

Understanding Physician Employment Contracts When Joining a Hospital

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Physicians presented with a new employment agreement from a hospital may feel as if they are unable to negotiate any of the terms and conditions contained in the agreement. While certain terms may be non-negotiable and considered industry standard, there are many provisions in a hospital employment agreement that may be negotiated. Even in instances where the provisions of the agreement are truly non-negotiable, it is important for the physician to understand fully the terms of the agreement. Furthermore, even if the hospital refuses to change a provision, they may provide clarification of the intent of a provision which, especially if provided in writing (including email) would be helpful to have in hand.

Executing an employment agreement without paying attention to the details is a mistake that can impact a physician both financially and professionally. This binding agreement can have an effect on the physician for his or her entire career. In reviewing a proposed employment agreement, a physician will need to consider many factors. He must pay attention to the details and have an attorney review the agreement in full. If something doesn't make sense, ask questions about the provisions. If there is a term or condition that is not what the physician agreed to he should ask for changes.

The agreement should reflect the physician's understanding of the agreement. If she agreed on the amount of call, vacation time, CME reimbursements, etc. during the interview, all of those items should be reflected in the agreement. Any verbal representations made during interviews will be worthless in the event of a dispute.

Beyond that, there are specific provisions in the contract to which special attention must be paid:

Compensation

A physician should pay close attention to the salary, bonus, expense reimbursement and payment for CME seminars and conferences. Salary should be reviewed to make sure the written contract accurately reflects the oral discussions between the parties. The bonus structure should be reviewed to determine what, if any, bonus the physician may be entitled to. The physician should determine how the bonus will be paid and when will it be paid. In the event of an early termination, a physician may still be entitled to a prorated portion of the bonus. For example, if the bonus is paid out in December, but the physician terminates his or her employment in September, the physician may or may not be entitled to a pro rata portion of the bonus.

Physician expenses are also considered as part of the total compensation to a physician. Physician expenses can include cell phone costs, travel, meals, medical publications and dues and licensing expenses. Often employers will reimburse a portion of the physician's expenses provided the expense was preapproved.

Hospital Compensation

Hospitals frequently enter into arrangements where the hospital does not actually employ the physician. Instead the hospital leases the physician from a separate entity. There are other variations of this arrangement which all basically end up with the physician being employed by an entity other than the hospital. A physician should enter into this type of employment only after careful review. A leasing arrangement may negatively affect the physician's ability to participate in hospital benefits, retirement plans and, very importantly, may prevent the physician from enforcing the contract provisions against the hospital.

Hospital compensation for a physician is often based on Relative Value Units ("RVU"). An RVU is assigned to each activity or procedure performed by the physician. The targets for RVU's differ for each specialty. Average RVU's per specialty are published by the Medical Group Management Association. The physician should be aware that many times hospital employment agreements contain "clawbacks" of compensation if the RVU targets are not met. Certainly, this is a provision which should be negotiated out of the agreement.

Hospitals may also offer "quality" related bonuses, which are based on patient satisfaction, use of electronic medical records, chart completion, taking extra calls, and supervision of residents or nurse practitioners. Furthermore, hospital compensation to a physician may be controlled by federal and state Anti-Kickback laws. The physician must be compensated at fair market value. Often a hospital will obtain an expert valuation to determine that the compensation is fair market value.

Benefits

A physician should be entitled to the level of health benefits afforded to other employees of the hospital. Please note that this can change if the physician is leased to the hospital by a captive entity or other entity. The employed physician should also be entitled to participate in the retirement plan, life insurance and disability insurance plans offered by the hospital.

Malpractice Insurance

A requirement for the practice of medicine is professional liability coverage. There are two basic types of coverage: (a) claims made; and (b) occurrence based coverage. Claims made coverage is coverage for claims that are made while the policy is in effect. Under a claims made policy, once the policy premiums are no longer being paid, the coverage lapses. Any claim made after the lapse will not be covered under a claims made policy even if the claim relates to something that happened while the policy was in effect. Occurrence based policies covers incidents arising from the coverage period, regardless of when those claims are reported. Occurrence based coverage tends to be much more expensive, but it is the preferred type of coverage.

Hospitals often provide occurrence based professional liability coverage but in the event that a physician is offered a claims made policy, she should request that the hospital cover the costs of obtaining an extended reporting endorsement or "tail coverage" which extends the liability coverage after expiration of the policy paid for by the hospital. Although premiums on tail coverage vary widely from state to state

and from specialty to specialty, they can be very expensive, so this is an issue which should certainly be negotiated with the hospital.

Duties

The contract should cover what hours will be required and the location or locations the physician will be expected to work. The provision will also address the requirements for being on-call, billing, marketing and administrative duties, such as acting as medical director for a department of the hospital or mentoring residents. The physician should receive additional compensation for these activities or he should ensure that the RVU's associated with these activities will be included in his compensation.

Term and Termination

Each contract will have an initial term. The contract may also provide for automatic renewals of the term, unless there is written notice by either party seeking a termination of the agreement. Termination could be with or without cause.

Under Florida law, employees are presumed to be "at-will". Inclusion of a termination "without cause" provision in an employment agreement creates an "at-will" relationship between the physician and the hospital. Therefore, the hospital can terminate the physician at any time and for no reason at all. A physician who is terminated without cause has very little recourse against the hospital unless the termination was motivated by illegal reasons, such as race or gender discrimination.

Physicians should be careful when examining the termination "with cause" provision in their agreements. This provision allows the hospital to terminate the physician, if in the hospital's sole discretion, they determine the Physician breached certain covenants in the agreement. Regardless, if the breach is a curable breach, the physician should be afforded an opportunity to cure deficiencies, if possible prior to a termination with cause.

Examples of a curable breach would be failure to perform duties as requested or other insignificant breach. Anything potentially affecting patient health and safety would not be a curable breach.

Usually, there is a provision in the agreement allowing the physician to terminate her employment with thirty or sixty days' notice. Beware of provisions that allow the hospital to terminate the agreement immediately if the physician provides notice. If such a provision exists, a physician trying to do the right thing by providing her employer with ample notice may find that they are immediately out of a job. The physician should also have the right to terminate the agreement immediately in the event of a breach by the hospital (for example, the failure to pay salary) or if the hospital is found guilty of billing or insurance fraud.

Often, the employer also reserves the right to terminate the agreement without cause on thirty or sixty days' notice. When such a provision exists, the term of the contract may be illusory. A one year contract that can be terminated without cause on thirty days' notice does not guaranty employment for a full year, but it does guarantee that during the one year term the physician cannot be terminated without notice.

Effects of Termination and Restrictive Covenants

In the event of the termination of employment, the physician must review whether he or she will be forfeiting the bonus, hospital privileges, and the effect of the restrictive covenants. Restrictions are based on both time limits and geographic scope.

Upon employment being terminated, the restrictive covenants in the physician's contract will be effective. In all likelihood, the physician will be restricted from soliciting patients, employees and referral sources from the employer for a period of time after the employment has terminated. Under Florida law, restrictive covenants have been enforced against physicians, if the covenants are properly drafted. In Florida, a duration of one to two years is common and generally upheld as a reasonable restriction.

Furthermore, the physician may be restricted from practicing within a certain radius of the employer and for a certain period of time, and will generally be required to resign medical staff privileges at the hospital. This restriction can be burdensome in the event the employer has more than one location, including satellite offices. Where the employer is employed by a hospital that is part of a large hospital system, the hospital may attempt to extend the restrictions even further by requiring that privileges be resigned on all hospitals in the system. The physician may try to reduce the burden by negotiating that the restriction should only apply to locations in which the physician actually worked.

Conclusion

In conclusion, a hospital employed physician must ensure that he or she fully understand the employment agreement and the rights and obligations of the physician under the agreement. It is generally not expensive to have an agreement reviewed by an attorney specializing in health care transactions but legal fees can be considerable if a dispute occurs or if the physician intentionally or unintentionally violates a covenant contained in the agreement.

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