

Cal Ortho On-Line

Orthopaedic Legal News

EMERGING TRENDS IN ORTHOPAEDIC
PRACTICE MANAGEMENT, DELIVERY MODELS,
AND LEGAL ISSUES

REPORT III-2012-SPECIAL EDITION

Cal Ortho On-Line provides COA members with timely and relevant information on emerging issues affecting orthopaedic practice.

Topics will range from new health delivery models, strategies to make your practice successful, the use of physician extenders, and updates on recent legal/regulatory developments.

This publication is only available to COA Members.

Be sure that your membership is current so that you and your practice manager will continue to receive this publication.

Plan to attend:

[COA's 2013 Annual Meeting/](#)

[QME Course](#)

[C-Bones 2013 Annual Meeting](#)

April 18-21, 2013

Terranea Resort

Rancho Palos Verdes, CA

LA's Oceanfront Resort

For practice management strategies that are critical to the success of your practice.

Encourage your practice manager to also attend.

This meeting is accredited for Category I CME hours and 6 QME CME hours.

CALIFORNIA ORTHOPAEDIC ASSOCIATION

1246 P STREET
SACRAMENTO, CA
95814

P: (916) 454-9884
F: (916) 454-9882
COA1@PACBELL.NET

IN THIS ISSUE

Orthopaedic Surgeon Employment Issues

Advantages

Disadvantages

Steps to Take

Additional Resources

Next Edition of

Cal Ortho On-Line:

Bundled Payments for Orthopaedic Procedures

Experience with Negotiating Bundling Arrangements

Orthopaedic Surgeon Employment Issues

Orthopaedic Surgeon Employment Issues

“Where are we going?” “Are we there yet?” “What’ll we do when we get there?”

With the increased interest in employment of physicians, both by hospitals and medical groups, this edition of Cal Ortho On-Line contains an in-depth discussion of the:

1. Pros and cons of physician employment;
2. Potential models for employment by hospitals and ‘hospital-friendly’ physician groups; and,
3. Important contract terms that can pose problems for physicians. Model contract language is also provided.

Background information for this legal analysis was provided by Keith W. Carlson, Esq. and Jehan N. Jayakumar, Esq., of Carlson & Jayakumar, 2424 SE Bristol St. #300, Newport Beach, CA 92660. Email: keith@cjattorneys.com. The law firm of Carlson & Jayakumar specializes in health care and employment law.

Below is a summary of the report with action items for orthopaedic surgeons to take if they are considering an employment arrangement.

The complete report can be accessed by clicking on this link:

[Orthopaedic Employment Contract](#)

SUMMARY

Given the uncertainties with the economy in general, and the practice of medicine in particular, more and more orthopaedic surgeons are wondering about hospital employment as a potential means to practice. In fact, many already have chosen that route as a recent survey of the AAOS State Societies Committee shows a dramatic increase in the number of hospital employed orthopaedic surgeons nationwide.

Most physicians know that **California law bans the corporate** practice of medicine. This law **prohibits hospitals and other lay entities from practicing medicine which includes employing physicians.** However, the law has exceptions and community clinics, state and county hospitals, as well as those operated by the University of California may employ physicians outright. In addition, hospitals that are not exempt from the employment ban have developed alignment strategies with physician groups such as through medical foundations and hospital outpatient departments. Many of these models are discussed in this edition as well as in the January, 2012 edition of Cal Ortho On-Line which can be found on COA’s website: www.coa.org

Medical Foundations
Joint Ventures
Hospital Out-Patient Departments
Hospitalists
Medical Directorships

There are potentially advantages and disadvantages to physicians becoming employed.

Orthopaedic Surgeon Employment Issues

Advantages:

- Consistent working hours and wages;
- Employee benefits such as employer provided healthcare coverage, and pension plans;
- Increased referral potential;
- Less managerial, collection, and administrative duties;
- Potentially greater access to capital for new equipment/offices;
- Greater bargaining power with insurers; and,
- Greater bargaining power to reduce fixed costs such as supply costs, and medical malpractice insurance.

Disadvantages:

- Reduced control regarding practice decisions – being an employer rather than the boss;
- Potential gradual decline in compensation rates as more physicians become employed;
- Possible violations of corporate control laws;
- Termination of employment contract;
- Termination of employee benefits and pension if contract is terminated;
- Should the employment contract be terminated, loss of patient base; and,
- Increased scrutiny from state and federal regulators as physician employment arrangements become more common.

To protect patients from commercial exploitation, the law broadly interprets the practice of medicine to encompass many seemingly business decisions that have medical implications. Allowing a lay entity to control many of these decisions directly (or through a professional services agreement with a group) could result in a violation of the bar and accusations that a physician has aided and abetted the unlicensed practice of medicine.

A decision that the potential benefits of employment outweigh its burdens does not end the inquiry, however. There are two additional areas that should be analyzed before a physician even gets to the contract:

- Compatibility** – Will the physician be comfortable professionally practicing in the new environment?
- Due Diligence** - What are the underlying market conditions and reputation of the potential employer?

Once the orthopaedic surgeon has done the initial homework, then the potential employment contract should be analyzed and negotiated. Contracts often differ. The same employer may offer very different terms to different employees. Just because a colleague has agreed to their contract terms, this does not mean that the terms are a good deal for you. In conjunction with an experienced attorney, physicians should be particularly attentive to a host of important contract terms. Just a few of these include:

Orthopaedic Surgeon Employment Issues

CalOrtho On-Line is provided as a benefit to COA members to provide information (not advice) about legal developments affecting their medical practice.

The great number of legal developments does not permit the issuing of an update for each one, nor does it allow the issuing of a follow-up on all subsequent developments.

Internet subscribers and online readers should not act upon this information without consulting with legal counsel knowledgeable in health care law.

Term and Termination—Many contracts allow the employer to terminate without cause and without any procedural process even though the term may be for a longer period of time;

Scope of Services—Some contracts may obligate physicians to responsibilities of which he/she is unaware;

Compensation—State and Federal law restrict the amount and manner in which physicians can be paid; and,

Malpractice Coverage—Contracts that obligate physicians to purchase tail coverage may result in a large unanticipated expense.

STEPS TO TAKE

Steps orthopaedic surgeons may wish to take include the following:

- Hire an attorney to navigate the legal landmines.
- Do the requisite homework to ensure that you are compatible with the potential employer and that it will be a professionally and financially secure environment.
- Ask colleagues that you trust and share the same professional values with about their experiences.
- If seeking employment with a “hospital-friendly” physician group, obtain a copy of the professional services agreement between the hospital and the group to ensure there is no undue lay control over the practice of medicine.
- Stay involved with organizations interacting with state and federal elected legislators. Legislation that is considered or enacted can have a profound impact on your ability to practice and your reimbursement levels, whether you are in an employed arrangement or in private practice.

RESOURCES

To assist orthopaedic surgeons with employment issues, the following resources may be helpful:

- **Legal counsel knowledgeable in healthcare and employment law.**
- **Orthopaedic surgeon colleagues that are or who have been employed and who are willing to share their experiences with you.** Contact the COA office – 916-454-9884 or coa1@pacbell.net - if you would like to talk to COA members who may be willing to share their experiences with you.

Materials of interest include:

- CMA Model Employment Contract– http://www.coa.org/docs/cma_employmentcontractmodel.pdf
- AMA Annotated Model Physician-Hospital Employment Agreement, 2011 Edition- https://catalog.ama-assn.org/Catalog/product/product_detail.jsp?productId=prod1870016
- Chapter 8, “Hospital physician employment agreements,” ACOs, CO-Ops and other options: A “how-to” manual for physicians navigating a post-health reform world”, AMA - <http://www.ama-assn.org/resources/doc/psa/physician-how-to-manual.pdf>