

Contracting Essentials for All Physicians, Especially Residents and Fellows

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As many residents and fellows enter their final year of training, the recruiting period for physicians is on the horizon and these soon-to-be attending physicians will begin exploring their options. After nearly a decade or more of medical training, these physicians will finally have an opportunity to take control of their careers and choose their next opportunity.

More often than one might expect, we see new physicians become hesitant to fully review and negotiate their first contracts. Perhaps, after reaching their final goal, they don't want to seem too aggressive and fear having an offer rescinded. To help facilitate this process, we've put together this brief guide to help physicians navigate contract negotiations.

Although the full contract should always be read and understood in its entirety, there are some sections that play a key factor in negotiations that every physician should understand.

- Non-Compete Agreements (Restrictive Covenants)
- Contract Term & Termination
- Compensation

- Malpractice Coverage
- Plan for Worst-Case Scenario

Restrictive Covenants (Non-Compete Agreements)

Restrictive Covenants, often referred to as non-compete agreements, are contractual clauses that put temporary limitations on your employment once your current agreement ends. Although there are some states in which restrictive covenants are unenforceable by law, this is uncommon; restrictive covenants are routinely enforced in many states. In January 2023, the FTC proposed a rule that would prohibit companies from entering into non-compete agreements with their employees. As of right now, this is simply a proposal, and the agency is still soliciting public comments before the rule becomes finalized. Once finalized, litigation to challenge the rule is inevitable. Regardless, Pennsylvania already heavily scrutinizes physician non-compete agreements to protect the overall interests of the public.

Generally speaking, restrictive covenants must be designed to reasonably protect the employer without unreasonably restraining the physician. This is often achieved by prohibiting a physician from practicing in the current employer's immediate area for a reasonable period. For example, if you were a pediatrician, the restrictive covenant might prevent you from practicing as a pediatrician in any facility within 25 miles of your current employer for a period of one year once your current employment ends. The reasonableness of the time and geographic restrictions are dependent upon the facts surrounding your current employment

situation; a 50-mile restriction may be considered reasonable in an extremely rural area but would likely be unreasonable in a more densely populated area.

Standard restrictive covenants are usually applicable regardless of the reason for termination. In situations where both the employer and the physician could terminate the agreement without cause with only 60- or 90-days' notice, you are taking on a considerable risk that could force you to relocate, at least temporarily, once this agreement terminates. You should attempt to protect yourself against termination without cause or termination initiated due to a breach of the employment contract by the practice. You could also hope to negotiate a longer-guaranteed employment period or a longer notice period for termination without cause. Understanding the restrictive covenant of your contract is critical as you begin your career.

Contract Term & Termination

Contracts can either be for a specific term (i.e., length of time) or can be evergreen, continuing indefinitely until terminated for some reason. Many contracts have a provision allowing both the employer and the physician to terminate the contract without cause upon 30-, 60-, or 90-days' notice. For a physician fresh out of residency or fellowship, you would hope for an initial term of at least 2-3 years; it will take time for you to transition and fully understand the expectations of becoming an attending physician. Whether it's a matter of understanding how many office hours are typically expected, how many hospitals will be covered, your average call coverage

responsibilities, or even fully understanding the achievability of your wRVU targets, your first year as an attending physician will be full of new experiences and lessons. Having a longer initial contract term will give you a level of comfort during this transition. Also, because you are likely subject to a restrictive covenant, a longer term should provide additional assurances against you having to relocate so soon.

Malpractice Coverage

One significant change as you transition from residency or fellowship to practicing as an attending physician is your exposure to being sued for malpractice. This makes it critical that you fully understand the protection your employer provides you, such as malpractice insurance. Malpractice insurance coverage is usually available in two forms, occurrence and claims made.

- Occurrence coverage will often cover events that occur during the term of the insurance policy, regardless of when the claim is made; this type of coverage is preferred.
- Claims made insurance usually covers events only if they occur during the term of the policy and relate to a claim that is made during the term of the policy; this type of coverage is usually less expensive but also provides less protection. You will need to know the type of malpractice insurance that is provided by your new employer and take that into consideration as you negotiate the terms of your new employment and explore employment options.

Compensation

Although compensation is likely one of the top considerations as physicians explore their new opportunities, it should be one of the final items you agree upon. If possible, you

should defer the compensation decision until any other issues are resolved. Compensation provisions typically consist of a base salary with productivity expectations and may even come with a signing bonus or relocation bonus. To fully understand compensation, you should evaluate the employment opportunity as a whole. For example, if the compensation is high but the benefits are poor and you are expected to shoulder a disproportionate amount of call time, maybe the high compensation is not worth the expectations compared to another opportunity with lower compensation but better benefits and less call time requirements.

Be prepared to ask questions about the practice's specific expectations of you. For example, the practice should be able to provide data on the historical performance of physicians in the practice so that you can better understand the achievability of your wRVU targets. Throughout this process, keep in mind that the hospital or practice is going to try and hire you for as low of compensation as you are willing to accept; do not be hesitant to ask for a larger compensation if you feel the initial offer is lacking. Be prepared to bring data to the conversation and know your worth. Once the negotiations are complete and the contract is signed, you will not have this opportunity to advocate for yourself until the contract is up for renewal, or you transition to a new employer. Use whatever leverage available to you (i.e., restrictive covenant or term length) and negotiate to be adequately compensated for your services.

Plan for the Worst-Case Scenario

Most likely, your relationship with your new employer will be great, you will flourish in this new environment, and you will never need to revisit your contract again. Although that is the scenario we all hope for, that is not the scenario you should plan for when negotiating your contract. If an issue arises, you need to fully understand your rights and responsibilities as well as make sure that you are protected when it comes to things such as severance pay and restrictive covenants. The language that is in the contract sets the stage for how any adverse situation might play out. While negotiating your contract, you have a chance to advocate for yourself by inputting protections in any unpleasant situation. No matter how unlikely an issue is to arise, you should still plan for the worst-case scenario and build in protections for yourself during the negotiating process.

Conclusion

As your medical training concludes and this new chapter of your career begins, you will face many new experiences, both rewarding and challenging. Do yourself a favor and take the time to make sure your contract with your new employer sets you up for success. You've worked so hard to get to this point - this is the time to reap the benefits of all your efforts.

