term

- Length of term:
  - Evergreen Clauses
    - Automatically renewing contracts
    - Mandatory review of certain provisions (salary, bonus, benefits, etc.)
    - Feeling out period
    - Defined expiration date + Permanence

Duties

- Should be well defined:
  - Devote full time and best efforts
  - Full-time v. Part-time
  - Defined schedule
  - Exclusive or Non-exclusive
  - Location
  - Professional and Administrative
    - Specifically define the nurse practitioner’s responsibilities
    - Allow room for the employer to determine additional duties
    - Limit the employer’s authority to infringe on the nurse practitioner’s exercise of professional judgment
  - Moonlighting?

Duties

- Scheduling

- Other duties or restrictions
  - “Risky” behavior
  - Pro-bono
  - Policies and procedures
  - Coverage
  - Office hours requirements
  - Compliance Policies:
    - Conduct
    - Anti-discrimination
    - Sexual Harassment
Duties

- Duties of Employer
  > Space
  > Support
  > Supplies
  > Equipment

Qualifications

- "Representations and Warranties"
- Licensure
  > Un-restricted license to practice as a nurse practitioner
  > Valid narcotics number
  > Inform of proceedings, disciplinary action, suspension, revocation
- Does the nurse practitioner have any current contractual or other restrictions?
- Understand related party referral practices (e.g., does family member own a facility which they refer to (e.g., blood lab/))

Qualifications

- Insurability at regular rates
- Medical Staff Privileges
  > Application and Qualification
  > Maintenance of Good Standing
  > Employer Assistance/Payment of fees
- Program Participation
  > Medicare and Medicaid programs, if applicable
  > Compliance with rules and regulations
Qualifications

- Provider Contracts
  - Insurance contracts
  - Compliance with rules and regulations

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Qualifications

- Check state databases
- Check OIG Excluded Provider List
- Google search
- Check references

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Billing and Recordkeeping

- Billing
  - Providing nurse practitioner has “right to bill” for services rendered
  - Usually, “right to bill” is assigned to the employer
  - The employer will set billing rates (usually based on carrier contracts)
- Recordkeeping
  - A nurse practitioner legally must keep accurate detailed records
  - Analogous requirement in Agreement for billing purposes
    - Coding
    - Establishing medical necessity
  - Assisting the employer
Billing and Recordkeeping

Ownership of Patient Records
- Who owns the patient chart?
  - Licensee is legal owner
  - Most Agreements require assignment by licensee to employer
- Patient “owns” information in chart
- Patient may request transfer from employer to former nurse practitioner employee

Salary/Compensation

Defining the Compensation Package:
- Salary and Bonus
- Benefits
- Business Expenses
- Professional Expenses
- Vacation/Continuing Education

Salary/Compensation

Salary Computation
- Fixed amount for a period of time
- Production Based
- The Hybrid
  - Fixed plus Production Bonus
  - Allocation of Risk
Salary/Compensation

- Production based compensation factors:
  - Percentage of Billings
  - Percentage of Collections
  - Other factors:
    - Patient encounter volume
    - Procedures performed
    - Use of costly resources
    - Performance of non-clinical functions (e.g., administrative, marketing)

Salary/Compensation

- Benefits:
  - Examples:
    - Medical
    - Dental
    - Life Insurance
    - Disability Insurance
    - Automobile
  - May not list in Agreement
    - Reference to other documents

Salary/Compensation

- Will the employer pay for “business expenses” such as:
  - Cell Phone
  - Automobile/Business travel Expenses
  - Equipment
  - Other out-of-pocket expenses directly related to employee’s practice
Salary/Compensation

Will the employer pay for “professional expenses” such as:
- Continuing education and related travel expenses
- Hospital staff dues
- Professional association dues
- Licensure fees
- Professional subscriptions
- Professional liability insurance
  - Claims-made vs. Occurrence
  - “Tail” policy
  - Insurable at usual rates?

Expense Reimbursement:
- Reimbursement vs. Direct Payment
- Prior approval?
- Agreement may list reimbursable items
- Agreement may refer to established employer policy
- Annual caps/Carry-forward
- Documentation requirements
- Frequency of reimbursements

Time Off:
- Vacation and Sick Leave:
  - How much?
    - Usually measured in calendar days or business days
  - Carry-forward?
  - Reimbursed for unused days?
    - At end of each year?
    - Upon termination?
  - Vesting period?
  - Paid or unpaid?
**Salary/Compensation**

- Time Off:
  - Continuing Education
    - Time off for attending conferences
    - Included in vacation vs. Separate allotment
    - Minimum number of conferences per year
    - Reimbursement?

**Salary/Compensation**

- Retirement Planning:
  - Pension Plan
    - Usually employer funded
    - Discretionary
  - 401(k)
    - Employee funded on pretax basis
    - Limitation on yearly funding
    - Employer matching?
  - Agreement may only generally refer to retirement plans

**Termination**

- Grounds should be explicitly set forth in Agreement
  - At end of term
  - Without Cause:
    - Undermines permanence of relationship?
    - Notice provisions
    - Mutual agreement
Termination

- Either party’s breach
- Either party’s material misrepresentation
- For “Cause”
  > Usually misconduct on part of employee
  > Should be well defined

Some examples Of “Cause”:
- Incompetence/Failure to perform duties
- Exclusion/suspension from payor programs
- Material deviation from professional standards
- Not insurable at usual rates
- Commission of a crime – “moral turpitude”
- Failure to observe rules, reasonable directives
- Sexual harassment

Termination

- Disability
  > Definition:
    - General - Inability to perform duties
    - May vary depending on particular circumstances
  > Determination
    - Provide method for determining disability
    - Dispute Resolution
  > Define benefits to disabled employee
  > Duration of disability benefits
  - Relationship with disability insurance benefits
  > Termination due to extended disability
    - “Permanent Disability”
Termination

Mechanics:
> Automatic vs. action by other party?
  - Some causes always automatic:
    - Loss of license
    - Death
> Notice and ability to cure
> Vesting of salary and bonus
> Duties upon termination:
  - Complete charts and records
  - Ownership of records
  - Ownership of physical assets

Restrictive Covenant

Employer’s protection upon employee's termination
Most common types:
> Non-solicitation covenant
  - Patients
  - Referral sources
  - Employees
> Non-Competition
> Staff privileges
Mechanics:
> What activities are prohibited?
> For how long?
> Where?
Reasonableness – Court ability to modify

Restrictive Covenant

Confidentiality
> Prohibition on disclosure or personal use
> Should be well defined
> Usually includes:
  - Patient records
  - Trade secrets
  - Intellectual property
  - Business planning
> Assignment of Ownership of Confidential Information
Restrictive Covenant

- Enforcement:
  - Monetary damages
  - Liquidated damages
  - Buyout provision
  - Injunctive relief
  - Some confidential information protected by law (e.g., patient information)

Miscellaneous Provisions

- Examples:
  - Notices
  - Choice of Law
  - Dispute Resolution
  - Severability
  - Use of Headings and Pronouns
  - Assignment
  - Amendment
  - Counterparts

Collaborative Practice Agreement

- In New York, a nurse practitioner with more than 3600 hours of qualifying nurse practitioner experience does NOT have to have a collaborative practice agreement, BUT, must, at a minimum, still practice and have collaborative relationships with one or more qualified physicians or New York State Health Department licensed health care facilities.

- A collaborative relationship is when a nurse practitioner communicates by phone, in person in writing or electronically with a physician qualified to collaborate in the specialty involved or, for a facility, with a physician qualified to collaborate in the specialty involved who has privileges at such facility for the purpose of exchanging information in order to provide comprehensive care or to make referrals, as necessary.

- Must have documentation, but does NOT need to be an agreement.
Collaborative Practice Agreement

- In New York, if the Collaborative Practice Agreement is still required or it is chosen to use such an Agreement, the Agreement must include provisions on:
  > Patient referral and consultation
  > Coverage for emergency absences of either the nurse practitioner or the collaborating physician
  > Resolution of disagreements between the nurse practitioner and the physician regarding diagnosis and treatment
  > Peer review by the physician of patient records no less often than every 3 months (no minimum number of records)
  > Written practice protocols that the nurse practitioner will use