

Employment

W. Howard McAlister, Sunny Sanders, and John Classé

“You mean there’s a catch?”

“Sure there’s a catch,” Doc Daneeka replied. “Catch-22. Anybody who wants to get out of combat duty isn’t really crazy.” There was only one catch, and that was Catch-22, which specified that a concern for one’s own safety in the face of dangers that were real and immediate was the process of a rational mind. Orr was crazy and could be grounded. All he had to do was ask; and as soon as he did, he would no longer be crazy and have to fly more missions. Orr would be crazy to fly more missions and sane if he didn’t, but if he was sane he had to fly them. If he flew them he was crazy and didn’t have to; but if he didn’t want to he was sane and had to. Yossarian was moved very deeply by the absolute simplicity of this clause of Catch-22 and let out a respectful whistle.

“That’s some catch, that Catch-22,” he observed.

“It’s the best there is,” Doc Daneeka agreed.

Joseph Heller *Catch-22*

Approximately 60% of the graduates from optometry school enter the practice of optometry as employees, even though the majority of these graduates ultimately intend to become self-employed. Surveys begun in the 1990s by the Association of Practice Management Educators (APME) indicate that 50% of optometry school graduates enter a practice setting that is not intended to be their ultimate choice and that they expect to spend up to 5 years in that setting before pursuing their desired form of practice. These graduates invariably choose employee positions rather than starting or purchasing a practice. The usual reasons that graduates cite for choosing employment are inadequate business experience, significant debt at graduation, and overriding family obligations or other commitments.

Lack of meaningful business experience is a common concern among optometry school graduates. By working for others, graduates can participate in optometric practices but are not financially accountable for them. Many students overcome this lack of experience by working with private practitioners during summers, vacation periods or other arranged time periods and by planning externships in practice settings that are similar to the setting desired at graduation. During these periods, patient care and practice administration can be learned so that the student is able to feel confident about both types of management skills at graduation.

Another common concern of graduates is lack of the financial resources needed to start a practice, usually because of educational debts. Although the cost of education can be high and loans may be required to pay for years of professional study, students can and should limit debt as much as possible. Surveys conducted at schools and colleges of optometry have shown that some students are good at minimizing debt, whereas others are not. These surveys indicate the degree of debt at graduation is related to careful planning and prudent use of borrowed money and that fiscally responsible students can graduate with significantly less debt.

A third reason that optometry school graduates seek employment is because of personal or family obligations that make it necessary to remain in a certain location or to provide financial support for perceived lifestyle obligations. These obligations can be overriding to preclude a student who does not have adequate time from investigating options and identifying the best opportunities. Time during school should be used to explore the choices that are available and to select the best available opportunity so that the graduate will not be forced to choose a less-than-desirable beginning.

Seasoned optometrists periodically choose to leave self-employed modes of practice in favor of employed positions. The reasons are as varied as for the new graduate but include simplification of lifestyle and responsibilities, desire for a change in their optometric career path, and desire to reduce their time commitment to optometry. Although the financial stability of the seasoned optometrist may be less of an issue, the financial impact of transitioning from the ownership income level to the employee income level must be considered, accepted, and planned for financially.

Optometric employment opportunities include associateship with optometrists or ophthalmologists, residency, corporate optometry, the uniformed services, the United States Department of Veterans Affairs (VA), academia, industry, and health maintenance organizations (HMOs). This chapter discusses these employment options. Working as an employee clearly offers both advantages and disadvantages.

ASSOCIATESHIP

An associate is an employee and as such holds no ownership interest in the business entity for which the employee works. An associate does not share in the profits and losses but rather is salaried and may receive additional employee benefits. The ultimate responsibility for the practice belongs to the employer; the associate is not responsible for the practice’s financial status. An associate may participate in management decisions only to the extent permitted by the employer and will receive only a few of the tax breaks available to persons in small businesses. Despite these limitations, associateship can be used as a stepping-stone to partnership or sole proprietorship. For many newly graduated optometrists, it has proved to be an ideal means of making the transition from an academic environment to the business world. In selecting associateship, a graduate may work for an optometrist or an ophthalmologist.

Employment by an Optometrist

Many graduates begin their practice experience as the employee of an optometrist in private practice. Often the motivation for the associateship is the hope that employer and employee will agree to form a partnership. The associateship, which is usually for 1 to 2 years, serves as a trial period during which the optometrist and the associate determine their compatibility and the feasibility of a partnership.

BOX 4-1

Advantages and Disadvantages of Employment

ADVANTAGES

- Stable income and employee benefits available and paid by employer (e.g., paid vacations, health insurance, malpractice insurance premiums, continuing education expenses)
- Gain experience from other practitioners, learn the “art of optometry,” and increase business knowledge and skills.
- Minimal or no start-up costs and minimal or no investment required.
- Minimal management decisions required.
- The appropriate opportunity could lead to a future partnership.

DISADVANTAGES

- Average income, limited earning potential, limited upward mobility.
- No equity acquired in a practice.
- Dictated office policies and minimal independence.
- Very few good long-term arrangements unless they lead to partnership.
- After several years of employment, employees are at risk for termination because of higher salary and benefits; thus there is poor long-term security.
- A limited scope of practice may be found in certain settings because of the volume of patients that must be seen.

EMPLOYER	MEAN NET INCOME
Ophthalmologists	\$124,623
Multidisciplinary clinics	\$102,941
Optical chains	\$93,500
Optometrists	\$95,412
Industry	\$138,908

American Optometric Association: Career Advocate for the New Practitioner. St. Louis, 2007-2008.

Because the usual associate is a recent optometry school graduate with relatively little practice experience, the earnings of optometric associates, when compared with those for other types of employed optometrists, tend to be toward the lower end of the scale. Figures from surveys, such as those conducted by the American Optometric Association (AOA), reflect this (see Table 4-1). These results can be misleading, however. Other types of employment have a higher proportion of individuals who have been out of optometry school for more than 3 years and who are therefore higher wage earners by virtue of their years on the job. These surveys also do not recognize the long-term potential of optometric associateship, which often results in a partnership arrangement. Benefits complement salary and are of particular importance to associates because, if paid for by the associate, they cannot be fully deducted for tax purposes, whereas they can be deducted fully as legitimate business expenses by the employer.

If associateship is contemplated, the practice should be evaluated to determine whether it is large enough to support another optometrist. General guidelines should be used to assess practice income, growth, and number of annual examinations. The office should be large enough to accommodate another practitioner, and adequate support staff, equipment, and instrumentation should be available.

An associateship allows both parties to consider and discuss the prospect of partnership. If the associateship results in the decision to form a partnership, the typical buy-in period is 5 to 7 years, which means that the associate becomes a full partner within a few years after graduating from optometry school. If the practice is maintained, it will support the new partner for the next 30 to 40 years, or until retirement is planned. If the associateship does not result in partnership, the associate usually leaves the practice to pursue other opportunities.

Employment by an Ophthalmologist

Increasingly, optometry school graduates are finding employment opportunities with ophthalmologists in private practice. The reason for this trend may be explained by the primary care orientation of optometry. Ophthalmologists have found that employee optometrists can provide refractive care; contact lens services; management of a wide range of ocular

pathologic conditions; and specialized services such as those needed by children, senior citizens, and patients seeking lowvision rehabilitation. Employing optometrists to provide these services allows ophthalmologists to concentrate on ocular surgery and other secondary and tertiary services.

Because ophthalmologists earn, on the average, a higher mean income than do optometrists, they provide, on the average, a higher salary than that paid by optometrists (see Chapter 1). Part of the reason for this difference in remuneration is the ability of ophthalmologists to offer more benefits (e.g., moving expenses, allowances for use of an automobile, group term life insurance, or disability insurance) than optometrists.

There can be some significant drawbacks, however, to an ophthalmologic associateship. The duties assigned to the associate may not be ideal. An associate who would prefer to treat ocular pathologic conditions may have to provide refractive care or perform work-ups for the surgeon rather than manage a wide variety of patients with ocular disease. For this reason, it is important to determine whether the duties of the associateship match the optometrist's scope of practice goals. Another drawback is that ophthalmologic associateship does not offer much opportunity for long-term advancement. It is rare for ophthalmologists to join into partnership with optometrists. In fact, in many states optometrists and ophthalmologists are prohibited by law from jointly forming a professional association (PA) or professional corporation (PC) for that purpose. Therefore optometrists employed by ophthalmologists tend to either remain employees or leave the practice to begin or join an optometric practice.

Whether a graduate wishes to work for an optometrist or an ophthalmologist, the likelihood of finding an associateship opportunity is directly related to the effort put into the search and the graduate's ability to form a personal relationship with the potential employer before graduation. The associateship market is a competitive one, and students who begin early, meet potential employers, and work in their practices before graduation are the ones who graduate with opportunities awaiting them. To wait until the fourth year of optometry school to solicit by mail or any other means an invitation to interview and to have but one opportunity to make a favorable impression is to invite disappointment. If associateship is desired, the process of looking for a potential employer should begin as early as possible, and when opportunities are found, the student should try to visit the practitioner frequently. The better the personal relationship, the more likely it will result in a successful associateship.

Associateship Considerations

An associate is an employee who holds no ownership interest. The usual associate—a young, just-licensed optometrist—is often looking for a permanent practice opportunity and views associateship as a means of undergoing a trial period. Employment is considered to be a stepping-stone to partnership and provides a means of measuring the good faith of both parties. Thus one of the key goals of associateship often is to determine whether a partnership is feasible.

Finding an associateship opportunity and negotiating an employment contract are not simple tasks, and they are made

more difficult if the associate is an optometry student still in school. Lack of experience in negotiation and unfamiliarity with the customary terms of employment put the prospective associate at a disadvantage. For these reasons a thorough, well-written employment agreement is necessary. Of course, contracts have been based on no more information than the length of employment and the amount to be paid and have been sealed by the execution of little more than a firm handshake. Thus there is a frequently expressed attitude that written contracts are an unnecessary entanglement for salaried employees. However, such an attitude puts the associate at a significant disadvantage.

The associateship agreement is a way of expressing the conditions of employment and the financial benefits to be received by the associate. It anticipates possible eventualities and establishes the responsibilities of the parties. Negotiation of its terms forces both employer and employee to address the difficult issues that handshake agreements customarily avoid. Without written provisions, the parties may ultimately find that they have failed to agree to important aspects of the employment and that litigation is the only way to clarify a dispute.

There is a natural concern that written agreements may contain terms that are byzantine in expression and draconian in effect. But a contract with a "Catch-22" clause can easily be avoided by parties who understand the terms to be negotiated and the limitations of personal service agreements. It is the purpose of this chapter to describe how to assess an associateship opportunity, the provisions that should be included in an employment agreement, and how to structure the contract negotiation to achieve a successful result.

Assessing Associateship Opportunities

The first step in the effort to find employment is to determine whether a practice can support another practitioner. Some of the factors deemed to be significant are listed in Box 4-2. Among the most significant are the gross and net incomes and the growth curve of the practice.

Gross and Net Income

A major consideration in the decision to increase the number of practitioners in a practice is the practice volume. Although there is no magic number that can be used to determine whether a practice can support another practitioner, the gross income should be equal to or greater than the national mean for such practices nationwide or have the potential to equal or exceed such earnings (see Chapter 1). If the gross income is less than the national mean, a rapidly escalating growth curve is an important indicator that the practice is growing and may be able to accommodate another practitioner.

Growth Curve

A growth curve in which the gross and net incomes are increasing rapidly indicates that the practice has not reached its potential; a growth curve that is decreasing indicates a practice that is diminishing or downsized; and a stabilized growth curve may indicate that the practice has reached its maximum

BOX 4-2

Factors That Indicate a Practice Can Support an Associate

- When the appointment book is consistently booked weeks in advance and the doctor must spend long hours in the office
- When the practice population has begun to grow older, to the exclusion of a young patient base.
- When the annual number of new patients has declined to less than 20% of the patient population.
- When the doctor is so busy that it is difficult for him or her to provide a full range of services.
- When the doctor is interested in a specialty area but must spend the majority of time with primary care patients.
- When the doctor wants to spend more time with family or in pursuit of other interests and less time seeing patients.
- When the doctor has had a period of poor health or is currently in poor health.
- When the doctor desires to protect his or her equity in the practice by transferring part of the ownership to a younger doctor, thereby acquiring some retirement security.
- When the doctor no longer has the energy or inclination to build the practice and participate in those activities that were necessary to establish the practice in the first place.

or that the practitioner is so busy that further growth cannot be achieved without another pair of hands. Analysis of the practice will yield the answer to the “flat” growth curve. When assessing practice growth, inflation must be taken into consideration when determining the gross and net incomes so that the amount of true growth can be ascertained. The cost of living index can be used to make this calculation.

A more detailed analysis can be performed, if desired, involving the overhead expenses for the practice, laboratory costs, percent of net income being generated, percent of income from services and materials, and similar matters, with these results being compared with national norms. If the practice results differ markedly from the mean figures found nationally, determination of the reason is helpful in assessing the ability of the practice to thrive with another practitioner. Because of the cost and complexity of partnership (often the ultimate aim of an associateship), the time spent collecting and analyzing information is time well spent.

Determining an Associate’s Salary

Probably the most difficult issue to resolve is the associate’s salary. There is often uncertainty over whether an employer’s income will be reduced because of the extra cost of the associate. This is a legitimate concern, but one that is directly tied to the productivity of the associate. If the associate merely sees patients that otherwise would have been examined by the employer, then gross income will not go up and the employer’s income will inevitably go down. The key factor is the ability of the associate to see patients the employer cannot (such as overflow) or to generate new patients altogether. The associate also can generate income by providing coverage when the employer is out of the office, by offering services not provided

by the employer (e.g., low vision, binocular vision, or sports vision), or by providing a greater range of needed services to existing patients (e.g., Medicare, Medicaid). Because an associate is typically younger than the employer, lives in a different part of town, and shops and enjoys recreation different from the employer, it is expected that the associate will generate patients by virtue of this exposure to new people and places. This generation of patients is necessary for the associateship to be successful.

Cost of an Associate. One way of analyzing the cost of an associate is to determine the number of patients the associate must see to pay his or her own way. The answer obviously depends on how much the associate is being paid, but assuming that an associate is to be paid \$50,000 annually and that the net income in the practice is one-third of the gross income (which is a representative figure for well-established practices), a gross income of \$150,000 must be generated for the associate to pay his or her own way. How many patients does this \$150,000 gross represent? If an optometrist grosses \$200 per patient (a conservative figure), 750 patients must be seen during the course of a year, or about three patients a day (for 250 working days) to generate \$150,000. Actual numbers from the practice can be substituted to achieve a more accurate count, but even so, the daily patient load will not be overwhelming. Actually, because having two practitioners together causes a certain amount of fixed expense sharing, the \$150,000 gross will not only pay the associate’s salary but also will generate additional income for the employer.

Bonus Income. To gauge an associate’s motivation, it is often desirable to offer a bonus. For example, for every dollar more than \$150,000 generated by the associate, he or she gets 25%. Thus, if the associate generates an extra \$1,000 of gross income per month, a bonus of \$3,000 is earned for the year. The associate also earns income for the employer (the difference between the percentage paid the associate and the actual net profit percentage), a profit for which the employer has to do nothing. If an associate shows no interest in generating this bonus income, the employer has learned an important lesson about the associate, a lesson for which the employer has paid nothing.

Salary. Associates quite naturally rate the remuneration that is offered as either the top or one of the top factors to be considered. But economic surveys, such as those conducted by the AOA, have shown that associate income paid by an optometrist is not as high as the income paid by other types of employers (see Chapter 1). Does this mean that associateships with optometrists are less desirable than other types of employment? The answer is clearly “no” because salary is not the sole factor that should be assessed when considering an associateship with an optometrist that may lead to partnership. The smaller salary for a year of associateship, followed by a career in an optometric partnership, pales when compared to career earnings as the employee of an ophthalmologist, health maintenance organization (HMO), or optical chain. Self-employed practitioners earn substantially more than employed practitioners throughout a career; therefore the potential of an associateship to lead to a lifetime of earnings has a much greater economic value than the immediate salary received.

Benefits. The salary earned during associateship may be affected by the cost of living at the employer's location, the amount of federal and state taxes, and the ability of a spouse to find employment and add to the family income. If the salary offered to an associate is insufficient, the associate should be able to document this with statistics. It may be possible for the employer to improve the associate's remuneration by offering fringe benefits (Box 4-3). The economic value of these benefits exceeds their actual cost because the associate would not only have to generate the income necessary to pay for them but also the tax on this income. In addition, an associate who must pay for these benefits rather than receive them as part of compensation for employment will likely find that they cannot be used as tax deductions, whereas the employer may deduct the cost of associate benefits as a business expense (see Chapter 39). An associate may find that the fringe benefits are valuable enough to compensate for the lower salary, particularly if bonus income also is available.

Negotiation of the Contract

Successful resolution of the salary issue depends, at least in part, on the negotiations between the employer and potential associate. Because of the prohibitive expense of hiring an attorney, negotiations are conducted face to face by the individuals involved. The negotiation process is made much easier when the parties know one another well; visits to the practice by the potential associate or part-time work by the potential associate in the practice while in school are excellent ways of forming a personal relationship. There are several general rules that may be helpful to both parties in negotiating an associateship agreement, but they may be especially useful to the potential associate, who most likely has little if any actual negotiating experience (Box 4-4). (Also see Chapter 7.)

The main objectives of an employment contract are threefold, as follows:

- To create a written expression of the agreement between the parties

BOX 4-3

Examples of Fringe Benefits for an Employed Optometrist

ADVANTAGES

- Moving expense reimbursement or allowance
- Health and dental insurance premiums
- Continuing education reimbursement or allowance
- Optometry license renewal fees
- Professional society dues
- Automobile use reimbursement or allowance
- Disability insurance premiums
- Group life insurance premiums
- Sick pay
- Retirement plan with employer contributions (e.g., simple IRA, 401[k])
- Paid vacation
- Paid holidays
- Family vision care

BOX 4-4

Negotiation of an Associateship Agreement

Begin negotiating early. Negotiations require time and if possible, should be begun early. The process is made easier when the parties know one another and negotiations proceed in a personal, relaxed atmosphere.

Establish negotiation goals. The goals of the negotiation should be written and prioritized, with the most important items first.

Be realistic. Unrealistic expectations can derail negotiations; young practitioners should "do their homework" and research the associateship market so that expectations—especially financial ones—are realistic.

Negotiate compromise items first. Take the list of prioritized goals and turn it upside down, then negotiate the least important items first; they are the easiest issues to compromise.

Know how to overcome an impasse. The usual stumbling block is salary. To overcome an impasse, counteroffers should be planned before the negotiation. The inclusion of fringe benefits and bonus salary may be used to make the salary offer acceptable.

Initiate the contract proposal. The first draft of the associateship contract can be prepared by the potential associate. Sample contracts are readily available and can be used to move negotiations closer to closure.

Use professional expertise. Obtaining professional advice before, during, or after the negotiations can be quite valuable to young negotiators; if such advice is available, it should be used.

- To achieve a comprehensive description of the agreed-on employment
- To enter into a bargained-for exchange that is fair

A contract is an agreement, upon sufficient consideration, to do or not do a particular thing. To form a contract, the following three elements must be present:

1. *Mutual assent.* This is often referred to as a "meeting of the minds"; both an offer and an acceptance are required. An offer must be definite, certain in its terms, and not illusory ("I may offer you a partnership in 12 months" is not definite and thus is not an offer). An acceptance must be absolute and unconditional; adding or changing any terms results in a counteroffer ("I accept your offer if the salary is \$10,000 higher" is a counteroffer not an acceptance).
2. *Consideration.* This is a bargained-for exchange that results in a gain or loss (employment in return for wages satisfies the requirement for consideration).
3. *Capable parties.* If a party is not capable (e.g., insane), the contract will be deemed void (not valid to either party); temporary incapacity (e.g., drunkenness) will make the contract voidable (it can be disaffirmed by one party).

A contract for services cannot be enforced by making the employee work because persons cannot be made to work against their will. However, an action for damages (economic loss) may be brought by the employer for breach of a personal services contract. A default on a contract also makes for a poor reference.

Both verbal and written agreements are contracts. However, a written contract is much easier to prove than a verbal contract. Verbal contracts also promote superficiality in negotiation and misunderstanding of contract terms. If an employer

refuses to provide a written agreement, a letter of acceptance may be used to describe the necessary details of employment.

Fairness is a most important consideration; without it, one of the parties is likely to feel that the arrangement unduly favors the other and that a long-term association, such as a partnership, is not desirable. The important provisions of an associateship

agreement that require negotiation should be compiled on a checklist (Figure 4-1). This list can structure the negotiation process and serve as the starting point for the construction of a contract. It also can serve as documentation of the agreement reached by the parties and submitted to an attorney for the drafting of a contract. The final agreement

Employer _____ **Employee** _____

The parties negotiating the associateship contract should reach agreement on each of the following items.

1. **Conditions of employment.** The contract should describe the employee's working conditions; special duties (e.g., postoperative care), hours (e.g., night appointments), or practice locations (if there is more than one office) should be described in the contract.
 - ___ Duties:
 - ___ Location of employment:
 - ___ Days of employment:
 - ___ Hours of employment:
2. **Term of employment.** The specific dates of the contract's beginning and ending should be listed; one year is the usual minimum term of employment.
 - ___ Beginning date:
 - ___ Ending date:
3. **Salary.** The total amount per year, and how it is to be paid (e.g., on the last day of each month) should be specified.
 - ___ Annual salary:
 - ___ How paid:
4. **Bonus income.** To provide an incentive for performance, a bonus may be offered. It is customarily based on the employee's gross income; above a specified floor amount, the employee receives a percentage of the gross income he or she generates (e.g., 25% of every dollar over \$120,000). Payment may be monthly, quarterly, semiannually, or annually.
 - ___ Base amount:
 - ___ Percentage bonus to be paid:
 - ___ When bonus is to be paid:
5. **Employee benefits.** These benefits are tax deductible to the employer and are not taxable as income to the employee.
 - ___ Moving expense reimbursement or allowance:
 - ___ Health insurance premiums:
 - ___ Malpractice insurance premiums:
 - ___ Continuing education reimbursement or allowance:
 - ___ Optometry license renewal:
 - ___ Professional society dues:
 - ___ Automobile use reimbursement or allowance:
 - ___ Disability insurance premiums:
 - ___ Group life insurance premiums:
6. **Paid vacation.** Customarily, an employee is entitled to 1 or 2 weeks of paid vacation after 6 months of work. If a special time of year is desired (e.g., first week in June), it should be described in the contract. Office holidays should also be listed in the contract.
 - ___ Amount of paid vacation:
 - ___ When it is to be taken:
 - ___ Office holidays:
7. **Equipment provided by employee.** To prevent disagreement over the ownership of equipment purchased by the employer for use by the employee or equipment brought to the practice by the employee, a schedule (i.e., a list) should be attached to the contract, describing the equipment owned by the employee and used in the practice.
 - ___ Equipment to be purchased by employer for use by the employee:
 - ___ Equipment the employee is to bring to the practice:
8. **Patient names and addresses.** It is customary for the contract to specify that the names and addresses of patients seen by the employee remain the property of the employer and for the employee to have no right to the reproduction or use of these names and addresses.
 - ___ Use of patient names and addresses:

FIGURE 4-1 Associateship agreement negotiation checklist.

1. **Patient records.** Patient records, even those of patients seen exclusively by the employee, customarily remain the property of the employer. If the associateship agreement terminates, however, it is appropriate for the employer to agree to provide copies for the former employee, when patients request that they be transferred.
 Ownership of patient records:
 Transfer of records after termination of employment:
2. **Covenant not-to-compete.** The parties may agree to include a covenant not to compete in the agreement. (Note: state law must be consulted to determine the enforceability of such a provision.) After termination of the contract (for whatever reason), the employee agrees not to practice within a specified time and distance from a described location. Damages (e.g., \$50,000) may be described in the contract for breach of the covenant.
 Time covenant to be in force:
 Distance (radius) of covenant; location from which calculated:
 Damages for breach:
3. **Termination of the contract.** The reasons for termination of the contract should be described (e.g., insolvency, death, disability, insanity, loss of license, mutual consent). It is customary for the employer to be able to terminate the contract on giving adequate written notice (e.g., 2 weeks, 30, 60 or 90 days) to the employee.
 Reasons for termination:
 Period of notice to the employee:
4. **Disability of the parties.** The agreement should describe the obligations of the employer if the employee is permanently disabled (which must be defined). The agreement should also provide the employee with an option to purchase the practice if the employer is permanently disabled or dies; the amount to be paid (e.g., \$250,000) should be specified in the contract.
 Disability of employee:
 Disability or death of the employer:

FIGURE 4-1 Cont'd

should be drafted by a competent attorney rather than by the parties themselves; the cost is relatively low. Use of an attorney ensures that the contract is in compliance with state law and appropriately executed. The major provisions attendant to the associateship contract are described in **Appendix 1** of this chapter.

RESIDENCY

There are approximately 225 accredited residency positions and a limited number of postdoctoral fellowship positions that provide postgraduate education for optometrists. These positions may be found in a variety of practice locations, including schools and colleges of optometry, VA hospitals and outpatient clinics, Indian Health Service facilities, eye care surgery referral centers, major medical centers, and US military bases. They offer a wide range of experiences and environments for learning, providing a year of intense clinical and educational experience in a particular area of optometry. Residency programs are currently available for training in the following:

- Family practice optometry
- Primary eye care
- Cornea and contact lenses
- Geriatric optometry
- Pediatric optometry
- Low-vision rehabilitation
- Vision therapy and rehabilitation
- Ocular disease
- Refractive and ocular surgery
- Community health optometry

To apply for a residency program, the applicant must have graduated from an accredited school or college of optometry.

Because there is only 1 residency program available for every 8 graduates, residency positions are highly competitive. It is important for applicants to take and pass Parts I and II of the examination given by the National Board of Examiners in Optometry (NBEO). Excellent academic records and letters of recommendation also are advisable.

Residency programs offer a concentrated clinical experience, with some time devoted to other activities, such as didactic education, research, and teaching. The range and extent of nonclinical activities varies from program to program. Residents can expect to work full days and to serve as necessary providing emergency and on-call care. Salaries for residents are standard and provide essentially subsistence level wages. Pay can be an issue for residents who must live in expensive metropolitan areas.

Optometrists who have recently completed a residency are the individuals best able to discuss a particular program's strengths and weaknesses. They should be consulted by students interested in applying for a specific residency position.

VETERANS AFFAIRS

The VA was organized in 1930 and is one of the largest independent agencies within the US government, operating the world's largest system of hospitals and clinics as part of its overall responsibility for the nation's veterans. The VA also plays an important role in the education of health care professionals. It is estimated that in any given year more than 25% of all US medical and surgical residents receive training at VA hospitals.

The involvement of optometrists in VA education and patient care has a much shorter history. Optometrists were not eligible to serve in VA staff positions until 1957, and the

first VA residency position for optometrists was not created until 1975. Today, opportunities may be found both for VA staff optometrists and for residency positions.

To be selected for an entry-level VA staff position, the applicant must have a Doctor of Optometry (OD) degree from an accredited school and an optometry license from any state and must pass a physical examination. These qualifications allow an optometrist to apply for an associate-grade position. A limited number of entry-level positions are available, however, and to be competitive, applicants also should have completed a residency or have experience as a practitioner. To be selected for the next level, full grade, the optometrist must have served in a residency program or served 2 years as a practitioner. There are 3 more levels—intermediate, senior, and chief—which require increasingly stringent qualifications. There are numerous benefits, such as health and disability insurance, paid vacations, and similar entitlements, and a generous retirement plan.

There are more than 350 staff positions in the VA system, located in hospitals or outpatient clinics. Staff and clinic sizes vary from facility to facility, as do practice privileges, because the scope of practice for each practitioner is determined by the facility rather than by state law (VA facilities are subject to federal rather than state regulation). Primary care is offered to a diverse population of veterans, and there is ample opportunity to participate in research projects. VA staff optometrists commonly contribute to the professional literature and provide postgraduate education. They also contribute to the education of optometrists through VA residency programs.

There are about 136 residency positions at VA facilities, providing excellent clinical postgraduate training for young optometrists. To be eligible to apply, applicants must have graduated from an accredited school of optometry. Applicants must pass Parts I and II of the examination given by the NBEO. Because there are a limited number of VA residency positions, there is significant competition for these positions. The pay for VA residency positions, like all residency positions, is low. Days are full, and there are after-hours responsibilities as well. The year of training, however, enables residents to qualify for VA staff positions, to apply for positions in academic institutions, or to provide improved skills in a private practice setting. There are also 3 research fellowships offered by Veterans Affairs.

CORPORATE PRACTICE

Ophthalmic companies employ optometrists to provide services in several types of practice settings, including “next-door” or mercantile lease arrangements, as part of a trademark chain, or within a “superstore.” Although the financial arrangements vary among these types of employers, optometrists in corporate settings often serve as “independent contractors” rather than as employees. An independent contractor is someone who contracts to perform work by his or her own methods and without being subject to the direct control of the employer. The advantage to the corporate employer of such an arrangement is that the employer is not responsible for the negligence of the independent contractor and does not have to contribute half of the independent contractor’s social security payments to

the federal government. Thus the independent contractor is liable for any liability claims arising from employment and is solely responsible for the withholding and payment of his or her income tax and social security contributions.

The advantages to corporate practice are that there is little investment, the beginning income is usually good and positions are readily available for new graduates. In the typical situation, the employer provides the office, staff, and equipment and uses advertising to attract a patient base. As payment, the optometrist receives all fees charged for services or a percentage of fees charged for services, with a minimum salary usually guaranteed. In rare instances, the optometrist may share in the fees received from the sale of ophthalmic materials, but typically these fees are paid solely to the corporate employer. The lease arrangement between employer and optometrist is inevitably favorable, with the optometrist typically paying a nominal fee for the rental of the office space. The lease arrangement is for a limited period, however, and may be cancelled at the option of the employer. The arrangement also may assert that the patient records are the property of the corporate employer and must remain in the office after the relationship with the optometrist has ended.

The disadvantages of corporate practice are a lack of security, limitations in the scope of practice, and a ceiling on earnings. Because an optometrist working in a corporate environment has no ownership interest, there is no long-term security. Unlike a private practitioner, at retirement there is nothing to sell to a successor. In a corporate setting, the scheduling of patients often does not permit a full scope of practice to be enjoyed, and the optometrist may not be able to develop specialized skills because so much time must be devoted to routine examinations. Although the optometrist receives a minimum salary and is remunerated based on fees for services, there is a ceiling on earnings that is based on the corporate employer’s profit margin. If profits get too low, the optometrist gets no further increase or is discharged so that a newer optometrist can be employed at a lower pay rate. As a consequence, the optometrist in a corporate setting does not achieve the job security or the income earned by self-employed optometrists in private practice.

New graduates often look to corporate practice as a means of obtaining practical experience while reducing the debts of professional education. Although these goals can be accomplished, employment for a period of years is required. Unfortunately, after several years it can be financially difficult for the optometrist to leave a steady income for the uncertainties of beginning a new practice or purchasing an existing practice. Regardless of the practice option chosen, debt must be incurred (to open or buy a practice), and this indebtedness may conflict with other financial needs or priorities. The longer the optometrist remains in the corporate setting, the more difficult it can become to leave.

UNIFORMED SERVICES

Employment positions exist for optometrists within the US Army, Air Force, Navy, and Public Health Service (PHS). The majority of these positions are in patient care, although some

are purely research and some are purely administrative. Most of these positions require optometrists to be commissioned officers, but in a few positions, optometrists are civil service or contract employees.

There are more than 400 optometrists serving in the armed forces. Optometry school graduates entering military service enter with the rank of O-3. If they enter the Army or Navy, they will serve in the Medical Service Corps; in the Air Force, they will serve in the Bioscience Corps. A limited number of optometry school graduates enter military service each year through the Health Professions Scholarship Program, which pays for 1 to 4 years of the graduate's professional school education.

Optometry officers provide patient care in multidisciplinary environments such as medical centers, community level hospitals, and clinics. For the new graduate, the patient care experience in the first few years of military service practice is usually more extensive than the experience enjoyed by contemporaries in private practice settings. Since the dependents of military active duty personnel and retirees and their dependents are eligible for care from military health care providers, the optometry officer will see patients of all ages.

More than 130 optometrists serve as officers in the PHS. The vast majority of patient care positions within the PHS are in the Indian Health Service. Most optometrists serve as commissioned officers and, like the military services, enter at the rank of O-3. A few optometrists serve as civil servants or tribal hires. Eligible beneficiaries in the Native American patient population also include all age groups, although almost half of the beneficiaries are younger than 21 years. Many health care facilities of the uniformed services provide clinical training to optometry students, thereby allowing clinicians of the uniformed services an opportunity to teach.

Commissioned officers receive a salary, tax-free housing, and subsistence allowances and do not share in the cost of operating a practice. In general, the patient care equipment and facilities are very good. A retirement plan, health care coverage, protection against disability, and malpractice coverage are provided. Junior officers usually have few administrative requirements related to operating the practice. All members of the uniformed services receive 30 days of paid vacation each year.

For midcareer practitioners, several opportunities exist to enter graduate degree programs or residencies, at government expense, while remaining on active duty and drawing full pay and allowances. The number and type of positions vary from time to time and between services. There also are a limited number of career-broadening assignments in administrative areas and research.

Military officers may be assigned to different facilities all over the world, allowing for the opportunity to travel to many exotic locations. Time off and funding for continuing education are generally provided to meet credentialing and state licensing requirements.

Most assignments allow for a varied patient population, but in some locations, the patient census consists mostly of young, healthy men and women. These locations are generally in

training centers, where the practitioner may provide only very limited basic care to a large volume of patients each day.

Because of the chronic shortage of optometrists in the uniformed services, the opportunity to provide specialty care, such as contact lenses, low-vision rehabilitation, and binocular vision therapy may be very limited.

The salary received by both officers and civil servants is not competitive with that of most other positions available to new graduates. Also, the special pay for optometry officers is a small fraction of that paid to medical and dental officers. Although the retirement pension is very good, it is only authorized for those with at least 20 years of service.

Many officers complain of being required to perform nonpatient care duties such as administrative officer of the day and so forth. Administrative performance is often perceived as being more important to promotion and success than patient care. Usually, most officers of equivalent education, such as physicians and dentists, are not required to serve in nonprofessional capacities.

Many Indian Health Service clinics are in remote locations and require extensive travel. Moving is required of military officers on a frequent basis. This obligation can cause considerable disruption to family life. Although many positions are in exotic locales, there also are a number of hardship tours, including assignments in combat areas.

ACADEMIA

Fewer than 600 full-time faculty positions exist within schools and colleges of optometry for clinical and classroom teaching and for clinical and basic research. Academicians progress through various academic ranks, beginning with instructor, assistant professor, associate professor, and culminating with professor. Promotion depends on the faculty member's contributions to teaching, research, scholarly activities, and service.

Accepting a faculty position requires no investment of capital and does not incur the same type of time demands found in a private practice setting. There are far fewer administrative tasks generally required of junior faculty when compared with optometrists in a private practice. Optometrists in academia receive a guaranteed salary, as well as benefits such as health, disability, and malpractice insurance; as well as vacation and a retirement plan. Time and stipends are usually provided for attending professional conferences. Optometrists at schools and colleges of optometry have the opportunity to pursue areas of special interest. In many cases, income can be supplemented by offering continuing education and providing patient care outside the academic institution. Excellent job security is obtained when a faculty member achieves tenure. Eligibility for tenure occurs 7 to 10 years after being placed on a tenure track.

From an economic viewpoint, academia provides a relatively low level of remuneration for ODs. Although there is no development of equity, as is found in private practice, retirement plans are usually generous. To gain a position as a faculty member, additional professional or graduate degrees or a residency are usually required. Thus the educator must train longer to be paid relatively less than contemporaries in other settings. Faculty members have minimal independence,

and junior members have very little ability to affect academic policy. If a faculty member is on a tenure track but not awarded tenure, other employment must be sought.

HEALTH MAINTENANCE ORGANIZATIONS

HMOs provide comprehensive health maintenance and treatment services for a voluntarily enrolled group of patients who pay a periodic fixed rate for services. These patients also may pay a small copayment fee at each office visit.

Ross-Loos Medical Group, established in 1929, is considered to be the first HMO in the United States; it was headquartered in Los Angeles and initially provided services for Los Angeles Department of Water and Power (DWP) and Los Angeles County employees. Approximately 500 DWP employees enrolled at a cost of \$1.50 each per month. Within a year, the Los Angeles Fire Department signed up, then the Los Angeles Police Department, then the Southern California Telephone Company (now AT&T) and more. By 1951, enrollment stood at 35,000 and included teachers, county and city employees.

The history of Kaiser Permanente HMO dates to 1933. Kaiser Permanente evolved from industrial health care programs for construction, shipyard, and steel mill workers for the Kaiser industrial companies during the late 1930s and 1940s. It was opened to public enrollment in October 1945.

The organization that is now Kaiser Permanente began at the height of the Great Depression with a single inventive young surgeon and a 12-bed hospital in the middle of the Mojave Desert. When Sidney Garfield, MD, looked at the thousands of men involved in building the Los Angeles Aqueduct, he saw an opportunity. He borrowed money to build Contractors General Hospital; 6 miles from a tiny town called Desert Center, and began treating sick and injured workers. But financing was difficult, and Dr. Garfield was having trouble getting the insurance companies to pay his bills in a timely fashion. To compound matters, not all of the men had insurance. Dr. Garfield refused to turn away any sick or injured worker, so he often was left with no payment at all for his services. In no time, the hospital's expenses were far exceeding its income.

Harold Hatch, an insurance agent, proposed that the insurance companies pay the hospital a total amount, in advance, for each worker covered. The financial relationship between the insurance companies and the hospital was efficient, and allowed Garfield to focus on a new idea: preventative health care.

Intrigued by the concept developed by Hatch and Garfield in the Mojave Desert, Henry Kaiser persuaded Garfield to open a prepaid practice for his construction workers building the Grand Coulee Dam in Washington state in 1938. Coverage was later extended to the families of the workers. In 1942, Kaiser established health plans for workers and families at shipyards in Richmond, California and Vancouver, Washington, and at a steel mill in Fontana, California. In 1945, Kaiser membership was opened to the public. Today, Kaiser Permanente operates in nine states and the District of Columbia, and is the largest not-for-profit health maintenance organization in the United States,

with 8.3 million health plan members, 134,000 employees, 11,000 physicians, 30 medical centers, 431 medical offices, and annual operating revenues of \$22.5 billion.

There are two types of HMOs: staff models and independent practice associations (IPAs).

Staff model HMOs provide services to members through their own professional staff, which is employed by the HMO. An optometrist working for a staff model HMO is usually paid a salary, with the workload being an additional consideration.

IPAs contract with a private practitioner to have the practitioner deliver health services to its members. These practitioners are usually paid either on a capitation basis or on a fee-for-service basis.

Staff model HMOs offer an immediate income with no start-up costs. Although a staff optometrist does not have to be concerned about clinic coverage for patients when the optometrist is out of the office, the daily schedule of office hours is usually beyond the optometrist's control. To compensate for the moderately attractive salary offered to optometrists, many HMOs offer a good fringe benefit package that includes paid time off for continuing education; a monetary stipend for continuing education expenses; health, life, and disability insurance; sick leave; and a retirement plan.

Staff model HMOs require minimal management time and few management decisions from the optometrist. The optometrist, as a primary care provider, usually operates as the gatekeeper of the system for all patients with vision problems. There is no limit to the age of patients seen in this setting, and with the optometrist as the entry point into the system, there is diversity in the types of cases the optometrist will encounter. It is a multidisciplinary practice environment, and the optometrist often practices side by side with the primary care physician.

As an employee, the optometrist will build up little or no equity in the practice. Depending on the organization of the HMO, medical practitioners may control the administration of the optometrist's department. Under medical control, the optometrist may not be used as the gatekeeper of the system. It also may result in the optometrist not being allowed to practice the full scope allowed by state law, seeing a restricted age of patients and being allocated a decreased amount of examination time per patient.

INDUSTRY

The eye care, pharmaceutical, and medical care industries are ever-expanding entities in today's health care system. Optometry is becoming a growing part of these industries with its primary health care provider positioning. There are an increasing number of employment opportunities for new graduate, as well as seasoned optometrists, within these industries.

Optometrists are employed in a variety of roles. An optometrist can be employed to do research, either clinical or involving the development of new vision care products. Recently, optometrists have been employed as sales representation in the field, public relations, marketing, administration, and consulting.

Industry employment offers immediate income. Salaries are usually above most other optometric salary levels and full benefits, including paid time off; continuing education stipends; health, life, and disability insurance; sick leave; profit sharing; and retirement plan. Depending on the job responsibilities, an expense account for job-related expenses may also be available.

CONCLUSION

The choice of an employment option after graduation from optometry school is usually based on a decision by the graduate not to become an employer but to obtain practice experience as an employee. In making such a decision, graduates should always consider whether the employment opportunity possesses the flexibility to allow changes in career direction. Because so many graduates enter employment positions thinking that they will provide a short-term experience, it is important that the option chosen provides an opportunity to change when it is appropriate and timely to do so.

ACKNOWLEDGMENTS

The authors of this chapter in the first edition of *Business Aspects of Optometry* were James Albright, John G. Classé, Craig Hisaka, W. Howard McAlister, and Timothy A. Wingert.

The authors of this chapter in the second edition of *Business Aspects of Optometry* were John G. Classé, Craig Hisaka, and W. Howard McAlister.

BIBLIOGRAPHY

- 62 American Law Reports 3d 1014.
- 62 American Law Reports 3d 970.
- 62 American Law Reports 3d 918.
- American Optometric Association: *Caring for the eyes of America—a profile of the optometric profession*, St. Louis, 2006.
- American Optometric Association: *Career Advocate for the New Practitioner*, St Louis, 2007–2008.
- Anonymous: Federal service optometry, part II, *AOA News* 29(1): 9–10, 1990.
- Anonymous: Military optometry makes problem-solving strides, *AOA News* 28 (24): 1,8, 1990.
- Anonymous: Optometry in the Alaskan bush, *AOA News* 28(24):1, 13 – 14, 1990.
- Anonymous: Special report: federal service optometry, *AOA News* 27 (23):1,3 – 4,13, 1989 .
- Baldwin B, Christensen B, Melton J: *Rx for success*, Midwest City, OK, 1983, Vision Publications.
- Berman M S: Challenges for optometric education, *J Optom Ed* 17(4):105 – 106, 1992.
- Classé JG: *Legal aspects of optometry*, Boston, 1989, Butterworth.
- Clausen LR: Advanced education, *J Optom Ed* 17(4):1 07– 1 10, 1992.
- Department of the Army: *The Medical Service Corps, the Army Medical Team*, Falls Church, Va, 1988, US Government Printing Office.
- Department of the Navy: *Navy Recruiting Command: Navy Medical Service Corps*, Falls Church, Va, 1988, US Government Printing Office.
- Grosvenor T: The clinical master of science degree, *Optom Vis Sci* 69(3): 255 – 256, 1992.
- Internal Revenue Service publication 15, Employer’s tax guide (circular E).
- Internal Revenue Service publication 15B, Employee’s tax guide to fringe benefits.
- Internal Revenue Service publication 17, Your federal income tax.
- Internal Revenue Service publication 334, Tax guide for small businesses.
- Internal Revenue Service publication 520, Scholarships and fellowships.
- Internal Revenue Service publication 552, Record keeping for individuals.
- Kaz MA: Five steps that determine your practice’s true value, *Rev Optom* 132(12):33 – 38, 1995.
- Luft H: *Health maintenance organizations: dimensions of performance*, New York, 1981, Wiley.
- McAlister WH, Davidson DW: A 1988 survey of federal service optometrists, *J Am Optom Assoc* 62(7):500 – 503, 1992.
- Newcomb R D, Marshall E C, editors: *Public health and community optometry, ed 2* Stoneham, MA, 1990, Butterworth.
- Scerra CA: Seeking the substance of practice valuation, *Optom Economics* 5(2):42 – 46, 1995.
- Schwartz C: Optometry and HMOs: the view from inside, *Optom Economics* 5(2):17 – 19, 1995.
- Shipp MD, Talley DK: A 1987 survey of military optometrists: activities, roles and attitudes, *J Am Optom Assoc* 59(10):802 – 814, 1988.
- Siemsen D W: The role of the institution, *J Optom Ed* 17(4):117 – 118, 1992.
- Silverman MW, Woodruff C, Hardigan PC: The future of optometric practice? The results of a survey of optometrists and optometry students, *Optometry* 75:615 – 621, 2004.
- Sparks BI: Military externships: recruitment friend or foe?, *J Am Optom Assoc* 61(6):471 – 473, 1990.
- Stein G: HMO—Here’s what it’s all about, *J Am Optom Assoc* 47(2):136 – 141, 1976.
- US Department of Health, Education and Welfare, Health Services and Mental Health Administration: *Health maintenance organizations: the concept of structure*, Washington, DC, 1972, The Department.

Websites

- www.aoa.org. Web site for the American Optometric Association .
- www.irs.ustreas.gov. Web site for the Internal Revenue Service contains forms and publications that can be downloaded .
- www.opted.org . Web site for the Association of Schools and Colleges of Optometry.

APPENDIX 1

Provisions of the Associateship Agreement

An associateship agreement is no more than an employment contract in which the associate agrees to provide specified services in return for a stated compensation. It consists of a series of clauses that define the relationship between the parties and provide for certain eventualities. It is signed by the parties so that there can be no question that each has read and understood its provisions. A well-drawn contract should discourage legal action by its succinctness and completeness; a poorly worded, vague, or incomplete contract may require a court to ascertain its meaning and effect. Both parties should keep this in mind when reviewing a proposed contract; if it is not clear, it should be made so. The time spent on revision will be worth the effort. The basic provisions of a contract include recitals, employment and duties, term, compensation, facilities, fees, insurance, illness and disability, records and files, covenant not-to-compete, termination, and miscellaneous provisions.

Recitals

Each contract begins with a recitation of the preliminary matters fundamental to the contractual arrangement such as the identification of the parties, the date of agreement, and the nature of the relationship being formed.

If the employer is a professional corporation, S corporation, or limited liability company, the employment relationship will be between the associate and the business entity rather than with the optometrist employer personally.

Employment and Duties

The contract should explain the duties expected of the associate, where the duties are to be performed, and the number of hours involved in the employment on a weekly basis. If the associate wishes to be assured of the right to perform certain duties (such as postoperative care of patients), it should be specifically mentioned in the contract. If a certain day or part of a day is to be an off day, the day should be specifically included. If evening or weekend hours are contemplated, the day and hours should be described in the contract. If there is more than one office location, the agreement should identify the days or hours spent at each location. These provisions protect both parties against arguments over what the duties of the associate will be and where and when they are to take place.

If a contract specifies that the hours per week shall be a “minimum of 40 hours,” this wording permits the employer to have the associate work on an open-ended schedule. From the point of view of the associate, it would be preferable to specify a maximum number of hours per week or to list the actual hours of employment per day, with a clause that states the associate may be required to work extra hours on duties associated with the administration of the practice, after-hours coverage of patients, and promotion of the practice in the community.

Term

The term is the length of time for which the contract will be in force—the definitive length of time for which this contract applies and under what circumstances the length of time can be extended upon mutual consent.

Compensation

This is the remuneration, wage or salary that will be paid by the employer to the employee in compensation for the work provided.

Facilities

An employee is usually not expected to bring equipment or supplies to the employer’s facilities. If an associate brings equipment to the practice (e.g., binocular indirect ophthalmoscope), it is best to list these items on a separate page (called a “schedule”) that can be incorporated into the contract. The agreement specifies that at the termination of the agreement these items remain the property of the associate and may be removed from the practice by the associate.

It is customary for the contract to state that it is the responsibility of the employer to provide reasonable facilities, staff, equipment, and other items necessary to the practice of optometry.

Fees

In an employer-associate relationship, fees are paid by patients to the employer, and the associate has no right to them.

Insurance

An employer may provide several types of insurance: life, disability, personal property, personal injury (workers’ compensation), and professional liability (malpractice). Life, disability, and professional liability insurance are often offered as an employment benefit. Personal property coverage insures the associate’s property against loss from fire, theft, or other hazard, and personal injury insurance protects the employer against claims for injury by an employee that are work-related (the employer may have private insurance coverage or worker’s compensation insurance). Some employers may require the associate to “indemnify” the employer for any professional liability claim involving the associate. This means that the associate must reimburse the employer’s insurer for any money paid as damages based on an act or omission by the associate. To protect against such claims, the associate will need to take out a professional liability (malpractice) policy. The amounts of coverage required may be stipulated in the employment agreement.

Illness and Disability

A young associate is much more likely to be disabled than to die, but employment contracts do not usually provide disability benefits. The reason is that a nonworking employee is a drain on practice income, and during the course of several months,

the payment of benefits with no offsetting income could jeopardize the financial stability of the practice. Disability insurance can be purchased to cover this eventuality; however, it is relatively expensive, which usually means that dollars spent for disability coverage are used to provide coverage for the employer rather than the employees. The expense of this insurance is one reason that new graduates do not purchase it themselves; it also is limited as to the amount of coverage.

Therefore, in the usual case, the associateship agreement states that if the associate is permanently disabled, the associate loses his or her job. If the associate has not taken out private disability insurance, which is the usual case, the associate's only source of income will be Social Security (see Chapter 25).

"Permanent disability" needs to be defined in the associateship agreement. It is often described as an inability to perform the duties of one's occupation for 90 consecutive days or a total of 90 days out of a 12-month period.

One other provision that may be added to an associateship agreement involves the employer. The contract may specify that, in the event of the permanent disability or death of the employer, the associate is given the first right to purchase the practice for an amount stated in the contract. This provision benefits both parties, since the employer will have a ready buyer for the practice and the associate can see the value that the employer places on such a sale.

Records and Files

Patient files (names and addresses) and examination records are owned by the employer, and it is customary for the employer to retain ownership of the records of all patients examined by the employee after the termination of the employment agreement. Even so, there are several important negotiating points that concern these records.

One issue involves the right of the associate, at the termination of the agreement, to have access to the records in the event the associate becomes involved in legal action. Another involves the right of the departed associate to make copies of the records of patients examined by the associate or to make lists of the names and addresses of the patients seen by the associate. This latter provision is rarely included in employment contracts.

The usual clause addressing these issues states that the employer will provide copies of the records of patients examined by the associate to the departed associate at the patients' request. The employer is, in fact, ethically (and in many states legally) obligated to do this. The employer also would be obligated to turn files over to attorneys or courts in the event the associate became embroiled in legal action. Associates are bound by HIPAA privacy requirements to respect the confidentiality of patient health care information, both while employed and after employment has ended.

Restrictive Covenant

An employment contract may include an agreement between the parties that the associate, on conclusion of employment, will not practice within a specified period and within a certain circumscribed area in competition with the employer. This provision, in jurisdictions where it is enforceable, allows the

employer to institute legal action against the associate if there is a breach of the covenant. The remedies available to the employer include injunctive relief, which is an order from a court prohibiting the associate from continuing the competitive conduct, or liquidated damages, which is a contractually agreed-on sum that the associate must pay if found to be in violation of the covenant not-to-compete.

Even though a covenant not-to-compete may be included in an associateship agreement, it may not be enforceable. In several states the courts have refused to enforce these clauses, whereas in others, the courts will uphold them if the limits of time and place are reasonable or will reform them to make them so.

Legal counsel should always be consulted whenever a covenant not-to-compete is being considered, so that all parties understand their rights and responsibilities at the termination of the contract.

Termination

Although contracts are for a stated period, there are circumstances that can intervene and terminate the agreement prematurely (e.g., death, loss of license, or bankruptcy). The parties also may mutually agree to terminate the relationship, and this is so even if this right is not expressly stated in the contract. Employment contracts should list the specific reasons for termination and avoid "catch-all" phrases that are vague and may be subjectively interpreted by the employer (e.g., "if employee fails to faithfully or diligently perform the duties of employment or discharge the provisions of this contract").

Contracts should provide for termination by either party upon the giving of notice. The period required for notice varies from contract to contract, but 30 days is the most commonly used. Severance pay may be included in the contract. One common method is to compensate the associate for any unused vacation time at the date of termination. For example, if the associate had worked for 6 months, on a pro-rata basis the associate would be entitled to 1 week of vacation (if allowed 2 weeks per year under the contract), assuming the associate had taken no vacation before termination. In this example, the associate would receive 1 week's pay as severance compensation.

An associate who is terminated with wages unpaid is usually due the wages, unless the contract provides for loss of wages when terminated for certain specified reasons (e.g., dishonesty). Although an associate cannot be forced to fulfill a personal service contract, the termination provisions of the contract should be obeyed. If the associate breaches the agreement (by failing to give notice as required), the employer may bring a legal action for any monetary damages suffered by the employer as a result of the associate's abrupt departure.

Miscellaneous Provisions

Most contracts conclude with several miscellaneous provisions that are intended to clarify the applicable law ("this contract shall be construed under and regulated by the laws of New York") and to list certain restrictions that apply to the

contract. These restrictions typically prohibit changes to the contract unless they are in writing, prohibit the associate from allowing another person to fulfill the associate's duties under the contract, and declare that the written instrument is the entire contract that has been agreed to between the parties.

The contract is concluded with the "seal" of the parties, which is their signatures. The signatures can be notarized but that is not necessary. The contract usually provides for duplicate copies to be made, so that each party has a duly signed agreement. The contract should be stored in a secure location so that it cannot be lost or destroyed.

Tax Considerations

An associate is paid an income in cash, which may be deducted as a business expense by the employer. However, there can be income other than cash that must be reported by the associate, and this income can be substantial (Box 4-5). From the gross income of the associate, the employer will withhold certain items such as federal income tax, Social Security, and state or local taxes. The employer withholds income tax from wages if the wages are more than the employee's withholding allowances. In general, an employee's withholding allowances equal the number of exemptions that the employee will be entitled to in figuring annual income tax (see Chapter 39). Every new employee has to file a Form W-4, Employee's Withholding Allowance Certificate, which is used by the employer to determine the correct withholding for the employee (Figure 39-7). The amount to be withheld for federal income taxes is based on gross wages before any other deductions are taken.

Similarly, the employee must fill out a state withholding allowance certificate, so that the correct state income tax deduction can be made (unless the state does not tax income). There may be a local income tax to be withheld as well (county or municipal). These deductions are reported to the employee (and the IRS) on Form W-2, Wage and Tax Statement (Figure 39-8).

The Federal Insurance Contributions Act (FICA) provides for a federal system of old age, survivors, and disability insurance. This system is financed through Social Security taxes, which are deducted from the employee's wages on a percentage basis up to a certain maximum income. A similar system exists for Medicare, which provides hospital insurance, except there is no maximum income after which there is no tax (see Chapter 39).

There are deductions that an associate may find subtracted from his or her paycheck, including contributions to a retirement plan (e.g., individual retirement account, 401[k] plan), health insurance plan, or county or municipal government for reasons related to the associate's status as a licensed professional doing business within the county or city.

The associate also may be able to claim certain business-related expenses as a tax deduction, but to do so the associate must itemize deductions on Schedule A (see Chapter 39), as part of the miscellaneous category. They will be deductible, however, only to the extent that they exceed 2% of the adjusted gross income.

Tax planning is important, even for employment opportunities, and associates should understand the applicable tax law to take full advantage of deductions and to better bargain for benefits.

BOX 4-5

Noncash Income That Associates Must Report When Calculating Taxes

- Sick pay received while an associate is ill or injured is taxable, but benefits received under an accident or health insurance policy paid for by the associate are not taxable.
- Medical insurance premiums, if paid for by an employer, are not included in income.
- Vacation allowances are considered to be wages and are included in income.
- Severance pay is taxable as income.
- Moving expense allowances or reimbursements are included in gross income for the associate (but are offset by the expenses incurred); these allowances or reimbursements are not considered wages for purposes of income tax or Social Security withholding.
- Interview expenses paid by an employer or prospective employer are considered to be income but are not subject to income tax or Social Security withholding.
- Rewards and bonuses are considered to be income.
- Christmas gifts, such as turkeys, or other gifts of nominal value from an employer are not considered to be income; cash, gift certificates, or like items are considered to be income to the extent of their cash value.
- Educational expenses paid by an employer (such as continuing education) must be included as income.