Understanding and Negotiating Physician Employment Agreements

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Disclaimer
This presentation is informational only. It does not constitute legal advice.

Reviewing and Negotiating Physician Employment Agreements

A stitch in time saves nine  
-Proverb

An employment agreement is a legal document. Seek assistance from a lawyer

ISMA Resources for Member Physicians

Program for Members
ISMA has an arrangement with several law firms to provide employment contract reviews for members

- The firm charges the physician a flat rate
- For the flat rate the lawyer will
  - Review and consider agreement
  - Let the physician know of any areas of concern and
  - Answer the physician’s initial questions
- This arrangement is available to ISMA dues-paying member physicians – lower rate for residents
- The fee is a discounted rate

ISMA Resources for Member Physicians

For member physicians, ISMA can also:
- Answer general questions about a contract
- Refer members to experienced legal counsel

Working with Legal Counsel

- Know the anticipated fee – usually lawyer will provide an estimate
- Tell your lawyer your situation and expectations
- Understand the deliverable from the lawyer
  - For many contracts the lawyer will provide suggested revisions to the contract and the physician communicates with the employer
  - This keeps the cost down
### How to Approach a Contract

#### Preliminary Pointers
- What the employer tells you verbally does NOT count
  - Any oral statements are superseded by the written contract
- Employer could tell you that you will not be required to take call – but if you sign an agreement which says that you are required to take call, the agreement prevails and you have no legal recourse
- Don’t be pressured by time or short deadlines
  - It is not uncommon for employer to give you a contract and say you have 2 days to review it – that is not enough time
- Find out who in the organization (1) will handle the negotiation discussions; and (2) is the decision maker
- Get copies of all documents that are referenced in the contract
  - For example, if the contract says that you have to comply with the employer’s ethics policy, that policy is now part of the contract

### How to Approach a Contract

#### Business Terms vs. Legal Terms
- Business terms are the terms the physician should decide – they are not legal issues
- The physician should always review and have a good understanding of the business terms
- You may need a lawyer’s help to understand the contract language

### Business Terms of a Contract

#### Example of common business terms for physician contracts
- **Compensation**
  - Base comp
  - Signing bonus – any payback?
  - Bonuses
  - How compensation is calculated
  - License fees/dues
  - CME expenses
  - Business expenses
  - Phones
  - Moving expenses – any payback?
  - What information will be shared with you if comp is based on productivity?
  - Benefits
- **On call requirements**

### Legal Terms of a Contract

#### Examples of common legal terms for physician contracts
- **Restrictive covenants**
  - Scope
  - Time
  - Geographic area
  - Can it be terminated – for example, if the employer terminates physician without cause, does RC apply?
  - Can the physician “buy out” the RC?
- **Arbitration clauses**
- **Indemnification**
- **Termination provisions**
  - For cause – immediate termination
  - For cause – with notice and ability to cure
  - Without cause
  - Think about termination from both sides, when employer can terminate and when physician can terminate

### Business Terms of a Contract

#### Whether the physician’s services are limited to one location or whether the employer can require the physician to provide services at multiple locations
- A list of services that the physician must provide
- Exclusivity (whether you can perform any services other than patient care for employer) – for example, whether you can serve as an expert in a medical malpractice case or volunteer at a free clinic
- What happens to the medical records if you leave the employer
- What communications are made to patients if you leave the employer – you want to require that the employer tell patients your new location
- Employer’s obligations (usually providing adequate space and personnel)
- Who is responsible for hiring/firing other staff
- Whether physician will be required to collaborate with a NP or supervise a PA
- Effective date

### Legal Terms of a Contract

#### Compliance with laws and policies
- Assignment of payment
- Billing requirements
- Fraud and Abuse Laws (Stark, Anti-Kickback)
- Confidentiality
- Attorney’s Fees
- Standard legal terms common in all contracts
  - Amendment
  - Waiver
  - Severability
  - No assignment
  - Choice of law
  - Counterparts
Combination Business and Legal Terms

- How long the contract will be in effect
  - Consider in context of any restrictive covenant and termination clause
- Medical malpractice insurance
  - Tail coverage – who will pay
  - Type of coverage – “Qualified Provider” status to get the benefit of the Indiana Medical Malpractice Act
  - Limits on coverage – usually within scope of employment

Negotiation

- Don’t feel bad for negotiating – this is professional
- You can’t get something unless you ask for it
- Be organized and have a strategy for the negotiation
  - Prioritize what you request
  - Explaining the reason behind a request can be helpful
  - Determine who will be negotiating on other side
  - There is an order – if you ask for 5 changes and they said yes to 3, don’t ask for 2 new changes
- Leverage
  - Be prepared for some employers to say they will accept no changes to agreements
  - If you’ve never negotiated seek mentor (independent of potential employer)

Case Examples of Changes to Contracts with Legal Review

I polled the law firms – some examples of contract changes for new physicians:

- Adding sign on bonus
- Adding student loan forgiveness
- Making restrictive covenant more favorable
- Clarifying leave provisions
- Limiting location of practice
- Adding tail coverage if employer provides claims made policy
- Changing comp from 1 year of guaranteed salary to 2 years of guaranteed salary

Case Examples of Changes to Contracts with Legal Review

Moonlighting agreements

- Resident told no restrictive covenant – had lawyer review and there was – resident would have been prevented from working in resident’s specialty following fellowship – lawyer helped negotiate that out of contract
- Short agreement that was not reviewed by lawyer – there were scheduling issues and employer was going to make resident pay for tail insurance and reimburse for some fees that employer paid

Questions?

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