Physician Employment Contracting: What You Need to Know Before Signing

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"I understand what it means, I’m just saying ‘LOL’ isn’t really appropriate in a contract."
In All Seriousness …

• Contracts can be complex, complicated and tricky.

• A physician must ensure that he/she fully understands the employment agreement and the rights and obligations under that agreement.

• Executing an employment contract without understanding the details can be a mistake that may impact you financially and professionally for many years to come.
First Things First…

• Request a letter of intent before receiving the contract.
  – Letter from the hiring organization that outlines the basics of the offer: salary, job obligations, benefits, term, etc.
  – Helps ensure that what was agreed upon verbally ends up in the contract.

• Never accept a verbal offer or move based solely on a letter of intent.
Do not hesitate to negotiate!
Many young physicians sign contracts “as is” fearing they will lose a job if they negotiate.
What you agree to in a contract sets the tone for the future relationship.
What’s in a Contract?
Parties to the Agreement

- Include the precise legal names of all parties.
- Anyone who has obligations under the contract should be named.
- Specific to hospitals, hospitals frequently enter into arrangements where the hospital does not employ the physician, but instead “leases” the physician from a separate entity.
  - Effect is that the physician may end up being employed by an entity other than the hospital.
  - This requires an extra level of scrutiny and review to make sure the employing entity is actually legally and contractually responsible to the physician.
- The legal status of entity should be indicated (partnership, corporation, LLC).
- All parties/entities must sign the agreement.
Term of the Agreement

• Beginning and ending dates should be clear.

• Most agreements have two dates that need to be defined:
  – “Effective date” – day that mutual contractual obligations between the parties go into effect and become enforceable
  – “Starting date” – day that work is actually commenced
  – Effective date may be before the starting date

• Most physician employment agreements are for one to two years and will likely state the contract will automatically renew at the end of each term.

• Read the “term” section in conjunction with the “termination” section (usually later in the agreement).
Termination

• Termination clause perhaps the single most important clause in the contract.

• Close attention should be paid to the terms and conditions.

• Two methods of termination: “with cause” and “without cause.”

• Termination “with cause” provisions allow employer to terminate a physician, in the employer’s sole discretion.
  – Usually allows employer to immediately terminate if certain events occur, such as physician losing his or her medical license, license restriction or being convicted of a felony.
  – Look for long lists of “with cause” reasons.
  – Reasonable causes.
  – A good termination provision will allow for the opportunity to “cure” (where possible) any deficiencies prior to termination.
• Termination “without cause” sections are problematic.
  – Allow employer to terminate the agreement without cause on thirty or sixty days notice (or less) for ANY reason.
  – When this provision exists, the term of the contract is illusory- a one-year contract that can be terminated without cause on thirty days’ notice does not guarantee employment for a year; only guarantees that during the one-year term the physician cannot be terminated without notice.

• Usually provision that allows the physician to terminate employment with thirty or sixty days’ notice.
  – Beware of a provision that allows the employer to terminate immediately if the physician provides this notice.
  – If such a provision exists, a physician trying to do the right thing and provide sufficient notice may find they are immediately out of a job.
Section **Termination.** Notwithstanding any other provision of this Agreement, this Agreement may be terminated as follows:

(a) By **immediately and without notice**, if any of the following occur:

(i) Physician's license to practice medicine in Connecticut or Physician's registration to prescribe narcotics is suspended, revoked, restricted or involuntarily surrendered, or is "voluntarily" surrendered after Physician has been accused of violation of state or federal law or regulations by any state or federal department, agency or regulatory authority;

(ii) Physician's clinical privileges and membership on the Medical Staff of any hospital affiliated with the **are involuntarily terminated**;

(iii) Physician's malpractice insurance cannot be renewed at a standard rate or is terminated due to Physician's claims experience or Physician's errors or omissions;

(iv) Physician is suspended or excluded from any third party payment program in which **is a participating provider**; or

(v) Physician commits any felony or any other act involving dishonesty or moral turpitude. For purposes of this Agreement, the phrase "dishonesty or moral turpitude" shall mean any act or omission that implicates the honesty or integrity of Physician, and in particular, shall include any crime involving theft, deceit or fraud.
(b) By [redacted] upon thirty (30) days advance written notice provided to Physician, which termination shall be effective automatically if any of the following occur and are not cured to the reasonable satisfaction of [redacted] prior to the expiration of such thirty (30) day period:

(i) Physician's material breach of this Agreement;

(iv) Physician, in [redacted] sole judgment, engages in negligent, willful or reckless conduct that causes, or has the potential to cause, harm to the reputation or business of [redacted] any hospital or other facility that is affiliated with [redacted] or any of their respective patients or employees, provided that if Physician engages in conduct that [redacted] determines, in its exclusive discretion, causes or may cause patients, visitors or other staff of [redacted] to be at risk of harm, termination hereunder shall not be subject to the thirty (30) day cure period, and this Agreement may be terminated immediately by [redacted].
THE SALARY IS
NEGOTIABLE ... TAKE IT OR
LEAVE IT
Compensation

• Compensation arrangements are varied.

• Range from a fixed base compensation plus incentive to a purely production-based compensation formula.

• A well-designed compensation plan should:
  – Include compensation that is consistent with recognized benchmarks for the physician’s experience and specialty
  – Establish incentives that promote physician productivity and efficiency
  – Be based on objective criteria that are easily understood by the physicians
  – Promote a sharing of risk between the physician and the organization
  – Recognize different incentives for capitation and other risk-based payments versus fee-for-service
  – Provide a mechanism for performance measurement and feedback to the physician
Compensation (con’t)

• Hospital contracts:
  – Usually have complex compensation calculations based on the relative value units (RVU) of a procedure.
    • For example, in an RVU-based salary structure, if a 15-minute office visit is assigned an RVU value of 0.7, and a doctor is paid $35 per RVU, the physician will be paid approximately $24 for that encounter.
  – Targets for RVUs differ for each specialty and employment contracts may contain a “takeback” of compensation if RVU targets are not met.
  – Any takeback should be negotiated out of an agreement
  – Quality metrics are likely to be included

• Medical group contracts:
  – May contain a “buy in” clause in which after a certain time an employed physician would have the opportunity to purchase shares or options in the group as part of a partnership agreement.
  – This should be drafted and negotiated outside of the employment contract.

• Allowances for continuing medical education conferences and medical society dues (!) should be negotiated in advance and contained in the employment contract.
An indemnification clause obligates one party to compensate another party for losses or damages.

Be wary of these clauses.

For example, an employment contract with a hospital may contain an indemnification clause where the physician agrees to indemnify the hospital for over-billing/over-coding issues. If you agree, the hospital could try and make you pay Medicare for the amount overpaid.
Employment Status / Responsibilities

- Full or Part Time?
- Are you required to perform administrative or teaching duties?
- Call schedule?
- Expected work week?
- How many patients per hour?
- Reporting relationship?
- Will you have a say in hiring support staff?
Restrictive Covenants

- A covenant-not-to-compete is common in most physician contracts.
- Prevents a departing physician from competing with an employer in a specific geographic area for a specific period of time.
• Are they legal?!?

• These covenants ARE legal in Connecticut and very rarely are they struck down by a court.

• As long as a covenant is “reasonable” (and there is a very wide latitude in determining what is “reasonable) it will be enforced.

• In a state like Connecticut, where the urban areas are clustered in tight proximity, be very wary of a covenant-not-to-compete that contains a radius of even ten miles.

• This may substantially limit future employment and the boundaries of the geographic area should be very carefully analyzed to see what potential employers are implicated.
(b) Non-Competition After Termination. In the event that this Agreement and Physician's employment under this Agreement are terminated by [REDACTED] pursuant to Section 4.2(a), (b) or (e) or by Physician pursuant to Section 4.2(f), Physician agrees that, for a period of twenty-four (24) months after the date of such termination, Physician shall not engage in the practice of medicine (whether directly providing patient care or supervising the provision of patient care) in the "Restricted Area" (as defined below) with, for or on behalf of a hospital or an entity controlled by or under common control with a hospital. For purposes of this Section 1.8, the "Restricted Area" means that area comprised of one or more circle(s), each having a radius of twenty (20) miles and centered on each site at which Physician practiced medicine on twelve (12) or more days during the twelve (12) months prior to termination.
(c) Non-Solicitation After Termination. In the event that this Agreement and Physician's employment under this Agreement are terminated by either party with or without cause, Physician agrees that, for a period of twenty-four (24) months after the date of such termination, Physician shall not, directly or indirectly employ or solicit for employment any individual who was employed by [redacted] during the term of this Agreement.

(d) Construction by Court. If any part of Sections 1.8(a), 1.8(b) or 1.8(c) should be determined by a court of competent jurisdiction to be unreasonable in duration, geographic area, or scope, then this Agreement is intended to and shall extend only for such period of time, and in such area and scope and with respect to such activity, as is determined by such court to be reasonable. For example, with respect to the Restricted Area set forth in Section 1.8(b), if a court holds twenty (20) miles to be unreasonable, then nineteen (19) miles; and if not nineteen (19) miles, then eighteen (18) miles; and if not eighteen (18) miles, then seventeen (17) miles; and if not seventeen (17) miles, then sixteen (16) miles; and if not sixteen (16) miles, then fifteen (15) miles; and if not fifteen (15) miles, then fourteen (14) miles; and if not fourteen (14) miles, then thirteen (13) miles; and if not thirteen (13) miles, then twelve (12) miles; and if not twelve (12) miles, then eleven (11) miles; and if not eleven (11) miles, then ten (10) miles; but not less than ten (10) miles. Similarly, with respect to the duration set forth in Sections 1.8(b) and 1.8(c), if a court holds twenty-four (24) months to be unreasonable, then eighteen (18) months; and if not eighteen (18) months, then twelve (12) months; but not less than twelve (12) months.

(e) Affirmation of Reasonableness. The parties hereto acknowledge and agree that the scope and duration of the restrictions contained in this Section 1.8 are fair and reasonable, and shall not unduly prevent Physician from practicing medicine or earning a livelihood, and that such restrictions are important and necessary to protect the legitimate interests of [redacted].
Most employers provide professional liability coverage.

There are two types of coverage:
- Claims Made - coverage for claims that are made while the policy is in effect. Under this policy once the policy premiums are no longer being paid, the coverage lapses. When a physician terminates employment, the policy terminates and any future claims are not covered.
- Occurrence Based - covers incidents arising from the coverage period, regardless of when the claims are reported. More expensive (but preferred) coverage.

Employment contracts should specify the type of coverage offered.

If a claims made policy is offered, an employment contract should contain a provision for “tail coverage,” which extends the liability coverage after the expiration of the policy paid for by the employer.
Other Provisions

• Is other employment permitted?

• After employment ends, will physician have access to medical records? (negotiate for reasonable access)

• Notice and cure provision
  – Allows you to cure something that potentially puts you in breach of your contract.

• How will contract disputes be resolved and who will pay costs and attorney’s fees? (arbitration vs. litigation.)

• Changes/modifications to the contract – are they permitted and how?

• OBTAIN A COMPLETE SIGNED AND DATED COPY OF ANY CONTRACT!
Don’t Make These Mistakes!

You made a mistake.

I'm sorry.

It's ok.

I'm sorry.

I'm sorry.

I'm sorry.

Please stop.

If one apology makes it ok, 100 apologies should make it awesome!
• Mistake 1: Not consulting legal counsel.

• Mistake 2: Waiting too long to consult legal counsel.
  – Consult with counsel *before* starting to negotiate.
• Mistake 3: Failing to Ask Questions and Research the Prospective Employer and Employment Situation
  – Ask a lot of questions!!

• Mistake 4: Relying on Oral Promises Not Reflected in the Written Contract
  – If it is not written down, the conversation didn’t happen!
• Mistake 5: Overlooking “Fuzzy” Contract Language; No “legalese”
  – If it is not clear to you, ask for clarification.

• Mistake 6: Ignoring Covenants Not to Compete

• Mistake 7: Failing to Understand the Full Implications of Malpractice Insurance Provisions
Final Thoughts

Keep calm and read your contract.

Any questions?