

# **TIPS FOR NEGOTIATING PHYSICIAN EMPLOYMENT AGREEMENTS**

## **Basic Clauses and Considerations**

Presented by:



[www.TheHealthLawFirm.com](http://www.TheHealthLawFirm.com)



**Main Office:**

1101 Douglas Avenue  
Altamonte Springs, FL 32714

**Phone:** (407) 331-6620

**Fax:** (407) 331-3030

**Website:** [www.TheHealthLawFirm.com](http://www.TheHealthLawFirm.com)




## **Today's Lecturers:**

**Lance O. Leider, J.D.**

**Kate T. Hollis, J.D.**

# 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
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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




# 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
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# 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
  - Automatic renewal
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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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# 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
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# Compensation

- Option to buy into group
    - “Buy-in” clause or “partnership” arrangement
    - Draft these options separately, if possible
    - Often not reached or offered
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# 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
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# 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
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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
  - 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
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# 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
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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
  - Agreement may contain an option to “buy out” of restrictive covenant
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# 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
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# Restrictive Covenants


- Nonsolicitation
    - Patients
    - Employees
    - Referral Sources
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# Other Terms

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

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