



Physician's Guide To Employment Contracts

TOP 10 TIPS FOR PHYSICIAN EMPLOYMENT RELATIONSHIPS

- 1 READ AND UNDERSTAND AGREEMENT BEFORE YOU SIGN** – The provisions in your employment contract become enforceable once you sign and possibly before, when you act in compliance with the terms. Read and make sure you understand the substance thoroughly. Hiring an experienced health care attorney to review and fully discuss with you will allow you ask appropriate questions and make your best decision.
- 2 HOW MUCH LEVERAGE DO YOU HAVE?** – Negotiation of employment terms typically depends on how much the employer needs you and profits from your services. If the location is geographically remote, or your subspecialty is uncommon or profitable, you have greater ability to negotiate away unfavorable terms or reduce the time period or geographic scope of a non-compete. However, if your subspecialty is common and your service area is urban, you will likely have little, if any, ability to negotiate. Also, being too aggressive may even label you a difficult physician on the front end, so proceed with caution.
- 3 NON-COMPETE OBLIGATIONS** – These obligations will restrict you from practicing medicine in your sub-specialty in a certain geographic location for a certain amount of time after the termination of the employment contract. Be sure to understand what this means in reality. There may be certain statutory requirements for a non-compete to be enforceable against physicians in your state (e.g., Texas requires a reasonable buyout and non-interference with any acute need in a physician/patient relationship). But unless these requirements are facially deficient, prudent physicians should presume that the non-compete is enforceable as part of the employment arrangement and that the employer will actually enforce it, even if the employer terminates you without cause.
- 4 NON-SOLICITATION AND NON-OWNERSHIP OBLIGATIONS** – Although not a *per se* prohibition from practicing medicine, these impact the ownership interests you can have, the patients or referral sources to whom you can market and treat, and the employees whom you can hire upon termination of the employment contract. Although employers draft these to be broad and indirect, you may try to negotiate these to be more narrow (e.g., prohibiting only solicitation of current patients, referral sources, and employees rather than potential; prohibiting ownership only where directly conflicting; making clear that restrictions do not apply to after-acquired locations).
- 5 HIPAA, PRIVACY, AND TRADE SECRET CONFIDENTIALITY** – Observe all employment policies, including HIPAA and patient privacy laws, at the outset of the employment relationship. Keep it simple by using the phone, pager, laptop, computer tablet supplied to you by your employer, and avoid forwarding information to personal devices. Always use proper mobile device protocols and avoid taking hard copy information that is not secured to non-office locations. Just because you have access to confidential materials, access them only as necessary. Limit access to patient treatment or other proper purposes as specifically authorized by your employer. And use the trade secrets of your employer for employment purposes only.

- 6 IS THERE AN INCOME GUARANTY OR RECRUITMENT COMPONENT?** – Funds may be offered that will enable the employer to support you with salary payments as you build your practice. These federally-regulated requirements allow such amounts to be forgiven as long as you practice in a certain service area for a certain period of time. However, if your employment is terminated (e.g., if the economics of your practice fail) or you otherwise need to relocate, an income guaranty complicates the situation greatly. Seek an experienced health care attorney's advice to ensure you understand the risks and benefits of the arrangement before you accept. Get legal help if you make a decision to leave the practice area or otherwise not meet your forgiveness obligations.
- 7 ENVISION LOGISTICS** – Logistics are a crucial part of your practice, but you cede control over them when you become employed. Clarify the locations of your clinical practice as well as any hospital or health care facilities to which you will be expected to go. Understand the call coverage requirements and what the expectation will be for holidays and taking vacation. Also, many employers now measure your clinical "quality" with algorithms and formulas, so be aware of what is measured and how it is measured to ensure that you do not become an outlier.
- 8 MAKE A GOOD MATCH** – Be realistic about your decision to become employed. Compelling reasons to become employed (salary/bonus, benefits, call coverage, shifting of overhead and administrative expenses) may have certain tradeoffs (how much you are actually paid, your actual working and call coverage schedules, clinical quality expectations, unreasonable overhead and administrative expenses). Look for an employer with a good reputation of treating physicians right and spend time conducting thorough due diligence before you take the plunge.
- 9 RECOGNIZE RED FLAGS** – Once the employment relationship starts, don't be blind to signals that the relationship is not working (whether due to economics, personalities, politics, etc.). Addressing red flags early on with an experienced health care attorney will allow you to get a jump on how best to address any concerning issues, before you find yourself in a crisis with limited options.
- 10 RESIST THE URGE TO RESIGN** – If there is an actual crisis, do not resign your employment without seeking the guidance of an experienced health care attorney to help you make the best decision and guide you through the process. Interwoven state and federal reporting requirements, coupled with self-reporting obligations, exist for all physicians. Be careful not to unwittingly trigger an affirmative report by resigning when there is an "investigation." Even if your employer is not a hospital or health care entity, your clinical privileges at such an institution may be contractually tied to your continued employment. Tread carefully. Determining a strategic legal plan to resolve the issue and continue employment is crucial. Or, if continued employment is not feasible, efforts to extricate yourself from employment while minimizing damage to your professional record must be your top priority—in this event, legal help is essential!



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