

# Contracting 101

## The good, the bad, and the ugly!



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# why is it important you have a health care lawyer?

- You have spent 4 years of high school, 4 years of college, 4 years of medical school, and 4-6 years as a resident – Now you are ready to begin your career!
- You search for a practice or hospital employment
  - You met the partners or the administrator
  - You are a hit
  - They offer you a position
  - Hand you a contract
  - You like the compensation
  - You reach for your pen – STOP!
- What are the other terms in the contract?
- Duties? Scope? Termination Provisions? Partnership? Compensation structure?
- Must read cover to cover – consider it a rough draft!
- Terms are negotiable! Both sides will compromise....

# Preliminary Issues

- Contracts for employers are drawn up by attorneys
- Usually drafted to favor employers
  - Usually two different types
    - Straight Employment
    - Recruitment Agreement
- Your lawyer is there to help you:
  - Assist you with malpractice coverage and/or liability issues:
    - Tail coverage
    - Time period for coverage
- Indemnity – who indemnifies
- Notice issues
- Termination
  - With and without cause
- Ownership of Patients lists/Medicare Records
- Notice to patients if Practice closes – avoidance of LSBME problems

# Preliminary Issues

- Due dates?
  - Contracts take time
    - Revisions
    - Negotiations
  - Immigration issues
- Salary/Sign on bonus/relocation reimbursement
- Hospital v. Group

# Marriage?

- Employment – akin to marriage
  - Know your partner
  - Groups goodwill in the healthcare community
- Qualities should include:
  - Honesty, integrity, free and open communication, mutual respect, and trust
- Ask to see the books –
- Understand Practice Finances
- Know your overhead – production bonuses
  - RVU base, Quality Matrix, Production Base
- Partnership provisions:
  - Buy in
  - Buy out

# Benefits

- Various benefits:
  - Professional organizations – who pays?
  - Licensing – who pays?
  - MCLE – who pays?
- Disability
  - Define disability – for how long? Disputes?
- Loans
  - Signing Bonus?

# Devil is in the details!

- Physicians fail to get everything on paper:
  - Must get every aspect of employment agreement in writing
  - Expectations
  - production
  - Obligations
  - Call schedule
  - Compliance with third party payors
  - Compliance with accounting/bookkeeping
- Oral promises get lost/forgotten
- Contract should be detailed with little room for interpretation

# Negotiations

- Before negotiations determine:
  - Salary desires
  - Benefits
  - Working conditions
  - Look for deal breakers – prioritize deal breakers
    - Partnership track – timeline/productivity/buy in
    - Can you accept these terms?
  - Long office/on-call hours/schedule
- Be realistic:
  - Employers want to stick to their standard contract
  - Major concessions can cause disputes
  - You will not get everything you want

# Negotiations

- Ask Questions
  - Revenue growth
  - Bonus structure
- Don't be adversarial
  - Show interest and etiquette – most will respond to questions – if not – red flag?

# Devil is in the details!

- Pay Attention to the Definitions
- Contracts should cover:
  - Office hours, time on call, MCLE reimbursement, professional dues, and vacation time
- Focus items:
  - Compensation and benefits
    - New hires – usually fixed salary for a year (minimum)
    - Salary – MGMA guidelines
    - If based on productivity – RVU based, Quality based, Production based
    - Draw schedule
    - If contract renews automatically make sure to address salary increase
    - Moving expenses – covered?
    - Benefits should be clear! – Health, life and disability insurance – pension/retirement provisions (vesting and eligibility)

# Devil is in the details!

- Term of Agreement – Area of Focus
  - Auto - Renewal?
  - How many years?
- Notice requirements – who notifies who
- Termination clause
  - Review – allows for either employer or employee to terminate
  - Without Cause - requires 60-90 days
  - Moratorium – require employer keep you for 6 months
  - Termination for “Cause”
    - Read carefully
    - Look for reasons for dismissal
    - Should be clear and specified
    - Look for subjective open-ended provisions – “behavior is not in the best interest of the practice”
    - If definitions are too loose ask they be eliminated or restricted

# Devil is in the details!

- Dispute Resolution
  - Mediation/Arbitration (binding/not binding)
- Non-Compete Agreements
  - Almost all contracts contain
  - If you leave – you will not be able to practice in a certain area for a certain time period
  - Louisiana enforces Non-Compete if it states the parishes
  - Look for reasonableness
  - You might not be able to eliminate this clause
  - May be able to limit to facilities when terminated for “Cause”

# Devil is in the details!

- Compliance with laws
  - Requirement for CMS
  - Inspection of records
  - Corporate Practice of Medicince
- Governing Law – usually Louisiana – or location of hospital
  - Addresses venue, location of arbitration etc.
- Assignment
  - Reassignment of claims to hospital or group
- Severability – if one portion of contract is invalid – other portions are not affected
- Entire Agreement – contract constitutes whole agreement
- Modifications – requirements for modification – if any
- Waiver – requirements

# Devil is in the details!

- Requirements for Partnership?
  - Time period
  - Financial Productivity
  - Buy in
  - Buy out
  - Ownership percentage (shares)
  - Voting rights
  - Distribution of practice revenue
  - Protocol for evaluating practice assets
    - Equipment
    - Property
    - Accounts Receivable
  - Tax Issues

# Devil in the details

- Partnership
  - New hires – usually have lower salary to obtain partnership
  - Should specify time doctor would be considered
  - Should specify requirements – productivity
  - Should specify “buy in”
  - Trial period – usually one year
    - Should contain annual or semi annual review of doctor’s work
  - Criteria should include:
    - Quality of medical care, nature and frequency of complaints, productivity date – all should be described
  - What is being purchased? – Stock, Shares, Interest in Partnership?
  - Are assets part of the deal?

# Devil is in the details!

- Partnership (cont.)
  - “Buy In” Formula:
    - Hard assets – furniture, equipment,
    - A/R – Accounts Receivable
    - Goodwill
    - Patients now choose managed care based on costs rather than reputation – so goodwill is less a factor and “buy ins” less expensive
  - If “buy in” is high –will group finance at low interest rates?
    - Look to negotiating excess production beyond bonus to apply to “buy in”
    - Tax issues
  - Ask about Valuation of Practice
    - Book value v. FMV

# Devil is in the details

- Red Flags
  - An abbreviated contract – does not cover key issues – compensation, grounds for termination, benefits, vacation, or sick leave
  - A group that attempts to rush you into an agreement
  - A prospective employer who suggests that you don't need an attorney
  - A contract that offers you something substantially different than what others in the group are accepting
  - A one sided deal favoring the group/hospital
  - A contract that does not mention partnership

# Questions or Comments Please contact:

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