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CRAFTING EFFECTIVE EMPLOYMENT CONTRACTS

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In the colloquial words of the old folk song Dry Bones (and as I hope my radiologist readers recall!) "The hip bone connected to the thigh bone."

In the same manner, I just can't say enough about the concept of connectivity in respect of how radiology groups operate, and about how operating issues can hamper or support a group's overall business success.

In this article, I'm going to focus on the relationship between the radiology group and its employed or subcontracted physicians. For ease, we'll refer to these radiologists as if they were all employees.

Many group leaders fail to understand that the way that the group relates to its employed radiologists affects many other elements of the group's business. Not to be exhaustive, interactions between the group and its physicians impact the cohesiveness of the group, which in turn impacts upon job satisfaction, which in turn impacts upon the way that group members relate to patients and to referring physicians. Of course, all of these elements impact upon the group's success.

The common view is that the purpose of an employment agreement is to set out the work schedule, substantive duties, and compensation to be paid the employed physician. However, when viewed in a larger strategic context, an employment agreement serves as a primary link in the relationship between the group and its employed radiologists. Its role, then, is not simply to deal with scheduling, duties, and compensation, but also to impact, cajole, incentivize and disincentivize the employee's actions in a manner designed to further the group's ends.

Viewed in this context, an employment agreement can be used to serve as a tool to bind the employed physician to the group. For example, a strategically designed employment agreement might contain provisions that link to the group's physician retention efforts. A case in point would be a provision that has the employee agreeing to serve on group committees at the group's request. Service on those committees, which exist to address real issues – they cannot be mere window dressing, is designed to increase the employees' sense of participation in the group.

An employment agreement also serves as a deterrent to the employed radiologist leaving the group, especially if to compete.

Some states permit the enforcement of covenants not to compete entered into by employed physicians. However even in jurisdictions in which covenants not to compete are unenforceable, in many instances, restrictions may be placed on the manner in which a former employee competes. Often, those restrictions have an impact that mimics the effects of a covenant not to compete. These include, for example, restrictions prohibiting an employee from soliciting other of the group's employees.

As an aside beyond the scope of this article, there are strategies that can be employed outside of the employment agreement itself to greatly protect the investment that the group has made in its employed physicians from being used to benefit those physicians' later competition against the group.

An employment agreement should also serve to assure the employed radiologist's cooperation with the group's strategic business efforts. For example, a group which plans in the future to provide services at multiple locations would use the employment agreement to facilitate the fact that employed radiologists may be required to work at one or more of several facilities.

A strategically focused employment agreement can also be used to assure the employed radiologist's cooperation in marketing, community service and other group initiatives, all in coordination with the group's overall business strategy. Because it would be impossible for any group to identify in advance all of the future specific areas of cooperation, the agreement should identify the requirements in broad strokes and provide that they can be identified with specificity by the group as they arise.

In conclusion, to be complete, a radiology group must make certain that it has fully utilized the opportunities presented by the employment agreement. Going well beyond the basics of schedule, duties and compensation, successful groups take advantage of the employment agreement's role in synchronizing each employed physician's actions to the achievement of the group's overall business goals and to the protection of the group's business interests.

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