

THE EMPLOYMENT AGREEMENT FOR PHYSICIANS

Basic Clauses and Considerations

Presented by:



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OBJECTIVES


- Understand language and terms found in physician employment agreements;
 - Recognize mistakes commonly made when entering into a contract; and
 - 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




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
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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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Compensation


- Guaranteed salary for one or two years
 - Salary based on production in following years
 - Option to buy into group
 - "buy-in" clause or "partnership" arrangement
 - Draft these options separately, if possible
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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
 - Additional tail coverage is needed to cover claims made after the policy expires
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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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Malpractice Insurance

- Most employers provide "claims made"
 - Requires tail coverage when the physician leaves
 - Agreement should outline who pays for "tail" coverage
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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
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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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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


- 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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Research and Writing

- 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
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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


- Usually restate what is already the law on these points



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 obtain a signed
copy of the contract!**





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