TIPS FOR NEGOTIATING
PHYSICIAN EMPLOYMENT
AGREEMENTS
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
- Obtain knowledge necessary to enter into an employment agreement, while avoiding problem areas
DISCLAIMER

- No two employment agreements are created equal
- Each agreement must be reviewed on its own terms
- Many of the terms may be negotiable
Duty to Read

- Parties have the duty to read the contract

- The duty to read is the assumption that both parties have read the agreement they signed
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
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
- Automatic renewal
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
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
Methods of Compensation

- Flat salary
- Guaranteed salary
- Modified flat salary with productivity basis

**Note:** Most practices are moving from fee-for-service pay models to productivity-based pay models.
Compensation

- Option to buy into group
  - “Buy-in" clause or "partnership" arrangement
  - Draft these options separately, if possible
  - Often not reached or offered
Benefits

- Bonuses
  - Sign-on bonus
    - Put bonus into bank (may need it if contracted is terminated early)
    - May have to repay entire bonus or prorated amount if contract is terminated early
Benefits

- Bonuses
  - Annual bonus
    - RVU
    - Collections-expenses
    - Fee Splitting
Benefits

- Bonuses
  - Paid time off
    - Lump vacation, sick days and CME together? Cumulative? Include holidays?
  - Health/Dental/Retirement plans
    - Spouse or family coverage
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
  - Most employers provide claims made
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
Tail Coverage

- Additional tail coverage is needed to cover claims made after policy expires
  - Agreement should outline who pays for tail coverage and how long it needs to be maintained
Covenant Not-To-Compete

- Prevents departing physician from competing with employer in specific geographic area for specific period of time
- Enforceable under Florida law
- Agreement may contain an option to “buy out” of restrictive covenant
Covenant Not-To-Compete

- Geographical area - usually 5 to 50 miles
- Length of time - 1 to 2 years
- Has to be reasonable – have a “legitimate business interest”
- Vary by specialty
- May apply only in certain instances of termination
Restrictive Covenants

- Nonsolicitation
  - Patients
  - Employees
  - Referral Sources
Other Terms

- Call schedule
- Clinical responsibilities
  - Where and how frequently?
- Educational responsibilities
  - Board certification
- Administrative duties
  - Supervising staff
  - Billing
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
Research and Writing Activities

- Generally, the 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
- Examples:
  - Leases
  - Sale of building or equipment
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
Termination

- Without cause termination
  - No formal reason
  - Method of notice
  - Notice period between 30 to 180 days
Termination

- Termination with cause
  - Reason to terminate the contract, i.e.
    - Suspension of a medical license
    - Loss of hospital privileges
    - Exclusion from the Medicare/Medicaid program
    - Conviction of a crime
Termination

- Cooperation Agreement
  - Physician and employer must notify the other of occurrence which may result in a claim from services rendered by physician
  - Parties must cooperate with each other when claim is filed
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
Disputes

- Usually resolved in the courts
- Each party will pay their own litigation costs and attorney fees
- Some parties choose arbitration
“Boilerplate” Provisions

- Be mindful of boilerplate terms
  - Indemnification
  - Mandatory arbitration
  - Venue
  - Attorney fees
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
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
ALWAYS request a signed copy of the contract!
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