

# The Employment Agreement—Part 1

Due diligence before saying “I do”.

BY MICHAEL J. SACOPULOS, JD

*Reprinted with Permission from The Journal of Medical Practice Management, Sep/Oct 2018, pgs 83-87, copyright 2016 Greenbranch Publishing, LLC, (800) 933-3711, www.greenbranch.com.*

*This article is the first of three parts.*

**H**ave you ever tried online dating? If so, you know that before you decide to “favorite,” send a “wink,” or write a message to a potential suitor, you’ll spend considerable time reviewing the profiles and images of the candidates put forth by the dating site’s algorithms. You may even invite your trusted friends or family members to weigh in.

If, as many describe it, practicing in a group is like being married, assessing potential partners and employers is a lot like online dating. Before you say, “I do,” there are many questions to ask, pieces of information to review, and personal and professional advantages (as well as disadvantages) to consider.

This series provides practical guidance and considerable detail about the physician employment process and agreement. It is important to understand at the outset that the written contract is not the most important part of the employment process. It is simply a legally enforceable document that embodies the business bargain arrived at by the employer and employee. More important than the document are the steps, conversations with trusted advisors, and due diligence conducted prior to ever preparing the written

agreement. The biggest question that a would-be employee and employer must answer is: should we be in business or partnership together at all?

This series, therefore, advises a preliminary assessment before even requesting or reviewing the employment agreement. It covers the discovery and due diligence that must be conducted before determining whether the two parties should practice or do business together. This process includes a self-assessment and the assembly of a personal advisory team, as well as an evaluation of

to put the “good patients” onto Dr. New’s schedule, or fill only 50% of potential slots.

- **Misfit:** After three months of practice, Dr. New realizes her new partners’ goals and values are very different from her own.
- **Left out:** Promised accounts receivable and productivity reports never materialize from the hospital’s central billing office.
- **Hazing:** Dr. New is handed an unexpectedly unreasonable call sched-

---

**If, as many describe it, practicing in a group is like being married, assessing potential partners and employers is a lot like online dating.**

---

each potential employer’s culture and values, reputation, financial health, and operations. This article describes the self-assessment and personal advisory team, and discusses how to evaluate culture and values, as well as reputational issues.

## Preliminary Steps

Everyone knows colleagues who have complained about entering into a horrible contractual relationship with a group practice or hospital—one they wish they had never gotten into in the first place, and that resulted in situations such as these:

- **Unpreferential treatment:** Loyal to Dr. Senior, front desk staff fail

ule, or chastised by the central billing office for not using the right codes or modifiers.

- **No authority:** Dr. New cannot hire or fire poorly performing, hospital-hired staff; or she cannot get anyone to order business cards or put her CV on the website.
- **Pay or else:** Several practice staff routinely perform personal assistant activities for Dr. Senior, creating a higher overhead.
- **The perfect storm (aka, nepotism gone wild):** This is some combination of the above, typically brought

*Continued on page 128*

## Self-Assessment

What do you want?	Why is it important to you?	Is it a must have or a nice to have?
Live someplace warm	My wife and I have had enough of Chicago winters.	Must have
No limit to practice building opportunity	I am entrepreneurial and have a lot of ideas for growth.	Must have
No more than six to eight physicians in the group or department	That is a good size for collegial work, but not too big.	Nice to have

*Employment Agreement (from page 127)*

on by Dr. Senior’s spouse acting as the practice’s administrator.

Much like opening a restaurant in Manhattan or playing the lottery, rarely do any of these situations work out in Dr. New’s favor. Notice that none of them has much to do with the employment agreement. Rather, they result from the dynamics of the relationship between the physicians, or with the staff or hospital administration.

Although it is true that physicians cannot sidestep 100% of potential problems such as these, asking the right questions, of the right people, and paying attention to the responses and your own inner circle’s guidance, will go a long way toward avoiding these Sunday morning regrets. A preliminary assessment of yourself and the organization you are considering joining is time well spent.

**Start With You**

Any wise person over the age of 50 will concur with Shakespeare’s Polonius who said, “This above all: to thine own self be true.” The best place to begin on the road to joining a practice or hospital is with a self-assessment. Physicians who have been studying and training for more than a decade can easily find themselves swayed by a heady compensation offer. You must be rock solid on what you want out of an employment agreement—or you’ll take the bait and accept a job for the wrong reason.

Think about your professional and

personal goals, and categorize them in terms of must have versus nice to have. In other words, what do you absolutely need in your work situation, and what could you potentially relinquish without serious regrets? Is autonomy important, or the ability to control your destiny in terms of practice building and income? Where does work-life balance rank against the requirements of call coverage? Is the support and camaraderie of colleagues

of jumper cables could easily result in the filing of insurance claims. That is why, when it’s time for me to buy a new car, I ask my son to tag along with me to the dealership. He got the gearhead gene from his mother’s side of the family. He speaks the same language as the sales guy. He knows what to ask about the car’s features and costs, and can triage the answers as honest or hokey. My automotive ineptitude is quickly replaced with

**A preliminary assessment of yourself and the organization you are considering joining is time well spent.**

a must have or a nice-to-have? Do you want to participate in the business and marketing of the practice? How do you feel about politics and bureaucracy? Is clinical research one of your career goals?

Consider these things carefully and write them down in a format such as the one shown in the Self-Assessment sidebar. If you have a spouse or significant other, ask him or her to review your assessment and provide honest feedback.

**Assemble a Personal Advisory Team**

I’m no expert on cars. When I look under the hood of a vehicle, I have no idea where anything important resides or what all those belts, wires, and clamp things do. My use

confidence that knows no boundaries when my son is present.

New physicians can assess, intubate, stitch up, insert an IV, and perform CPR on patients. But it’s the very rare few who have the sufficient depth of knowledge to properly assess the management, finance, and risk issues that impact their future employment. In fact, most do not have a basic knowledge of revenue cycle management or the important aspects of a profit-and-loss statement. None of these are taught in medical school.

However, nearly every physician has a network of trusted family members, friends, mentors, and advisors. It’s from this personal network that you must choose and assemble a personal advisory team that has your

*Continued on page 130*

### *Employment Agreement (from page 128)*

back when it comes to assessing employment options and contracting issues. They'll give you honest opinions about the organizations you "date"—kind of like when you introduce someone who is clearly not right for you at the family picnic, and everyone gives the thumbs down.

Here's who to include in this inner circle:

- **Spouse or significant other:** The decisions you make will have a direct impact on him or her. Ignore the advice of a partner at your own peril.

- **Mentor:** An old friend of the family, a medical school professor, perhaps someone from your church or synagogue. Select a non-family member whom you admire and trust.

- **Accountant:** You need a "numbers guy or gal"—preferably someone skilled in physician accounting to explain to you the pertinent details discovered during financial due diligence.

- **Healthcare attorney:** Choose a healthcare attorney, as opposed to one who specializes in family law or patent infringement. Healthcare and physician employment agreements have particular complexities that require specialized knowledge.

- **BFFs:** Long-time friends who "knew you when..." The ones who have given you good guidance in the past and have your best interest in mind.

Other than the accountant and healthcare attorney, the people you choose for the personal advisory team will guide you at no cost. Approach and confirm your top choices as soon as you can, even before you begin the employment process. They will be honored to help you on your journey.

When should you engage the accountant and attorney? Engage the accountant after you have had at least a few phone calls and a site visit, and it's time to conduct financial due diligence.

Engage your attorney sooner—preferably after the second "date". Nobody likes to pay the lawyer until they think they have a contract that needs reviewing. But if you wait until you have a document in hand, you've waited too long. You'll have missed

the opportunity for counsel on what you and your potential employer have already discussed. If you want to negotiate employment terms yourself and then have the terms blessed, hire a priest. If you want help negotiating the employment terms, hire a lawyer early in the process.

Debrief with your BFFs or significant other after the first phone or online video date with a prospective employer. But if things move to a second date, pull your attorney off the bench and get his or her insight about

court and 'marry' a technically capable physician with a fine demeanor only to realize that they brought the associate on too hastily, with no thought given to whether he or she was the right fit. The result is a bitter dissolution of the arrangement, typically in two years or less." Zupko adds that the most common problems her firm addresses during physician partnership break-ups are miscommunication, money, incompatibility, and the "children" (the senior physicians' staff).

---

---

### **If you want help negotiating the employment terms, hire a lawyer early in the process.**

---

---

your conversations with the senior partner or hospital administrator. In 45 minutes, you will gain a lot of good knowledge to use in subsequent interviews and site visits. Many young (and even not-so-young) physicians do not know what is possible in a contract or what they can potentially be compensated for. For a nominal fee, a job-seeking physician will gain a load of pertinent information in just under an hour. And in most cases, an attorney will not be needed again until you have a written contract to review.

#### **Perform a Culture and Value Assessment**

"Culture" and "value" are fuzzy words that are often dismissed by physicians. But when it comes to the success or failure of a professional relationship, the impact of culture and values is significant. The same is true in a marriage. How many times have you seen a marriage fail due to the fact that the couple does not see eye to eye about money, raising the children, or their shared future? A lot.

Cultural fit is important for Dr. Senior as well as Dr. New. "Over the years I've watched dozens of successful physicians think their problems would be solved by hiring a young associate to help them with the overhead or call coverage," points out Karen Zupko, president of Karen Zupko & Associates. "They

Some may think that discussing culture and values in a business setting is reserved for people on the far left who wear patchouli and eat large amounts of kale. No. The problem lies in the fact that culture and values are not easily articulated or quantified in thought or word. Therefore, uncovering differences and potential conflicts between two or more people regarding such concepts requires some real digging. The responses should be bounced off some of the members of your personal advisory team for feedback.

In the final analysis, culture and values are those things that are important to a person or organization and the reasons underlying that importance. Unless and until you have such information, you will almost certainly lack a sound basis for determining whether the relationship has a good chance for success. Their importance cannot be overstated. In fact, no other single factor is more commonly the cause of professional practice dysfunction or breakup than problems in this area.

So using the questions in the sidebar as an interview guide, carefully do the following:

- 1) Determine the degree of consistency in the partners' or department's goals, philosophies, and viewpoints—both personal and professional. What drives your potential partners or colleagues and what are they passionate

*Continued on page 132*

*Employment Agreement (from page 130)*

about? Is it money, rendering superior patient care, a desire to build their personal brand, academic research, or professional reputation? Do the partners or the hospital believe in time with family and a balanced, healthy life? Consider the answers to this question without judgment, but make sure you understand the priorities not only of the senior partner but of the other physicians as well.

2) Interview key, long-term staff members about physician attitudes and compatibility, and what it's really like to work for the organization. Staff is a rich source of the type of information you need. It is true that obvious political constraints will result in their being guarded about critical comments. But if you interview several, most likely

some consistent patterns will appear. Open-ended questions will help too. Try, "What are some unique things about this practice/department?" or "What does a really good day in this office look like to you?"

issues that have the greatest potential for disagreement.

4) Interview alumni (both physicians and staff), plus hospital personnel and medical device and pharmaceutical representatives, to gain

---

## Look for an alignment between the values of your potential partners or employer, and the values you identified in your self-assessment.

---

3) Probe the history and relative harmony of the physicians regarding income distribution, practice growth, operational and technology improvements, and governance. Carefully examine all the issues concerning money and power. These are the is-

additional insight. Nurses can be a particularly useful resource, and former employees are more likely to be transparent, often providing the most unbiased and complete representation of the organization's culture.

5) Discuss your findings with your spouse or significant other. The importance of involving him or her at every stage of your assessment, particularly the culture and value assessment, bears repeating.

Opposites may attract, but 46% of marriages end in divorce. At the end of the day, attitudes and philosophies need not be identical, but they do need to be compatible. Look for an alignment between the values of your potential partners or employer, and the values you identified in your self-assessment.

### Cyber Stalk Potential Employers

Interviewing people is a great way to collect qualitative insights about the organizations you wish to work for. But a bit of online stalking can yield lots of juicy details about the reputation of the practice or your potential partners too. This exercise is not intended to turn up only nefarious material. Doing some homework about the organization and its principles prior to each phone interview or site visit will make you look smart. You'll interview better than the majority of candidates.

Start by visiting the organization's website. Is it current? Or does it list an event from last year on the home page? Does it use responsive design? Is there a patient portal? Do the physician pages include videos of the phy-

*Continued on page 134*

## Ten Questions That Assess Values and Culture

**U**se this list as a menu when you interview partners, hospital administration, and staff. Choose the questions that matter to you the most.

- 1) What are the things you enjoy most about working here? What do you enjoy least?
- 2) What is the philosophy around call coverage, work-life balance, and spending time with family?
- 3) What is the group/hospital's vision for how it cares for the community?
- 4) Could you provide an overview of the governance policies? Is there a physician "rights and responsibilities" document?
- 5) What investments have been made or are being made to improve patient satisfaction and convenience?
- 6) How would you describe the leadership of Dr. Senior/the managing partner?
- 7) How would you describe the working relationship among the partners?
- 8) What are three or four words that describe the way the physicians treat the staff and the manager?
- 9) What qualities of the physicians are most appreciated by the staff?
- 10) Would you have the physicians in this group treat or operate on you or your family members? •

## *Employment Agreement (from page 132)*

sicians introducing themselves or a regurgitation of each physician's CV? The answers can provide clues about whether there are enough employees to support the organization (and, it follows, the physicians); whether practice leaders believe that technology investments are important (or whether they prefer to stay in the past until forced to change); and whether the organization recognizes and responds to how patients prefer to engage with their physician.

In addition, conduct Google searches on the practice or hospital name, and the names of the key physicians or the specialty of the department you are thinking about joining. You may learn that a potential partner is involved in interesting charity work that resonates with your values; or that the practice provides the team physician and physical therapists to the local high school football team.

Both of these are good fodder for interview discussions and for personalizing your post-interview thank you and follow-up notes.

Next, search the local newspaper and county websites. These are the two most likely places to learn whether the organization or a physician has been sued, how many times, and for what. Counties maintain this information for the court system, and it typically is available on their websites. If the case was particularly interesting, a local reporter may have covered it in a salacious story for the newspaper.

It goes without saying that you'll take a spin on the most common social media sites used by practices and hospitals: Facebook, Twitter, and Instagram. Reviewing the last full year of posts will tell you what the organization is proud enough to promote, as well as whether it understands how to leverage its brand using social media or just puts out cheesy marketing puffs. You might also find some

interesting patient comments, or gain insight into the types of patients that are attracted to the practice.

Finally, the best place to stalk for patient comments, of course, is online rating sites. Yelp, Vitals, Google Review, and RateMD provide a treasure trove of patient and family feedback. The combination of reviews on all of them can provide a complete picture, and some sites are more commonly used in certain regions than others. Be careful to look at the number of total reviewers before you give the information your stamp of credibility. **PM**



**Michael J. Sacopulos** is Founder and President, Medical Risk Institute; General Counsel for Medical Justice Services; and co-host of "Sound-Practice," a podcast launched in October 2018, e-mail: [msacopulos@medriskinstitute.com](mailto:msacopulos@medriskinstitute.com).

com; website: [www.medriskinstitute.com](http://www.medriskinstitute.com).