

TIPS FOR NEGOTIATING PHYSICIAN EMPLOYMENT AGREEMENTS

Basic Clauses and Considerations

Presented by:



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Today's Lecturers:

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OBJECTIVES


- Understand language and terms found in physician employment agreements
 - Recognize mistakes commonly made when entering into a contract
 - Obtain knowledge necessary to enter into an employment agreement, while avoiding problem areas
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DISCLAIMER


- No two employment agreements are created equal
- Each agreement must be reviewed on its own terms
- Many of the terms may be negotiable




Duty to Read

- Parties have the duty to read the contract
 - The duty to read is the assumption that both parties have read the agreement they signed
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Parties to an Agreement

- Agreement sets forth precise legal names
 - Anyone required to perform obligations should be named
 - Partnerships or corporations should be indicated
 - All parties ***must*** sign the agreement
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Term of the Agreement

- Beginning and ending dates should be clear
 - Effective date
 - Starting date
 - “Term” section must be read in conjunction with the “termination” section
 - Automatic renewal
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Physician's Responsibilities


- A good contract identifies:
 - typical schedule
 - where the physician typically works
 - expectations about call
 - Outlines expected administrative duties and expected community activities
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Employer's Responsibilities


- Should outline:
 - office space
 - support staff
 - supplies
 - billing services




Compensation

- May be subject to tax, fraud and abuse, and anti-self-referral laws
 - Must be fair market value
 - Fair market value determined by comparing entire compensation package
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Methods of Compensation

- Flat salary
 - Guaranteed salary
 - Modified flat salary with productivity basis
 - **Note:** Most practices are moving from fee-for-service pay models to productivity-based pay models
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Compensation

- Option to buy into group
 - “Buy-in” clause or “partnership” arrangement
 - Draft these options separately, if possible
 - Often not reached or offered
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Benefits

- Bonuses
 - Sign-on bonus
 - Put bonus into bank (may need it if contracted is terminated early)
 - May have to repay entire bonus or prorated amount if contract is terminated early
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Benefits

- Bonuses
 - Annual bonus
 - RVU
 - Collections-expenses
 - Fee Splitting
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Benefits

- Bonuses
 - Paid time off
 - Lump vacation, sick days and CME together? Cumulative? Include holidays?
 - Health/Dental/Retirement plans
 - Spouse or family coverage
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Malpractice Insurance


- Most employers provide professional liability insurance when physician works for employer
 - Should indicate “claims made” or “occurrence based”




Malpractice Insurance

- Claims made
 - Covers the physician only if claim is brought within policy period
 - Most employers provide claims made


Malpractice Insurance

- Occurrence based
 - Covers the physician for any alleged acts that occurred while the policy was in effect, even if the claim is brought well after the policy expires
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Tail Coverage

- Additional tail coverage is needed to cover claims made after policy expires
 - Agreement should outline who pays for tail coverage and how long it needs to be maintained
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Covenant Not-To-Compete

- Prevents departing physician from competing with employer in specific geographic area for specific period of time
 - Enforceable under Florida law
 - Agreement may contain an option to “buy out” of restrictive covenant
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Covenant Not-To-Compete

- Geographical area - usually 5 to 50 miles
 - Length of time - 1 to 2 years
 - Has to be reasonable – have a “legitimate business interest”
 - Vary by specialty
 - May apply only in certain instances of termination
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Restrictive Covenants

- Nonsolicitation
 - Patients
 - Employees
 - Referral Sources
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Other Terms

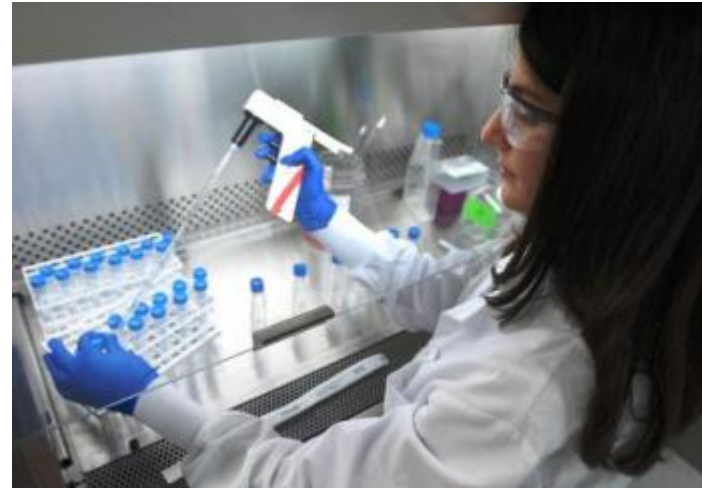
- Call schedule
 - Clinical responsibilities
 - Where and how frequently?
 - Educational responsibilities
 - Board certification
 - Administrative duties
 - Supervising staff
 - Billing
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Outside Employment


- Can be prohibited by some employers
 - May require the income be turned over to the employer
 - Physician should negotiate to minimize the employer's control over outside employment and income
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Research and Writing Activities


- Generally, the results and the written materials belong to the employer
- A written agreement can give the physician the ownership rights to these materials




Recruitment Incentives

- Carefully review any incentives to ensure that the incentives are permitted under federal law
 - Examples:
 - Leases
 - Sale of building or equipment
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Termination Clause

- One of the most important clauses in the contract
 - Can allow employer to terminate physician's employment if certain events occur
 - Physician may also be able to terminate the contract with appropriate notice
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Termination

- Without cause termination
 - No formal reason
 - Method of notice
 - Notice period between 30 to 180 days
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Termination

- Termination with cause
 - Reason to terminate the contract, i.e.
 - Suspension of a medical license
 - Loss of hospital privileges
 - Exclusion from the Medicare/Medicaid program
 - Conviction of a crime
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Termination

- Cooperation Agreement
 - Physician and employer must notify the other of occurrence which may result in a claim from services rendered by physician
 - Parties must cooperate with each other when claim is filed
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Termination


- Access to records
 - Most agreements say patient records belong to the employer
 - Physician should negotiate reasonable access
 - Defending a malpractice action
 - Credentials committee investigation
 - Florida Department of Health inquiry
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Disputes


- Usually resolved in the courts
- Each party will pay their own litigation costs and attorney fees
- Some parties choose arbitration




“Boilerplate” Provisions

- Be mindful of boilerplate terms
 - Indemnification
 - Mandatory arbitration
 - Venue
 - Attorney fees
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Contract Changes

- Most employers use standard contract for all physicians
 - Large employers are less likely to change their form to accommodate the physician than small organizations
 - Clarify certain provisions through use of a signed letter
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Additional Exhibits

- Many employment agreements will incorporate additional exhibits and covenants into a contract by reference
 - Do not sign the agreement until any and all exhibits, covenants, or addenda are initialed and attached
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ALWAYS request a signed copy of the contract!





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