

Physician Employment Contracts

By Michael Favia, Esq.

Physicians should give careful consideration to employment agreements

While a new job is often considered a dream come true, it can also become a nightmare if the relevant parties have not thoroughly discussed and agreed upon the terms of a contract. Consider, for example, these comments from young physicians who faced rude awakenings once employed. They shared their experiences in "Contracts, What You Need to Know," produced by the American Medical Association last summer (www.ama-assn.org).

- "Each contract I reviewed was different; however, they all protected the group or senior partner. Each was presented as a 'take it' or 'leave it' proposition."

- "When I arrived at my hospital, I found many surprises. There was no written contract with regard to my position; I had originally inquired about a contract but was informed that physicians were not given contracts at this institution. Then I discovered that the salary I was quoted was actually a loan, which I was expected to repay. Then I discovered I had to pay all of my routine expenses, including malpractice premiums, out of my own pocket. I also had been told that I could do my own billing, but when I arrived I was informed that the wife of my section chief would do the billing for 7% of my fees. Furthermore, I was informed that I was expected to pay a secretary additional money under-the-table each month."

- "He kept postponing signing the final contract. Finally, when it was presented to me for my signature, the buy-in agreement was missing. He said he needed clarification from his attorney. I didn't want to make any waves, since I had a lot to lose. Two months later, he said the practice wasn't doing well, and I had to leave. I was also told I had to look elsewhere to practice since our agreement had a non-compete clause."

In order to avoid circumstances such as these, contract attorneys and professional medical organizations highly recommend careful review of employment agreements, negotiation with personal interest as a

priority, and consultation with the appropriate legal experts. In general, several key items should be included in any physician employment contract.

1. The **legal names** of the parties involved.

2. The **type of position**. For example, is the position as an independent contractor, an employee, a partner, or a shareholder? Have the terms of the contract been tailored to the appropriate environment, i.e., a group practice, an academic appointment or managed care, which has more complex considerations.

3. The **compensation**, including how it is distributed and production requirements. Are there monies that must be repaid? What is the vacation and personal time policy?

While evaluating compensation, employees should consider incentives, benefits, bonuses and insurance. Particular notice should be paid to health care benefits, short- and long-term disability and medical malpractice **insurance**. Who is the provider and who will pay for it?

4. With regard to **medical malpractice insurance**, key questions include what are the coverages, liability limits and is there a tail provision when you might leave the practice. What happens if a claim is made after you move on to a new position?

5. The **duration** of the contract and how it can be cancelled.

6. The **job description** and working conditions.

7. The **division of labor**. Not only should the employee's responsibilities be detailed, so should the employer's. For example, what is the call schedule? By spelling things out, experiences such as the following from the AMA's survey can be avoided: "Contracts should state a maximum number of hours. He told me he could order me to work 200 hours a week if he so desired. I worked all public holidays. He took four weeks vacation during which time I was on call all the time. I was told I would be compensated for this extra work. He promised a bonus at the end of the first year. Just prior to the end of my first year, I asked about the bonus and partnership. He said, "What bonus? What partnership?"

8. The specifics of **partnership**. This area is often a source of conflict for physicians. For example, the AMA's survey revealed these difficulties:

- “After more than three years of working with him, he ‘was not ready’ to make me his partner even though I was performing 80% of the work and receiving 20% of the income.”
- “I made all the mistakes that the College of American Pathologists professional guidelines warned not to do. I failed to discuss the position with a previous employee of the group. If I had contacted this doctor, I would have discovered that the group never had any intention to make any employees partners.”
- “I knew there were some drawbacks. The first-year salary was considerably lower (30-40% lower) than other salary offers I received in the city; but the future income potential as a partner would more than compensate. The partners were making four times the starting salary of their employee. The other major drawback was that it was essentially five years to full partnership. Toward the end of the first year of employment, the group would vote to add an additional partnership track contract which consisted of an additional four years of service with yearly salary raises, higher bonuses and equal voting privileges. Two weeks before my employment contract was to expire, they told me there were insufficient votes to offer me a partnership contract. What they then offered was a second year of employment without any future job security. As I reflect back, I don't believe they ever had any intention of making me or any other future employee a full partner. Their goal was to form a limited partnership where only a few made high salaries. I believe they purposely delayed their decision to essentially force me to work another year for them.”

9. The provisions for **pensions**, 401Ks or other post-employment benefits. How to participate and when and under what circumstances do they take effect? Who can terminate and under what circumstances?

10. **Termination**, which can occur with cause or without cause.

11. **Conflict resolution**, which can include court, mediation or arbitration.

12. **Access to records**, which usually belong to the employer, should be discussed so that rights after an employee has left a practice have been established.

13. **Non-compete**, which states an employee can't work within a specific radius of the employer, and **non-solicitation**, which prevents an employee from asking patients to follow him or her to a new practice, should be delineated or at least be reasonable.

14. **Copyright control**, or who gets rights and credit for publications printed during the contract period.

15. **Moonlighting**, or employment outside the primary position, should be addressed and an agreement reached about outside commitments such as teaching or volunteer work.

In conclusion, it is important to remember potential employees have the right to negotiate. They should:

- determine the goal of employment
- talk to others about an employer's reputation
- be specific about needs and contributions
- read and understand all the terms
- refuse to agree to anything for which they don't have the opportunity to question and provide consent.

As the old adage goes, don't fall asleep on the job...while you're at it, or before you take it.

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