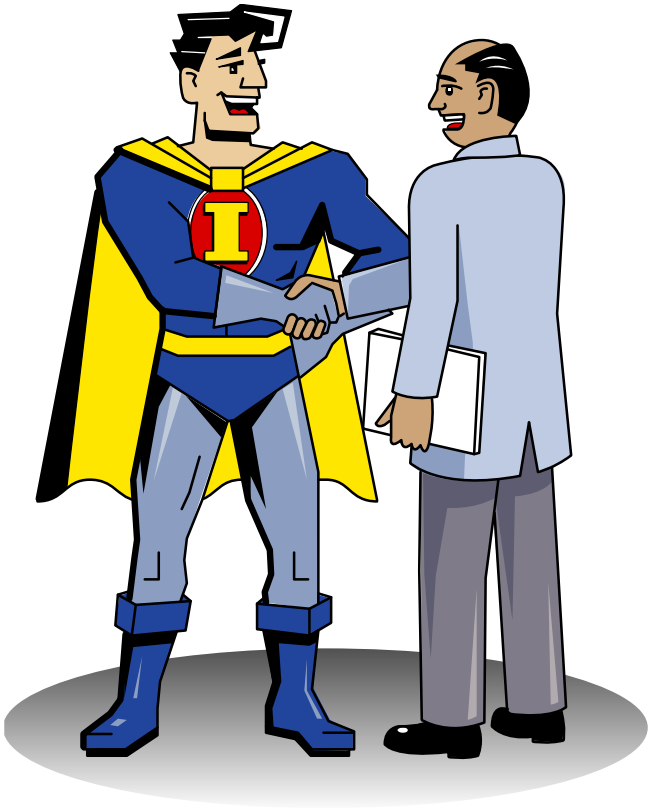
Complex Fair Market Value Evaluation

Robert A. Wade, Esq.
Partner
Krieg DeVault
4101 Edison Lakes Parkway
Suite 100
Mishawaka IN 46545
Telephone: (574) 485-2002
Fax: (574) 277-1201
bwade@kdlegal.com



Overview

- Fair market value/commercial reasonableness defined
- Benchmark data
- Compensation stacking
- On-call compensation
- Application of commercial reasonableness
- Productivity compensation
- Mid-level providers
- Hospital-based services
- Fair market value issues in real estate
- Timeshare leasing arrangements

Fair Market Value and Commercial Reasonableness are important factors in:

- Anti-Kickback Statute
- Stark Act
- Intermediate Sanctions

Anti-Kickback Statute (42 U.S.C. § 1320a-7b)

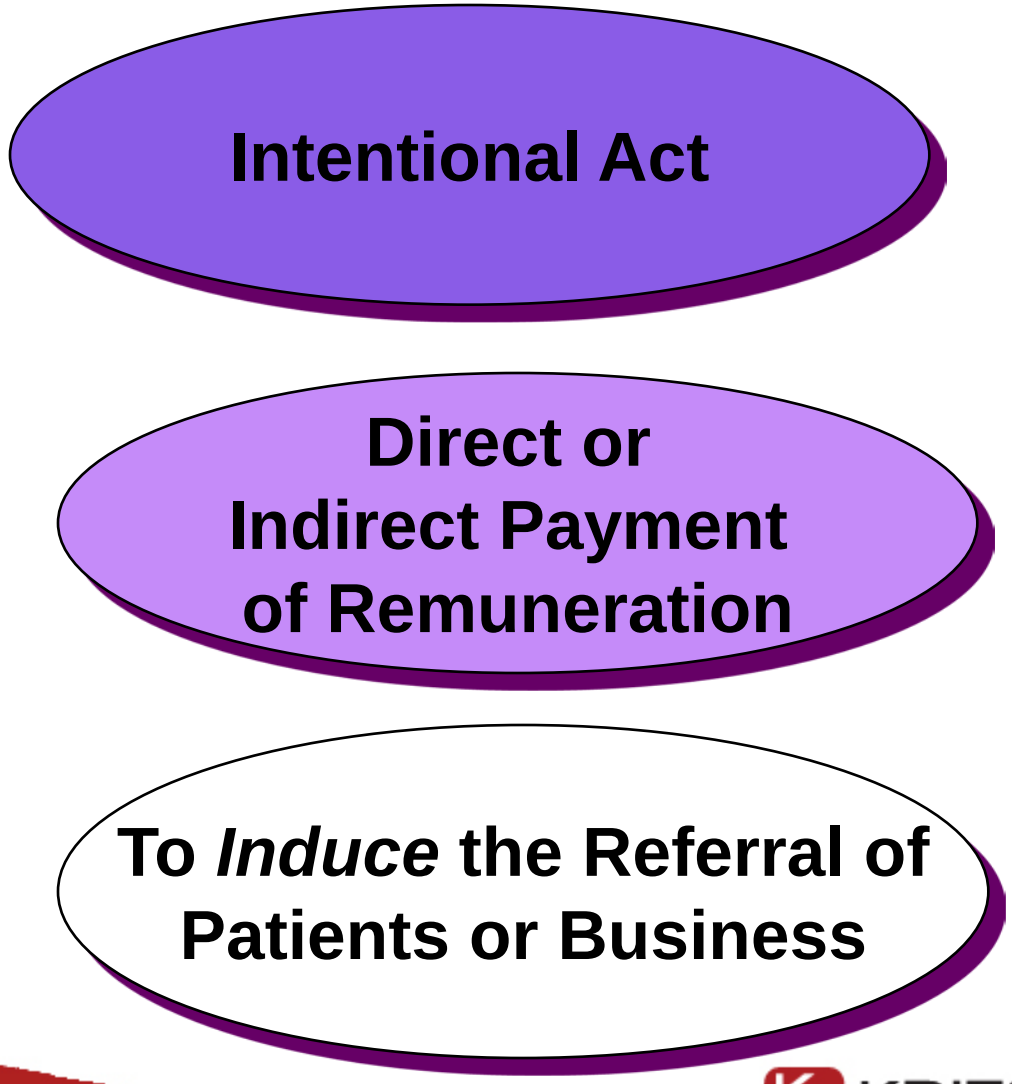
- Offer, pay, solicit, or receive remuneration;
- Directly or indirectly;
- In cash or in kind;
- In exchange for:
  - Referring an individual; or
  - Furnishing or arranging for a good or service; and
- Payment may be made by Medicare or Medicaid.

What Is Remuneration?

Extremely Broad Scope, whether in cash or in kind, and whether made directly or indirectly, including:

- Kickbacks;
- Bribes;
- Rebates;
- Gifts;
- Above or below market rent or lease payments;
- Discounts;
- Furnishing of supplies, services or equipment either free, above or below market;
- Above or below market credit arrangements; and
- Waivers of payments due.

Three Necessary Elements

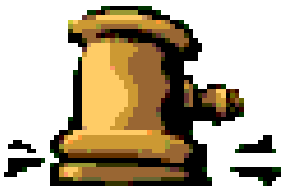


PENALTY


Fined
not more than $25,000
or
imprisoned for not
more than
five (5) years
or both

Stark Act
42 U.S.C. § 1395 nn

- Under the Stark Act, a physician is prohibited from making a *referral*:
  - to an *entity*;
  - for the furnishing of a *designated health service*;
  - for which payment may be made under Medicare or Medicaid;
  - if the *physician* (or an immediate family member);
  - has a *financial relationship* with the entity.



Stark Act
42 U.S.C. § 1395 nn

Stark Exceptions Requiring Fair Market Value/Commercial Reasonableness:

- Personal Service Arrangements
- Rental of Office Space
- Rental of Equipment
- Employment
- Isolated Transactions
- Fair Market Value
- Indirect Compensation Arrangement

Terms of exception	Group practice physicians [1877(h)(4); 411.352]	Bona Fide employment [1877(e)(2); 411.357(c)]	Personal service arrangements [1877(e)(3); 411.357(d)]	Fair market value [411.357(1)]	Academic medical centers [411.355(e)]
Must compensation be "fair market value"?	No	Yes—1877(e)(2)(B)(i)	Yes—1877(e)(3)(A)(v).	Yes—411.357(1)(3)	Yes—411.355(e)(1)(ii).
Must compensation be "set in advance"?	No	No	Yes—1877(e)(3)(A)(v).	Yes—411.357(1)(3)	Yes—411.355(e)(1)(ii).
Scope of "volume or value" restriction.	DHS referrals—1877(h)(4)(A)(iv).	DHS referrals—1877(e)(2)(B)(ii).	DHS referrals or other business—1877(e)(3)(A)(v).	DHS referrals or other business—411.357(1)(3).	DHS referrals or other business—411.355(e)(1)(ii).
Scope of productivity bonuses allowed.	Personally performed services and "incident to", plus indirect—1877(h)(4)(B)(i).	Personally performed services—1877(e)(2).	Personally performed services—411.351 ("referral") and 411.354(d)(3).	Personally performed services—411.351 ("referral") and 411.354(d)(3).	Personally performed services—411.351 ("referral") and 411.354(d)(3).
Are overall profit shares allowed?	Yes—1877(h)(4)(B)(i)	No	No	No	No.
Written agreement required?	No	No	Yes, minimum 1 year term.	Yes (except for employment), no minimum term.	Yes, written agreement(s) or other document(s).

Terms of exception	Group practice physicians [1877(h)(4); 411.352]	Bona Fide employment [1877(e)(2); 411.357(c)]	Personal service arrangements [1877(e)(3); 411.357(d)]	Fair market value [411.357(1)]	Academic medical centers [411.355(e)]
Physician incentive plan (PIP) exception for services to plan enrollees?	No, but risk-sharing arrangement exception at 411.357(n) may apply.	No, but risk-sharing arrangement exception at 411.357(n) may apply.	Yes, and risk-sharing arrangement exception at 411.357 may also apply.	No, but risk-sharing arrangement exception at 411.357(n) may apply.	No, but risk sharing arrangement exception at 411.357(n) may apply.

WHAT IS FAIR MARKET VALUE?

"What do you mean by FMV?"

- In the healthcare context, there are essentially 3 basic views on the meaning of FMV:
  - "Person on the street" perspective
  - Professional appraisal perspective
  - Legal/regulatory perspective
- Unfortunately, these 3 basic views frequently conflict.
- Parties can get "dazed and confused" when these 3 competing views meet to complete a transaction.

"The Street" View of FMV

- "What everyone is getting paid in the market"
- "What the hospital down the street is paying"
- "Incremental cost plus a profit margin"
- "What's in a survey book"
- "What it's worth to one party to the transaction"

Professional Appraisal View of FMV

"The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under a compulsion to buy or sell and when both have reasonable knowledge of the relevant facts."

(International Glossary of Business Valuation Terms)

Professional Appraisal View of FMV

- Based on the “hypothetical-typical” buyer concept
- FMV contrasts with investment value or strategic value
- Determination of FMV is based on 3 approaches to value:
  - Cost
  - Income
  - Market
- Formal body of knowledge and professional standards governing the appraisal practice for real estate and business valuation (“BV”)
- No current body of knowledge or standards for compensation valuation (“CV”)

Legal/Regulatory View of Fair Market Value

According to the Stark Act, ***fair market value*** is "the value in arm's-length transactions, consistent with the general market value."

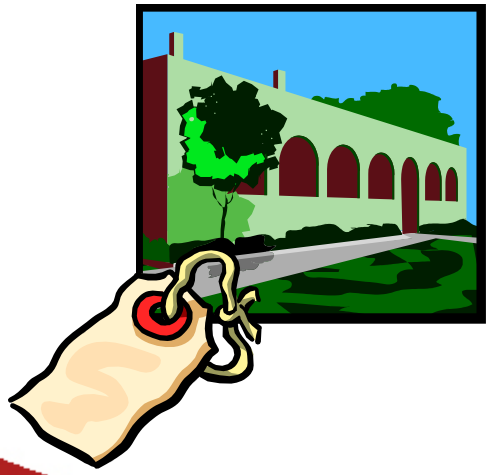
Legal/Regulatory View of Fair Market Value

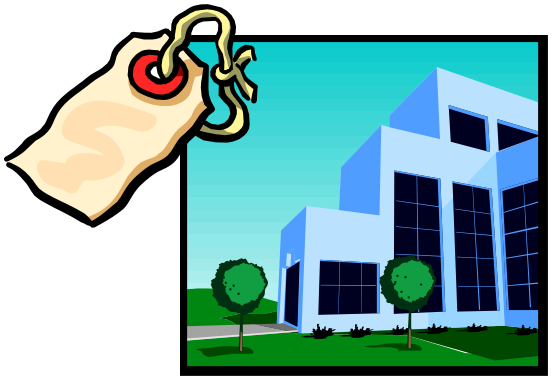
"General Market Value" means the price that an ***asset*** would bring as a result of *bona fide* bargaining between well-informed buyers and sellers who are not otherwise in a position to generate business for the other party, or the ***compensation*** that would be included in a service agreement as a result of *bona fide* bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party, on the date of acquisition of the asset or at the time of the service agreement.

42 C.F.R. § 411.351

Legal/Regulatory View of Fair Market Value

The Stark Act also defines ***Fair Market Value*** as the market price at which bona fide sales have been consummated for like type assets in a particular market.





Legal/Regulatory View of Fair Market Value

For real estate, the Stark Act states that **fair market value** is "the value of rental property for general commercial purposes (not taking into account its intended use). In the case of a lease of space, this value may not be adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor when the lessor is a potential source of patient referrals to the lessee."

Legal/Regulatory View of Fair Market Value

A Fair Market Value Safe Harbor for ***hourly rates*** was developed under Stark in the Phase II regulations.

Safe harbor deleted in Phase III regulation. However, OIG stated that safe harbor methodology is still a prudent documentation process.

Fair Market Value
Safe Harbor Deleted

An ***hourly rate*** is deemed to be fair market value if it meets one of the following two tests:

1) Hourly rate is less than or equal to the average hourly rate for emergency room physician services in the market provided there are at least three hospitals providing emergency room services in the market.

Fair Market Value
Safe Harbor Deleted

An ***hourly rate*** is fair market value if it meets one of the following two tests:

2) Hourly rate is determined by averaging the 50 percentile national compensation level with the same physician specialty in at least four of the following survey, and dividing by 2000.

- Sullivan, Cotter & Associates, Inc. - Physician Compensation and Productivity Survey
- Hay Group - Physician's Compensation Survey
- Hospital and Health Care Compensation Services - Physician Salary Survey Report
- Medical Group Management Association (MGMA) - Physician Compensation and Productivity Survey
- ECS Watson Wyatt - Hospital and Health Care Compensation Report
- William M. Mercer - Integrated Health Networks Compensation Survey

Legal/Regulatory View of FMV

- Stark regulations state that the definition of FMV "is qualified in ways that do not necessarily comport with the usage of the term in standard valuation techniques and methodologies."
- *Stark example:*
  Exclusion of market comparables between parties in position to refer
- *Stark example:*
  FMV can be established by "any method that is commercially reasonable."
- OIG Anti-kickback statute example:
  Footnote 5 to Advisory Opinion 09-09 cautioning the use of the Discounted Cash Flow (DCF) method for an ASC valuation

Avoid the FMV Definition Pitfall

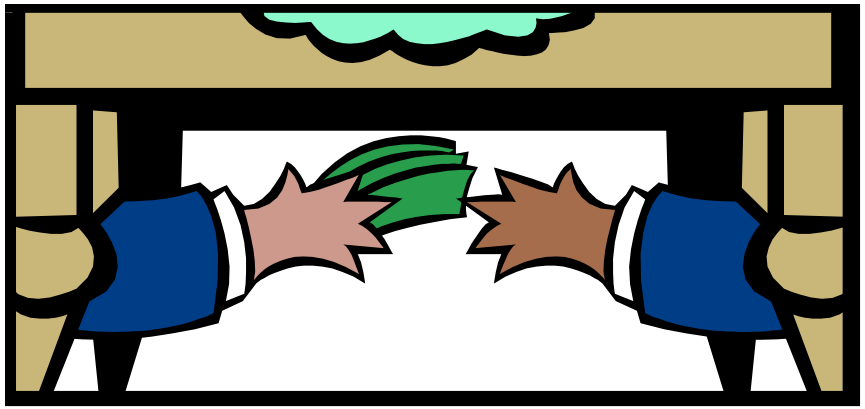
- The “Street” perspective of FMV is generally not reliable for healthcare regulatory purposes but may provide useful information.
- Regulatory definition of FMV may limit or qualify FMV methods used in professional appraisal practice.
- FMV as determined under professional appraisal standards may be more rigorous than the regulatory requirements.

Avoid the FMV Definition Pitfall

- Learn to identify and navigate through the different views of FMV as they arise in negotiating transactions and compliance reviews.
- Recognize that appraisal professionals do not give regulatory advice, but only their opinion as to the determination of FMV, which may or may not take into account regulatory considerations.

What Is Commercially Reasonable?

Many of the exceptions under the Stark Act require the payment to "be commercially reasonable even no referrals were made" between the parties.



What Is Commercially Reasonable?

To be commercially reasonable, both the ***SERVICES*** and ***PAYMENT*** must be commercially reasonable.

What Is Commercially Reasonable?

The following services may not be commercially reasonable:

- Two medical directors over a department when only one is needed.
- Paying the physician for questionable consulting services.
- Renting a piece of equipment full-time when only used once a month (assuming rental for one day is less than full-time rental).
- Purchase of physician's medical office building with no intention to use building.

Benchmark Data

Typical third party surveys include:

- Sullivan, Cotter & Associates, Inc. - Physician Compensation and Productivity Survey;
- HayGroup - Physicians Compensation Survey;
- Hospital and Healthcare Compensation Service - Physician Salary Survey Report;
- Medical Group Management Association - Physician Compensation and Productivity Survey;
- ECS Watson Wyatt - Hospital and Health Care Management Compensation Report
- William M. Mercer - Integrated Health Networks Compensation Survey

Table 1: Physician Compensation

	Phys	Med Pracs	Mean	Std. Dev.	25th %tile	Median	75th %tile	90th %tile
Allergy/Immunology	159	80	$312,268	$141,606	$213,175	$267,735	$379,908	$516,288
Anesthesiology	3,259	166	$419,596	$128,983	$338,287	$423,657	$496,769	$571,819
Anesthesiology: Pain Management	164	54	$488,836	$213,909	$387,128	$401,611	$524,879	$859,777
Anesthesiology: Pediatric	55	6	$498,376	$151,103	$404,682	$479,085	$668,229	$697,387
Cardiology: Electrophysiology	246	104	$522,984	$189,263	$395,874	$490,386	$607,709	$777,461
Cardiology: Invasive	503	133	$491,291	$200,880	$362,907	$457,310	$600,625	$712,764
Cardiology: Invasive-Interventional	669	150	$537,624	$220,555	$389,211	$497,500	$639,965	$811,697
Cardiology: Noninvasive	733	160	$435,267	$187,285	$306,000	$421,377	$536,021	$637,929
Critical Care: Intensivist	85	30	$299,043	$108,636	$230,073	$281,773	$338,230	$454,345
Dentistry	72	16	$190,860	$61,123	$142,787	$179,328	$243,410	$276,443
Dermatology	312	124	$437,157	$207,895	$281,883	$385,088	$566,034	$744,785
Dermatology: Dermatopathology	7	5	*	*	*	*	*	*
Dermatology: Mohs Surgery	34	26	$674,454	$246,705	$475,491	$602,016	$845,444	$1,105,893
Emergency Medicine	928	73	$280,260	$90,749	$225,028	$262,475	$332,501	$398,497
Endocrinology/Metabolism	339	154	$224,580	$87,554	$172,954	$206,340	$256,085	$315,929
Family Practice (with OB)	926	155	$217,089	$74,567	$166,173	$202,528	$251,078	$320,655
Family Practice (without OB)	5,524	612	$201,512	$80,445	$151,207	$183,999	$233,948	$297,760
FP: Ambulatory Only (No Inpatient Work)	471	66	$185,455	$61,383	$144,147	$170,000	$211,220	$270,851
Family Practice: Sports Medicine	71	38	$252,636	$134,502	$173,431	$222,000	$268,030	$364,589
Gastroenterology	936	209	$496,139	$236,292	$343,708	$465,509	$610,118	$777,340
Gastroenterology: Hepatology	12	8	$287,529	$78,134	$222,509	$261,626	$344,343	$435,817
Genetics	11	8	$161,240	$38,441	$134,167	$162,559	$195,069	$209,741
Geriatrics	95	46	$194,634	$63,186	$150,000	$179,950	$231,747	$283,134
Hematology/Oncology	608	142	$433,745	$225,896	$277,886	$367,564	$522,247	$783,651
Hematology/Oncology: Oncology (Only)	63	25	$368,881	$145,767	$264,833	$400,000	$445,617	$545,910
Hospice/Palliative Care	31	13	$174,531	$40,771	$151,228	$170,593	$189,035	$227,818
Hospitalist: Family Practice	116	50	$219,930	$44,934	$193,763	$218,066	$249,148	$273,208
Hospitalist: Internal Medicine	3,140	390	$225,544	$68,320	$187,423	$215,000	$249,208	$299,116
Hospitalist: IM-Pediatric	38	18	$194,994	$60,378	$174,338	$190,000	$230,235	$285,486
Hospitalist: Pediatric	156	37	$168,605	$48,029	$136,171	$160,038	$188,534	$229,112
Infectious Disease	197	86	$221,358	$82,864	$169,614	$201,543	$264,133	$347,782
Internal Medicine: General	3,868	456	$214,906	$83,982	$160,731	$197,080	$250,000	$316,038
IM: Ambulatory Only (No Inpatient Work)	246	36	$212,365	$66,070	$166,036	$193,798	$251,695	$316,120
Internal Med: Pediatric	135	47	$220,884	$84,630	$160,909	$201,125	$258,094	$336,320
Nephrology	273	79	$319,598	$152,799	$218,990	$290,986	$390,000	$487,581
Neurology	683	201	$268,526	$130,989	$193,813	$237,918	$308,370	$413,390
Obstetrics/Gynecology: General	1,745	320	$311,427	$127,388	$224,515	$282,645	$371,989	$492,321
OB/GYN: Gynecology (Only)	191	94	$247,353	$112,896	$170,321	$229,879	$298,289	$402,204
OB/GYN: Gynecological Oncology	78	34	$398,159	$152,716	$303,942	$392,189	$466,733	$604,799
OB/GYN: Maternal & Fetal Med	95	39	$422,750	$160,525	$315,502	$402,264	$548,000	$640,961
OB/GYN: Reproductive Endocrinology	18	12	$339,602	$103,528	$276,067	$336,812	$389,244	$509,105
OB/GYN: Urogynecology	27	20	$323,207	$135,812	$248,637	$294,053	$362,754	$556,820
Occupational Medicine	101	67	$219,885	$100,279	$163,742	$195,920	$251,012	$341,666
Ophthalmology	430	126	$376,943	$190,441	$250,671	$338,208	$456,444	$631,366
Ophthalmology: Corneal & Ref Surgery	21	13	$423,924	$139,629	$308,053	$386,730	$542,335	$652,947
Ophthalmology: Pediatric	35	22	$304,931	$112,382	$231,619	$297,251	$353,733	$457,173
Ophthalmology: Retina	44	30	$619,114	$243,792	$435,461	$578,753	$772,422	$1,002,727
Orthopedic (Nonsurgical)	42	27	$235,887	$128,609	$144,687	$194,957	$316,314	$466,051
Orthopedic Surgery: General	928	248	$524,259	$272,148	$345,065	$473,770	$653,841	$876,427
Orthopedic Surgery: Foot & Ankle	72	52	$518,463	$239,257	$342,237	$453,543	$628,554	$917,364
Orthopedic Surgery: Hand	141	76	$544,106	$268,389	$364,990	$486,717	$619,662	$866,311
Orthopedic Surgery: Hip & Joint	121	59	$597,834	$249,435	$432,606	$564,139	$695,489	$879,191
Orthopedic Surgery: Pediatric	52	23	$468,798	$166,153	$338,390	$485,283	$589,684	$655,899
Orthopedic Surgery: Spine	129	73	$710,055	$381,138	$429,003	$613,709	$937,464	$1,201,400
Orthopedic Surgery: Trauma	37	22	$592,536	$214,184	$437,764	$526,501	$636,308	$920,858
Orthopedic Surgery: Sports Med	187	80	$653,642	$290,781	$442,742	$599,759	$802,497	$1,073,486
Otorhinolaryngology	525	174	$428,530	$219,072	$281,059	$370,534	$537,980	$725,422
Otorhinolaryngology: Pediatric	18	10	$317,982	$148,699	$201,883	$295,391	$425,001	$588,530


Captain Integrity℠
I want more money or I won't be your employed physician!
But that would be above fair market value.
I don't care! If you don't pay me what I want, I will never refer to you again!
All payments to physicians must be at fair market value.
Fair market value should be well documented and be contained in a written contract.
©RWADE

Benchmark Data
Data Example 1:

- Single Tier Model with a Guaranteed Cash Compensation of $175,000 with additional incentive compensation of $40 per RVU above 4,500 RVUs work.
- Base Compensation, RVU production and compensation per RVU all benchmarked at 50th percentile.

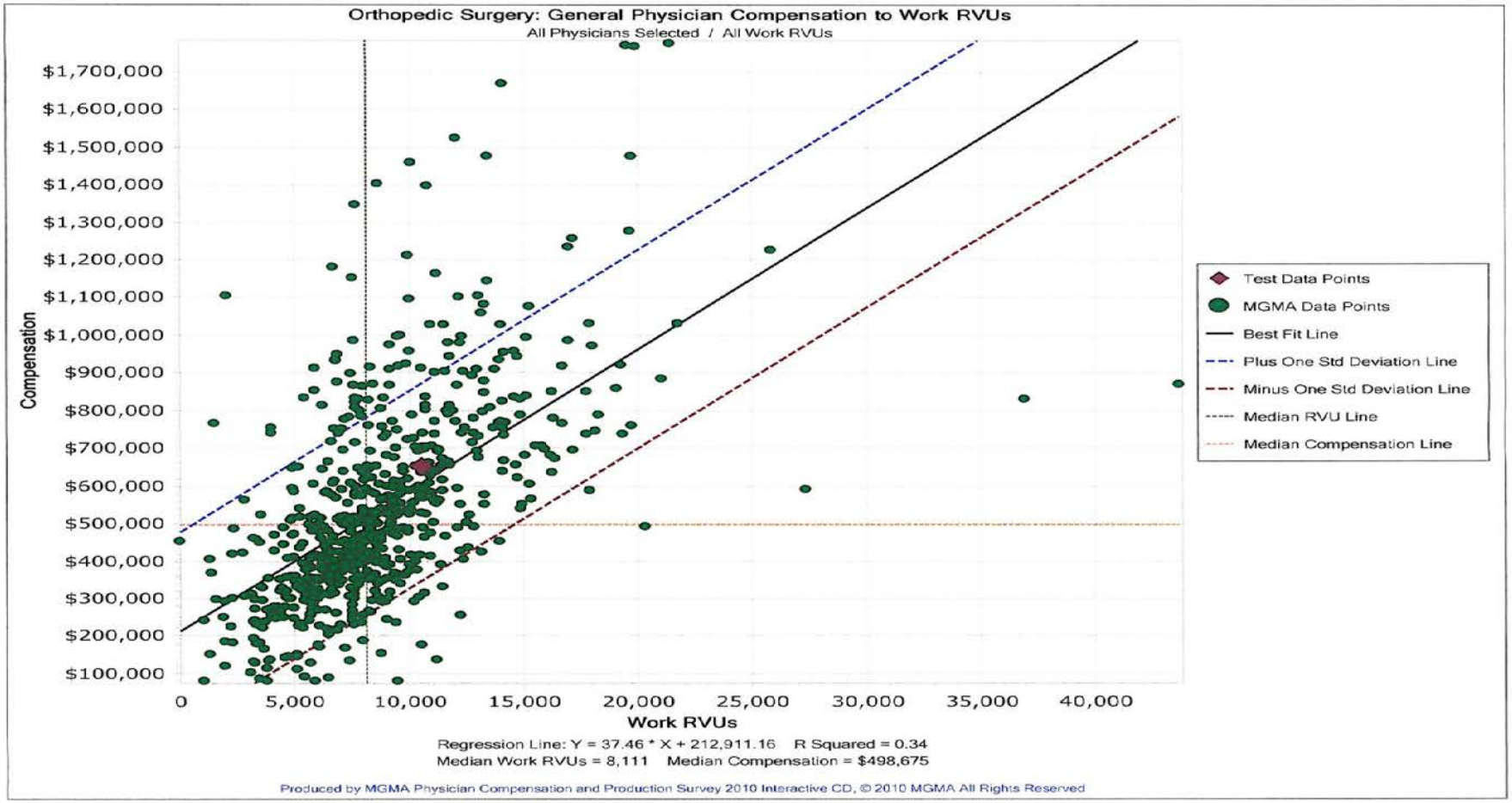
Percentile	Cash Compensation	RVUs	Compensation per RVUs
25	125,000	3,500	$35
50	175,000	4,500	$40
75	225,000	5,500	$41
90	300,000	6,500	$46

Benchmark Data
Data Example 2:

- Multiple Tiered Model
- 100% RVU Production

RVUs worked	Compensation per RVU
4,500 and below	$30
4,501 – 5,500	$35
5,501 – 6,500	$40
6,501 and above	$42

Benchmark Data



Benchmark Data

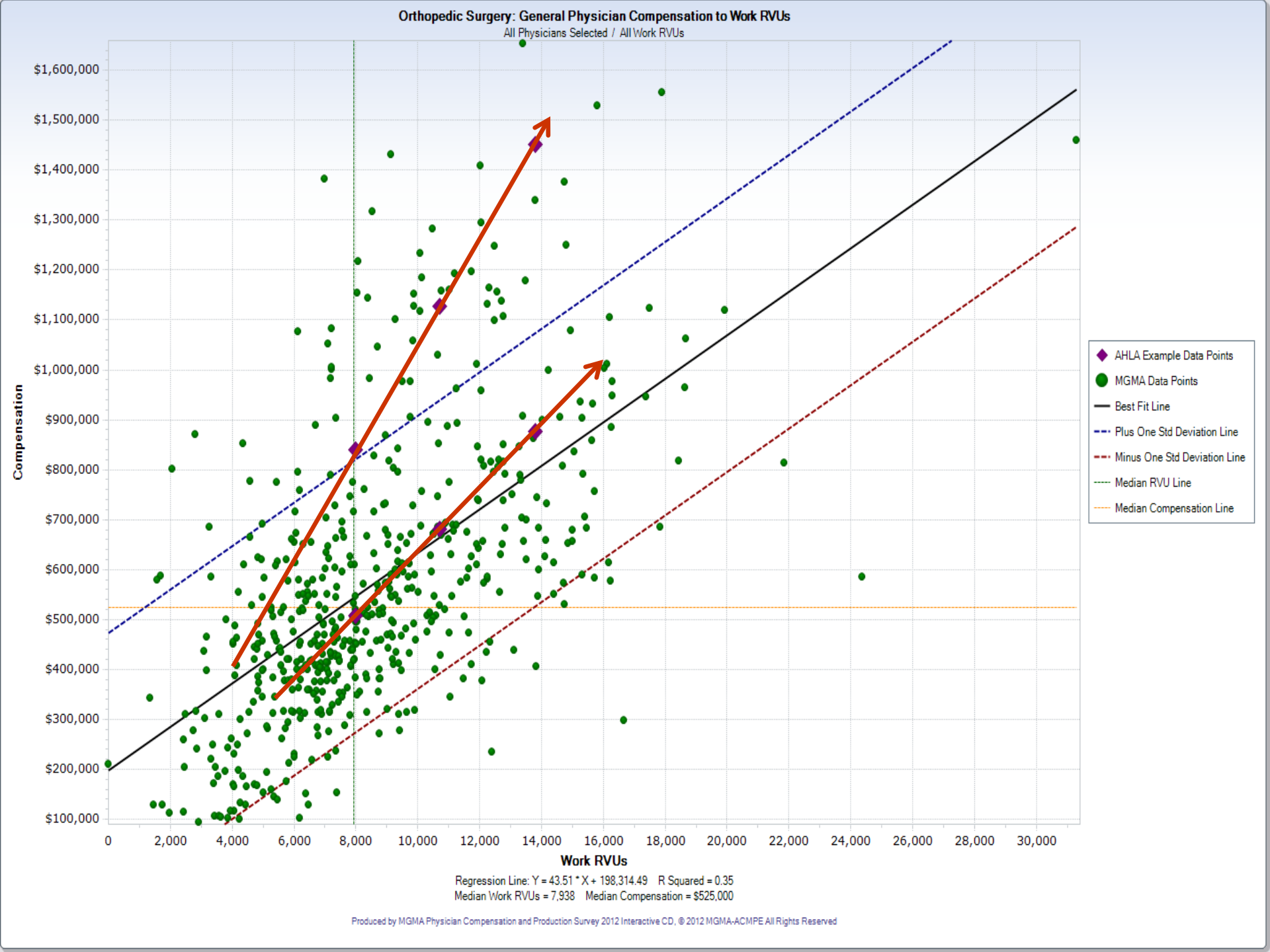
Be careful with the compensation per wRVU benchmark data.

- 90th percentile physicians, based upon productivity, do not earn compensation per wRVU at the 90th percentile.
- For most specialties, compensation per wRVU should remain approximately at the 50th percentile.

Benchmark Data

Specialty: Orthopedic Surgery			
	50th	**75th**	**90th**
wRVUs*	7,981	10,723	13,795
x $63.54(50th)*	$507,113	$681,339	$876,534
x $105.18 (90th) *	$839,442	$1,127,845	$1,450,958
Benchmark Range*	$520,119	$682,541	$943,059

* Based upon 2012 Physician Compensation and Production Survey from the Medical Group Management Association


Orthopedic Surgery: General Physician Compensation to Work RVUs
All Physicians Selected / All Work RVUs
Compensation
$1,600,000
$1,500,000
$1,400,000
$1,300,000
$1,200,000
$1,100,000
$1,000,000
$900,000
$800,000
$700,000
$600,000
$500,000
$400,000
$300,000
$200,000
$100,000
0
2,000
4,000
6,000
8,000
10,000
12,000
14,000
16,000
18,000
20,000
22,000
24,000
26,000
28,000
30,000
Work RVUs
AHLA Example Data Points
MGMA Data Points
Best Fit Line
Plus One Std Deviation Line
Minus One Std Deviation Line
Median RVU Line
Median Compensation Line
Regression Line: Y = 43.51 * X + 198,314.49 R Squared = 0.35
Median Work RVUs = 7,938 Median Compensation = $525,000
Produced by MGMA Physician Compensation and Production Survey 2012 Interactive CD, © 2012 MGMA-ACMPE All Rights Reserved

Productivity-Based Incentive Measures

The most commonly used productivity measures, in order, are the following: wRVUs, collections, net income, and patient visits.[1]

[1] 2011 Physician Compensation and Productivity Survey by Sullivan, Cotter & Associates, Inc. Of those that use productivity based incentive measures, 74% use work RUVs.

Exceed Benchmark Data Range

Fair market value is based upon the specific financial arrangement being entered into by the parties. Factors that can cause compensation to exceed 90th percentile include:

- Extremely high productivity
- High demand/low supply for specialty
- Thought leader in specialty
- Historic compensation above 90th percentile for *personally performed services* (do not include revenue from ancillary services or midlevel providers)
- Super sub-specialization or multi-specialty
- Nationally renown program

Compensation Stacking

- Aggregate compensation versus each component of compensation.
- Benchmark data includes all sources of compensation from respondents
- When analyzing fair market value compensation, understand all sources of compensation.
- Can one physician really be more than a 1.0 FTE?
- Focus on number of hours worked by physician.

Employment

Research

On-Call

Medical Staff Officer

Medical Directorship


Captain Integrity℠
Doctor, we can pay you $500 per hour.
That's very generous but, is that fair market value?
I think so.
I want to be sure. I understand that we could get into trouble if you pay me too much.
That is right! It is important to document that all payments made to physicians are of fair market value.
© RWADE

On-Call Compensation Arrangement Defined

When commercially reasonable factors exist to compensate a physician to provide either restricted or unrestricted call coverage, fair market value compensation paid to a physician ***to be immediately available*** by phone or page for consultation or ***to personally come to the hospital*** to treat a patient at the request of the hospital. The fair market value compensation is paid for the ***hospital's access*** to the physician requiring the physician to remain in close proximity to the hospital and be physically and mentally capable of providing direct patient care (including refraining from drinking alcohol or taking any medication that would inhibit the physician's ability to treat patients).

Key On-Call Compliance Issues

1. Is establishing on-call compensation commercially reasonable?
   - History of on-call services without compensation.
   - Frequency of call.
   - Number of physicians participating in call rotation.
   - Refusal of physicians to provide uncompensated call.
   - Competing hospitals providing call compensation.
   - Compensating targeted specialties (i.e., trauma) vs. compensating all specialties.

Key On-Call Compliance Issues

2. Documentation supporting on-call services.
   - Medical staff call schedule.
   - Documentation that physician responded when called by the hospital.
   - Physician certification of call services.
3. Physician providing call services at multiple unrelated hospitals.
   - Backup plan implemented when physician providing direct care services at one hospital, but called by second hospital.
   - Impact on fair market value compensation.
   - Possible certification by physician in contract that compensation for call services is not being paid by multiple hospitals.

Key On-Call Compliance Issues

4. When to compensate employed physicians?
   - Everyday?
   - Only when employee provides a disproportionate amount of call (i.e., more than six days).
5. How to determine fair market value compensation.
   - Benchmark resources.
   - Market influences.
   - Factors to consider when applying compensation to benchmark range (25th, 50th, 75th, 90th percentiles).
   - Available alternatives.

Key On-Call Compliance Issues

7. Selection of physician/group to compensate for call coverage.

   - High referral sources.
   - Every physician in specialty.
   - Rotate by individual physicians versus physician groups (decreases favoritism to larger groups).

8. Who retains reimbursement for personally performed services when physician is paid to be on call?
   - On call physician?
   - Hospital?
   - Can hospital guarantee a minimum amount of reimbursement when called in?

Key On-Call Compliance Issues

9. Because on call compensation is a “financial arrangement” under Stark an applicable exception must be met.
   - Available exceptions: Personal service arrangement, fair market value, or employment.
   - Unless physician is an employee, the arrangement must be in writing and signed by the parties for a term of at least 1 year.

ON-CALL COVERAGE
Pay Practices

On-call rates are reported based upon whether the physician provided ***restricted*** or ***unrestricted*** call coverage

- ***Restricted*** call indicates that the physician is ***required*** to stay on the premises

- ***Unrestricted*** call indicates that the physician is ***not required*** to stay on the premises

Pay Practices

	Restricted On-Call				Unrestricted On-Call			
	No. of Respon-dents	25th %	Median	75th %	No. of Respon-dents	25th %	Median	75th %
Maternal Fetal Medicine	2	isd	isd	isd	7	$23.50	$31.67	$57.08
Neonatology	7	$30.25	$77.17	$85.62	9	$23.80	$33.33	$39.62
Neurology	2	isd	isd	isd	34	$11.98	$16.72	$25.00
Neurosurgery	0	isd	isd	isd	72	$33.27	$41.67	$62.50
Obstetrics/Gynecology	16	$71.05	$84.41	$100.00	36	$ 11.41	$20.83	$29.17
Ophthalmology	0	isd	isd	isd	19	$ 7.44	$12.50	$20.83
Oral Maxillofacial Surgery	0	isd	isd	isd	21	$11.46	$16.67	$28.34
Orthopedic Surgery	0	isd	isd	isd	79	$27.08	$39.58	$54.17

isd = insufficient data (reported only for 5 or more respondents)

Source: Sullivan Cotter & Associates

ON-CALL COVERAGE

If on call physician needs to be available by pager/phone, and no third party survey is available, either of the following two approaches may be used:

- Find a specialty that does have a third party survey. Determine on call hourly rate and determine percentage of normal hourly rate.

  - ***Example:*** Third Party Survey $150 FMV hourly rate and $20 on-call rate = 13.3%
    Your on-call issue: $200 FMV hourly rate x 13.3% = 27/hour

  - Determine what market typically pay nurses as a percentage of normal hourly rate to be on call.

    - If nurses in market are typically paid $2 to be available by pager and normal hourly rate is $16, nurses are paid 12.5% of their normal hourly rate to be on call.

    - If a physician's normal hourly rate is $150, then it may be commercially reasonable to pay the physician $18.75 to be on call (12.5% of $150).

Commercial Reasonableness

- Compensation consistent with services rendered?

  Example: Using clinical benchmark data for medical directorship if i) a ***physician*** of a ii) ***particular specialty*** is required.

- Business risk should not shift from physician to hospital unless hospital has medical/business need.

  Example: Hospital master leasing medical office building owned by physicians.

- Using post-acquisition/employment justification for higher compensation.

  Example: Provider-based practice post-acquisition.

- Are loss employment arrangements commercially reasonable? Consider hospital expenses, payer mix, benefits, etc.


Captain Integrity℠
Where is Dr. Bennett?
He's at lunch.
Doesn't this procedure require that he be present?
Yes, but I know what I'm doing and Dr. Bennett is too busy.
Physician Supervision requirements have to be met.
A review of this practice is required.
© RWADE

Mid-Level Provider Supervision

Physicians *can* be compensated for supervising mid-level providers. Some states require higher levels of supervisions for physician assistants as opposed to nurse practitioners. Focus is on compensating physician for act of supervision, not the services rendered by the mid-level provider. A stipend can be paid based upon estimated number of hours the physician will spend supervising mid-level provider.

Mid-Level Provider Supervision

36% of organizations compensate physicians for mid-level provider supervision.[1] 59% provide an annual stipend, 36% pay a percentage of the mid-level provider's productivity, and 18% assign a phantom wRVU as proxy for supervision. The annual median and average stipend was $9,500 and $10,419, respectively.

[1] Based upon 2011 Physician Compensation and Productivity Survey from Sullivan, Cotter & Associates, Inc.

wRVU Credit for Mid-Level Provider Supervision Example

If a physician earns $300,000 generating 7,000 wRVUs for personally performed services working 2,000 hours annually, assuming the physician will spend 100 additional hours supervising a mid-level provider who has historically generated 2,000 wRVUs, the physician can be credited .1754 wRVUs for each wRVU generated by the mid-level provider.

Physician's hourly rate: $300,000 ÷ 2,000 hours = $150 per hour.

$150 x 100 hours = $15,000 projected stipend

Calculated compensation per wRVU: $300,000 ÷ 7,000 wRVUs = $42.86.

Projected wRVU credit: $15,000 ÷ $42.86 = 350 wRVUs

Physician versus mid-level provider ratio: 2,000 wRVUs ÷ 350 wRVUs = 5.7 wRVUS

Physician Credit: 1 wRVU ÷ 5.7 wRVUs = .1754 credit per wRVUs generated by mid-level provider

Hospital Based Services

Many hospitals pay hospital-based physicians (i.e. emergency medicine, anesthesiology, hospitalist, radiology) stipends. There is *no fair market value range for stipend payments.* Stipends can only be paid if, based upon services demanded by hospital and potential collections for such services, does not result in sufficient fair market value compensation for hospital based physicians.

Stipend Example

Fair market value compensation is $300,000 per physician and hospital requires 5.0 FTE physicians. Physician group only collects $1,200,000. Hospital may be able to pay a $300,000 annual stipend.

Calculation: $300,000 x 5 FTEs = $1,500,000 - $1,200,000 collections = $300,000.

Key: Physician group must be transparent regarding collections.

Rationale for Stipend

- Bad payor mix
- High Medicaid/charity patients
- Hospital requiring physician volume in excess of demand
- Lower patient acuity when compared with peers
- Hospital requiring overnight services


Captain Integrity℠
Doctor, we can lease office space to you at below market rates.
I thought all leases had to be at fair market value.
All leases must be at fair market value.
Below market rates cannot be offered.
©RWADE

Real Estate

Fair market value v. Commercially Reasonable: Is there a difference?

Real Estate

Fair market value: A Box is a Box is a Box. So, I can charge what the Hospital down the street charges. Right?

Real Estate

Fair market value: Is the physician paying occupancy costs that are consistent with arm's length relationships in comparable properties in local market?

Real Estate

Commercially Reasonable: **Is hospital establishing rental rates in amounts sufficient to generate positive cash flows and a rate of return consistent with i) risk and ii) other local real estate investors?**

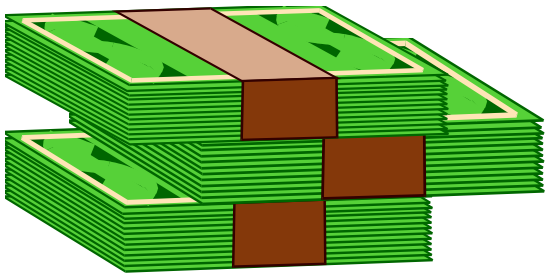
Real Estate

Commercially Reasonable: What a reasonable real estate investor will require as a rate of return.

10 %? 15%? 20%?

Real Estate

To be *commercially reasonable*, unless extenuating circumstances exist, real estate should generate a reasonable rate of return.



Real Estate

Commercially Reasonable: (Amortized Cost of Building + interest + expenses) - rent receipts = 10%+ [Market reasonable rate of return]

Real Estate

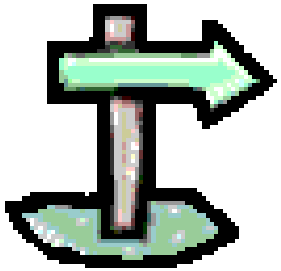
Things to consider:

- Tenant Improvements (“TI”)
- New Space (higher TIs)
- Rehab (Presumption - lower TIs)
- Standard TIs
- Enhanced TIs
  - Pay up front
  - Prorate with lease payments with interest

Real Estate

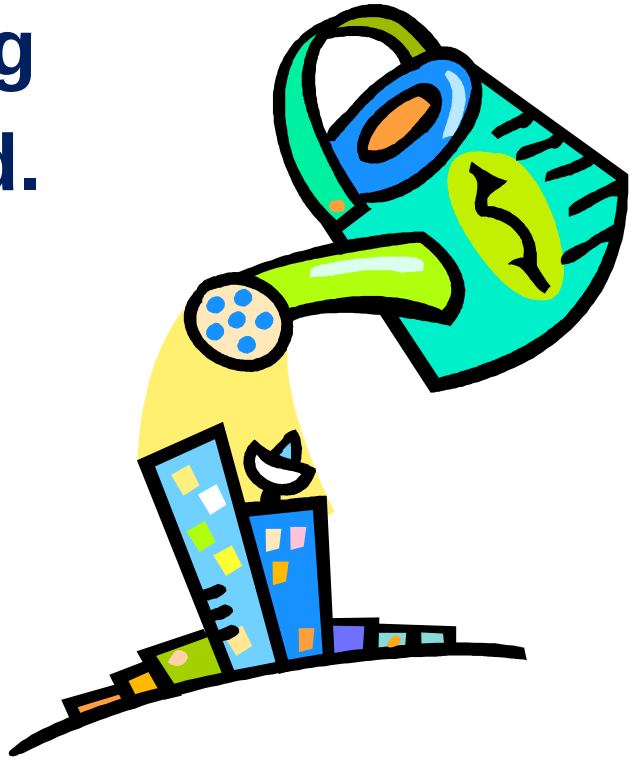
Things to consider (Continued):

- Leasing Costs
- Amenities (Parking, Security, Internet, etc.)
- Total Cost (Design, Construction, Land, Financing, HVAC, Taxes, Janitorial, Legal, etc.)



Real Estate

Quality of Building must be evaluated. Class A, B or C Building?



Real Estate
Shared Space

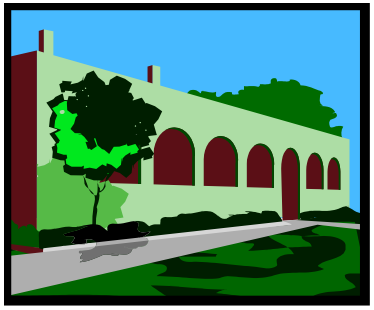
Must allocate all costs.

- Rental of space (Half or Full Day Slots)
- Vacancy Rate (Project 30% vacancy?)
- Supplies
- Utilities
- Staff (Registration, Nursing, etc.)
- Equipment

Real Estate
Shared Space (Example)

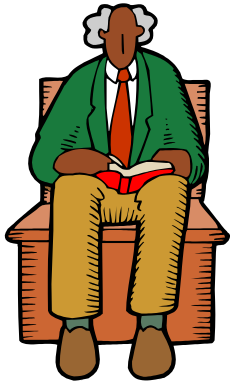
Assume the following:

- $18 gross per square foot rental (exclusive use)
- 30% projected vacancy
- 1,000 square feet in suite
- Building has 6,000 square feet, with 1,000 square feet for common area (5,000 square feet usable/leasable space)
- Suite capable of being leased in half day increments (8:00 A.M. – Noon; 1:00 P.M. – 5:00 P.M.)



Real Estate
Shared Space (Example)

- Furniture and equipment in suite determined to be leaseable at $2,000 per year using independent third party leasing company.
- Miscellaneous medical/office supplies projected to be used in suite is approximately $5,000 annually if suite leased 70% of the time.

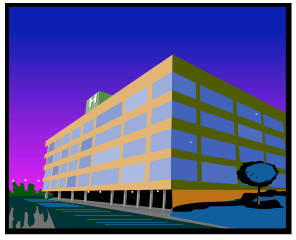


Real Estate
Shared Space (Example)

$18 (exclusive use rate) + 30% (vacancy) = $25.71 per square foot ($18 ÷ .7 = $25.71)

1,000 square feet (suite) ÷ 5,000 square feet (building not including common area) = 20% (percentage of suite's usable space in building's usable space)

1,000 square feet (common area) x 20% (suite to building) = 200 square feet (common area allocated to suite)



Real Estate
Shared Space (Example)

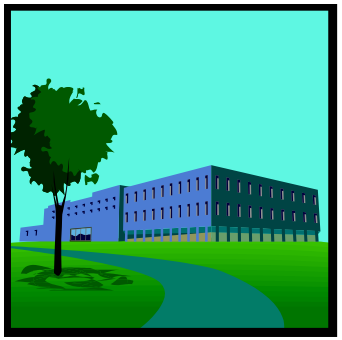
1,200 square feet (suite plus allocated common area) x $25.71 = $30,852

$30,852 + $2,000 (furniture and equipment) + $5,000 (medical/office supplies) = $37,852

$37,852 ÷ 52 (weeks) = $728 (weekly rate)

$728 ÷ 5 (business days in week) = $146 (daily rate)

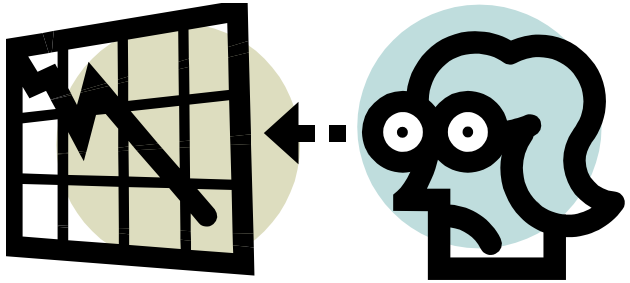
$146 ÷ 2 = $73 (half day rate)



Real Estate
Shared Space (Example)

Example becomes more complicated if:

- Part of suite is leased (as opposed to full suite)
- Staff is provided by landlord/hospital
- Specialized equipment is used
- Non-standardized supplies are used by a tenant



Questions