

The Top Ten Things Every Physician Should Consider Before Signing on the Dotted Line

No matter whether you are preparing to start your first job out of medical school or simply relocating to a new practice, you are no doubt anxious to dispense with the details and get on with the real work of treating patients. Before you are able to do so, however, you will most likely be confronted with some type of employment agreement. More than a mere technicality, this agreement can largely dictate the course your professional career takes over the upcoming months and years. Thus, to assist in this sometimes daunting process, we offer you the following list of considerations to keep in mind when presented with an employment agreement.

Read the contract!

Under Kansas law, a party to a contract has a duty to read the contract before signing it. This is strictly enforced by the courts -- thus, the failure to read the contract does not make it any less binding. Even if you are assured the contract offered for your signature is a "form contract" that everyone uses, do not sign a contract without first reading it. Be sure you understand exactly what the terms and/or jargon mean, what your responsibilities will be, and what you can expect in return. For example, a contract may provide for three weeks paid time off, but you will want to understand if this is for vacation only, or if it includes sick days, personal days, vacation, CME and any other time you take off.

Compensation

To a new physician, the compensation clause is invariably the most important clause in an employment contract. Apart from knowing the bottom line, it is also important to understand how the compensation arrangement is structured. Is it based on a fixed annual compensation? Is it a variable amount based on billings or collections? Is it a combination of both? After reading the contract, you should be able to state that you will be paid \$x for y amount of work. If you are not able to do so, ask for clarification. Additionally, it is important to ensure that the contract allows for regular salary negotiation as well as annual inflation adjustment.

How much is too much?

From an employee's perspective, it seems intuitive that an employment contract becomes more attractive the more compensation it offers. For physicians, however, this maxim only holds true to a point. If the compensation package you are offered appears to exceed the value of the services that you are expected to provide under the contract, be wary, especially if the compensation is tied in any way to the number of referrals or admissions you are expected to make. These types of arrangements may violate the Federal Anti-Kickback Rule. Additionally, if your employer is a not-for-profit hospital, excessive compensation could subject both you and the hospital to sanctions by the IRS. If you have doubts about the compensation that is being offered to you, or the strings that are attached, do some research. A number of resources are available online that are helpful in determining the fair market value of physician services. Additionally, you should always make sure the compensation has been approved in writing by the hospital or medical practice's governing board.

Schedule, hours and call duty

Does the contract stipulate a maximum number of hours that you will be expected to work in a week or month? The actual value of your contract decreases with every additional hour you are required to work. Does the contract specifically define the hospital's expectations as to call coverage? Unfortunately, some unscrupulous employers will try to railroad new physicians into providing an inordinate amount of call coverage as compared to that provided by more senior or specialized staff members. Be sure the contract specifies the amount of call coverage that is required. If call coverage is shared with the other members of the staff, be sure the contract states that coverage will be shared on a substantially equal basis.

Insurance

Be sure to consider insurance issues as you read the contract. What level of liability coverage has the hospital or practice group agreed to provide? What level are you, the physician, required to provide? While Kansas physicians are required to have medical malpractice coverage to obtain licensure, other types of coverage, such as a general liability policy, may be needed for claims that are not linked to "the rendering of professional services." In addition, it may be necessary to consider obtaining excess coverage to fully protect your personal assets. Finally, you should also consider whether the hospital or group has committed to purchasing medical malpractice "tail" coverage for future claims that might arise after you become inactive through retirement or relocation to another state.

Indemnification

Contracts that include a provision for mutual indemnification by the parties may result in exposure of a physician's personal assets. Generally, a physician's malpractice coverage expressly excludes coverage for contractual liability. Thus, in the event the hospital or

practice group seeks indemnification, the physician's insurer is not liable, leaving the physician on the hook. Understand this risk before agreeing to provide any indemnification.

Employee vs. Contractor

It is imperative that you understand what your relationship with your employer will be under the terms of the contract. Will you be an employee of the hospital or medical practice? A shareholder? An independent contractor? The answers to these questions can greatly affect both your tax burden and your potential liability in the event of a malpractice action. The level of control the hospital or medical practice has over the way in which you practice is also dependent on the nature of its relationship with you, so it is worth understanding exactly what that relationship is.

Staff Privileges & Bylaws

Check to see if your staff privileges are conditioned upon continued employment with a hospital employer. Usually, there is a right to a fair hearing before termination of staff privileges. However, those rights may be waived if the contract provides for automatic termination of privileges upon termination. Even if the language of the agreement does not explicitly say this, you should check to see if the contract is subject to the terms of an employee manual or organizational bylaws. If so, ask to see a copy of the manual and/or bylaws before you sign the contract. Pay particular attention to whether termination of employment is a basis to deny privileges, especially if you intend to work in the community served by the hospital following termination of the contract.

Termination

Generally speaking, there are three ways in which a physician employment agreement may be terminated. First, it may simply expire by its own terms if not renewed. Second, either party may terminate the agreement for cause, such as a material breach of the agreement. Third, agreements generally may be terminated without cause by either party so long as they give the other party sufficient advance notice. If you are concerned about how long you are committing yourself to a position, you should note both the duration of the initial term of the agreement, as well as the notice you are required to provide in order to prematurely terminate the agreement without cause.

Non-compete clauses

The general rule is that covenants not to compete are enforceable in Kansas. The contract may provide for a covenant not to compete with no provision for liquidated damages, or it may contain a restrictive covenant allowing the physician to pay damages in the event he or she opts to remain in the community. Either type is likely to be enforced, so long as the time period and geographic restriction are considered reasonable. You must be aware of the limitations placed upon you following employment before agreeing to the contract and know when and how they will come into play after the contract ends.

With these ten considerations in mind, you should be well-prepared to read and understand a physician employment agreement. However, if there are terms of the agreement that you are not comfortable with, or if you are simply faced with a deadline and pressed for time, ask an experienced health care law attorney to review the agreement for you. It may well save you time, money and headache in the long run.

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