

Transition into Practice: Legal Do's and Don't's

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June 13, 2006



Topics to be Covered

- Employment Contracts
- Third Party Payor Agreements
- Medical Records Management
- HIPAA
- Malpractice Issues
- Closing Advice



Employment Contracts: Things to Consider

- Fixed term vs. at will
- Compensation and Benefits structure
- Access to records
- Defense Costs
- Non-compete clauses



Fixed Term vs. At Will

- Generally employment contracts in Minnesota are “at will”
- Termination: with or without cause/notice
- DO: Review employment handbook (handbook = contract)



Compensation Structure/Benefits

Compensation

- How is your work evaluated?
- Are there performance requirements?
- Profit-sharing - how and when?

Benefits

- CME allowance/travel costs?
- Professional association membership dues?
- Retirement plan/401-k?

Access to Records

In case of complaints from patients or colleagues

Examples: patient complaints, malpractice allegations, sexual harassment/hostile work environment

DO: Be sure you will have access to patient records AND clinic's business records in order to defend the claim **EVEN AFTER** termination of employment

Defense Costs

- Will employer pay costs of defending claim?

Under MN Law, generally yes

- Check articles of incorporation/bylaws for limitations on to duty to defend

Non-Compete Clause

- Elements: Geography and Time + Damages
- Generally legal in MN – if “reasonable”
- Court test: Balance employer interest vs. MD’s need to make a living
- Court can “blue pencil”
- Job tenure
- DO: Understand details
- DO: Have an attorney review



Third Party Payor Contracts

Generally standard contractual language,
fee schedule negotiated

→ See *MMA/AMA Model Contract*
(available at www.mmaonline.net)



Third Party Payor Contracts

- Things to watch out for:

1. Termination (with or without cause? notice requirements? evergreen?)
2. Indemnification (one way or two way?)
3. Amendments (how/when/notice?)
4. Provider bulletins and manuals incorporated as part of contract

Medical Records Management

- Ownership
- Release
- Departure from a group

AMA ethical opinion:

The patients of a physician who leaves a group practice should be notified that the physician is leaving the group. Patients of the physician should also be notified of the physician's new address and offered the opportunity to have their medical records forwarded to the departing physician at his or her new practice. It is unethical to withhold such information upon request of a patient.

Medical Records Management:

DO

- Follow up on consults/tests
- Document telephone refills and patient calls
- Document missed and canceled appts.
- Keep it legible

DON'T

- Document baseless speculation
- Erase or destroy medical record entries
- Use “dictated not read”
- Fall behind on dictation


HIPAA Privacy

- HIPAA requires:
 - Notice of Privacy Practices
 - Accounting of disclosures
 - Right to amend
- Generally MN privacy law supercedes HIPAA
- HIPAA allows release for T,P,O
- MN requires consent for release to:
 - Other providers
 - Insurer or HMO for claims payment
 - Anything else not “authorized by law”



Malpractice Issues

- Coverage
 - claims-made vs. occurrence; tail limits
- Claim frequency in MN
 - 6 to 8 claims per 100 physicians
- Claim duration: 18-36 months
- MMA's Litigation Support Program



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Final Thoughts/Advice

**Keep MMA and MPS in mind
as resources – we are here
for you!**