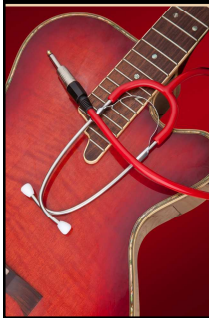


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## **Contract Negotiation: Partnerships, Employment Agreements and More**

John T. Ramey, MD

James L. Sublett, MD

Robert J. Holzhauer, MD, MBA

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## **Disclosure Information**

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## Learning Objectives

- Discuss contract negotiations from the vantage point of both the hiring practice and potential partner/employed physician
- List the basic elements of a physician contract and partnership agreement
- Describe the steps to take before buying a practice

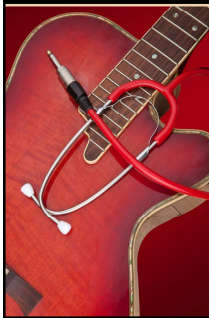
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## Contract Negotiations

John Ramey, MD  
National Allergy and Asthma  
Charleston, SC

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## **Contract Negotiations**

- Most important to find a place that you will “fit” in
  - Similar practice style
  - Allergy testing/immunotherapy philosophy
  - Patient philosophy
  - Call/vacation philosophy
  - Hospital coverage philosophy
  - Reimbursement philosophy
  - Collection philosophy

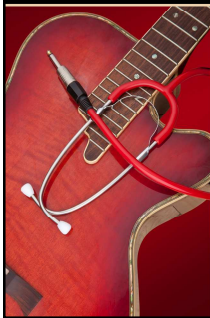
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## **Contract Negotiations From Employee Perspective**

- Try not to decide just based on location of practice
- Try not to decide just based on benefits
- Do you want to be an employee or partner?
- You want to be happy and passionate about your job

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## Contract Negotiations From Owner Perspective

- Don't just hire to fill a position
- Find someone with similar values
- Are you looking for an employee or partner?
- Find someone who has a long term vision for the practice

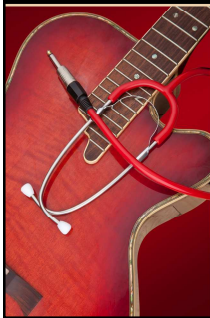
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## Long Term Prospects

Will you be there >3 years?	Practice	Academic
Yes	78%	48%
No	7	13
Not Sure	15	39

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## Evaluating a Contract

- Don't take a position because it MIGHT change
- If it isn't negotiated before the contract is signed, it isn't going to happen!
- Discreetly find out about those who have left the practice/institution
  - Why did they leave?
  - Are the problems corrected?
  - Will they limit your satisfaction?

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## Contract Negotiations

- Start early
  - 1-2 years before starting job
  - Competing against other applicants
  - Call or write letters to practices
- Update your resume

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## Ease of Job Hunt

Did you have a difficult time finding a satisfactory position?	Practice	Academic
Yes	41%	47%
No	59	53

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## Contract Negotiations

- Know what's important to you & discuss it
- What support will I get for growing my practice?
- Buy in?
  - Good will
  - Fixtures
  - Building
  - Research

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## **Contract Negotiations**

- How are you planning for the future?
  - Business plan; new practice development
- What's the business structure?
- Are there regular business meetings?
- Who reviews contracts?
- Are business tasks rotated among physicians?

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## **Contract Negotiations**

- What is the third party payer mix like?
- What has the historic financial performance of the practice been?
- What are the plans for full partnership opportunities? (and is there a "buy-in")
- Real estate partnership?
- What are the expectations about my productivity?

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## Evaluating a Contract

- Hire an experienced contract attorney
- A good contract balances the interests of both physician and employer
- Understand the time of equity ownership
- Understand the buy in

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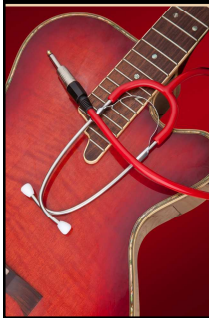


## Understanding the Buy-In

- Is “Good Will” dead or alive?
- What is a reasonable buy-in?
  - 1 million to buy-in
  - What are you willing to pay?
  - Supply vs demand
- Be wary of practices that won’t answer your questions



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## **Understand Your Restrictive Covenants**

- “Don’t sign a restrictive covenant”
  - If it is in the contract, then it will likely stay in some form
- May or may not be enforceable
- Different in each state
- More restrictive less likely to be enforceable
- May be enforceable with limited geography and time

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## **Understand Your Restrictive Covenants**

- Costly to defend
  - Attorneys will benefit
- Unlikely to be decided by a court
- Consider a buy-out amount to forgive the restrictive covenant
- Consider
  - Type of practice limitation
  - Geographic area
  - Duration

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## Evaluating a Contract

- Partnership compensation more important than employee
- Base salary +/- annual pay increases
- Productivity bonus
  - Can you achieve productivity bonuses?
- Signing bonus
- Relocation expenses

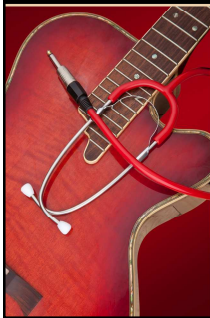
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## Evaluating a Contract

- Benefits
- Work hours and call schedule
- Incentive clauses
- Types of activities allowed?
  - Moonlighting
  - Speaking
  - Research/publishing
  - Outside financial activities

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## **Partnership Agreement**

- Expectation of achieving partner or shareholder status
- Specified in a separate agreement
- Usually after a fixed period of time and/or with qualifying performance
- There may be a junior vs. full partner level
- There may be a buy-in vs. sweat equity model
- Practice may offer financing
- There may be a pay-out when you retire

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## **Evaluating a Contract**

- Bad career choices are costly both monetarily and emotionally
- This should be a long term commitment, so “Will I fit in??”

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## Private Practice Base Compensation

Base Salary	Practice 2008	Practice 2009	Practice 2010
< \$80,000	6%	11	17
\$80,000-99,999	8	8	0
\$100,000-119,999	2	5	6
\$120,000-139,999	<b>30</b>	<b>11</b>	<b>23</b>
\$140,000-159,999	<b>30</b>	<b>29</b>	<b>32</b>
\$160,000-179,999	13	13	6
\$180,000-199,999	8	11	7
\$200,000-219,999	2	2	1
\$220,000+	2	11	6

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## Academic Base Compensation

Base Salary	Academic 2009	Academic 2010
< \$80,000	15%	31
\$80,000-99,999	3	0
\$100,000-119,999	<b>32</b>	<b>15</b>
\$120,000-139,999	<b>32</b>	<b>27</b>
\$140,000-159,999	16	23
\$160,000-179,999	--	-
\$180,000-199,999	--	-
\$200,000-219,999	--	-
\$220,000+	--	-

## Incentive Compensation


Bonus Income	Practice 2008	Pract 2009	Pract 2010	Academic 2009	Acad 2010
None	40%	46%	35	65%	60%
<\$10,000	26	22	37	6	28
\$10,000-\$19,999	9	19	12	16	8
\$20,000-29,999	13	8	9	13	--
\$30,000-39,999	4	2	--	--	4
\$40,000-49,999	2	--	2	--	--
≥\$50,000	6	3	5	--	--

## Signing Bonus

Signing Bonus	Practice 2009	Prac 2010	Academic 2009	Acad 2010
None	75%	66	77%	85
<\$10,000	12	23	13	11
\$10,000-\$19,999	8	--	--	4
\$20,000-29,999	2	9	6	2
\$30,000-39,999	2	2	3	--
\$40,000-49,999	2	--	--	--
≥\$50,000	--	--	--	--

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## Practice Type Comparison (Preliminary)\*

Compensation Type	Small Single Specialty (n=21)	Large Single Specialty (n=5)	Multispecialty (n=9)
Base	\$134 K	\$142 K	\$161 K
Incentive	12	6	14
Signing Bonus	3	2	6
<b>Total</b>	<b>\$149 K</b>	<b>\$148 K</b>	<b>\$181 K</b>

\* Ranges were extrapolated to point values for the purposes of these estimated calculations



## Benefits

Work Setting	Practice	Academic
Medical Insurance for Self	70%	68%
Medical Insurance for Spouse/Dependents	55	74
Dental Insurance	64	81
Disability Insurance	53	87
Malpractice Insurance	87	90
Paid Vacation	87	94
Retirement Plan	45	68
CME/Professional Meetings	83	71
Car Allowance	15	--

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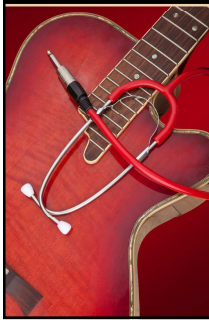
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## Ownership/Partnership?

Clinical Practice	%
Yes	<b>69</b>
No	12
Not Sure	12
Starting My Own Practice	7

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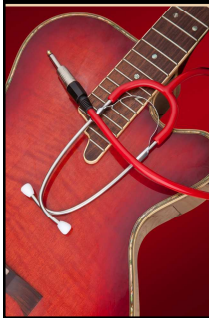


## Timing of Equity Ownership

Clinical Practice	2009	2010
At starting (eg, buying in to the practice)	3%	--
At or before first anniversary	<b>21</b>	<b>9</b>
At or before second anniversary	<b>38</b>	<b>35</b>
At or before third anniversary	15	12
After third anniversary	15	29



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## 2010 Compensation Satisfaction

Compensation Satisfaction	Practice	Academic
Very Satisfied	45%	7%
Somewhat Satisfied	40	57
Somewhat Dissatisfied	15	21
Very Dissatisfied	--	14

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## Partnerships, Employment Agreements and More

James L. Sublett, MD  
Managing Partner, Family Allergy & Asthma  
Louisville, Ky

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## Physician Contracts

- An employment agreement **is the most important document that a physician entering practice will sign**
- Vary in length and content

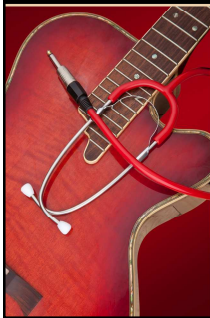
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## Physician Contracts

- Are **legally enforceable**, and can result in the paying of damages if the employed physician breaches the contract
- Attorneys typically have drafted the contract to **favor the employer**

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## Contract Issues

- Can be a **single-page document** offering you a position for a set period of time at a designated salary with a line for you to acknowledge receipt and acceptance via a signature
- As a signed, returned document, it has the **same legal effect as a 20- or 30-page contract** and will require you to fulfill the obligations specified in the document

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## Contract Issues

- **Oral promises typically are non-binding** on the part of the employer
- In addition to outlining salary and job expectations, contracts contain **several other components** that can affect a potential employee's future

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## **Benefits and Other Considerations**

- Immediate or is there a waiting period?
- Bonuses
- Ownership prospects
- Board certification
- Maintenance of certification

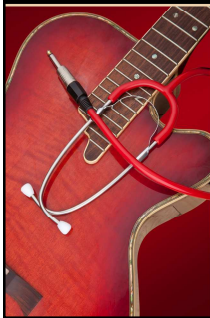
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## **Benefits**

- Licensure and credentialing fees
- Professional memberships (AAAAI, ACAAI, JCAAI, etc.)
- Cell phones (type and who pays the bills)
- On call arrangements
- Personal/family health insurance

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## Benefits

- Disability/life
- Malpractice insurance
- CME allowances
- Journal allowances
- Paid time off (vaction/sick/PTO)

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## Noncompete Agreements

- A restrictive covenant (“noncompete” clause) refers to language in the contract (or it may be a separate document) that restricts you from practicing near your employer’s office for a **specified distance and period of time** if you decide to leave your employer
- Your employer has a right to protect the practice that he or she has spent years developing
- Courts typically are **willing to enforce** a restrictive covenant provided that it is reasonable regarding the time and geographic restriction

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## **Noncompete Agreements**

- Noncompete agreements are prohibited in some states and unenforceable in others
- They also generally cannot restrict hospital practice
- A restrictive covenant is unenforceable if a physician is recruited to join a physician practice and the practice receives remuneration from a hospital to help the recruitment process, according to new Stark II regulations that went into effect in July 2004 (Federal Register: March 26, 2004, pages 16054, 16096)

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## **Medical Liability Insurance**

- Since young physicians are more mobile than prior generations, medical liability insurance “tail coverage” is a critical issue that should be addressed in the contract
- The two major types of malpractice insurance are
  - “Claims made” (covers lawsuits only if the insurance policy is in force at the time the lawsuit is filed)
  - “Occurrence” (covers lawsuits filed at any time as long as the physician had an insurance policy in force at the time of the alleged malpractice)

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## Medical Liability Insurance

- Most policies issued today are “claims-made”
- A “claims-made” policy typically is less expensive than an occurrence policy
- “Tail coverage” must be purchased if you terminate coverage for any reason (e.g., change insurance carriers or switch to an employer that uses another insurer)

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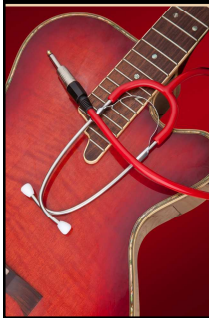


## Medical Liability Insurance

- Tail coverage will cover lawsuits that may be filed after you terminate a “claims-made” policy
- Tail coverage can be expensive, often costing multiples of the last annual premium
- Specify in the contract whose responsibility it will be to purchase it



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## Medical Liability Insurance

- The employer may base paying for tail coverage to a specified minimum length of employment
- Insurance coverage of moonlighting should be determined if it is permitted by the employer
- Should be extremely diligent when selecting an insurance company for malpractice coverage
- Malpractice insurance costs vary among states and even within geographic regions within an individual state (e.g., Dade County is among the highest in Florida)

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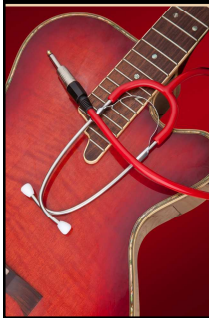


## Termination

- Two types of termination clauses
  - “For cause” (e.g. medical incompetence, moral turpitude)
  - “Without cause” (where reasons for termination need not be given but the physician is usually given sufficient notice with possible salary for a specified time)



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## **Termination**

- A three-year contract with a 60-day “termination without cause” clause is, in effect, a 60-day contract
- Some contracts will require the physician-employee to give written notice within a specified period of time before leaving the position
- A financial penalty may be incurred if notice is not given

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## **Employment Agreement Regarding Future Partnership**

- Years of service before partnership
- Attainment of certain productivity measurements (receipts, new patients)
- Expectation to maintain a certain level of productivity after attaining partnership status
- Partnership may not be automatic but must be agreed to by existing partners

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## How Are Buy-ins Typically Calculated?

- Some combination of:
  - Book value
  - AR
  - Goodwill (typically calculated from net profits)
- Buy-outs
  - Earn out of AR typically for one year; plus sell back shares typically valued the same way selling out as buying in

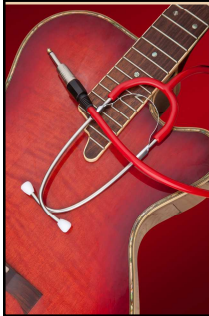
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## Keys to Entering Into a Successful, Sustainable Partnership

- Know that it's as good as a marriage, or if it goes south, as ugly as a divorce
- Trust between partners is paramount on every level – financial, ethical, moral, personal
- Having similar values is important – do you value longevity of partnership, value certain income level, value investing for growth, value quality staff in lieu of cheap labor, value small vs. large practice, etc.
- **Good and regular communication**

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## **Pitfalls: Where Partnerships May Stumble**

- Not being prepared financially for disassociation of a partner
- Differing values on key issues like investments, cash flow/ expenses, debt
- Poor communication in practice
  - Too much independence – not rowing in the same boat
  - Lack of interaction/discussion between partners
  - Governance issues

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## **Discussion**

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## **Steps to Take Before Buying A Practice**

Robert J. Holzhauer, MD, MBA  
Allergy Partners  
Central Coast of California  
San Luis Obispo, CA

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## **Reasons for Buying a Practice**

- To start out in practice (probably very uncommon)
- To move out of current position as employed or owner MD
- To expand a group practice into adjacent territory (perhaps most common reason)

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## **Example: Northeast Allergy Practice**

- 4 shareholder physicians
- 1 long-term employed physician
- 2 newly trained allergist/rheumatologists
- 1 nurse practitioner
- 2 full-time offices and shared space in primary care office in NW suburb

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## **Patterns of Practice Growth**

- “Same store sales”
  - Add providers
  - Grow practice of existing providers
- Contiguous growth
  - Add satellite locations
- Strategic growth
  - Regionally focused for contracting
- Opportunistic growth
  - “Home Run” practices

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## **Demand vs. Need**

- Demand = the number of allergists that a geographically defined market, or catchment area, is statistically able to support
- Need = unmet demand or the delta between the allergists practicing within a defined catchment area and the number of allergists that the area can statistically support

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## **Defining the Catchment Area**

- Geographically defined by:
  - County
  - Census tract
  - Zip code
- Demographically defined by:
  - Population
  - Growth projections
  - Socio-economics
- Consider physical barriers:
  - Waterways
  - Bridges
  - Mountains
  - Major roadways

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## Defining the Catchment Area Sources of Data

- Generally available data sources
  - US Census Bureau
  - State Department of Budget and Planning
  - US Department of Commerce
  - US Department of Labor
  - Federal Financial Institutions Examination Council (FFIEC)
- Proprietary sources
  - Solucient Data
  - DataFirst Corporation

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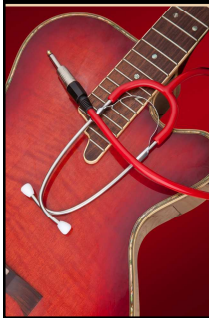


## Determining the Need “By the Numbers”

- **Step 1: Determine Demand Within the Catchment Area**
  - Current population
  - Projected population growth
  - Apply allergist to population ratio “norms”
    - 1.76 per 100,000 population (National Ambulatory Medical Care Survey, 1999)
    - 1.26 per 100,000 population (US Supply of Physicians AMA Survey)
  - “Norms” are adjusted regionally



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## Determining the Need “By the Numbers”

- **Step 2: Determine the Need Within the Catchment Area**
  - Identify other physicians (FTEs=Full-Time Equivalents) practicing allergy in the area
  - Subtract existing FTEs from demand to determine need

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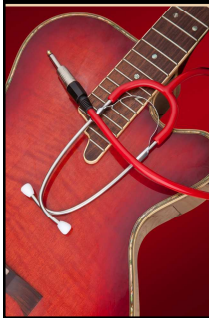


## Assessing the Competition

- Provider demographics
  - “Up and Comer” or “On the Way Out”
- “Core” (i.e., fully trained) vs. “Non-Core” (eg, ENT) allergist
- Word of mouth within local medical community
- Competition’s patients transferring to your practice
- Time to next appointment for competitor(s)



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**Valuation:  
Expected Return on Investment  
Reward for Assuming Risk**

Money market funds (low risk)	0.3%
T-bills	3.0%
Corporate bonds	3.5%
S&P 500 (long-term)	8.0%
S&P (smallest 10% of companies)	13.0%
S&P (smallest 1%)	20.0%
Licensed non-medical firms	25-30%
Medical practices (high risk)	60-70%

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**Valuation:  
Expected Return on Investment  
Reward for Assuming Risk  
Why High Risk?**

- Risk of government reducing payments
- Risk of commercial insurers reducing payments
- Malpractice risk

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## **Valuation Methods Discounted Cash Flow**

- Uses net present value formula
- Projects multiple years' net practice income discounted for loss of value of money over time
- Formula less useful today because of risk of expected reduction in practice's net income over time
- Must adjust for expected changes in practice when under new ownership

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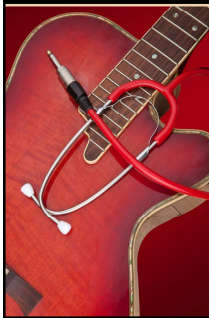


## **Valuation Methods**

### **Value Formula (Keith Borglum)**

- Return on investment of 60-70%
- Corresponds to 1.5x net income above fair market value (FMV) of labor
- If current job pays \$200,000 and compensation from owned practice (without seeing more patients) is \$300K, then value of practice is 1.5x \$100K, or \$150,000

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## **Valuation Methods**

### **Allergy Partners Approach (Larry Armor)**

- AP typically does not buy a practice's accounts receivable but allows seller to collect the AR him/herself
- AP pays for hard assets (furniture, fixtures & equipment) at fair market value (purchase price minus accumulated depreciation)
- AP pays for leasehold improvements (allocated over expected remaining term of the lease)
- AP pays for goodwill by creating income stream after retirement based on patients remaining on allergen extracts

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## **Due Diligence: Clinical**

- Clinical reputation
  - Ask referring physicians
  - Ask allergists in nearby towns and counties
- Patient records: Insist on looking at records for:
  - Legibility (you may have to read them some day)
  - Accuracy
  - Compatibility (is how he/she practices similar to how I want to practice?)

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## Due Diligence: Clinical

- Skin test records
  - Be certain that you understand and can interpret them
- Immunotherapy: Look at record and vials
  - Look for compatibility with your way of building and maintaining
  - Most importantly, make sure his/her concentrates are not “water”

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## Due Diligence: Financial

- Professional guidance absolutely necessary
  - Have your CPA review the practice in detail **OR**
  - Hire a practice management consultant
- Long list of items to review in detail
- Information should be from his/her CPA to assure accuracy

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**Questions?**

## Determining Need By The Numbers

### Step 1 . . .

Determine “Demand” within  
Catchment Area

1. Current Population
2. Projected Population  
Growth
3. Apply Physician to  
Population Ratio  
“Norms”
  - Nat’l Ambulatory Medical  
Care Survey (1999) 1.76 per  
100,000 population
  - U.S. Supply of Physicians –  
AMA Survey 1.26 per  
100,000 population

### Regionally Adjusted . . .

Figure 1.  
Allergist to Population Ratios by Region, 1999

	Population	Total Allergists per 100K Pop 1999	Core Allergists per 100K Pop 1999	Non-Core Allergists per 100K Pop 1999
New England	13,429,862	2.20	1.58	0.62
Middle Atlantic	38,291,763	2.35	1.69	0.66
East North Central	44,194,756	1.57	1.14	0.43
West North Central	18,694,626	1.64	1.17	0.46
South Atlantic	48,944,678	1.69	1.16	0.52
East South Central	16,471,211	1.51	1.04	0.47
West South Central	30,013,597	1.73	1.18	0.56
Mountain	16,813,233	1.57	1.00	0.57
Pacific	43,444,798	1.60	1.14	0.47
United States	270,298,524	1.76	1.23	0.52

# Determining Need “By The Numbers”

## Step 2 . . .

- Determine “Need” within Catchment Area
  - Identify Other Physicians Practicing Allergy in the Catchment Area
  - Derive “Need” within Catchment Area

## Extrapolating Visits . . .

- Using AP data, a physician with a “mature” practice averages about 2,400 total visits per year.
- 0.25 FTE MD Need would equate to approximately 600 annual visits.

## Example . . .

New Satellite Catchment Area			
Zip Codes 99910 through 99920 and 99922			
	. . . . . year . . . . .		
	2000	2005	2010
99910	12,666	13,050	13,425
99911	8,766	11,000	13,200
99912	5,347	6,500	6,700
99913	4,355	6,000	7,235
99914	11,998	13,240	13,700
99915	1,205	1,250	1,300
99917	9,788	13,000	14,500
99918	10,876	13,450	15,700
99919	13,455	16,000	18,755
99920	9,500	11,250	13,450
99922	20,225	23,250	24,555
<b>TOTAL POP.</b>	<b>108,181</b>	<b>127,990</b>	<b>142,520</b>
divide by 100,000	1.08181	1.2799	1.4252
multiply by	1.76	1.76	1.76
<b>DEMAND</b>	<b>1.90</b>	<b>2.25</b>	<b>2.51</b>
<b>PRACTICING MDs</b>	<b>2.00</b>	<b>2.00</b>	<b>2.00</b>
<b>NEED</b>	<b>(0.10)</b>	<b>0.25</b>	<b>0.51</b>