

Physician Contract Basics

Three Aspects of Every Contract

- The Offer
- The Acceptance
- The Consideration

Consideration – something received in return for a bargain

Performance – complete the job you were hired to do

Promise – agree to certain duties in exchange for the benefits of the bargain

Duration of Employment

- Contract Term
- Automatic Renewal
- “Out Clause”

Compensation

Salary - does amount include benefits?

Signing Bonus vs. Loan

Employee vs. Independent Contractor - Tax Implications

Salary vs. Hourly

Benefits - who pays?

Incentives - Night/Weekend Differential, Production Bonus

Contract Termination

Termination For Cause vs. Termination Without Cause

- For Cause = IMMEDIATE
- Without Cause – generally must give notice (30-90 days)

Avoid subjective language in “for cause” clauses: “appropriate authorities of a hospital . . . request that Employee no longer provide such services at the hospital.”

The Integration Clause

“This Agreement constitutes the entire agreement of the parties with respect to the matters contained herein, and supersedes any and all other discussions, statements and understandings regarding such matters”

Significance of Integration Clauses

Paid vs. non-paid vacation

Buy-in as a group partner

Shift schedules

Coverage (NP or PA?)

Administrative duties

Minimizing the Effect of Integration Clauses

If you were promised something not in contract, write it in margin (you and other party should both initial change).

The Indemnification Clause

“each party hereto agrees that he/she/it shall indemnify the other party hereto and that each party hereto shall hold the other party hereto harmless from any and all liability, costs, damages, judgments, losses or reimbursement and/or reasonable attorneys’ fees incurred as a result of”

Example

“Violation of [government billing regulations] . . .”

May make physician liable for amount of overbilling plus treble damages.

Possibly minimize impact of indemnity clause by limiting its effectiveness

Deal breaker!

The Non-Compete Clause

Often contained in ED contracts, but less applicable to typical emergency physician - no cognizable "business interest."

- May apply to ED Director
- Liquidated damages clauses
- Reverse Restrictive Covenant - CMG enters into an agreement with the hospital forbidding employment of CMG physicians unless payment of large sum of money.

Duty To Supervise - Potential Liability

- Inadequate Supervision
- Illinois Physician Assistant Supervision Act
 - "the supervising physician shall maintain the final responsibility for the care of the patient and the performance of the physician assistant."
- Improper delegation of authority
 - Physicians don't have "carte blanche to delegate any and all tasks to an assistant"
 - Gillis v. Cardio TVP Surgical Associates*
- Informed Consent
 - Does patient think your PA or NP is really a physician?

Malpractice Insurance

One of the Most Important Aspects of the ER Contract

Another "deal breaker."

Approximately 1 in 10,000 to 1 in 40,000 patients file a malpractice claim. Eight to twelve times that many have compensable injuries.

Two Major Issues:

- Coverage Limits
 - o Specific policy limits should be included in every contract.
 - o Range begins from \$100k per incident and \$300k per year to multimillions per incident
 - o Average coverage is \$1 million/\$3 million
 - o Should request certificate of insurance before signing contract.
- Type of Coverage
 - o "Claims-made" Vs. "Occurrence-based"
 - o Occurrence-based insurance protects you indefinitely
 - o Claims-made insurance must be in force when the incident occurred AND when the claim is made against you AND when the claim is reported

Malpractice Insurance Misconceptions

- They'll go after the "deep pockets," not me
- I can get away with the minimum policy limits
- I'll take my chances without coverage
- The statute of limitations has run

Finding a Position

Deciding on a Position

- Typical Considerations
 - o Location
 - State/Region
 - Travel time
 - Neighborhood
 - o Payment
 - Salary/hourly
 - Benefits
 - o Academic vs. Non-academic
 - o Work Environment
 - Patient volumes
 - Ancillary services
 - Group longevity at hospital
 - Administration goals
 - o Advancement
 - Partnership
 - Administrative Roles - Director/Assistant Director
- What are “Needs” and what are “Wants”?

Evaluating a Position

- Talk to employees
 - o Night shift docs
 - o Newest hires
 - o Person you are replacing or last to leave
- Talk to nurse manager
- Talk to spouses of group docs
- Talk to hospital administration

Unreasonable rigidity during interviews or negotiations may signal difficulties in future working relationships

Finding a Job

- In local area
 - o Cold-call hospitals/ERs
 - o ICEP EPIC
- Contact friends in locations you would like to work
- Ads in Annals, monthly emergency medicine magazines
- Contact ACEP or state offices
- National groups always looking for physicians – ECI, EMCARE, Team Health

Search Firms

- Often utilized with jobs that are difficult to fill
- Fees usually large - \$30,000 to \$50,000!
- Hospital or group usually picks up cost – may be less willing to use
- Maintain your right to seek own contract without owing them a fee
 - o Could cause hospital to walk out on negotiation if fee may be owed due to previous interaction
- May provide you with additional help on
 - o Marketing yourself
 - o Preparing CV
 - o Practice interviews
 - o Career planning
 - o Salary ranges