Introduction

- Contracting basics
  - Identify the contract
  - Read the contract
  - Understand the contract
  - Don’t dismiss “boilerplate”
  - Ask for changes

Employment Contracts

- Employee or independent contractor
  - Control over means and methods
  - Control over results only
- Employee advantages
  - Taxes (sometimes)
  - Benefits
- Independent contractor advantages
  - Taxes (sometimes)

Compensation

- Salary
- Bonuses
- Expense reimbursement
  - Cell phone
  - Travel
  - Meals and entertainment
- CME
- Medical malpractice insurance coverage

Benefits

- Health insurance
- Retirement plan
- Disability insurance
- Paid time off
  - Vacation and personal
  - Holidays
  - Illness
- “Partnership” track?

Malpractice Insurance

- Claims made vs. occurrence based
- “Tail” coverage
- Prior acts
- Administrative and other Investigations

Duties

- Hours
- Location
• Treatment of patients
• On-call – when and where?
• Billing and recordkeeping
• Administrative duties
• Marketing

8 Term and Termination
• Initial term
• Automatic renewals
• Termination without cause
• Termination for cause
  – Notice and opportunity to cure
  – Beware “employer discretion”
  – Self-reporting

9 Effects of Termination
• Payment/forfeiture of bonus
• Hospital privileges
• Restrictive covenants
• Report to OPMC

10 Restrictive Covenants
• Confidentiality
  – Medical records
  – Patient lists
  – Referral sources
• Non-solicitation
  – Duration
  – Patients
  – Employees
  – Referral sources

11 Restrictive Covenants
• Non-competition
  – Scope of activities
  – Geographic limitation
    • How many miles?
    • How many offices?
  – Duration

12 Dispute Resolution
• Arbitration vs. court
• Advantages of arbitration
  – Can be less time consuming
  – Can be less expensive
• Advantages of court
  – Right to discovery
  – Right to appeal
• Prevailing party legal fees
Managed Care Contracts

- Managed care organizations
  - Health care delivery system
  - Predetermined monthly fee to members
  - Network of providers
- Types of organizations
  - HMO (insurer contracts with providers)
  - PPO (organization of providers, contract with insurer as a whole)
  - Cost management company (e.g. Multiplan)

Overpayment Demands
(NYS Insurance Law 3224-b)

- A health plan shall provide 30 days written notice to physicians before engaging in overpayment recovery efforts
- A health plan shall not initiate overpayment recovery efforts more than 24 months after the original payment was received by a physician
- Exceptions:
  - Reasonable belief of fraud or other intentional misconduct, or abusive billing
- In the event that a physician asserts that a health plan has underpaid a claim or claims, the health plan may defend or set off such assertion of underpayment based on overpayments going back in time as far as the claimed underpayment

Provider Termination Rules
(NYS Public Health Law 4406-d)

- Need written explanation of the reasons for the proposed contract termination
- Opportunity for a review or hearing before a panel appointed by the health plan
- At least 30 days notice
- Exceptions: Imminent harm to patient care, a determination of fraud, or a final disciplinary action by a state licensing board that impairs the provider’s ability to practice

Recommendations

- Read the contract
- Understand the contract
- Ask questions
- Don’t assume terms are not negotiable
- Save the contract
- Obtain and utilize competent legal counsel

POP Quiz

TRUE OR FALSE:

The best way to do asset protection is to transfer everything to your wife or husband?

Answer

- TRUE
  - (Not Really)
20 Transfers To Spouse
   • Subjects assets to spouse’s liability
   • What about Divorce?

21 Timing Of Asset Protection
   • Before you know or should have known of a pending claim
   • What if you have already been sued?

22 Fraudulent Transfers
   • Claim is Pending or
   • You have reason to believe that you are going to be sued
   • Judgment likely in excess of insurance coverage
   • Assets are transferred to a relative, friend or trust
   • Intent is crucial
   • Court may set aside any transfer deemed fraudulent, i.e. the creditor gets the asset

23 Choice of Entity
   • C Corporation
     – Separate corporate level taxation
     – Distributions taxed to shareholders as dividends
     – Provides liability protection to shareholders
   • S Corporation
     – Pass-through entity
     – No corporate level taxation
     – Provides liability protection to shareholders
   • Limited Liability Company
     – Pass-through entity
     – Taxed as partnership unless sole practitioner
     – Enhanced liability protection to members

24 Protect Your Corporate Assets
   • A claim will usually be instituted against a physician and his or her corporation
   • Need to protect corporate as well as personal assets
   • Consider leasing equipment rather than purchasing
   • Hold corporate real estate in separate LLC

25 Protecting Accounts Receivable
   • Obtain revolving line of credit or loan against A/R’s which will operate as a lien on those assets
   • Utilize funds from the loan to purchase life insurance or other exempt asset for shareholders

26 Maximize Exempt Assets
   • Select most advantageous retirement plans
• Contribute Maximum
  – 401(k) – contribution $15,000 (50+ may contribute $20,000)
  – IRA – contribution $4,000 (50+ may contribute $5,000)
  – Defined Contribution – $46,000
  – Defined Benefit – limitation on annual benefit increased to $185,000
• Life Insurance and Life Insurance Trusts

27 Using LLC’s To Protect Real Estate
• Transfer residence to non-physician spouse and place home in LLC
  – Single Member LLC disregarded for tax purposes
  – Allows utilization of mortgage deduction
  – Allows use of capital gains exemption on sale
  – Effectively prevents creditors from forcing sale of asset
• Rental, investment and commercial real estate should be in separate LLC for each property

28 Other Asset Protection Techniques
• Off Shore Trusts
• Family Limited Partnerships or Family Limited Liability Companies
• Qualified Personal Residence Trusts

29 Off Shore Trusts
• Governed by laws of a foreign jurisdiction
• Creditor’s action must be initiated in foreign jurisdiction
• Foreign jurisdictions will not honor judgments of US courts
• Statute of Limitations for fraudulent conveyances normally 2 or 3 years

30 Family Limited Partnerships And Family Limited Liability Companies
• Can be used to hold business interests, real property, stocks and investments
• Must be treated as a business for tax purposes
• Distributions must be regular and proportional to interest in the FLP
• Can be used to make gifts to family members using valuation discounts

31 Family Limited Partnerships And Family Limited Liability Companies
• Discounted value may be obtained for estate and gift tax purposes
• A debtor’s interest in an FLP or FLLC cannot be attached, and a court cannot order sale of interest or liquidation of FLP or FLLC
• Creditor is entitled only to a “charging order”

32 Family Limited Partnerships And Family Limited Liability Companies
• Court cannot order FLP or FLLC to distribute assets
• If charging order granted, debtor turn over any distributions to the creditor

33 Qualified Personal Residence Trust
• Transfers of up to 2 personal residences to “Qualified Personal Residence Trusts”(QPRTS)
• Donor retains right to occupy for designated term of years; at end of term title passes to designated beneficiaries (e.g., children)

• Trust provides option to Donor to lease premises from remainder beneficiaries after the term

• Residence and appreciation on it is potentially excluded from donor's estate

• Legal title passes to irrevocable trust so property may be placed beyond reach of creditors

Custom-Tailor Your Asset Protection Plan

Developing the RIGHT Asset Protection Plan includes taking into account:

– Your medical specialty
– Personal needs
– Your family's needs
– Retirement needs
– Estate, Gift and Income tax consequences of the techniques you select as well as
– Protecting your assets from creditors
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AREAS OF PRACTICE  Partner at the law firm, Mr. Gallo’s practice includes license defense, professional discipline, administrative and other licensure matters, institutional privilege concerns, reimbursement issues, regulatory compliance, retrospective audits and other medical practice issues. Mr. Gallo has superior knowledge and vast experience in medicine as a healthcare provider, administrator and educator. Mr. Gallo continues to lecture on a wide variety of topics to clinicians at medical and other specialty society functions and to fellows, residents and physician assistant students throughout New York State.

PAST EXPERIENCE  Thomas M. Gallo, PA, JD, has extensive experience regarding the complex and diverse legal needs of healthcare providers. After graduating from the Physician Assistant Program he worked in various clinical specialties including Obstetrics/Gynecology, Thoracic and Cardiovascular Surgery, Internal Medicine, Pediatrics, and Emergency Medicine. Mr. Gallo has been involved in the education of physician assistant students, medical students, interns and residents in New York and Massachusetts. He has served in the role of Associate Program Director of a nationally accredited physician assistant program, as well as serving as an Associate Professor and Clinical Adjunct Professor. He has lectured on numerous topics including medicine, surgery, HIPAA compliance, Healthcare Law and Medical Ethics. Additionally, Mr. Gallo has lectured for a Physician Assistant National Certifying Exam (PANCE) Review Course. Mr. Gallo has worked in private practice as a healthcare attorney for over twenty years.