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

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

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

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

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

- Most employers
 provide professional
 liability insurance
 when physician works
 for employer
 - Should indicate "claims made" or "occurrence based"



- 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

- 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

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

Covenant Not-To-Compete

- Prevents departing physician from competing with employer in specific geographic area for specific period of time
- Enforceable under Florida law

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

Termination Clause

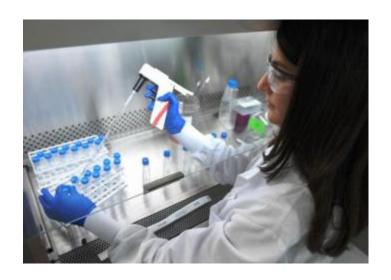
- One of the most important clauses in the contract
- Can allow employer to terminate physician's employment if certain events occur
- Physician may also be able to terminate the contract with appropriate notice

Termination

- 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

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

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

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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