VETERINARY BUSINESS ADVISORS, INC.
Counsel for the Veterinary Profession

Retaining Your Residents©

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Finding the right resident for your practice is a lot of time and work. Protect your investment and keep your resident from straying to other practices by including proper retention provisions in your residency agreements.

The basic bargain you make with your resident is simple: you agree to pay all or part of your resident's training and residency living expenses; and your resident agrees to work at your practice for a minimum period—the "retention period"-- after she is board certified.

To implement this bargain, residency provisions typically use a stick and/or carrot approach. The stick requires your resident to pay back the residency expenses you fronted if she fails to timely pass her residency or if she leaves your practice before the agreed upon retention period expires. The carrot, which is optional, pays your resident a bonus at the end of the retention period.

Here's a list of the principal issues your residency provisions should address, bearing in mind that the main variable affecting their structure and content is whether or not the residency will be in-house.

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1. Residency Rules. If you are sponsoring the residency, both you and the resident should agree to respectively follow the residency rules and guidelines set by the applicable veterinary college ("Residency Rules"). Accordingly, you would be prudent to ensure that compliance with Residency Rules will not unduly burden your practice *before* you commit to sponsoring the residency. The residency provisions should also: (a) require the resident to keep track and inform you of any rule changes; and (b) allow you to terminate the residency without penalty in the unlikely event rule change makes compliance too burdensome for your practice.

2. In-House Residencies. With in-house residencies, your resident will invariably be your employee during the residency period, so all the usual employee issues relating to compensation and benefits apply. However, you will need to adjust your standard employment agreement to give your resident time to: (a) complete whatever externships are required by the Residency Rules; and (b) study for her boards. (In this regard, you may consider reducing her compensation accordingly.) Do not forget to check that your insurance and benefit plans will cover your resident during this period.

3. Off-Site Residencies. If a veterinary school or other hospital is going to sponsor the residency, you need to consider whether you want your resident to be your employee during this time. If the resident will be attending a veterinary school or other hospital far from your practice, you may not want her to be your employee, since an employer is generally liable for their employees while they are acting within the scope of their employment. Since you have deeper pockets than your (normally) impecunious resident, plaintiffs will be motivated to sue you if your resident gets into trouble.

If this liability worries you, then you will need to loan your resident the amounts she needs, with the understanding that you will employ her as soon as she is permitted to take the boards (and then forgive the loan at the end of the retention period).

Loaning residency expenses to your resident with an employment agreement to follow will be more complicated to structure, negotiate and document, than simply employing your resident from the outset. This will take more time and cost more in legal fees. You will need to balance this increased cost against the risk of incurring liability for your employee's acts and omissions while a resident. Such balancing will require weighing various factors, including the extent to which the veterinary school or other institution is liable for their residents and to which your resident employee will be deemed to be acting within the scope of her employment. Common sense would indicate that the school or institution should be primarily liable for all resident activities and that the risk of your incurring such liability is remote. But all bets are off in our sue-happy society. It may also be possible to cost-effectively insure

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against any residual liability. As a precaution, your resident should agree to seek your permission before engaging in any remunerative activity while a resident, (e.g., working at a shelter or temping at an emergency clinic), so that you can evaluate the risk thereof.

Finally, depending upon the residency program's schedule and how far away it is from your practice, consider whether you want your resident to work for you during week-ends, holidays and/or residency program breaks.

4. Ensuring Diligence. Whether or not your resident will be completing her residency at your practice, she should agree to diligently pursue her residency to completion, which will include studying and sitting for the boards as soon as she is permitted to do so. Your resident should commit to become board-certified by a certain deadline (which can be extended for a limited time if your resident becomes disabled). If the residency program is held off-site, your resident should agree to provide you with adequate documentation to monitor her progress.

5. Residency Expense Tracking. Your residency provisions will also need to specify the residency expenses for which you will be responsible and how they will be documented and paid. Consult with your tax advisor to ensure that this is done in a tax efficient manner.

6. Residency Expense Repayment. Now for the stick. The residency provisions typically will provide that the resident will repay the residency expenses you have advanced, unless she works at the practice through the end of the agreed upon retention period. In essence, your resident is "working off" her "debt" to you. (The "debt" being your advance of residency expenses to her.) Thus, during the retention period, your former resident's compensation should be less than market to reflect this "repayment."

This loan analogy cuts both ways however, because a savvy resident will demand that the repayment obligation be suitably pro-rated, so that if she leaves, say, in the middle of the retention period, she need reimburse only half of the residency expenses.

The provisions should provide for a repayment schedule and an interest rate (or specify that the resident will owe no interest). In attempting to reduce interest as much as possible or eliminate it all together, a savvy resident will argue that the practice is benefiting from the services of a "captive" specialist, who cannot leave without incurring a substantial reimbursement obligation. This benefit is above and beyond what an un-affiliated lender would receive, and in consideration for this benefit your practice should not charge interest. (Be advised, however, that charging below market interest or no interest may subject you to tax liability.)

7. Disability and Early Termination. Proper residency provisions must also cover life's more foreseeable contingencies. The two principal intervening events that should be addressed are disability, and employee termination before the expiration of the retention period.

7.1. Resident disability generally will extend the deadline for obtaining board certification and also length of the retention period. If your resident's disability lasts longer than this extension, she normally would be terminated, just like any other employee subject to long-term disability. But what about her repayment obligation? Should she still owe you for the residency expenses you advanced? If you're tough you might say yes. If you're nicer you might want to forgive your disabled resident's repayment obligation in whole or in part. (Note that you might be able to insure against this risk.)

7.2. What happens if you terminate your resident before the end of the retention period? If you terminate for the usual "for good cause" reasons, then the resident should still repay you for the residency expenses you advanced. In this regard, the residency provisions should allow you to terminate your resident "for good cause" if she fails to become board-certified by a specified date.

But if you terminate your resident at your discretion, i.e., for any reason other than "for good cause", then the provisions should extinguish your resident's obligation to repay you for the residency expenses.

If your resident leaves before the end of the retention period she will owe you the residency expenses you advanced. That is after all the whole point of having retention provisions in the first place. But heads up: a savvy resident will require the provisions to address what happens if she terminates her residency agreement because of your breach of that agreement.

8. Retention Bonus. If you wish to motivate your resident with a carrot in addition to the stick, the residency provisions can provide that you will pay your resident a specified bonus if she stays through a specified date (which need not coincide with the end of the retention period, and could even be paid periodically in installments). As with your resident's obligation to repay residency expenses, the bonus provisions will need to deal with disability and early termination (either implicitly or explicitly).

9. Residencies as CLE. Residency programs at veterinary schools or other institutions can constitute a valuable educational resource for your practice. Accordingly, do not forget to require your resident to provide copies of all interesting residency documents and give your practice periodic presentations of residency activities.

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Like many things in life, residency provisions are simple in concept but complex in implementation. You will need to invest some time and effort, and incur some expense in preparing a proper residency agreement. Accordingly, it makes sense to temporarily employ your future resident at your practice *before* committing to any residency obligation---just to make sure that she is worth the investment.