

Contract Negotiation for New Physicians

Anatomy of your first employment agreement; what to look for and when to get help

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A **NEW PHYSICIAN** finally receives an offer for employment after years of schooling, training, residency (possibly a fellowship) and exams. Yet, despite all the formal medical education, the physician is not prepared to navigate the legalities of the employment agreement. This article aims to fill that gap with an overview of the salient terms found in the standard employment contract.

Identifying Objectives

After reading the contract, identify pivotal concepts and terms. Is the physician willing to accept teaching responsibilities for additional pay? Or, is working in only outpatient more important? Creating a list of those items to change and terms to be added (ranked in order of priority) will focus revision efforts and increase the probability of favorable modifications.

Perform Due Diligence

Due diligence is the investigative process during which you attempt to answer, “do I see myself working here?” Ask questions and gather information about the potential employer and discover the personality of the practice, its economic health and its clinical approach to practicing medicine. For example, question the employer about the buy-in process for ownership in the practice. What are the buy-in costs? How is compensation calculated for owners? What is the recent retention rate of physicians? How many physicians have been offered partnership in the past three years? How many malpractice suits have been filed against the practice or physicians in the past three years?

If the employer is unwilling to answer questions or entertain revisions to your agreement, such dismissive attitudes may carry over to patient care and workplace environment—the employer may not be the best fit for the physician or share the physicians’ goals.

Performance Standards

Typically, physicians are hired on a full-time basis, working at least 40 hours per week. But how is this basis defined in the contract? Does the 40 hours include performing administrative duties? Are physicians expected to take call? How is call divided or scheduled? In addition, how does the employer evaluate and document performance? Questions about the performance evaluation process and

standards for evaluating physicians should be addressed prior to signing a contract.

Another key item to consider is location. Are services performed at one specific location or travel to multiple facilities within a hospital’s network required? Travel time between locations may deplete personal or family time and is not accumulated as a wRVU (work Relative Value Unit).

Compensation

New physicians normally receive a guaranteed base salary with possible subjective or objective bonuses. Base compensation varies depending on the specialty, geographic location and nature of the practice. It is recommended that physicians speak to mentors and colleagues or view the Medical Group Management Association’s (MGMA) compensation and production survey to compare the compensation offered to the median or average compensation of similar physicians.

Incentive bonuses are assessed yearly on an individual and/or group level based on wRVUs. For example, a psychiatrist earning \$275,000/year base salary may receive a bonus of \$60 per wRVU that exceeds a 4,125 wRVU annual threshold. The concept: the more hours worked, the higher the bonus. Ask the potential employer for a sample bonus calculation and average wRVUs of similarly placed physicians for the previous year to determine if the bonus criteria is achievable.

Employee Benefits

Employee benefits are critical components in assessing the value of the overall compensation package. These benefits may include health, life and disability insurance, retirement plans, continuing medical education allowances and sick/vacation days. Most practices offer expense reimbursement for CME costs, professional association dues, licensing fees, board testing and medical staff dues. The details of these benefits are outlined in the employee handbook or internal policies, not in the employment contract, so be sure to obtain a copy of these materials from human resources.

Lately, employers, particularly in rural areas, are offering new physicians signing bonuses, relocation allowances (both to defray moving costs and contribute money towards a down payment for real estate), loan repayment assistance and retention payments. If the contract does not include one or more of these types of payments, the physician should ask for it.

Malpractice Insurance

Not understanding insurance coverage could cost a physician dearly upon departure from the practice. Professional liability insurance is available on a claims-made or occurrence basis. Claims-made insurance provides coverage for claims reported during the term of the policy regardless of when the incident occurred. In contrast, occurrence insurance provides coverage for incidents arising on or after the policy date and through the term of the policy regardless of when those claims are reported. Occurrence insurance is more expensive, so employers typically provide claims-made insurance to physicians at the employer's sole cost during the physician's employment term.

Strictly for claims-made insurance upon termination of employment, the employer or physician must purchase a "tail policy" to cover incidents reported to an insurer beyond the policy termination date. The payer of the tail policy depends on the contract terms. But beware! Tail policies are very expensive. The physician should try to negotiate different scenarios where each party pays for the tail policy (employer pays if employer terminates without cause, but employee pays if terminated for cause).

Restrictive Covenants

Generally, there are three types of restrictive covenants: confidentiality; non-solicitation; and non-competition. All three types are standard in employment agreements for professional services but vary in the scope and interests they serve to protect. Confidentiality covenants prohibit physicians from divulging confidential information learned during employment to a third party without the employer's prior approval. Non-solicitation covenants preclude physicians from soliciting employees or patients of the former employer during and for a certain time after employment.

The last type of restrictive covenant is the most contentious since it may limit the physician's right to practice medicine. Non-competition covenants prohibit physicians from engaging in services that directly or indirectly compete with those of the former employer, during and for a period after employment, within a certain geographic area. In Illinois, a non-compete must be narrowly tailored in time (two years after termination), geography (within a five-mile radius around the employer's principal location) and activity (limited to your specialty or field). Unfortunately, there is no standard test to determine whether a non-compete is valid and enforceable—the terms vary on a case-by-case basis, heightening the need for contract review by a skilled attorney.

In most situations, employers require a non-compete to protect their business interests, thus employers will not remove it from the employment agreement. Instead, narrowing the terms of the non-compete to a manageable scope for an

appropriate exit strategy better serves the physician's objectives.

Term and Termination

The term of employment for new physicians is typically between three to five years and is sometimes automatically renewable for another few years. However, this does not mean that physicians are guaranteed a position. The term must be read in conjunction with the termination clauses. For instance, the agreement may permit either party to terminate the contract for any reason (or no reason) with 90 days' advance notice. If such notice is provided, the term of employment changes to 90 days.

These are two types of termination—for cause and without cause. "Without cause" termination can be for any reason or no reason at all but should be mutually granted to both the employer and physician. Physicians should consider asking the employer to waive the non-compete and cover the tail policy fee in the event the employer terminates the agreement without cause. Under "for cause" termination, the employer has reasonable grounds for ending a physician's employment. Employment may terminate immediately in the event of the physician's death, disability, loss of medical license or loss of medical staff privileges.

Ensuring the employment contract contains a "cure period" of at least 30 days gives the physician time to correct the transgression and avoid termination. The bases for termination must be outlined clearly and objectively in the employment agreement and should not include vague standards such as "any action contrary to the employer's interests." The employment agreement should contain the physician's right to terminate the agreement for cause if the employer breaches their fiduciary obligations.

Final Thoughts

It's imperative to get everything in writing, even if it's in an email. Physicians must review the employment agreement carefully and sign it only after they understand all the conditions and liabilities and obligations of all parties. If still overwhelmed, physicians should contact a knowledgeable attorney who can suggest changes. When an attorney negotiates on the physician's behalf, it diffuses an emotionally charged situation and preserves the physician-employer relationship. After all, the physician has made it this far—now, it's time to cross the finish line.

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