



# Negotiating Your Future

Raj Singhal, MD - Pediatric Anesthesiologist



## Core Competencies

- ▶ At the end of this presentation, the audience member should be able to:
  - ▶ Distinguish between different types of medical practices
  - ▶ Explain the different types of payment structures
  - ▶ Understand the purpose of a Fair Market Valuation (FMV)
- ▶ For future education and professional actions, the audience member should be able to:
  - ▶ Have a framework to help in future negotiations with hospital administration
  - ▶ Determine when it is appropriate to engage legal counsel
  - ▶ Understand the process of Collective Bargaining and Unionization



## Financial Disclosures

- ▶ I am currently employed by Phoenix Children's Medical Group
- ▶ I have a Per Diem position at Envision Physician Services
- ▶ I was a lead negotiator with my practice and Envision, as well as with my Pediatric Division and Phoenix Children's
- ▶ I am not receiving any compensation for endorsement of any particular product, firm, or negotiation strategy
- ▶ This presentation is for educational purposes only, and if you need legal advice or counsel, you should consider speaking with an attorney



## Practice Models

- ▶ Multiple types of compensation models:
  - ▶ Shared revenue
  - ▶ Eat what you kill
  - ▶ Salary
  - ▶ Bonus for RVU threshold
  - ▶ Blended productivity
- ▶ Multiple types of practice models:
  - ▶ Academic Practice
  - ▶ Private Practice
  - ▶ Community Based
  - ▶ Hospital Based
  - ▶ Research/Government



## Care Team Models

- ▶ Combination of practitioners
- ▶ Depending on ratio of supervision, can result in more charges compared to solo practice
- ▶ Billing modifier QZ has been under pressure
- ▶ Each state has different rules on what makes up a care team



## Productivity Models

- ▶ Multiple types of compensation models:
  - ▶ RVU Based
  - ▶ Case Based
  - ▶ Hourly Rate
  - ▶ Minute-by-Minute Rate
  - ▶ Insurance Blind
  - ▶ Insurance Specific



## Shared Revenue Models

- ▶ Multiple approaches
  - ▶ Everyone can be an equal recipient of earned revenue
  - ▶ Daytime revenue can be split, with after-hours work going to the individual provider
  - ▶ Everyone can receive a salary, with a year-end bonus based on productivity
  - ▶ Potentially allows for more flexibility and fairness for work performed



## Employment Models

- ▶ Multiple approaches
  - ▶ Can be community, private, academic, or government
  - ▶ Benefits are typically more robust compared to self-employed models
  - ▶ Clearer protections for both the employer and employee from a liability standpoint
  - ▶ Salary is better defined and less variable compared to productivity models



## Private Equity Enters the Fray

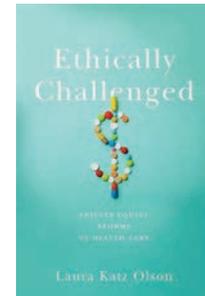
- ▶ Private equity has increased in size and scope, with deals exceeding \$100B yearly, up from \$5B in 2000
- ▶ Stable cash flow, valuable fixed assets, large size make hospitals a hotbed for PE acquisition
- ▶ There has been increased adverse events including falls and central line associated bloodstream infections
- ▶ Continued economic factors show that PE is here to stay



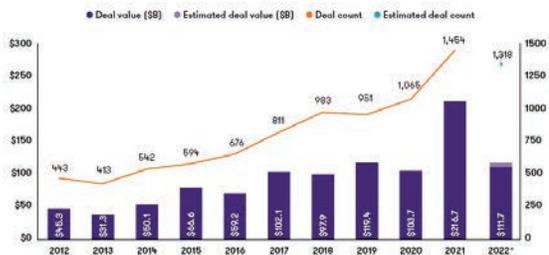
Kannan S, Bruch JD, Song Z. Changes in Hospital Adverse Events and Patient Outcomes Associated With Private Equity Acquisition. JAMA. 2023;330(24):2365-2375. doi:10.1001/jama.2023.23147

## Private Equity, Continued

- ▶ 90% of acquisitions do not have federal oversight
- ▶ Fragmentation in the healthcare industry makes it ripe for increase in efficiency
- ▶ Focus on the bottom line can reduce health care quality
- ▶ Private Equity is inherently focused on the short-term outlook
- ▶ Most firms exit their Health Care strategy in 3-7 years



## U.S. PE deal activity in healthcare



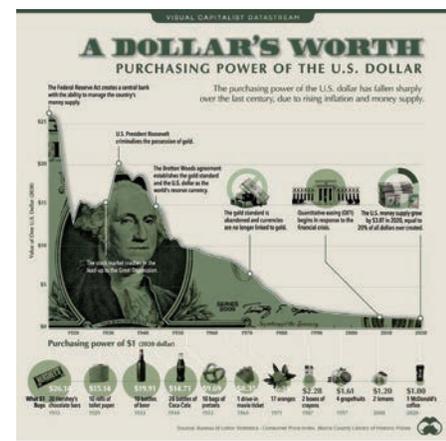
Source: PitchBook Data, Inc. 1st of December 31, 2022

## Why Does this Continue?

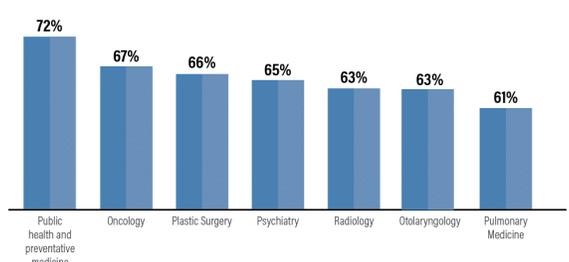
- ▶ Increased bureaucracy
- ▶ Federal reporting guidelines
- ▶ Medicare and ACA requirements
- ▶ Administrative burden
- ▶ Physician Burnout



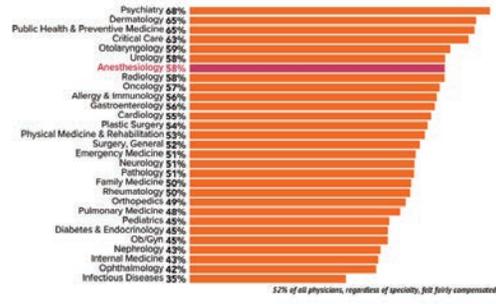
# Salaries



# SPECIALTIES WITH THE GREATEST AMOUNT OF PHYSICIANS WHO FEEL THEIR COMPENSATION IS FAIR

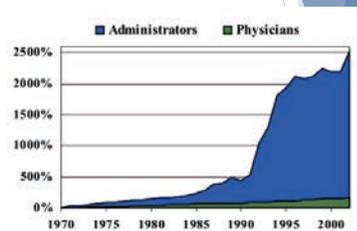


# Which Physicians Feel Fairly Paid? 💰



# Is it Time to Switch Careers?

- ▶ Clinical Salaries have stagnated
- ▶ More administration of healthcare
- ▶ Overall outcomes are tracked as opposed to individualized care
- ▶ Evidence based medicine can take years to implement



# Negotiating 101

- ▶ 5 Strategies
  - ▶ Competing
  - ▶ Accommodating
  - ▶ Avoiding
  - ▶ Compromising
  - ▶ Collaborating



## Where to Start?

- ▶ Medical groups are at a disadvantage in negotiations
- ▶ Most medical professionals do not have formal training in business, economics, finance, or negotiations
- ▶ Despite significant knowledge and intelligence, clinicians are not known for negotiating well



## Level the Playing Field

- ▶ Start small
- ▶ Understand your opponent
- ▶ Use data to your advantage
- ▶ Unity is key
- ▶ Consistent messaging from a small group of reasonable colleagues



## Is Hiring Counsel a Good Idea?

- ▶ Pros:
  - ▶ Unification
  - ▶ Expert advice
  - ▶ Niche market
  - ▶ Final contract review
- ▶ Cons:
  - ▶ Expensive
  - ▶ Increased complexity of negotiating
  - ▶ Can appear antagonistic



## So You've Decided on an Attorney...

- ▶ Local
  - ▶ Will understand nuances of state and local labor laws
- ▶ National
  - ▶ Will typically have broader knowledge and experience, as well as more resources
- ▶ Specialty Specific
  - ▶ Unique to your specialty, will have detailed knowledge of the minutiae which can make contracts favorable or unfavorable



## Who is Best?

- ▶ Larger firms may be more beneficial for larger groups
  - ▶ More members will result in more complexity and expense
- ▶ Local employment firms can be very detailed with local questions
  - ▶ Understanding local non-compete and non-solicitation laws
- ▶ Specialty specific can help provide alternative viewpoints
  - ▶ Individual law firms exist for anesthesiology specific contracts



## Fair Market Valuation

- ▶ Takes into account what the national, regional, and local market will support
- ▶ MGMA, SCA, Gallagher, AMGA
- ▶ Looks at percentiles of salary data
- ▶ Various surveys are more or less favorable to anesthesiology
- ▶ Medicare rates, care team models, insurance contracts all affect data



Percentile	Peds Anes	Peds South	Peds South vs Nationwide	Peds East	Peds East vs Nationwide
10	372,794	415,122	42,328	309,224	-63,570
25	441,245	474,155	32,910	423,943	-17,302
50	<b>487,733</b>	<b>557,094</b>	69,361	<b>484,491</b>	-3,242
75	559,800	573,876	14,076	504,961	-54,839
90	606,554	627,000	20,446	549,166	-57,388
Percentile	General	Gen vs Peds	Gen South	Gen West	Gen West vs Nationwide
10	252,905	-119,889	224,799	335,806	82,901
25	375,820	-65,425	352,500	424,200	48,470
50	<b>405,475</b>	-82,288	<b>452,834</b>	<b>490,457</b>	84,982
75	552,022	-7,778	584,729	571,805	19,283
90	675,940	69,386	701,816	650,239	-25,701
Percentile	Cardiac	Card vs Gen	Pain	Pain vs Gen	
10	443,041	190,136	360,092	107,167	
25	482,491	106,671	425,000	49,180	
50	<b>538,670</b>	133,195	<b>510,606</b>	105,131	
75	575,377	23,355	663,203	111,181	
90	593,250	-82,690	937,679	261,739	

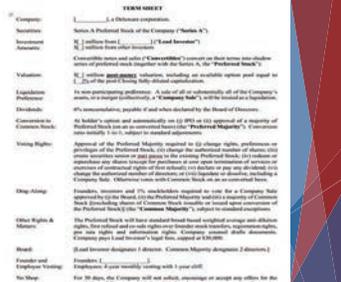
## So You've Got Numbers...now What?

- ▶ Come up with a Wish List
- ▶ What are deal breakers?
- ▶ What are your "must" haves?
- ▶ What are your "want to" haves?
- ▶ What can you live without?
- ▶ Next, develop a term sheet
  - ▶ Term, length, compensation, termination
  - ▶ Define an FTE
  - ▶ Determine call work parameters



## Term Sheet

- ▶ Terms are important to work through
- ▶ Boilerplate language is common
- ▶ Consider an addendum to boilerplate contracts
- ▶ Use the addendum as a way to supersede boilerplate language if in conflict
- ▶ Fine print can be of paramount importance



## Term Sheet - How to Put it Together

- ▶ Depending on the size of the group, needs can change
- ▶ Smaller groups can be more nimble, but may have more individual carve outs
- ▶ Larger groups will be hard pressed to make individual carve outs, but with unity can be more effective
- ▶ Key is to do this with buy-in from colleagues
- ▶ Consider having an attorney review your terms before submission



## Negotiating Against Yourself

- ▶ Your Term Sheet will be your "ceiling"
- ▶ The Offer Sheet will be your "floor"
- ▶ Negotiation will get the floor and ceiling to become closer together, ideally ending up on the table in front of you
- ▶ There are hard caps for salaries depending on the type of model you are entering



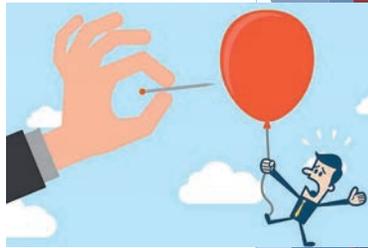
## How to Stick Together

- ▶ Communication is key
- ▶ Making sure individual needs align with group needs is important
- ▶ Making sure group values align with organizational values helps facilitate any transaction
- ▶ Many organizations try to "divide and conquer" by splitting individuals off
- ▶ Having counsel can mitigate this, especially with tortious interference



## Quick Aside - Tortious Interference

- ▶ Applies to ongoing contract negotiations
- ▶ Stipulates that competitors cannot "poach" or hire away employees
- ▶ If found to be done during a contract negotiation, the competitor has to pay treble damages to the affected employer



## Leverage

- ▶ Leverage can be used by both sides in a negotiation
- ▶ Employer Leverage:
  - ▶ Provide salary, benefits
  - ▶ Own the health care center
  - ▶ Non-compete clauses
- ▶ Employee Leverage:
  - ▶ Not easily replaceable
  - ▶ Complete collapse of operative cases without anesthesia
  - ▶ Can wait out the non-compete



## Overleveraged

- ▶ If too aggressive, either party can walk away from the table
- ▶ Important to be firm, but reasonable
- ▶ Anesthesia is a necessary service, but it is feasible to be undercut and replaced by an aggressive outsourcing firm
- ▶ Disrupting clinical care to attempt to gain "leverage" will backfire in the long run



## Now You're At the Table

- ▶ Ensure the counterparty is in a position to make significant financial decisions
- ▶ May take several attempts to come up with a workable solution
- ▶ Focus on data, data, data - fair market value data will generally bolster your case for a contract renegotiation or salary adjustment
- ▶ Good faith negotiations require both sides to understand the others needs and wants



## Don't Go in Solo

- ▶ Whether it is with counsel or colleagues, a team of like-minded individuals is essential
- ▶ Keep any talking points brief, and stick to the data at hand
- ▶ Do not forget about the difference between "must-haves" and "would-be-nice"
- ▶ Ensure buy-in from your group before agreeing to any major changes not previously discussed



## Unionizing and Collective Bargaining

- ▶ Physician unions do exist
- ▶ Starting a formal new union can be challenging to do from a legal standpoint
- ▶ Private Practices can be subject to anti-trust litigation
- ▶ Collective Bargaining is typically done through union leaders and company leaders
- ▶ Similar effect can be achieved by retaining group counsel





"In the moment when I truly understand my enemy, understand him well enough to defeat him, then in that very moment I also love him."

## So You Got a New Contract...

- ▶ Make sure to read the fine print
- ▶ Compare your notes with the final numbers
- ▶ Ensure accuracy between contractual agreements
- ▶ Counsel can ensure that all parties contracts are reviewed and executed appropriately



## Could We Have Done Better?

- ▶ Group Dynamics are incredibly important
- ▶ No matter what deal you get, there will be those who say it could have been better
- ▶ FMV is the main datapoint which can be utilized to advocate for fair payment for services provided
- ▶ Continued salary survey data mining is required to stay competitive for recruitment and long-term retention



## Past, Present, Future...

- ▶ Learning from past experiences can help to make our current practice more efficient and safe
- ▶ Continued quality improvement initiatives can guide our current practices to form a better future
- ▶ Keeping the future in mind can help to retain our current staff
- ▶ A combination of longer tenured and shorter tenured staff who are all happy can be the best recruitment tool for the future



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