

Understanding Physician Employment Contracts

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Introduction:

Many physicians fail to read all of the provisions in their employment contracts believing they face a “take it or leave it” quandary. While there are provisions in these contracts that are “standard in the industry,” there are many issues which can be negotiated. Physicians who simply sign the contract without a full understanding of its terms (and their potential impact) often find themselves at odds with their employers, unemployed, or in increasing numbers – in a court of law. This article is intended to help physicians avoid these eventualities.

Compensation:

Physicians can often increase their total compensation through a negotiated productivity incentive provision. Employers readily appreciate the inherent profitability that comes with a physician exceeding expectations and are, therefore, often willing to share a percentage of the revenue “collected” when the revenues are greater than anticipated.

Quality of Life Issues:

To many, this aspect of the contract is as important as the compensation provision, itself. Yet, all too often, the job requirements prove to be far more onerous than initially anticipated. To avoid these surprises, physicians should carefully consider the following:

- What are the practice hours? Is the practice “nine-to-five” or does it entail evenings and weekends? If the later, will you be expected to work those evenings and weekends? This should be addressed in the contract. An employment contract requiring forty or fifty hours a week, without defining those hours could leave an employee with the hours other, more senior members of the practice no longer want. Unless you are willing to work those nights and weekends, without limitation, these terms should be resolved before signing the contract.
- What is the call policy of the practice? A contract may provide that the employee is responsible for “call” – however “call” is not defined. Once employment begins, the physician finds that “call” is not apportioned on an equal rotating basis, that more senior members of the practice are not sharing call, or that one of the physicians who was to share call suddenly leaves the practice. A good employment agreement will address these issues.
- Does the practice have multiple locations? If so, will you have to travel? Are your travel expenses to be reimbursed? Physicians can often negotiate a monthly expense account to cover these costs. Others may not wish to travel far from home. You should know where you are going to be working, and who is going to pay for you to get there, before entering into an employment contract.

Reputation:

Few things can be more devastating to a career than being associated with a practice under public investigation, or indictment. How long have other employees been at the practice? What are the partners like? What are their billing procedures? Do the partners have any license suspension, criminal or malpractice history? These are important questions to answer before selecting an employer.

Duties & Responsibility:

Ask your potential employer to allow you to shadow an associate for a day. This will give you an idea of what a typical day might be like and help you understand what will be expected of you. It will also give you an opportunity to have an associate who has been at the practice for a while tell you what is good and bad about the practice.

Malpractice Insurance:

There are two types of malpractice insurance typically available, "Occurrence" and "Claims Made". Occurrence covers the physicians for services rendered both during *and after* the term of the Employment Contract. Claims Made policies are usually far less expensive, but provide coverage only for claims brought during the term of employment and while covered by the policy. As such, as a physician employee insured under a Claims Made policy, your coverage terminates if your employment terminates. Claims brought after the date of termination, even claims related to acts which occurred during employment, are not covered.

To maintain insurance for these acts, the physician is obligated to purchase additional insurance known as "Tail Coverage". Tail Coverage is expensive. Therefore, it is important to determine what type of malpractice insurance is being provided and who will pay for tail coverage, if the insurance provided is Claims Made.

Termination:

There are normally two types of termination sections within an Employment Agreement - termination without cause and termination with cause.

- **Termination Without Cause:** A termination without cause provision allows an employer to terminate an employee at any time, without reason. As such, a two or three year employment agreement which has a provision allowing the employer to terminate without cause on thirty days notice is, in reality, only a thirty day contract. A terminate without cause provision generally relegates a physician to "at will employee" status. An at will employee can be terminated at any time for no reason at all. At will employees have absolutely no recourse, unless the termination is predicated upon illegality (*i.e.*, age, race or gender discrimination).
- **Termination With Cause:** Every employment agreement includes a provision allowing either party to terminate the contract for certain defined reasons, usually including theft, fraud, loss of license, bankruptcy and other serious acts. Many employment agreements also include catchall provisions that allow the employer to terminate the physician if, in the employer's sole discretion, it is determined that the physician's continued employment is detrimental to the practice. These provisions are too subjective and the consequences are too great. They

allow the employer to terminate a physician immediately, with no notice or recourse. These provisions should be negotiated out of the contract or, at a minimum, provide for a period of time to cure any alleged deficiency.

Restrictive Covenants:

Restrictive covenants usually prohibit a physician from obtaining employment within a certain geographic distance from the practice location(s) in which he or she has practiced. They constitute of the most litigated issues in employment contracts because the restriction must be reasonable to be enforceable. The court in most states do not like to prohibit physicians from offering medical services to patients simply because there is a written agreement containing a restriction on the employee's ability to compete with his or her former employer. Courts will often be flexible and inventive in finding ways to find the restrictive covenants unenforceable. However, the courts have held that if the restrictive covenant is reasonable, the non-compete provision will be enforced.

A restrictive covenant has two elements – geographic area and time frame. When faced with a restrictive covenant, a physician must consider whether the restriction will prevent working in a desired location when they leaving the practice. If the location is within the restricted area, then efforts should be made to negotiate a reduction in the restricted area to a smaller region that does not include the desired future location.

Conclusion:

A good employment contract is one that is fair to both the employer and the employee. With a fair contract, both parties can enjoy a mutually rewarding and successful future. A one-sided contract, by contrast, can lead to misery and expense.

Physicians who may have questions regarding contracts of any kind can visit the Kern Augustine Conroy & Schoppmann, P.C. website at www.drlaw.com, call us at 1-800-445-0954 or email us at kacs@drlaw.com.