Physician’s Guide to Employment Contracts

OnCall Advisors
Preface

While helping hundreds of doctors transition to new employers each year, we have discovered that one of the most dangerous and problematic aspects of an attending physician’s life is their employment contract. From start to finish, it is mostly written in a legal language that few speak and is designed to protect the employer, sometimes at the expense of the physician. This guide is designed to uncover some of the common traps built into these contracts. It will aid in your understanding of what is being required, given, and taken from you both during and after the life of your contract.
Understanding the Nature of Physician Employment Contracts

Every contract is an agreement between two parties to both fulfill duties and/or convey some value to the other party in return. It is usually mutually beneficial and requires negotiation to both incentivize and protect both parties sufficiently. Whoever drafts the contract inherently creates it with its own interests in a primary position. Since this is expected, the recipient ought to analyze it critically so as to avoid unwanted restrictions or lack of desired incentive. It is not unusual or confrontational to ask for time to review any contract given to you and, in most cases, the help of a trained professional should be utilized for review and possible negotiation of the documents. In other words, do not give in to the urge to sign your contract in order to appear easy to work with or agreeable. The consequences of not carefully reviewing your contract may change the course of your entire career and possibly your post-career plans.

What Should Be Evaluated

Every contract is different and will contain its own unique opportunities and challenges. While there may be other dangerous areas, the following are the most frequent and likely problems you will face in your physician employment contracts:

1. Understanding the Offer
2. Understanding Your Employment Status
3. Specificity
4. Compensation
5. Restrictive Covenants (Non-Competes)
6. Duties/Responsibilities
7. Professional Liability Insurance (malpractice)
8. Termination

The rest of this guide will focus on each of these topics and will help prepare you to more competently review and negotiate your employment contract.
In many cases, physician will mainly focus on the offered income as the most important aspect of the contract. While this is understandable, it can also lead to a less comprehensive view of the offer that may lead to poor decisions and negotiations. Be sure to take into account both the financial components (compensation and benefits) as well as the intangible factors (location, practice reputation, partnership opportunities, favorable call and other duties) when considering the entire offer.

Understanding Your Employment Status

There are three different types of employment you could be offered:

1. Employee
2. Independent Contractor
3. Partner

EMPLOYEE
If you are hired as an employee, you will most likely be paid a W-2 income and have access to the entire menu of group benefits that are offered.

INDEPENDENT CONTRACTOR
If you are an independent contractor, you will likely be paid a 1099 income and will not have access to the group benefits. Therefore, your income should also be higher than if you were an employee since you will have to obtain your own benefits individually.

PARTNER
If you are being offered as a partner, you will probably be taking on increased risk and responsibilities for the promise of greater rewards. These rewards often come in the form of increased pay, participation in the profit of the employer, or some additional benefit package. Make certain that you evaluate your partnership agreement very carefully. Many employers are very good at adding partners to help shoulder the business and financial responsibilities without offering an appropriate corresponding reward.
Compensation can be made up of several components:

- Signing Bonus
- Guaranteed Salary
- Productivity-Based Salary
- Productivity Bonus
- Quality/Other Bonuses

SIGNING BONUS
A signing bonus is simply an enticement that an employer offers in order to encourage you to sign their contract. For many residents and fellows, this may be a welcome gesture to relieve the budgetary pressures often faced while living on training program salaries. For others, it may not be very important at all. The main thing to realize is that it is simply a part of your compensation package and must be viewed in light of the entire offer. Be cognizant of any repayment obligation you may have on the signing bonus. If there is one, make sure that you earn your pro-rated portion of the signing bonus for each month you work so that you do not owe the entire amount if you are terminated weeks before the end of the term of the contract.

GUARANTEED SALARY
A guaranteed salary is simply where the employer explicitly proposes to pay you a pre-determined salary for your services. This too may carry a repayment obligation or be structured as a “draw”. In either case, be certain about its terms before you sign or you may owe all or a large portion of it back to the employer if you are terminated or don’t meet certain goals.

PRODUCTIVITY-BASED SALARY
A productivity-based salary is simply compensation that is paid based on a pre-determined formula where the physician is paid a certain amount for each unit of production achieved. In
many cases, productivity-based formulas are based on hours worked, net collections, RVUs, or other easy to measure standards. In some cases, it is not as clear and must be discovered by pressing the employer for clarification and examples. Productivity Bonuses

Productivity bonuses are the same as productivity-based salaries except that they are paid on top of the normal salary as an incentive to reach certain performance standards. Often, a lower guaranteed salary will be offered in conjunction with a productivity bonus to give you some financial security while incentivizing hard work and desired performance.

OTHER BONUSES

In regards to quality and other bonuses, we have seen many types and varying degrees of complexity through the years. Your main goal should be to understand how any bonus is calculated, who will calculate it, how often you will be given a report showing your progress toward the bonus, and when will it be paid. If you understand these things, you will be able to financially plan as you will have a good idea of how much to expect and when your bonuses will be coming.

Restrictive Covenants (Non-Competes)

One of the most controversial clauses in any contract is the restrictive covenant or “non-compete.” These provisions will most likely carry a geographic scope and time component that will outline how far away you must go in order to continue practicing similarly without creating undesired competition for the employer. In some states, these are fairly regularly upheld and in others, are rarely considered legally valid. Of course, this is no reason to ignore your restrictive covenant or sign a contract with one of these provisions that is grossly over-reaching and dangerous. Once you have signed it, you will be at the mercy of the courts should your termination occur and this covenant be enacted. Make certain that your “non-compete” will not force you into an unwanted move and that it is for a reasonable amount of time (most commonly 2 years). A 15 mile radius in New York City will still leave you with many options in the surrounding areas while the same radius might require you to move your family if the employer is in rural Kansas.
Duties/Responsibilities

Almost all physician contracts will provide a list of duties and responsibilities that will be required of you. Attorneys call these affirmative obligations since they are the very core functions of the job you are agreeing to perform on a regular basis for compensation. You must be careful and read through every provision of this section since it is very hard to get out of affirmative obligations once you have signed the contract without being in breach of the contract. Of course, the employer will require the obvious duties you are expecting, but sometimes you will find bizarre or hidden duties within this section that could cause your firing or put you in a less than desirable position. In the past, we have seen physicians obligate themselves to buy certain types of unnecessary insurance or be forced to work at multiple locations as far as an hour away from the main practice location or hospital without knowing it!

Professional Liability Insurance (Malpractice)

This type of insurance is also known as malpractice. The main questions to ask are:

1. Who pays for the coverage?
2. What are its limits?
3. What type of policy is it?
4. How is “tail” covered?

Malpractice insurance can be fairly expensive so who pays for it may drastically change the value of your overall financial offer. Also, the limits vary and must be analyzed to ensure that you are properly covered in the event of a lawsuit. Your policy will either be an “occurrence-based” or “claims made” policy. If it is “occurrence-based”, you will not need to worry about a tail endorsement (tail coverage) once you leave the employer that covers the liability on the body of work you are leaving behind. If it is a “claims made” policy, you or the employer will need to procure “tail coverage” upon your termination. It is important to realize that tail coverage can be rather expensive and could be the responsibility of the employer or the physician depending on who initiated the termination and why it occurred. Certainly if an employer fired you “without cause”, you should have less responsibility for the tail coverage than if you violate the contract and force your firing.
Perhaps the scariest part of any contract is the termination section. The most basic thing to know is that termination can occur “for cause” or “without cause”. Your contract will outline all of the “for cause” reasons you can be fired such as committing a felony or losing your medical license. Make sure that all of these reasons are very specific so that the employer doesn’t have the ability to simply fire you after missing one day of work due to illness because there are no details regarding the number of days you must miss from illness before you are fired. The “without cause” section will simply layout how each party can voluntarily end the relationship without a specific cause for immediate termination. If your employer would like a 60 day notice before you leave, it is only reasonable that they should provide you with 60 days of your pay should they terminate you without cause.

Physician employment contracts are very unique and have many characteristics not found in other professions. If you ask a high school math teacher about his restrictive covenant or an librarian about her malpractice insurance, they will most likely not know what you are talking about. Therefore, throughout your career it is very important to take the time to review all of your employment contracts carefully. It may be wise to employ a professional to review your contract for you and possibly even help negotiate on your behalf.

If you use a professional service, be sure that your review is being completed by an actual attorney who specializes in physician contracts and has reviewed contracts in your specialty and in your state. If you want to save time and connect with one of the leading firms in the country for this type of service, simply click below to begin your review or learn more about our 3 levels of contract review services.
Disability Insurance is one of the most important financial protections for physicians to have since in most cases it protects the largest asset they own: their future income. Also, since 33% of all people between the ages of 30 and 64 will become disabled sometime in their lives, it is one of the more likely utilized insurance coverages you can own. Knowing which companies provide true, own-occupation contracts is the place to start. From there, understanding the base features and riders will help you to analyze your own-occupation options and proceed confidently in purchasing a disability insurance policy.

Also, please feel free to view any of our other physician guides that interest you:

PHYSICIAN’S GUIDE TO DISABILITY INSURANCE
PHYSICIAN’S GUIDE TO TRANSITIONING TO PRACTICE

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