Fair Market Value: Analysis and tools to comply with Stark and Anti-kickback rules

A 90-minute interactive audioconference

Wednesday, March 19, 2008

1:00 p.m.–2:30 p.m. (Eastern)
12:00 p.m.–1:30 p.m. (Central)
11:00 a.m.–12:30 p.m. (Mountain)
10:00 a.m.–11:30 a.m. (Pacific)
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Dear Program Participant,

Thank you for participating in our Fair Market Value: Analysis and tools to comply with Stark and Anti-kickback rules audioconference, featuring speakers Robert A. Wade, Esq. and Marci Rose Levine, and moderated by Melissa Varnavas.

Our team is excited about the opportunity to interact with you directly. We encourage you to ask our experts your questions during the program. If you would like to submit a question before the audioconference, please send it to the producer, Jessica Underhill, at junderhill@hcpro.com and provide the program date in the subject line. We cannot guarantee that your question will be answered during the program, but we will do our best to include a good cross section of questions.

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Thank you, again, for attending the HCPro program today. We hope you found it to be informative and helpful and that you will continue to rely on HCPro programs as an important resource for pertinent and timely information.

Sincerely,

Leokadia Marchwinski
Director of Multimedia Production
HCPro, Inc.
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Robert A. Wade, Esq.

**Robert Wade** concentrates his practice in representing health care clients, including large health systems, hospitals, ambulatory surgical centers, physician groups, physicians and other medical providers. His specialization includes representing clients with respect to the Stark Act, Anti-Kickback Statute, False Claims Act, and Emergency Medical Treatment and Active Labor Act. Bob is also a nationally recognized expert in all aspects of health care compliance, including developing, monitoring and documentation of an effective compliance program. He has experience in representing health care clients with respect to issues being investigated by the Department of Justice and the Office of Inspector General. Bob has experience negotiating and implementing Corporate Integrity Agreements. He has operationally practical experience having served as a General Counsel and Organizational Integrity Officer for a multi-hospital system for 6-1/2 years.

Bob is also the creator of Captain Integrity (www.captainintegrity.com), a unique compliance program branding and education resource that has received national recognition and has been used by many hospitals, health systems and other providers. In addition to Bob’s health care experience, he has counseled public and private companies, partnerships and other business entities in general business matters, as well as matters involving professional sports and mergers and acquisitions.

Marci Rose Levine

**Marci Levine** is a Partner with Sonnenschein Nath & Rosenthal LLP, and a National Practice Group Leader of the firm’s Health Care Group. She has extensive corporate and contracting experience, and advises clients with respect to the full range of healthcare fraud and abuse laws. Ms. Levine has worked with the Stark and Anti-Kickback Laws in connection with a wide range of corporate transactions and contracting practices, including physician recruitment, medical directorships, professional services arrangements, and hospital-physician joint ventures.
Presentation by Robert A. Wade, Esq. and Marci Rose Levine
Fair Market Value: Analysis and tools to comply with Stark and Anti-kickback rules

Presented by:
Robert A. Wade, Esq. and
Marci Rose Levine

An HCPro live audioconference presented on March 19, 2008

Why Is Documenting Fair Market Value and Commercial Reasonableness Important?

- Fines and penalties, including three times the amount paid by Medicare/Medicaid for service, $10,000 fine per payment, etc.
- Exclusion from Medicare/Medicaid programs
- Intermediate sanctions
- Imprisonment
This really won't happen to me, will it?

The government has better things to worry about than one contract between a hospital and physician, right?

Tell That to the Parties Involved in the Following Cases:

- Former General Counsel, Tenet HealthCare
- Metropolitan Health, Grand Rapids, Michigan
- Rapid City Regional Hospital, Rapid City, South Dakota
- McLaren Regional Medical Center, Flint, Michigan
- Baptist Medical Center, Kansas City, Missouri
- Saint Joseph Regional Medical Center, South Bend, Indiana
Excerpt from the Complaint Against the Former General Counsel, Tenet Healthcare

- Between April 5, 1993, and August 8, 1994, Northridge entered into employment contracts with twelve physicians... under which the physicians were paid well above fair market value... Each of the financial analyses indicated that the practices themselves would suffer significant annual losses at the compensation level projected for the employee physicians... Most of the financial analyses also showed the projected revenues that North Ridge would receive from clinical laboratory outpatient referrals from the physicians once they were hired. The statements showed that the anticipated laboratory referrals would greatly reduce or even eliminate the projected losses from the physicians' practices.

Fair Market Value and Commercial Reasonableness are Important Factors

- Anti-Kickback Law
- Stark Law
- Intermediate sanctions
Anti-Kickback Law
(42 U.S.C. § 1320a-7b)

- It is illegal to knowingly or willfully:
  - Offer, pay, solicit, or receive remuneration
  - Directly or indirectly
  - In cash or in kind
  - To induce the ordering, purchasing, leasing or the recommending/arranging for the ordering, purchasing, or leasing of items/services
  - Covered in whole or in part by Medicare or Medicaid

Anti-Kickback Law
Employment Safe Harbor

- Payments made by employer to employee under bona fide employment relationship for the furnishing of any item or service for which payment may be made under Medicare or Medicaid are excepted from the Anti-Kickback Law’s prohibitions, provided:
  - Fair Market Value
  - Arm’s length negotiation
  - Reasonable
Anti-Kickback Law
Safe Harbor for Personal Services and Management Contracts

- Written Agreement signed by parties
- Term of at least one year
- Agreement must specify aggregate payment and such payment must be set in advance
- Compensation must be reasonable, fair market value and determined through arm's length negotiations
- Agreement must specify exact services required to be performed

Compensation must not be determined in a manner that takes into account volume or value of referrals
- All arrangements must be in one contract
- The arrangement must serve a commercially reasonable business purpose
Anti-Kickback Law
Safe Harbor for Personal Services and Management Contracts (cont.)

- If the Agreement does not contemplate full-time services, it also must specify:
  - The *exact* schedule of intervals
  - Their *precise* length
  - The *exact* charge for such intervals
Anti-Kickback Law
Safe Harbor for Equipment Rental

- Written Agreement
- Identify specific equipment
- Schedule of usage
- 1 year term
- *Fair Market Value*

Stark Act
42 U.S.C. § 1395 nn

- Under the Stark Act, a physician is prohibited from making a *referral*:
  - To an entity
  - For the furnishing of a designated health service
  - For which payment may be made under Medicare or Medicaid
  - If the physician (or an immediate family member)
  - Has a financial relationship with the entity
Stark Act (cont.)
42 U.S.C. § 1395 nn

- Stark exceptions requiring Fair Market Value/Commercial Reasonableness:
  - Personal service arrangements
  - Rental of office space
  - Rental of equipment
  - Employment
  - Isolated transactions
  - Fair Market Value
  - Indirect compensation arrangement

Stark Act
Personal Service Arrangement Exception
(Applies to Compensation Relationships)

- Remuneration paid under personal service arrangement is not prohibited compensation arrangement if:
  - Arrangement is set out in **writing**, signed by parties and specifies services covered by arrangement
  - Arrangement **covers all services** to be provided by physician to entity. This condition is met if:
    - Contract references all other arrangements
    - Master list of contracts is maintained with historical record of all arrangements
  - Term of at least **one year**
Stark Act
Personal Service Arrangement Exception (cont.)
(Applies to Compensation Relationships)

- Services are **reasonable** and **necessary**
- Compensation to be paid over term of arrangement is set in **advance**, does not exceed **FMV**, is **reasonable** and determined through **arm’s length negotiations**, and is not determined in manner which takes into account volume or value of referrals between parties.

Rental of Office Space and Equipment Exception
(Applies to Compensation Relationships)

- Term of at least **one year**
- Rental charges are **set in advance**, consistent with **fair market value**, and not determined in a manner that takes into account volume or value of referrals or other business generated between parties.
- Lease would be **commercially reasonable** even if no referrals were made between parties.
Rental of Office Space and Equipment Exception (cont.)
(Applies to Compensation Relationships)

- Can charge per use fee (“per click”) as long as charge does not reflect payment for professional services
- Per click fee must be FMV and commercially reasonable

Bona Fide Employment Exception
(Applies to Compensation Relationships)

- Employment is for identifiable services
- Amount of remuneration under employment is:
  - Consistent with fair market value, reasonable and determined through arm’s length negotiations
  - Not determined in manner which takes into account volume or value of referrals by referring physician
  - Remuneration is provided pursuant to agreement that would be commercially reasonable even if no referrals were made to employer
Bona Fide Employment Exception (cont.)
(Applies to Compensation Relationships)

- Productivity bonuses can be paid if based on services performed personally by the physician (i.e., worked RVUs)

Bona Fide Employment Exception (cont.)
(Applies to Compensation Relationships)

- An employer can require an employee to refer to a particular provider, practitioner or supplier so long as:
  - The compensation is set in advance
  - The compensation is fair market value
  - The referral requirement
    - Is in writing signed by the parties
    - Is waived if the patient expresses a preference for a different provider
    - Is waived if the patient's insurance does not cover services at required providers
    - Is waived if physician believes that the required referral is not in the patient's best medical interest
Bona Fide Employment Exception (cont.)
(Applies to Compensation Relationships)

Requiring referrals (cont.)

- The required referrals relate **solely** to the physician’s services covered by the scope of the employment and the referral requirement is reasonably necessary for the legitimate business purposes of the compensation arrangement between the employer and the employee.

**Good**
Employed Primary Care – Inpatient

**Bad**
Medical Director - Inpatient

Isolated Transaction Exception
(Applies to Compensation Relationships)

- Definition of compensation does not include isolated financial transactions, such as one-time sale of property or practice, if:
  - Amount of remuneration is:
    - Consistent with **FMV**, is **reasonable** and determined through **arm’s length negotiations**
    - Is not determined in manner that takes into account volume or value of referrals by referring physician
    - Remuneration is provided pursuant to agreement that would be commercially reasonable even if no referrals were made to purchaser
  - No other transactions between parties for 6 months after isolated transaction
**Fair Market Value Exception**
(Applies to Compensation Relationships)

- Payments that are *fair market value* are permitted compensation arrangements if:
  - In writing
  - Covers all arrangements between parties
  - Does not have to have one-year term as long as terms and conditions do not change during first year
  - Compensation set in advance, **FMV**, and not related to volume or value of referrals
  - Commercially reasonable and furthers legitimate business interests
  - Complies with fraud and abuse provisions
- Carves out renal of office space

---

**Indirect Compensation Arrangement Exception**
(Applies to Compensation Relationships)

An indirect compensation arrangement is any series of ownership or compensation arrangements.

For example:

![Diagram showing ownership and compensation flow between entities](image)
Indirect Compensation Arrangement Exception (cont.)
(Applies to Compensation Relationships)

- The aggregate compensation that is closest to the referring physician (in the example below, the compensation between company B and C) must be **fair market value**.

![Diagram showing compensation relationships]

Intermediate Sanctions

- If a tax-exempt organization engages in an **excess benefits transaction** with a **disqualified person**, the tax-exempt organization's directors and managers, and the disinterested person, could be subject to a tax of 25% on the excess benefit. If the excess benefit is not paid back or reversed, the organization's officers and managers, and the disqualified person could be subject to a 200% tax on the excess benefit.
Intermediate Sanctions (cont.)

Disqualified Person

- A disqualified person is an officer, director, trustee, highly-compensated or high-level employee, department or project manager, major donor or anyone who has been in a position to exert substantial influence over the organization within the prior five years.

Intermediate Sanctions (cont.)

Excess Benefit

- An excess benefit is one that exceeds fair market value for the benefit received by the tax exempt organization, or is not comparable (commercially reasonable) to similar benefits paid by similar tax-exempt organizations.
Intermediate Sanctions (cont.)

- Ultimately, the Internal Revenue Service has the authority to revoke the tax-exempt status

What is Fair Market Value?

I want MORE!  
Fair market value is fine! 

$
What is Fair Market Value? (cont.)

- According to the Stark Act, **fair market value** is “the value in arm’s-length transactions, consistent with the general market value”

What is Fair Market Value? (cont.)

- “General Market Value” means the price that an asset would bring as a result of *bona fide* bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party, or the compensation that would be included in a service agreement as a result of *bona fide* bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party, on the date of acquisition of the asset or at the time of the service agreement.

42 C.F.R. § 411.351
What is Fair Market Value? (cont.)

- The Stark Act also defines *fair market value* as the market price at which bona fide sales have been consummated for like type assets in a particular market.

- For real estate, the Stark Act states that *fair market value* is “the value of rental property for general commercial purposes (not taking into account its intended use). In the case of a lease of space, this value may not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor when the lessor is a potential source of patient referrals to the lessee.”
What is Fair Market Value? (cont.)

- Although the proximity to the lessor cannot add value to the lease payments, the rental payment can “take into account intended use if it takes into account costs incurred by the lessor in developing or upgrading the property or maintaining the property or its improvements”

VS.

What is Fair Market Value? (cont.)

- Key points under the Stark Act:
  - Referrals between the parties cannot be considered
  - Fair market value is determined upon the sale or when the service agreement is executed
  - Local market conditions are factors (i.e., lack of a specialty in the market, depressed real estate market)
  - Proximity of real estate to the lessor (hospital) cannot be considered, but costs of developing or improving real estate should be considered
What is Fair Market Value? (cont.)

- Stark II, Phase III Regulations deleted fair market value safe harbor
  - Two methodologies CMS adopted in 2004 to establish FMV were both flawed and impractical
  - Hourly rates that were established through the two methodologies usually resulted in relatively low hourly payment rate
  - General concern that methodologies would effectively establish a low ceiling for reasonable, FMV hourly payment amounts to physicians

Further guidance on FMV in Phase III Regulations:
- Continues to promote the use of objective, independently published salary surveys as a “prudent practice” in evaluating FMV
- “[A]ppropriate method will depend on the nature of the transaction, its location, and other factors”
- Different rates may be paid for administrative and clinical services
What is Fair Market Value? (cont.)

Further guidance on FMV in Phase III Regulations (cont.):

- No rebuttable presumption that an arrangement is consistent with FMV. Parties to the arrangement bear burden of proving that remuneration is consistent with FMV and that it has been contemporaneously documented.

Intermediate Sanctions

According to the Internal Revenue Service, *fair market value* “is the price at which property, or the right to use property, would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell, or transfer property or the right to use property, and both having reasonable knowledge of all relevant facts.”

“The fair market value of economic benefits received for the performance of services is reasonable compensation, which is the value that would ordinarily be paid for like services by a like enterprise under like circumstances.”

See: Internal Revenue Service Web Site at www.irs.gov/charities/charitable/article/0,,id=123303,00.html
What is Commercially Reasonable?

- Many of the exceptions under the Stark Act require the payment to “be commercially reasonable even no referrals were made” between the parties.

What is Commercially Reasonable? (cont.)

- To be commercially reasonable, both the services and payment must be commercially reasonable.
What is Commercially Reasonable? (cont.)

- The following services may not be commercially reasonable:
  - Two medical directors over a department when only one is needed
  - Paying the physician for questionable consulting services
  - Renting a piece of equipment full-time when only used once a month (assuming rental for one day is less than full-time rental)
  - Purchase of physician’s medical office building with no intention to use building

What is Commercially Reasonable? (cont.)

- Commercially reasonable payments are financial arrangements that are equivalent to arrangements between parties who are not dependent upon referrals
- Examples:
  - Landlord of a medical office building who is not a medical provider and who owns the medical office building to generate a reasonable rate of return/profit
  - Lessor of equipment who is in the business of renting equipment, and is not a doctor or other medical provider
Documentation of Fair Market Value/Commercial Reasonableness

Let the fun begin!

Documentation of Fair Market Value/Commercial Reasonableness (cont.)

- Is it an art or is it a science?
- For every physician contract, fair market value/commercial reasonableness is the biggest issue
Legal Opinions

- Most law firms do not provide legal opinions on fair market value or commercial reasonableness.
- Law firms should work with providers to establish a process to develop FMV/commercial reasonableness information, and then opine that providers followed established process.

Fair Market Value

- Guidelines for the following arrangements:
  - Employment agreements
  - Medical directorships
  - Real estate leasing
  - Time share arrangement
  - Equipment leasing
  - Consulting services
  - On-Call coverage
For employed physicians, the following compensation structures can be developed:

1. Equal compensation
2. Productivity-based compensation (Cap Compensation -i.e., 75th percentile by specialty)
3. Combination of equal pay and productivity-based compensation
4. Point System (a/k/a relative value unit [RVU] method)
5. Fixed base periodic salary plus bonus

Market Data:
1. Determine what competitors are paying (antitrust risks)
2. Opinion letter from compensation analyst
3. Third party surveys
Employment (cont.)

- Typical third party surveys include:
  - HayGroup - Physicians Compensation Survey
  - Hospital and Healthcare Compensation Service - Physician Salary Survey Report
  - Medical Group Management Association - Physician Compensation and Productivity Survey
  - ECS Watson Wyatt - Hospital and Health Care Management Compensation Report
  - William M. Mercer - Integrated Health Networks Compensation Survey
Employment (cont.)

- Key concepts:
  1. Range established (25%, 50%, and 75%)
  2. Specialty is matched
  3. Hourly rate is determined by percentile
  4. Surveys are averaged to negate disparity
  5. Premium added to base in lieu of benefits (assuming physician is independent contractor)

Incentive Compensation Arrangements

- There are three (3) basic types of productivity compensation arrangements:
  - Percentage of collections
  - Compensation per RVU
  - Percentage of gross charges
### Incentive Compensation Arrangements (cont.)
#### Pros vs. Cons

**Gross Charges**
- **Pro:**
  - Compensation is not based upon patient's payor
- **Con:**
  - Charges may not be aligned with collections
  - Compensation can be influenced by employer's increase/decrease of charges

**Collections**
- **Pro:**
  - Compensation is aligned with the amount employer collects for professional services
  - Good documentation, better behavior
- **Con:**
  - Great incentive for physician to see patients with higher paying payors (disincentive to see Medicare, Medicaid or indigent patients)
Incentive Compensation Arrangements (cont.)

Pros vs. Cons

Relative Value Unit

Pro:

□ Compensation is based upon physician’s productivity
□ Value of RVU is assigned by Medicare
□ Physician is compensated for work effort regardless of payor/collections

Con:

□ Compensation based upon RVUs may not be aligned with collections
□ Confusion between work and total

Example 1

■ Single tier model with a guaranteed cash compensation of $175,000 with additional incentive compensation of $40 per RVU above 4,500 RVUs work
■ Base compensation, RVU production and compensation per RVU all benchmarked at 50th percentile

<table>
<thead>
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<th>Percentile</th>
<th>Cash Compensation (RVUs)</th>
<th>Compensation per RVUs</th>
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<td>75</td>
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<td>$41</td>
</tr>
<tr>
<td>90</td>
<td>300,000 (6,500)</td>
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Example 2

- Multiple tiered model
- 100% RVU production

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<th>RVUs worked</th>
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<tr>
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<tr>
<td>6,501 and above</td>
<td>$50</td>
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</tbody>
</table>

Medical Director

- Structure of compensation (and underlying fair market value documentation) may depend upon legal status

Employee vs. independent contractor
Medical Director (cont.)

- Independent contractor:
  1. Hourly payment (with maximum number of hours in contract)
  2. Annual payment (determined by projected number of hours multiplied by fair market value hourly rate)
  3. Incentive-based compensation (i.e., gainsharing)

- If annual payment method is used, need to track hours to make sure consistent with contract
Exhibit A

Medical Director (cont.)

Duties and Responsibilities:

- If physician will be a medical director, require physician to complete a time card, (written statement of services rendered and amount of time dedicated to such services)

Medical Director (cont.)

Time sheet

Duties

- Time tracking

Example included as Exhibit C

Medical Director (cont.)

Tracking tool

MEDICAL DIRECTOR
Tracking Tool

<table>
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<tr>
<th>Last Name</th>
<th>Current Hourly Pay</th>
<th>Contract Hourly Pay</th>
<th>Contract Weeks</th>
<th>Actual Total Hrs Wk</th>
<th>Prorated Hrs.</th>
<th>Contracted Annual Hrs</th>
<th>Contract Start Date</th>
<th>Contract Expiration Date</th>
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</table>

Current Hourly Pay: Current hourly rate based upon total hours documented
(Total Annual Compensation/32 X Contract Weeks)/(Actual Total Hours Worked)

Contracted Hourly Pay: (Total Annual Compensation)/Contracted Annual Hours

Contracted Weeks: Number of weeks into current annual contract cycle

Total Hours Worked: Number of hours of services documented by physician during current term based upon times sheets approved

Prorated Hours: Average hours physician would have worked if hours evenly distributed throughout contract term

Contracted Annual Hours: Number of hours required by contract on annual basis

Contract Expiration: Expiration date of current annual term

Total Annual Compensation: Total amount of annual compensation per contract
Real Estate

Fair market value v. commercially reasonable: Is there a difference?

Fair market value: A box is a box is a box. So, I can charge what the hospital down the street charges. Right?

Real Estate (cont.)

- **Fair market value:** Is the physician paying occupancy costs that are consistent with arm's length relationships in comparable properties in local market?

- **Commercially Reasonable:** Is hospital establishing rental rates in amounts sufficient to generate positive cash flows and a rate of return consistent with i) risk and ii) other local real estate investors?
Real Estate (cont.)

- **Commercially Reasonable**: What a reasonable real estate investor will require as a rate of return

  10%? 15%? 20%?

Real Estate (cont.)

- To be *commercially reasonable*, unless extenuating circumstances exist, real estate should generate a reasonable rate of return

- Commercially reasonable: (Amortized Cost of Building + interest + expenses) - rent receipts = 10% + [Market reasonable rate of return]
Real Estate (cont.)

- Things to consider:
  - Tenant improvements ("TI")
    - New space (higher TIs)
    - Rehab (Presumption - lower TIs)
    - Standard TIs
    - Enhanced TIs
      - Pay up front
      - Prorate with lease payments with interest

- Things to consider (cont.):
  - Leasing costs
  - Amenities (parking, security, internet, etc.)
  - Total cost (design, construction, land, financing, HVAC, taxes, janitorial, legal, etc.)
Real Estate (cont.)

- Quality of building must be evaluated
- Class A, B or C building?

Real Estate (cont.)

Shared Space

- Must allocate all costs
  - Rental of space (half or full day slots)
  - Vacancy rate (project 20% vacancy?)
  - Supplies
  - Utilities
  - Staff (registration, nursing, etc.)
  - Equipment
Assume the following:
- $18 gross per square foot rental (exclusive use)
- 30% projected vacancy
- 1,000 square feet in suite
- Building has 6,000 square feet, with 1,000 square feet for common area (5,000 square feet usable space)
- Suite capable of being leased in half day increments (8:00 A.M. – Noon; 1:00 P.M. – 5:00 P.M.)

Furniture and equipment in suite determined to be leaseable at $2,000 per year using independent third party leasing company

Miscellaneous medical/office supplies projected to be used in suite is approximately $5,000 annually if suite leased 70% of the time
Real Estate
Shared Space Example (cont.)

- $18 (exclusive use rate) + 30% (vacancy) = $25.71 per square foot ($18 ÷ .7 = $25.71)
- 1,000 square feet (suite) ÷ 5,000 square feet (building not including common area) = 20% (percentage of suite's usable space in building's usable space)
- 1,000 square feet (common area) x 20% (suite to building) = 200 square feet (common area allocated to suite)

1,200 square feet (suite plus allocated common area) x $25.71 = $30,852

$30,852 + $2,000 (furniture and equipment) + $5,000 (medical/office supplies) = $37,852

$37,852 ÷ 52 (weeks) = $728 (weekly rate)

$728 ÷ 5 (business days in week) = $146 (daily rate)

$146 ÷ 2 = $73 (half day rate)
Real Estate
Shared Space Example (cont.)

- Example becomes more complicated if:
  - Part of suite is leased (as opposed to full suite)
  - Staff is provided by landlord/hospital
  - Specialized equipment is used
  - Non-standardized supplies are used by a tenant

Equipment Leasing

- First, it must be determined whether the equipment will be used exclusively by lessee or shared between multiple providers
Equipment Leasing (cont.)

- If leased exclusively, comparables from third party leasing companies should be obtained
  - Call and receive quote
  - If unable to obtain a quote from a third party leasing company, lessor could determine the useful life of the equipment and reasonable rate of return for lessors of equipment

Equipment Leasing Example

- Equipment valued at $100,000, with a useful life of 7 years, and a commercially reasonable rate of return of 30%, produces an annual lease rate of $18,571
- Reasonable Rate of Return: Determined by lessors who are not dependent upon referrals from lessees
Equipment Leasing
Example (cont.)

- If the equipment is not going to be used exclusively by the lessee, either a daily, hourly or per click lease rate should be developed
  - Quote from third party leasing company
  - If unable to receive third party quote, using the same methodology as used in the exclusive use example may be appropriate
- $18,571 (annual rate including 30% rate of return) divided by 260 days = $71 daily rental rate
- Caution: This does not include any additional services lessor needs to provide to transport equipment or to make equipment available to lessee (i.e., films, technician, etc.)

Equipment Leasing (cont.)

- It is very important to use comparables from sources who are not referral sources
Consulting Services

- Payment for consulting services can be:
  - Hourly
  - Fixed payment for project
- Fixed payments should be developed by estimated number of hours to be dedicated by physician multiplied by fair market value hourly rate using national surveys or third party compensation consultant

Consulting Services (cont.)

- Actual consulting services should be performed

**Good:**
Review and develop written reports/analysis

**Questionable:**
Paid “consulting fee” to sit in an audience to listen about a new product/service
2006 Physician On-Call Pay Survey Report

Sullivan Cotter and Associates, Inc.

June, 2006

Introduction

- Sullivan, Cotter and Associates, Inc. conducted a survey of the on-call pay practices and rates paid to physicians across the U.S. in January, 2006
- 109 Organizations participated in this survey
Significant Findings

- Majority of participants (95%) were from hospitals/health systems - 5% were from physician group practices
- 46% of the hospitals were trauma centers
- Majority (84%) of participants require physicians to provide on-call coverage - 55% of this amount pay independent physicians to be on call

Significant Findings (cont.)

- 14% of participants state that they are planning to implement additional on-call arrangements
- Reasons are as follows:
  - Physician demands
  - Threats of leaving
  - Inadequate on-call coverage
Pay Practices

The table below summarizes the methods used by survey participants to compensate on-call physicians who are called in to work:

<table>
<thead>
<tr>
<th>When the Contractual Physician is Called in, the Physician Receives:</th>
<th>Percent (a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional fees</td>
<td>92%</td>
</tr>
<tr>
<td>Professional fees and subsidy for indigent care</td>
<td>11%</td>
</tr>
<tr>
<td>Additional payment in the form of a response rate</td>
<td>4%</td>
</tr>
<tr>
<td>Additional payment based on wRVUs</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>1%</td>
</tr>
</tbody>
</table>

(a) Percentages add to more than 100% due to multiple response categories

Pay Practices (cont.)

On-call rates were reported based upon whether the physician provided restricted or unrestricted call coverage

- **Restricted** call indicates that the physician is required to stay on the premises
- **Unrestricted** call indicates that the physician is not required to stay on the premises
Pay Practices (cont.)

- On-call pay is provided in various forms such as hourly, daily (24 hours), weekly (168 hours) and annually (8,760 hours)
- All amounts paid were calculated to an hourly rate

<table>
<thead>
<tr>
<th></th>
<th>Restricted On-Call</th>
<th>Unrestricted On-Call</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Respondents</td>
<td>25th %</td>
</tr>
<tr>
<td>Anesthesiology</td>
<td>10</td>
<td>$62.55</td>
</tr>
<tr>
<td>Cardiology</td>
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<td>isd</td>
</tr>
<tr>
<td>Cardiothoracic Surgery</td>
<td>0</td>
<td>isd</td>
</tr>
<tr>
<td>Critical Care</td>
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<tr>
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<tr>
<td>Internal Medicine</td>
<td>6</td>
<td>$59.38</td>
</tr>
</tbody>
</table>

isd = insufficient data (reported only for 5 or more respondents)
### Pay Practices (cont.)

#### Restricted On-Call

<table>
<thead>
<tr>
<th>Specialty</th>
<th>No. of Respondents</th>
<th>25th %</th>
<th>Median</th>
<th>75th %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maternal Fetal Medicine</td>
<td>6</td>
<td>$60.31</td>
<td>$82.50</td>
<td>$100.00</td>
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<td>Neonatology</td>
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<td>$42.55</td>
<td>$65.00</td>
<td>$90.00</td>
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<tr>
<td>Neurosurgery</td>
<td>0</td>
<td>isd</td>
<td>isd</td>
<td>isd</td>
</tr>
<tr>
<td>Obstetrics/Gynecology</td>
<td>20</td>
<td>$60.63</td>
<td>$72.10</td>
<td>$83.07</td>
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<tr>
<td>Ophthalmology</td>
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<td>isd</td>
<td>isd</td>
</tr>
<tr>
<td>Oral Maxillofacial Surgery</td>
<td>0</td>
<td>isd</td>
<td>isd</td>
<td>isd</td>
</tr>
<tr>
<td>Orthopedic Surgery-Hand</td>
<td>4</td>
<td>isd</td>
<td>isd</td>
<td>isd</td>
</tr>
</tbody>
</table>

isd = insufficient data (reported only for 5 or more respondents)

#### Unrestricted On-Call

<table>
<thead>
<tr>
<th>Specialty</th>
<th>No. of Respondents</th>
<th>25th %</th>
<th>Median</th>
<th>75th %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maternal Fetal Medicine</td>
<td>0</td>
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<td>isd</td>
<td>isd</td>
</tr>
<tr>
<td>Neonatology</td>
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<td>$19.09</td>
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<td>28</td>
<td>$23.44</td>
<td>$39.58</td>
<td>$62.50</td>
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<tr>
<td>Obstetrics/Gynecology</td>
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<td>$12.39</td>
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<td>$33.85</td>
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<td>Ophthalmology</td>
<td>12</td>
<td>$ 4.60</td>
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<td>$17.48</td>
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<tr>
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<td>9</td>
<td>$ 6.54</td>
<td>$20.83</td>
<td>$38.54</td>
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<tr>
<td>Orthopedic Surgery-Hand</td>
<td>31</td>
<td>$20.83</td>
<td>$37.50</td>
<td>$50.00</td>
</tr>
</tbody>
</table>

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---

### Pay Practices (cont.)

#### Restricted On-Call

<table>
<thead>
<tr>
<th>Specialty</th>
<th>No. of Respondents</th>
<th>25th %</th>
<th>Median</th>
<th>75th %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orthopedic Surgery-Hand</td>
<td>0</td>
<td>isd</td>
<td>isd</td>
<td>isd</td>
</tr>
<tr>
<td>Otolaryngology</td>
<td>0</td>
<td>isd</td>
<td>isd</td>
<td>isd</td>
</tr>
<tr>
<td>Pediatrics</td>
<td>2</td>
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<td>isd</td>
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<tr>
<td>Plastic Surgery</td>
<td>2</td>
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<td>isd</td>
<td>isd</td>
</tr>
<tr>
<td>Psychiatry</td>
<td>1</td>
<td>isd</td>
<td>isd</td>
<td>isd</td>
</tr>
<tr>
<td>Trauma Surgery</td>
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<td>$91.67</td>
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<tr>
<td>Urology</td>
<td>0</td>
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<td>isd</td>
<td>isd</td>
</tr>
<tr>
<td>Vascular Surgery</td>
<td>0</td>
<td>isd</td>
<td>isd</td>
<td>isd</td>
</tr>
</tbody>
</table>

isd = insufficient data (reported only for 5 or more respondents)

#### Unrestricted On-Call

<table>
<thead>
<tr>
<th>Specialty</th>
<th>No. of Respondents</th>
<th>25th %</th>
<th>Median</th>
<th>75th %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orthopedic Surgery-Hand</td>
<td>8</td>
<td>$12.75</td>
<td>$17.71</td>
<td>$21.08</td>
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<tr>
<td>Otolaryngology</td>
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<td>$ 9.03</td>
<td>$15.48</td>
<td>$20.10</td>
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<tr>
<td>Pediatrics</td>
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<td>$ 5.54</td>
<td>$10.42</td>
<td>$24.99</td>
</tr>
<tr>
<td>Plastic Surgery</td>
<td>11</td>
<td>$10.71</td>
<td>$15.63</td>
<td>$37.50</td>
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<tr>
<td>Psychiatry</td>
<td>15</td>
<td>$ 5.95</td>
<td>$ 9.50</td>
<td>$12.50</td>
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<tr>
<td>Trauma Surgery</td>
<td>22</td>
<td>$25.71</td>
<td>$45.83</td>
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<td>$16.95</td>
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<tr>
<td>Vascular Surgery</td>
<td>9</td>
<td>$10.42</td>
<td>$15.63</td>
<td>$39.58</td>
</tr>
</tbody>
</table>

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On-call Coverage

- Need to determine if on-call physician is required to be at the hospital while on call (restricted), or is merely available by pager/phone (unrestricted)

On-call Coverage (cont.)

- If on call physician needs to be available by pager/phone, and no third party survey is available, either of the following two approaches may be used:
  - Find a specialty that does have a third party survey. Determine on call hourly rate and determine percentage of normal hourly rate.
    - Example: Third Party Survey $150 FMV hourly rate and $20 on call rate = 13.3%
    - Your on-call issue: $200 FMV hourly rate x 13.3% = 27/hour
On-call Coverage (cont.)

- Determine what market typically pay nurses as a percentage of normal hourly rate to be on call
  - If nurses in market are typically paid $2 to be available by pager and normal hourly rate is $16, nurses are paid 12.5% of their normal hourly rate to be on call
  - If a physician’s normal hourly rate is $150, then it may be commercially reasonable to pay the physician $18.75 to be on call (12.5% of $150)

Lessons Learned from Ortho Device DPAs

- Five companies that account for about 95% of hip and knee implant market entered deferred prosecution agreements with DOJ
- Criminal complaints based on use of consulting agreements with surgeons as inducements to use particular products
- $311 million aggregate settlement under AKL and FCA
Annual Needs Assessment

- Reflect company’s expected, commercially reasonable needs for all consulting services:
  - Medical
  - Clinical
  - Training/Educational
  - Research
  - Development

Annual Needs Assessment (cont.)

- Contains budget for the total amount of payments contemplated
- Prepared “in consultation” with function that has the need for the services
- Must be pre-approved by Compliance Officer.
- Used as “basis” for consultant selection and all agreements and payments
- Compliance Officer shall “attest” that reflects “bona fide, commercially reasonable” needs of company
Annual Needs Assessment (cont.)

- Identify and quantify services needed within each discrete service category and provide written support for need
- Shall set forth:
  - Nature of services needed
  - Range of hours needed to complete the service
  - Number of consultants needed
  - Maximum FMV compensation to be paid
  - Qualifications and expertise of consultants

Annual Needs Assessment (cont.)

- Shall define and limit all consulting services performed for the year
- No consulting agreements for:
  - Services not specified in Needs Assessment
  - Exceeding the number of services specified in Needs Assessment
Annual Needs Assessment (cont.)

- Company shall maintain record of all consulting services
- Compliance Officer shall provide monthly summaries to senior management of consulting services provided or submitted for payment:
  - By consultant
  - By region
  - By total
  - With list of services left to be provided

Fair Market Value

Fair market value documentation should be developed and documented before offer is made
Fair Market Value (cont.)

Another tool:
- Physician Recruitment and Employment checklist

PHYSICIAN CONTRACT CHECKLIST: RECRUITMENT, EMPLOYMENT, AND INDEPENDENT CONTRACTORS

- Name of Physician
- Specialty
- Subject Matter of Contract
- Term of Contract

Documentation Guidelines

- Health care organization should establish a structured approval and documentation process for all physician contracts
Documentation Guidelines (cont.)

- One example is using the Board of Trustees, or a committee of the Board of Trustees (i.e., Executive Committee)
- Documentation submitted for approval can include:
  1. Fair Market Value/Commercially Reasonableness documentation (survey, checklist, competing offers)
  2. Proof of legal review
  3. Officer’s Certificate (see Exhibit F)
  4. Copy of contract (or contract review memo disclosing the material components of the contract)

Contract Approval

Officer’s Certificate

FOFFICER’S CERTIFICATION

1. I, , [President] of [Name of Organization] hereby certify that to the best of my knowledge, the following matters are true for the by and between [Name of Organization] and dated , 2025 (the “Arrangement”):

2. The payments pursuant to the Arrangement represent the fair market value of the services to be rendered thereunder;

3. No payment has been or will be made, to the professional referenced herein outside of the terms and conditions of the Arrangement unless such outside payment is also consistent with [Name of Organization]’s policies; and

4. I, , shall ensure that the services required under the Arrangement are rendered prior to making each payment thereunder.

Date: __________________ Signature: __________________

* Can be signed by CEO, VP or President.
Documentation Guidelines

- Because of the inherent risk with physician contracts, the Board of Trustees should either i) be involved in the approval process, or ii) establish a process to be followed by the administration for approval of physician contracts.
- Board/Committee approval of financial transactions with physicians creates rebuttable presumption under Intermediate Sanctions Regulation.

Documentation Guidelines (cont.)

- For every contract, the following documents should be maintained in a central file:
  - *Executed* and *current* copy of contract
  - Fair market value/commercial reasonableness documentation that formed the basis for the contract
  - Documentation of legal review
  - Officer’s certificate (see Exhibit F)
Annual Review

- First:
  - Each year, healthcare organizations should identify every payment made to a physician or physician group

- Second:
  - After all physician payments are identified, the legal/compliance department should determine that there is a valid contract for every payment

- Third:
  - All payments must be reflected on a W-2 (for employees) or 1099 (for independent contractors)
Thank you!

- Any questions?
Market Survey Data for Documentation Format

Summarized below is the market survey data establishing the fair market value of pay for Family Practice Physician (without OB). This market data has been obtained from independent third party compensation surveys.

**SURVEY DATA**  
**FAMILY PRACTICE (WITHOUT OB)**

<table>
<thead>
<tr>
<th>Survey</th>
<th>Survey Match</th>
<th>Region</th>
<th>25th %ile</th>
<th>50th %ile</th>
<th>75th %ile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sullivan</td>
<td>Family Practice without OB/GYN</td>
<td>National</td>
<td>124,624</td>
<td>140,906</td>
<td>165,778</td>
</tr>
<tr>
<td></td>
<td>Family Practice without OB/GYN</td>
<td>Regional</td>
<td>126,276</td>
<td>144,942</td>
<td>172,331</td>
</tr>
<tr>
<td>Hay</td>
<td>Family Practice</td>
<td>National</td>
<td>128,647</td>
<td>149,880</td>
<td>163,306</td>
</tr>
<tr>
<td></td>
<td>Family Practice</td>
<td>Regional</td>
<td>129,896</td>
<td>151,337</td>
<td>182,249</td>
</tr>
<tr>
<td>HHCS</td>
<td>Family Practice</td>
<td>National</td>
<td>185,966</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MGMA</td>
<td>Family Practice without OB</td>
<td>National</td>
<td>131,527</td>
<td>153,874</td>
<td>186,886</td>
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<tr>
<td>ECS</td>
<td>Family Practice physician</td>
<td>National</td>
<td>125,810</td>
<td>139,730</td>
<td>165,897</td>
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<tr>
<td><strong>Average</strong></td>
<td></td>
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<td>127,796</td>
<td>152,376</td>
<td>172,741</td>
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<tr>
<td>approx/hour</td>
<td></td>
<td></td>
<td>$61</td>
<td>$73</td>
<td>$83</td>
</tr>
</tbody>
</table>

**Additional information:**
A 20 to 30% premium can be applied to total cash in lieu of benefits. A 25% premium applied to the 50th percentile would equal approximately:
- $190,471 per year
- $92 per hour
- $733 per day

**Surveys:** Regional data included where available. Data updated to 7/1/02.  
HayGroup - 2001 Physicians Compensation Survey  
Hospital and Healthcare Compensation Service - 2002 Physician Salary Survey Report  
Medical Group Management Association - Physician Compensation and Productivity Survey 2000  
ECS Watson Wyatt - 2001/2002 Hospital and Health Care Management Compensation Report
Medical Director Time Sheet Form

**DUTIES**

|   | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| A. | Provide program assistance, guidance, and recommendations. | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| B. | Provide medical guidance and direction. | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| C. | Provide educational inservices and/or conferences. | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| D. | Administrative duties. | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| E. | Be available to discuss and review treatment. | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| F. | Be a physician liaison. | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| G. | Meet regularly with Clinic staff. Attend meetings as requested. | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| H. | Other | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

**GRAND TOTAL:**

|   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |   |

*In addition to the above, please generally describe the services performed this month.*
Medical Director Tracking Tool

### MEDICAL DIRECTOR Tracking Tool

<table>
<thead>
<tr>
<th>Last Name</th>
<th>Current Hrly Pay</th>
<th>Contract Hrly Pay</th>
<th>Contract Weeks</th>
<th>Actual Total Hrs. Wrk</th>
<th>Prorated Hrs.</th>
<th>Contracted Annual Hrs.</th>
<th>Contract Start Date</th>
<th>Contract Expiry Date</th>
<th>Total Annual Compensation</th>
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</thead>
<tbody>
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<td>$114.00</td>
<td>17</td>
<td>65.5</td>
<td>59</td>
<td>180</td>
<td>09/01/05</td>
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<td>$20,520.00</td>
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<tr>
<td>Dr. Bombay</td>
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<td>78</td>
<td>156</td>
<td>07/01/05</td>
<td>06/30/06</td>
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<tr>
<td>Dr. Doctor</td>
<td>$142.12</td>
<td>$111.00</td>
<td>43</td>
<td>201.5</td>
<td>258</td>
<td>312</td>
<td>08/01/05</td>
<td>07/31/06</td>
<td>$34,632.00</td>
</tr>
<tr>
<td>Dr. I.M. III</td>
<td>$139.54</td>
<td>$137.80</td>
<td>4</td>
<td>79</td>
<td>80</td>
<td>1040</td>
<td>08/01/05</td>
<td>07/31/06</td>
<td>$143,310.40</td>
</tr>
<tr>
<td>Dr. Feelgood</td>
<td>$134.77</td>
<td>$97.87</td>
<td>26</td>
<td>321</td>
<td>442</td>
<td>884</td>
<td>07/01/05</td>
<td>06/30/06</td>
<td>$86,520.00</td>
</tr>
</tbody>
</table>

**Current Hourly Pay**: Current hourly rate based upon total hours documented

(Current Annual Compensation/52 x Contract Weeks)/(Actual Total Hours Worked)

**Contracted Hourly Pay**: (Total Annual Compensation)/(Contracted Annually Hours)

**Contract Weeks**: Number of weeks into current annual contract cycle

**Total Hours Worked**: Number of hours of services documented by physician during current term based upon timesheets approved

**Prorated Hours**: Average hours physician would have worked if hours evenly distributed throughout contract term

**Contracted Annual Hours**: Number of hours required by contract on annual basis

**Contract Start**: Effective date of current annual term

**Contract Expiration**: Expiration date of current annual term

**Total Annual Compensation**: Total amount of annual compensation per contract

Created by: Robert A. Wade
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Suite 1400
202 South Michigan Street
South Bend, IN 46601
(574) 239-1906
bob.wade@bakerd.com
Physician Contract Checklist

<table>
<thead>
<tr>
<th>PHYSICIAN CONTRACT CHECKLIST: RECRUITMENT, EMPLOYMENT, AND INDEPENDENT CONTRACTORS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Physician</td>
</tr>
<tr>
<td>Specialty</td>
</tr>
<tr>
<td>Subject Matter of Contract to Term of Contract</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Under the Contract, will Physician be an</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Independent Contractor, or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private Practitioner not rendering services on behalf of the [Organization Name]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is Physician being recruited to relocate to the geographic area served by [Organization Name]?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, will Physician’s practice be moved greater than 25 miles?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Is Physician currently, or will the Physician be an employee, shareholder, member or owner of a medical group, professional corporation, company, or entity other than [Organization Name]? |  | |
| If so, state the name of such group or entity. Include any group or entity that is related to [Organization Name]. |  | |
I. OVERVIEW

Because of the Anti-Kickback Statute, Stark Law and Internal Revenue Code, it is essential that any benefits or compensation given to physicians be consistent with fair-market-value for the services provided. Tax-exempt organizations must have a systematic process for reviewing and approving agreements with physicians, including agreements involving physician recruitment, to ensure compliance with all applicable laws. This Checklist is designed to ensure that [Organization Name] meets these requirements when it recruits physicians to enter private practice in [geographic location] or to become employees or independent contractors of [Organization Name].

[Organization Name] should maintain a Master File for each physician with whom it has any agreement or arrangement. The Master File should contain this Checklist as well as copies and documentation of every agreement or arrangement with each physician. (Some physicians’ files (e.g., with whom the [Organization Name] has entered a joint venture) may not contain this Checklist because the [Organization Name] does not provide the physician any benefits or compensation.)

Sections II and III must be completed before a Committee of the Board of Trustees (the "Committee") considers the Contract. Section II must be completed before the Physician is presented with the Contract. The Committee should review the completed Sections II and III as well as all documentation used to complete Section II before approving any contract.

The Contract should not be executed prior to Committee approval (although the Physician may be presented with the Contract "pending approval of the Committee"). Thus, Section IV should be completed before Contract execution. The full Board need not review the Contract before it is executed.

If you have any questions about how to complete or use the Checklist, ask your Supervisor or consult legal counsel.
II. DOCUMENTATION

Date of Completion of Checklist: ____________________________
Name of Person Completing Checklist: ____________________________
Title of person Completing Checklist: ____________________________

This Section must be completed before the Committee approves the Contract and before the Contract is presented to the Physician.

A. TOTAL COMPENSATION FOR EMPLOYEES

If Physician is to be an employee under the Contract, complete this Subsection A. If Physician will not be an employee, go to Subsection B.

List the types and value of all compensation the Physician will receive as an Employee. (Include compensation and benefits from all entities related to [Organization Name]. Attach separate sheets as necessary.)

<table>
<thead>
<tr>
<th>Compensation Type</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base Compensation</td>
<td>$</td>
</tr>
<tr>
<td>Maximum Incentive Compensation</td>
<td>$</td>
</tr>
<tr>
<td>Malpractice Insurance Premium</td>
<td>$</td>
</tr>
<tr>
<td>Travel and Expense Reimbursement for Continuing Medical Education</td>
<td>$</td>
</tr>
<tr>
<td>Medical Society Dues</td>
<td>$</td>
</tr>
<tr>
<td>Fees for Applying for Participating Status in Managed Care Networks</td>
<td>$</td>
</tr>
<tr>
<td>Licensing Fees</td>
<td>$</td>
</tr>
<tr>
<td>Pension Benefits</td>
<td>$</td>
</tr>
<tr>
<td>Health Insurance</td>
<td>$</td>
</tr>
<tr>
<td>Life Insurance</td>
<td>$</td>
</tr>
<tr>
<td>Car Allowances</td>
<td>$</td>
</tr>
<tr>
<td>Subsidy for Parking</td>
<td>$</td>
</tr>
<tr>
<td>Cellular Phone or Other Telephone Allowance</td>
<td>$</td>
</tr>
<tr>
<td>Signing Bonus</td>
<td>$</td>
</tr>
<tr>
<td>Maximum Reimbursement for Moving and Relocation Expenses</td>
<td>$</td>
</tr>
<tr>
<td>Interview Travel Expenses</td>
<td>$</td>
</tr>
<tr>
<td>Loan or Salary Advance:</td>
<td>$</td>
</tr>
<tr>
<td>Amount</td>
<td>$</td>
</tr>
<tr>
<td>Amount to be forgiven each year</td>
<td>$</td>
</tr>
<tr>
<td>Other</td>
<td>$</td>
</tr>
</tbody>
</table>

TOTAL VALUE OF ALL COMPENSATION: $
<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is each form of compensation reflected in the Contract?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Physician should not receive any benefits or payments that are not covered by or described in a written agreement. If any incentive or other form of compensation that will be provided is not included in the Contract, is it reflected in another written agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is there or will there be any joint venture agreement between [Organization Name] or one of its related entities and the Physician?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If the Physician will be employed less than full-time, will [Organization Name] or one of its related entities have with the Physician:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any turn-key agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any space lease agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any equipment lease agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any personal services agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any billing services agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any personnel services and/or training agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any administrative services agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any practice management agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any Medical Director agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any research agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>any purchasing agreement?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>other? (please list on a separate sheet of paper if necessary)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are all written agreements with the Physician attached?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is Physician required to submit receipts for all expenses that are reimbursed?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Are receipts for all expenses paid for and documentation (or summaries) of all benefits provided by [Organization Name] attached?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### B. Non-Employees

#### 1. Total Compensation for Non-Employees

This Subsection should be completed for all physicians who will be independent contractors or who are being recruited to enter private practice.

List the types and value of all compensation the Physician will receive. (Include compensation and benefits from all entities related to the **[Organization Name]**. Attach separate sheets as necessary.)

<table>
<thead>
<tr>
<th>Compensation for Professional Services and/or Coverage</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation for Medical Director or Other Administrative/Consultative Services</td>
<td>$</td>
</tr>
<tr>
<td>Income Guarantee:</td>
<td>$</td>
</tr>
<tr>
<td>Maximum Payment per year</td>
<td>$</td>
</tr>
<tr>
<td>Loan:</td>
<td></td>
</tr>
<tr>
<td>Amount</td>
<td>$</td>
</tr>
<tr>
<td>Amount to be forgiven each year</td>
<td>$</td>
</tr>
</tbody>
</table>

List every other form of assistance provided to the Physician and/or his/her family (cash or non-cash) and the value:

| $ |
| $ |
| $ |
| $ |
| $ |
| $ |

**Total Value of All Compensation** $
Is each form of compensation reflected in the Contract?

The Physician should not receive any benefits or payments that are not covered by or described in a written agreement. If any incentive or other form of compensation that will be provided is not included in the Contract, is it reflected in another written agreement?

Is there or will there be any joint venture agreement between the [Organization Name] or one of its related entities and the Physician?

Does or will the [Organization Name] or one of its related entities have with the Physician:

- any turn-key agreement?
- any space lease agreement?
- any equipment lease agreement?
- any personal services agreement?
- any billing services agreement?
- any personnel services and/or training agreement?
- any administrative services agreement?
- any practice management agreement?
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- any research agreement?
- any personal services agreement?
- any billing services agreement?
- any personnel services and/or training agreement?
- any administrative services agreement?
2. Community Need

(Complete this section only if recruitment incentives are being offered to the Physician. Note: Recruitment incentives can be offered only if Community Need is established.)

<table>
<thead>
<tr>
<th>Does [Organization Name] have a Medical Staff Development Plan in effect?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>If so, are the sections of the Medical Staff Development Plan that are directly relevant to recruitment of Physician attached?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Is documentation of community need for a physician with skills held and maintained by the Physician with whom [Organization Name] is contracting attached?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Community need:

Check all of the following that apply and provide appropriate explanatory documentation.

- The population-to-physician ratio in the community is deficient in the relevant specialty relative to the ideal ratio contained in Graduate Medical Education National Advisory Committee (GME NAC) or similar reports.
- There is a demand for a particular medical service in the community for which the Physician is being recruited, coupled with a documented lack of availability of the service or long waiting periods for the service.
- The community or area where the Physician will serve when the agreement is executed has been designated a "Health Professional Shortage Area" (as defined by federal regulations).
- There is a demonstrated reluctance of physicians to relocate to the community due to [Organization Name]'s physical location (e.g., because the hospital is in a rural or economically disadvantaged inner-city area).
- [Organization Name] anticipates a reduction in the number of physicians in the relevant specialty in the service area due to anticipated retirements during the next three years.
- There is a documented lack of physicians serving indigent or Medicaid patients within [Organization Name]'s service area, provided that the recruited Physician commits to serving a "substantial number" of Medicaid and low income patients.
- A need exists in the community for a physician with the skills held and maintained by this particular Physician.
- [Organization Name] is engaging in a geographic market extension.
- [Organization Name] is engaging in a specialty market extension.
- [Organization Name] is attempting to improve the quality of care provided. (A specific statement of how the recruitment of this particular Physician will help to improve quality is recommended.)
- This particular Physician will replace a physician who is retiring or resigning.
- This particular Physician has administrative expertise that is needed by [Organization Name].
- This particular Physician will help to fill a specific payor demand.
- The addition of this particular Physician will help [Organization Name] to fulfill a specific licensing or regulatory requirement.
- The addition of this particular Physician will enhance the services provided at a satellite site.
- The addition of this particular Physician will help [Organization Name] to implement its strategic plan or vision; and/or
- The recruitment of this particular Physician will assist [Organization Name] with a given program's development or extension.

Note: All of the criteria above needs to be analyzed to determine if community need is documented. Not every factor, by itself, may support sufficient community need to provide financial incentives to a physician to relocate.
### C. REASONABLENESS OF COMPENSATION/RECRUITMENT INCENTIVE

Approximately what time commitment will be required of Physician?  

<table>
<thead>
<tr>
<th>hours per yr/month/wk</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Is the total compensation consistent with the fair-market-value of the services the Physician will render, as reflected in national survey data or other documentation reasonably relied upon by person completing Checklist? To complete fair-market value, the amount to be paid to the Physician may need to be calculated at an hourly rate. Factors that may be relevant when determining where along the fair market value range the Physician should be compensated include, without limitation, specialty, board certification or eligibility, geographic location, years in practice, etc.  

Have copies of all survey data relied upon been attached?  

Note: Contract cannot be approved until survey data is attached to Checklist. Also, if Physician is to be compensated above the 50th percentile, attach a memo explaining why physician should be compensated above the 50th percentile. NO CONTRACT SHALL BE APPROVED IF DESIRED COMPENSATION IS ABOVE 90TH PERCENTILE.  

If financial incentives are being offered to recruit a physician to relocate to [Organization Name]’s geographic area, state nature of all financial incentives to be offered  

If [Organization Name] will make a loan to the Physician, state the amount.  

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
</tr>
</tbody>
</table>

Source of Prime Rate:  

Repayment Terms:  

Forgiveness Provisions, if any:  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Will the Physician be required to sign a Promissory Note?  

What security will the Physician be required to provide?  

Physician’s house  

Physician’s accounts receivable and equipment  

Other assets (describe)  

Is the Physician required to purchase a life insurance policy naming [Organization Name] as a beneficiary?  

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
</tr>
</tbody>
</table>
For Non-Employee Physicians only, if [Organization Name] provides an Income Guarantee, state the Length of Guarantee: ________________ years

<table>
<thead>
<tr>
<th>Repayment Terms:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Forgiveness Provisions, if any:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If an Income Guarantee will be offered, are the expenses limited only to the incremental expense for the addition of the relocating Physician</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If moving expenses are being reimbursed, is the reimbursement consistent with [Organization Name]'s policies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are the moving expenses reasonable? State why:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>If relocating Physician joins an existing group, is there a prohibition on restricting the Physician's practice (i.e., restrictive covenant)?</th>
</tr>
</thead>
</table>
III. ARM’S-LENGTH TRANSACTION

Date of Completion: _________________________

This Section should be completed contemporaneously with negotiation and execution of the Contract.

Identify the people substantially involved in negotiating with the Physician.

________________________________________________________________________

| Did any of these individuals have a conflict of interest due to a relationship, financial or otherwise, with the Physician or one of the Physician’s close family members? | Yes | No |
| Did the Physician reject any offer made by [Organization Name]? (If so, attach additional sheets describing in detail and forward any correspondence from physician to [legal contact title].) | ........................................... |
| Did the Physician seek a relationship with or receive any offers from other hospitals or providers? (If so, and if offers have been produced by Physician, forward other offers to [legal contact title].) | ........................................... |
IV. PROCESS

This Section must be completed before the Contract is executed.

<table>
<thead>
<tr>
<th>Prior to Execution, Contract Approved by:</th>
<th>Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
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<tr>
<td></td>
<td></td>
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</tr>
<tr>
<td>Board of Trustees Committee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal Counsel</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Before or after Contract execution, the Board of Directors must ratify the Contract.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did any Member of the Committee have a conflict of interest concerning the Contract?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>If so, did such Member(s) participate in discussions of and/or voting on the Contract?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did the Committee consider documentation of the reasonableness of compensation, including national comparability survey data? (e.g., MGMA data)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did the Committee consider documentation of the community need for the physician? (Only applicable if recruitment incentives are offered.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did the Committee document the basis for its decision to approve or disapprove the Contract?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Officer’s Certificate

OFFICER’S CERTIFICATION

I, ______________________________, [President]* __________________ of [Name of Organization] hereby certify that to the best of my knowledge, the following matters are true for the __________________________ by and between [Name of Organization] and __________________________ dated ____________, 2007 (the "Arrangement"):

1. There are no other arrangements, written or oral, with __________ except as written in the Arrangement;

2. The payments pursuant to the Arrangement represent the fair market value of the services to be rendered thereunder;

3. No payment has been or will be made, to the professional referenced herein outside of the terms and conditions of the Arrangement unless such outside payment is also consistent with [Name of Organization]’s policies; and

4. I, as the________________________, shall ensure that the services required under the Arrangement are rendered prior to making each payment thereunder.

Date:____________________          Signature:____________________________

* Can be signed by CEO, VP or President.
Physician Contract Review Memo

**PHYSICIAN CONTRACT REVIEW MEMO**

**Name of Physician or Group with who contract is being sought:**

**Type of contract** (i.e., Medical Director, Employment Agreement, Practice Location Agreement): __________________________________________________________ (“Contract”)

**Specialty:** ______________________________

[Organization Name] Contracting Entity (check all that apply):

List all Entities

**Name and Title of Administrator completing Physician Contract Review Memo:**

*Signature of above Administrator: __________________________Date: __________.*

Pursuant to the terms of the proposed contract, the physician/group will do the following:

**Term:** The Contract will commence and end on the date of service provided

Renewal terms, if any, are as follows:

Describe i) why the Contract is Fair Market Value and ii) method of compensation. (Be very detailed, including a calculation as to how the annual compensation was determined. For example, if the documented Fair Market Value per hour rate is $100.00, and 100 hours are expected from the physician/group, then a $10,000 annual payment is warranted.) **Attach all supporting Fair Market Value documentation, including Physician Recruitment Checklist if applicable. In addition to the Fair Market Value documentation, if Physician is to be compensated above the 50th percentile, attach a memo explaining why Physician should be compensated above the 50th percentile (relevant factors may include specialty, board certifications or eligibility, years in practice, etc.).** NOTE: NO CONTRACT SHALL BE APPROVED IF DESIRED COMPENSATION IS ABOVE 90th PERCENTILE EXCEPT WITH AN INDEPENDENT THIRD PARTY EVALUATION.
Administrator responsible for monitoring performance of all aspects of Contract by physician/group (listed administrators are limited only to the following: CEO, COO, SVP, VP):

State why the Contract is needed (including those needs that further [Organization Name] charitable purpose):

Billing: Does the contract cover professional patient care services to be performed by the physician? _____ Yes _____ No If YES, will [Organization Name] bill, either directly or by a contracted billing company, for the professional patient care services and retain revenue? _____ Yes _____ No

In addition to the above, this contract is needed and furthers the [Organization Name] charitable service because (initial all that apply): _____ the contract benefits the community by improving patient access to quality medical services; _____ the contract will further the [Organization Name]'s mission; _____ the contract will improve an existing area of service.

* * *

[Legal staff to complete the following portions of this memo]

Has the Contract been reviewed and approved by legal counsel? _____ Yes _____ No

Stark exception upon which contract is based (legal staff must initial one):

_____ Bona fide employment relationship
_____ Personal services arrangement
_____ Rental of office space
_____ Rental of equipment
_____ Other: ____________________________

If the contract was reviewed by in-house counsel, the signature that follows is a representation that [Organization Name]'s in-house counsel believes that the contract satisfies, in all material respects, [Organization Name]'s policy on hospital physician financial relationships and applicable laws governing such relationships.

____________________________________ (signature of [Organization Name] lawyer)

Has an Officer's Certificate been executed and delivered to the legal office? (legal staff must initial one) _____ Yes _____ No

If not, please explain why:

________________________________________________________________________
________________________________________________________________________

[Chief Financial Officer, or designee, to complete the remaining portion of this memo]

Has the Contract been reviewed and approved by Finance? _____ Yes _____ No

BDD801 4199552v1

Created by: Robert A. Wade
Baker & Daniels LLP
202 South Michigan Street
Suite 1400
South Bend, IN 46601
(574) 239-1906
bob.wade@bakerd.com
List of industry acronyms
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABN</td>
<td>Advance Beneficiary Notice</td>
</tr>
<tr>
<td>AHIMA</td>
<td>American Health Information Management Association</td>
</tr>
<tr>
<td>APC</td>
<td>Ambulatory Payment Classification</td>
</tr>
<tr>
<td>CDT</td>
<td>Code on Dental Procedures and Nomenclature</td>
</tr>
<tr>
<td>CM</td>
<td>Clinical Modification</td>
</tr>
<tr>
<td>CMS</td>
<td>Centers for Medicare and Medicaid Services</td>
</tr>
<tr>
<td>CPT</td>
<td>Current Procedural Terminology</td>
</tr>
<tr>
<td>DRG</td>
<td>Diagnosis Related Group (3 day window)</td>
</tr>
<tr>
<td>E/M</td>
<td>Evaluation and Management</td>
</tr>
<tr>
<td>FI</td>
<td>Fiscal Intermediary</td>
</tr>
<tr>
<td>HIPAA</td>
<td>The Health Insurance Portability and Accountability Act 1996</td>
</tr>
<tr>
<td>HCPCS</td>
<td>Health Care Financing Administration Common Procedure Coding System</td>
</tr>
<tr>
<td>ICD</td>
<td>International Classification of Diseases</td>
</tr>
<tr>
<td>JCAHO</td>
<td>Joint Commission on Accreditation of Healthcare Organizations</td>
</tr>
<tr>
<td>NDC</td>
<td>National Drug Codes</td>
</tr>
<tr>
<td>OIG</td>
<td>Office of Inspector General</td>
</tr>
<tr>
<td>OPPS</td>
<td>Outpatient Prospective Payment System</td>
</tr>
<tr>
<td>OSHA</td>
<td>Occupational Safety and Health Administration</td>
</tr>
</tbody>
</table>

- Registered Health Information Administrator (RHIA)
- Registered Health Information Technician (RHIT)
- Certified Coding Associate (CCA)
- Certified Coding Specialist (CCS)
- Certified Coding Specialist–Physician-based (CCS-P)
- Certified in Healthcare Privacy (CHP)
- Certified in Healthcare Privacy and Security (CHPS)
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<th>Price</th>
<th>Order code</th>
<th>Quantity</th>
<th>Total</th>
</tr>
</thead>
<tbody>
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</tr>
<tr>
<td>Sales tax* (see below)**</td>
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<tr>
<td>Grand total</td>
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</table>

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- [ ] Bill me.
- [ ] Bill my (✓ one): VISA, MasterCard, AmEx
- [ ] Check enclosed (payable to HCPPro)
- [ ] Bill my facility with PO #

**Signature**
(Required for authorization)

**Account no.**

(Your credit card bill will reflect a charge to HCPPro)

**Exp. date**
Speaker contact information

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Partner
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South Bend, IN 46601
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Fax: 574/472-4576
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Web site: www.bakerdaniels.com

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Website: www.sonnenschein.com

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  - Corporate compliance
  - Credentialing/privileging
  - Executive leadership
  - Finance
  - Health information management
  - Hospital pharmacy
  - Infection control
  - Long-term care
  - Marketing
  - Medical staff
  - Nursing
  - Pharmaceutical
  - Physician practice
  - Quality/patient safety
  - Rehab
  - Residency
  - Safety

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March 19, 2008

Rob Stuart
Senior Vice President / Chief Operating Officer