

Employment Law Presentation to Sri Lanka Medical Association of North America – East Coast, Inc.

NOVEMBER 17, 2007

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Overview

- I. At Will Employment
- II. Employee Handbooks
- III. Employment Contracts
- IV. New Jersey and New York Law on Restrictive Covenant Agreements for Physicians
- V. Employment of Physicians
 - A. Sample Offer Letter
 - B. Sample Employment Agreement
 - C. Sample Restrictive Covenant
 - D. Sample Employee Handbook
 - E. Contemporaneous Documentation of Discipline and Termination

EMPLOYMENT CONTRACTS

- In New York and New Jersey,
 Employees Can be Fired without
 Due Cause.
- New Jersey and New York are both "employment-at-will" states.

Exceptions to At Will Employment

- There are a few exceptions to "employment-atwill" in New Jersey and New York.
- Discrimination based upon:
 - race
 - creed
 - national origin
 - age
 - handicap
 - gender
 - sexual orientation
 - marital status

NY Public Health Law sect. 2801-b Protects Physicians' Hospital Privileges

"It shall be an improper practice for the governing body of a hospital to . . . deny or withhold from a physician . . . staff membership or professional privileges in a hospital, or to exclude or expel a physician . . . from staff membership in a hospital or curtail, terminate or diminish in any way a physician's . . . professional privileges in a hospital, without stating the reasons therefor, or if the reasons stated are unrelated to standards of patient care, patient welfare, the objectives of the institution or the character or competency of the applicant."



Employment Handbooks as a Source of Rights Against Termination at Will

- Common source of litigation.
- Representations made in employee handbooks are enforceable in certain circumstances.
 - Woolley v. Hoffmann-LaRoche, Inc., 99 N.J. 284, modified, 101 N.J. 10 (1985).



Employee Handbooks

- Critical documents for every employer to have.
- Can serve as an affirmative shield to lawsuits.
 - Faragher v. Boca Raton, 118 S.Ct. 2275 (1998).



Employment Handbooks as a Source of Rights Against Termination at Will

- Recognition of "basic contract principles concerning acceptance of unilateral contracts."
 - McQuitty v. General Dynamics Corp., 204
 N.J. Super. 514, 520 (App.Div. 1985).





- "... an employer of a substantial number of employees circulates a manual that, when fairly read, provides that certain benefits are an incident of the employment (including, especially, job security provisions), the judiciary, instead of "grudgingly" conceding the enforceability of those provisions ... should construe them in accordance with the reasonable expectations of the employees."
 - Woolley v. Hoffmann-LaRoche, Inc., 99 N.J. at 297-98.

Enforceability of Provisions



- Distribution of manual to general work force creates presumption of reliance.
 - Labus v. Navistar Int'l Trans. Corp., 740 F.Supp. 1053, 1062 (D.N.J. 1990).
- General distribution "forms a basis for the legal presumptions that (1) the employer intended to be bound and (2) employees were generally aware of and could have reasonably relied upon the manual's terms."
 - Alito, N.J. Employment Law (2d ed.), §1:6-1, at 16 (1999).



Clear and Explicit Language

- Language regarding job security must be "explicit and clear."
- Comprehensive provisions regarding termination and discipline should be included.
 - Woolley v. Hoffmann-LaRoche, Inc., 99 N.J.
 284, 306, modified, 101 N.J. 10 (1985).



Handbook Disclaimer Crucial to Avoid Creating a Contract

Clear and Prominent Disclaimer:

- "All that need be done is the inclusion in a very prominent position of an appropriate statement that there is no promise of any kind by the employer contained in the manual; that regardless of what the manual says or provides, the employer promises nothing and remains free to change wages and all other working conditions without having to consult anyone and without anyone's agreement; and that the employer continues to have the absolute power to fire anyone with or without good cause."
 - Woolley v. Hoffmann-LaRoche, Inc. 99 N.J. 284, 309, modified, 101 N.J. 10 (1985)

Employment Contracts

- Terms of an employment contract must be definite enough that the courts can tell reasonably certainly what each party has promised to do.
 - Friedman v. Tappan Development Corp., 22 N.J. 523, 531 (1956).
- These terms should include, at a minimum, the length of the employment and the circumstances under which it can be terminated.



Employment Contracts

- Employment contract for a fixed period of time, which has passed, does not become a year-to-year contract, unless the intent to do so is clearly stated in the contract.
 - Craffey v. Bergen County Util., 315 N.J. Super. 345, 352 (App.Div. 1998), certif... denied, 158 N.J. 74 (1999).



Restrictive Covenants for Physicians in NY and NJ

- Agreement by which an employee agrees not to engage in competition against an employer, after the employment has ended.
- Not all states recognize restrictive covenants for physicians.
- New Jersey and New York do allow restrictive covenants for physicians.

Restrictive Covenants for Physicians

- Generally include:
 - Non-compete agreement (physician will not practice in a certain area for a specified time)
 - Non-solicitation agreement (physician will not solicit patients from employer)
 - Agreement that physician will not have privileges at specified hospitals
 - Confidentiality agreement (physician will not use or disclose proprietary information of the practice)

NJ and Restrictive Covenants

- In New Jersey, restrictive covenants for physicians are acceptable, as long as they are reasonable.
 - The Community Hospital Group, Inc. t/a JFK
 Medical Center v. Jay More, 183 N.J. 36
 (2005)
 - Pierson v. Medical Health Centers, P.A., 183N.J. 65 (2005)
 - Karlin v. Weinberg, 77 N.J. 408 (1978)

NJ and Restrictive Covenants

- Restrictive covenant for physicians reasonable if:
 - Necessary to protect legitimate interests of the employer
 - No undue hardship on the employee
 - consider whether it is reasonable both in duration and in geographic scope
 - Not harmful to the public

NJ Restrictive Covenants: Factors to Consider

- Time employer needs to rebuild practice following employee's departure
- Reasonableness of geographic scope
- Whether activities departing physician is prohibited from engaging in are same as those performed by the employer physician
- Hardship on employee and reason for departure (physicians who choose to leave can be seen as bringing hardship on themselves)
- Likelihood another physician in area can provide medical services left by departing physician
- Effect enforcement of covenant would have on public interest

Broad NJ Restrictive Covenant Upheld

- Physician prohibited from practicing within 30-mile radius for two years.
- Factors considered:
 - Hospital developing broad clinical neurological program, had devoted about \$14 million since 1992
 - \$200,000 on advertising and promotion each year
 - Neurosurgeon hired immediately after residency
 - No prior patient base or practice
 - Eight years at hospital to build base, then left to compete
 - Physician was neurosurgeon, a specialist
 - Patients regularly travel over 30 miles for specialized care
 - State of NJ has great mobility
 - 17% of hospital's patients live more than 30 miles away
 - Community Hospital Group v. More, supra

NY and Restrictive Covenants

- New York courts use basically same standard
 - "Covenants restricting . . . a physician, from competing with a former employer or associate are common and generally acceptable. As with all restrictive covenants, if they are reasonable as to time and area, necessary to protect legitimate interests, not harmful to the public, and not unduly burdensome, they will be enforced."
 - Gelder Med. Group v. Webber, 42 N.Y. 2d 180 (N.Y. 1977), internal citations omitted

30-mile, 5-year Restrictive Covenant Enforced in New York

- Restrictive covenant barring physician from practicing within 30 miles of rural village, for period of five years, reasonable.
- Enforceable even though, unlike in New Jersey case, physician was expelled from the practice without cause.
 - Gelder Med. Group, 41 N.Y. 2d 680 (N.Y. 1977)

NY Broad Restrictive Covenant

- Court took into consideration that:
 - doctor did not allege practice sought to enforce provision in bad faith
 - practice developed over twenty years at great cost
 - doctor had no roots in area, had had affiliations with practices in several other areas
 - enforcing covenant would not harm public interest; other physicians available to serve public need

Revising Restrictive Covenants

- Courts will amend covenants which are too restrictive.
- Known as "blue-pencilling"
- Technique used by both NJ and NY courts
- Too stringent restrictive covenant can be relaxed, so that overall agreement is reasonable. (see, e.g., Muller v. N.Y. Heart Center, 238 A.D.2d 776, 3rd Dept. 1997)



Sample Offer Letter

- Physicians Incorporated
- 101 Hospital Drive
- Healthcare, NJ 09110

November 17, 2007

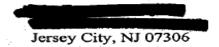
- September 1, 2006
- Nu Employee, M.D.
- 247 Med School Avenue
- Residence, NY 09001
- Dear Dr. Employee:
- I am very happy to welcome you as part of our team. This letter confirms and memorializes that effective November 17, 2007 you are a salaried at will employee receiving \$107,500 per annum. Your regular work day shall be from 9am to 6pm. However, you may have to come in earlier or work later to get your work completed. As a salaried physician, you are considered an exempt employee and are not eligible for overtime.



Sample Offer Letter, p. 2

- In accordance with the handbook that has been provided you, your Benefits Eligibility Period (the "BEP") begins today. Following the expiration of the BEP, you will be eligible to receive the benefits provided to full time permanent employees such as healthcare benefits, paid holidays, vacations, sick days, etc.
- I acknowledge that you have reviewed and executed the acknowledgement of the anti- discrimination and sexual harassment policies. Further, you have reviewed the CEPA/Whistleblower policy in the lunchroom. Please feel free to discuss these policies and ask any questions of me. The success of our practice depends on these policies being followed and respected at all times.
- Should you have any questions pertaining to the contents of this letter, please feel free to discuss same with me. I ask that you sign this letter which indicates your acknowledgement of the contents of the letter and your agreement with each and every term contained in this letter. It is completely up to you to provide this acknowledgement.
- Sincerely,
- Boss Doc, M.D.
- Managing Partner

October 5, 2004





This letter will confirm the offer of employment to you for the position of Customer Service Representative for "Company"). The details of this offer are set forth below:

- 1. Starting Date: Your hire date is October 11, 2004.
- Compensation: You will be compensated according to <u>Attachment 1</u>.
- 3. <u>Benefits</u>: You will be eligible to participate in or receive benefits under the Company's various employee benefit plans, policies or arrangements as they may exist from time to time, subject to the same terms and conditions as other similar Company employees. All determinations with respect to eligibility and benefits will be made solely in accordance with the terms of such plans, policies and arrangements.
- 4. Expenses: You will be reimbursed for reasonable and necessary out-of-pocket expenses in accordance with Company guidelines.
- 5. Vacation: You are entitled to annual vacation time according to company policy.
- 6. Employment At-Will: Employment may be terminated by you or by the Company on an at-will basis, by providing one (1) week's notice during an initial ninety (90) days probationary period. Thereafter, employment may be terminated by you or by the Company on an at-will basis, by providing two (2) weeks notice of such termination. In the Company's sole discretion, you may be asked not to report to work, but to be available for work or to respond to inquiries, during the notice period and the Company shall pay you your salary through the end of the notice period.

In the event the Company terminates your employment for justifiable cause such termination will take effect immediately without a notice period.

Notwithstanding anything to the contrary contained in this Agreement you and the Company each acknowledge that the employment relationship is on an "at-will" basis, which means that either the Company or you may terminate the employment relationship at any time for any reason whatsoever, with or without cause or notice. You hereby acknowledge that no representations have been made by the Company as to any minimum or specified term or length of employment or that you may be terminated only for cause or only after the Company engages in corrective action or counseling. You also acknowledge that no one other than the President of the Company is authorized to make such representations, and that any modification to the at-will status must be in a written agreement signed by the President of the Company together with the Head of Human Resources and you.

- 7. Intellectual Property Rights: Any and all rights to any works which you create or to which you contribute in any manner pursuant to your employment with the Company, including any patents, copyrights trade secrets, or other intellectual property rights, and any designs, concepts or intellectual property rights of any manner which you introduce to the Company during the course of your employment, are the exclusive property of the Company. You agree that whenever requested to do so, you will execute all necessary documents in favor of the Company, including but not limited to assignment forms, in connection with any such work.
- Confidential Information. You acknowledge and agree that you will come into contact 8. with, have access to and learn various technical and non-technical trade secrets and other Confidential Information, which are the property of the Company. Such Confidential Information includes but is not limited to methods, procedures, devices and other means used by the Company in the conduct of its business, marketing plans and strategies, pricing plans and strategies, data processing programs, software programs, database applications, formulae, drawings, secret processes, machines and adaptations thereto, inventions, research projects, and all other matters of a technical nature, all of which Confidential Information is not publicly available, but has been developed by the Company at its great effort and expense; names and addresses of the Company's customers and clients and their representatives responsible for entering into contracts for the Company's products; customer or client leads or referrals; specific customer or client needs and requirements and the manner in which they have been met by the Company; information with respect to pricing, costs, profits, sales, markets, plans for future business and other development, insider information as defined under SEC law and regulations, all of which Confidential Information is not available from directories or other public sources; and information with respect to the Company's employees, their names and addresses, compensation, experience, qualifications, abilities, job performance All of the Confidential Information has been developed, and similar information. acquired or compiled by the Company at its great effort and expense.

- 9. Non-Disclosure of Confidential Information. You acknowledge and agree that any disclosure, divulging, revealing or other use of any of the aforesaid Confidential Information by you, other than in connection with the Company's business will be highly detrimental to the business of the Company and serious loss of business and pecuniary damage may result therefrom. Accordingly, you specifically covenant and agree to hold all such Confidential Information and any documents containing or reflecting the same in the strictest confidence, and you will not, either during employment with the Company or at any time thereafter, without the Company's prior written consent, disclose, divulge or reveal to any person whomsoever, or use for any purpose other than the exclusive benefit of the Company, any Confidential Information whatsoever, whether contained in your memory or embodied in writing or other physical form.
- 10. Return of Confidential Information and other Company Property. You agree that, upon termination of employment with the Company, or at any other time upon the request by Company, you will return to the Company all files, records, compilations, reports, studies, manuals, memoranda, notebooks, documents, financial reports and statements, correspondence, and other Confidential Information, including copies thereof, whether prepared by you or not, in your possession. You also agree to return to the Company all equipment given to you on loan and further agree that upon failure to do so the Company may deduct the cost of replacement from your final paycheck.
- 11. Conflict of Interest. You may not use your position, influence, and knowledge of confidential information or the Company's assets for personal gain. A direct or indirect financial interest, including joint ventures in or with a supplier, vendor, customer or prospective customer without disclosure and written approval from the President of the Company is strictly prohibited and could be grounds for dismissal.
- 12. Non-Solicitation of Customers. You acknowledge and agree that during the course and solely as a result of your employment with the Company, you have and will become aware of some, most or all of the Company's customers, their names and addresses, their representatives responsible for purchasing the Company's products, their specific needs and requirements, and leads and referrals to prospective customers and clients. You further acknowledge and agree that the loss of such customers and clients would cause the Company great and irreparable harm. Consequently, you covenant and agree that in the event of the termination of employment with the Company, whether voluntarily or involuntarily, you will not, for a period of one (1) year following the date of termination, directly or indirectly solicit or lure away any customer or client or prospective customer or client of the Company with whom you came into contact while employed by the Company.

- 13. Non-Solicitation of Employees. You acknowledge and agree that during the course of employment by the Company, you have and may hereafter come into contact with some, most or all of the Company's employees, their knowledge, skills, abilities, salaries, commissions, benefits and other matters with respect to such employees not generally known to the public. You further acknowledge and agree that any solicitation, luring away or hiring of such employees of the Company will be highly detrimental to the business of the Company and will cause the Company serious loss of business and great and irreparable harm. Consequently, you covenant and agree that during the course of employment with the Company and for a period of one (1) year after termination of such employment whether such termination is voluntary or involuntary, you will not directly or indirectly, on behalf of yourself or another, solicit, lure or hire any employees of the Company with whom you had contact while employed by the Company, or assist or aid in any such activity.
- 14. Enforcement of Covenants: You acknowledge and agree that the covenants set forth in Sections 7 through 12 herein are reasonable and necessary for protection of the Company's business interests, that irreparable injury will result to the Company if you breach any of the terms of said covenants and that, in the event of your actual or threatened breach of said covenants, the Company will have no adequate remedy at law. Accordingly, you agree that in the event of actual or threatened breach of any of such covenants, the Company will be entitled to immediate injunctive and other equitable relief, without bond and without necessity of showing actual money damages. Nothing contained herein shall be construed as prohibiting Company from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damages which it is able to prove.
- 15. Severability: If any term or provision of this offer letter or any portion thereof is declared illegal or unenforceable by any court of competent jurisdiction, such provision or portion thereof shall be deemed modified so as to render it enforceable, and to the extent such provision or portion thereof cannot be rendered enforceable, this offer letter shall be considered divisible as to such provision which shall become null and void, leaving the remainder of this offer letter in full force and effect.
- 16. Arbitration: You hereby acknowledge and agree that in consideration of your employment with the Company, that you knowingly and voluntarily enter into the following terms to arbitrate any employment related disputes other than an alleged violation by Employee of paragraphs 7 through 12 hereof, and voluntarily waive the judicial remedies afforded by federal and related state statutes, as follows:

(a) You agree to arbitrate any dispute, claim, or controversy ("claim") against the Company, its parents, subsidiaries and current and former officers, directors, or employees, arising out of or relating to your employment or the cessation of employment, whether voluntary or involuntary which could have been brought before any government administrative agency or court including, but not limited to, claims under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, Sections 1981 through 1988 of Title 42 of the United States Code, The New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq.; The New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 to 19-8; The New Jersey Wage and Hour Act, N.J.S.A. 34:11-56a, et seq.; as well as any other federal, state, or local law, ordinance, or regulation, or based on any public policy, contract, tort, or common law or any claim for costs, fees, or other expenses including attorney's fees, but excluding any claim under paragraphs 3, 4 or 5 of this Agreement, or any claims for worker's compensation or unemployment compensation.

All claims and defenses which could be raised before a government administrative agency or court must be raised in arbitration and the arbitrator shall apply the law accordingly. The Company also has the right to initiate arbitration regarding any matter covered by this Agreement. You understand that by signing this Agreement, you are waiving your right to commence any court action. You understand that any claim for arbitration will be timely only if brought within the time in which an administrative charge or complaint would have to have been filed if the claim is one which could be filed with an administrative agency. If the arbitration claim raises an issue, which could not have been filed with an administrative agency, then the claim must be filed within the time set by the appropriate statute of limitations. You understand that you are waiving your right to commence or join a collective action.

(b) The arbitration shall be arbitrated by a single arbitrator in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association ("AAA"). You agree that the Federal Rules of Civil Procedure will govern the manner in which the arbitration will proceed. You understand that you will be required to pay the first \$150 of the costs of commencing an arbitration with the AAA and the remainder of any costs of commencing an arbitration will be paid by the Company, subject to a subsequent award by the arbitrator. The parties agree that the decision or award of the arbitrator should be in writing. The decision or award of the arbitrator shall be final and binding upon the parties. The arbitrator shall have the power to award any types of legal or equitable relief available in a court of competent jurisdiction, including, but not limited to, the costs of arbitration, lost wages, compensatory damages, punitive damages and attorney's fees, to the extent such damages are available under law. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction. You agree that any relief or recovery to which you may be entitled from any claims arising out of employment, cessation of employment, or any claim of unlawful discrimination shall be limited to that awarded by the arbitrator. You have the right to conduct discovery and take depositions as provided by the Federal Rules of Procedure. You have the right to be represented by an attorney.

(c) You understand that a copy of the AAA National Rules for the Resolution of Employment Disputes is available for review from the Company's Human Resources Department. You further understand that you may contact the AAA to request a copy of these rules at 1633 Broadway, New York, New York 10019, telephone no. (212) 484-3266, fax no. (212) 307-4387.

(d) This arbitration section, as well as all terms and conditions of your employment, shall be governed by and shall be interpreted in accordance with the laws of the State in which the principal office of the Company is located.

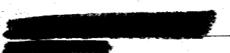
(e) If for any reason this arbitration section is declared unenforceable, you agree to waive any right that you may have to a jury trial with respect to any dispute or claim against the Company relating to any of the terms and conditions of or termination from employment with the Company, including but not limited to any of the claims enumerated in the first paragraph of this arbitration section.

(f) You understand that you would not be or remain employed by the Company unless you agreed to this arbitration section. You have been advised of your right to consult with counsel regarding this Agreement.

(g) You and the Company each agree that this section shall survive termination of your employment and shall survive the termination of this Agreement.

This Agreement contains the entire agreement between you and the Company, whether written or oral, with respect to its subject matter. It may not be altered, amended or modified except by an agreement in writing.

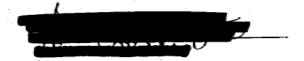
If you have any questions, please do not hesitate to contact me. Please sign one copy of this letter on the appropriate signature line, and return it to Human Resources at:



Director, Customer Care

VP, Human Resources

I agree to accept employment with The Swatch Group (U.S.) Inc. on the above-mentioned terms.



10-06-04 Date

ATTACHMENT 1

Salary:

You will be paid an hourly wage of \$18.27, which is equivalent to an annual salary of \$38,000 (based on a 40 hour work week) effective as of your actual start date.

Payments will be made on a bi-weekly basis in accordance with the Company's payroll procedures, as they may exist from time to time.

2. Status:

Non-exempt

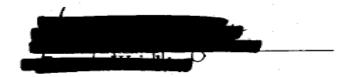
3. Report to:

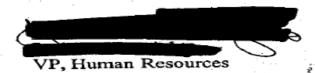
Manager, Customer Service

All compensation is subject to annual review and adjustment in the Company's discretion.



Director, Customer Care





10-6-04 Date

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Sample Restrictive Covenants

Solicitation of Employees

I agree that for a period of one year immediately following the termination of my employment with Company for any reason, whether with or without cause, I shall not either directly or indirectly solicit, induce, recruit or encourage any of Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of Company, either for me or for any other person or entity.

Employee Non-Compete Agreement

- Employee desires to give, and Employer desires to receive from Employee, a covenant not to engage, either directly or indirectly, in competition with, or to solicit any customer, patient, or account of, Employer. Furthermore, Employee expressly acknowledges that Employee shall not use any customer or client lists such as the Physicians, Inc. patient list.
- Employer and Employee desire to set forth in writing the terms and conditions of their agreements and understandings.

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Sample Employment Handbook

- OFFICIAL EMPLOYEE HANDBOOK
 - Physicians, Incorporated
 - 101 Hospital Drive
 - Healthcare, NJ 07091
 - (732) MED-JOBS

November 17, 2007



Receipt and Acceptance of Employee Handbook

I understand that it is my continuing responsibility to read and know the contents of this handbook. I also understand and agree that the Employee Handbook is not an employment contract for any specific period of employment or for continuing or long term employment. Therefore, I acknowledge and understand that unless I have a written employment agreement with Physicians, Incorporated or one of its affiliates that provides otherwise, I have the right to resign from my employment with Physicians, Incorporated at any time with or without notice and with or without cause, and that Physicians, Incorporated has the right to terminate my employment at any time, with or without notice and with or without cause.

I have read, understand and agree to all of the above. I have also read and understand the Physicians, Incorporated Employee Handbook. I agree to return the Employee Handbook upon termination of my employment.

Signature	Date	
	_	



Employee Handbook: Employment At Will Statement

"AS EXPLAINED ELSEWHERE IN THIS HANDBOOK, YOU ARE AT ALL TIMES AN AT-WILL EMPLOYEE WHICH MEANS THAT EITHER YOU OR PHYSICIANS, INCORPORATED MAY TERMINATE THE EMPLOYMENT RELATIONSHIP AT ANY TIME, WITH OR WITHOUT NOTICE AND WITH OR WITHOUT CAUSE. SATISFACTORY COMPLETION OF THE BENEFITS ELIGIBILITY PERIOD IN NO WAY AFFECTS YOUR AT-WILL STATUS. NOR DOES IT IN ANY WAY CREATE A CONTRACT OF EMPLOYMENT FOR A SPECIFIED DURATION OR IN ANY WAY CREATE AN AGREEMENT, EXPRESS OR IMPLIED, THAT YOU MAY BE DISCHARGED ONLY FOR GOOD OR JUST CAUSE."



Employment Handbook: Statement on Personal Conduct

"Occasionally, it is necessary to use disciplinary measures when an employee's personal conduct is contrary to the accepted practices or policies of Physicians, Inc. Disciplinary measures may take many forms, including verbal and written warnings, suspension, demotion and discharge. Discipline will not be administered progressively but, instead, on a caseby-case basis. Thus, for example, an employee may be discharged for his or her first violation of a Physicians, Inc. practice or policy; or merely given a verbal warning depending on the particular circumstances. In arriving at a decision as to appropriate discipline, Physicians, Inc.'s management will consider, among other things, the seriousness of the infraction, the employee's past performance record and all other relevant circumstances."

Sample Policy on Sexual Harassment, Discrimination, Accommodation and Equal Employment

A. HARASSMENT/ DISCRIMINATION

- It is the goal of Physicians, Inc. to promote a workplace that is free of sexual harassment/ discrimination and all other forms of harassment/ discrimination including race, religion, national origin, age, gender, and other legally protected conditions. Sexual harassment or other legally protected forms of discrimination of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by this organization. Further, any retaliation against an individual who has complained about sexual harassment or other legally protected forms of discrimination or for cooperating with an investigation of such harassment/ discrimination is unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment and other legally protected forms of discrimination, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees.
- Physicians, Inc. takes allegations of sexual harassment and other legally protected forms of discrimination seriously, we will respond promptly to complaints of such harassment or discrimination and where it is determined that such inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.
- Please note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment and other legally protected forms of discrimination, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment or other legally protected forms of discrimination.

What is Sexual Harassment.

- The guidelines issued by the EEOC and the New Jersey Division of Civil Rights and adhered to by Physicians, Inc. make it illegal for hiring, promotion, or other employment decisions to be based upon whether an employee submits to, or rejects, sexual advances. The guidelines also ban conduct that interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.
- The following are excerpts from the EEOC guidelines forbidding sexual harassment of employees:
- "Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
- submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- such conduct has the purpose, or effect, of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."
- These guidelines apply to all Physicians, Inc. employees.
- Under these guidelines, direct or implied requests for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits or continued employment constitutes sexual harassment.
- In addition, other sexually-oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating or humiliating to male or female workers may also constitute sexual harassment. While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct which if unwelcome, may constitute sexual harassment, depending upon the totality of circumstances, including the severity of the conduct and its pervasiveness:
 - Unwelcome sexual advances whether they involve physical touching or not;
 - Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life, comment on an individual's body, comment about an individual's sexual activity, deficiencies or prowess;
 - Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments; and/or
 - Discussion of one's sexual activities.
- All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of sexual harassment complaint is unlawful and will not be tolerated by this organization.

B. COMPLAINTS OF SEXUAL HARASSMENT/ DISCRIMINATION.

- If any employee believes that he or she has been subjected to sexual harassment/ discrimination or has information regarding an incident of sexual harassment/ discrimination, the employee has the right to file a complaint with our organization. This may be done in writing or orally.
- If you would like to file a complaint, you may do so by contacting <u>any employee whom you are comfortable approaching or any of the occupants of the offices of Physicians, Inc.</u>, or the <u>EEOC</u> (1 800 669-4000) or <u>the New Jersey Division of Civil Rights</u> (609 292-4605). These individuals and entities are available to discuss any concerns you may have and to provide more information to you about our policy on sexual harassment/ discrimination and our complaint process and your rights to be free of sexual harassment/ discrimination.
- When Physicians, Inc. becomes aware that sexual harassment/ discrimination might exist, it is obligated by law to take prompt remedial and appropriate action, whether or not the victim wants the company to do so. Accordingly, all claims will be promptly investigated and held in confidence to the maximum extent practicable.

Sexual Harassment/ Discrimination Investigation.

- When we receive the complaint or information regarding an incident of sexual harassment/ discrimination, we will promptly investigate the allegation in a fair and expeditious manner. The investigation will be conducted in such a way as to maintain confidentiality to the extent practicable under the circumstances. Our investigation will include a private interview with the person filing the complaint or providing the information concerning the incident of sexual harassment/ discrimination and with witnesses. We will also interview the person alleged to have committed sexual harassment/ discrimination. When we have completed our investigation, we will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct the results of that investigation.
- If it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the offending conduct and, where it is appropriate; we will also impose disciplinary action.

Disciplinary Action.

If it is determined that inappropriate conduct has been committed by one of our employees, we will take such action as it appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action as we deem appropriate under the circumstances.

Cooperation.

An effective sexual harassment/ discrimination policy requires the support and example of all company personnel. All employees are responsible for their own conduct, as well as the conduct of personnel they supervise or manage. Employees can be held personally liable for any illegal conduct in which they engage, or in which they knew, or should have known, was occurring and failed to report to Physicians, Inc.. Accordingly, employees who engage in sexual harassment/ discrimination, who know and fail to report incidents of sexual harassment/ discrimination, or who fail to cooperate with company-sponsored investigations of sexual harassment/ discrimination are subject to disciplinary action. Likewise, employees who refuse to implement remedial measures, obstruct remedial efforts of other employees and/or retaliate against sexual harassment/ discrimination complainants or witnesses are subject to disciplinary action. By the same token, however, if after investigating a complaint of possible harassment/ discrimination, Physicians, Inc. determines that the complaint is not bona fide or that the employee had intentionally provided false information regarding the complaint, disciplinary action will be taken against the individual who filed the complaint or gave the false information.



Employment Handbook: Receipt and Acceptance

I hereby acknowledge receipt of the Physicians, Incorporated Policy on Sexual Harassment, Discrimination, Accommodation, and Equal Employment. I understand that it is my continuing responsibility to read and know its contents. I also understand that if I have any complaints of sexual harassment, discrimination, or refusal to offer accommodation, that I have an obligation to make a complaint as noted above in order that the medical practice can take prompt remedial action.

- I have read, fully understood and agreed to all of the above. I hereby acknowledge having received a copy of this document. Should I desire the policy in a different language, I will make a due demand in writing.
- Signature _____ Date ____
- (The original of this document will remain in your personnel file)



Disciplining and Firing Employees

Critical to create contemporaneous documentation when:

- □ Disciplining employees
- □ Terminating employees



Successful documentation requires employers to follow 10 key rules:

- 1. Maintain a contemporaneous record.
- 2. Define the problem or issue.
- 3. Explain the effect of the problem or issue on your organization.
- 4. Be accurate in your accounts.
- 5. Use explicit time frames.
- Refer to specific instances or a pattern of conduct.
- 7. Be fair to the employee.
- 8. Explain your position clearly.
- 9. Know the facts.
- 10. Spell out the consequences.
 - ☐ (The Employment Paper Trail: Using Documentation and Performance Appraisals to Avoid the Potholes, by Mark R. Hornak of Buchanan Ingersoll PC)