

# **THE PHYSICIAN EMPLOYMENT AGREEMENT**

## **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; 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 request a signed copy of the contract!**





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