Contracts and physicians: The good, the bad & the things to never ignore

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Practically all physicians must sign an employment contract at some point in their careers. For those just out of residency, it can be mystifying. For mid-career professionals, it can lead to a certain amount of soul searching about the direction of their practice, or more generally, what they want out of life, both on the job and in their personal life. For anyone, it can be a stressful time.

The WSMA offers education and information that can help physicians take the right steps to a fair contract that reflects their needs and goals. The following is a brief guide on some important issues to consider before signing a contract. The more informed a prospective employee is, the better the final contract will be.

I'll be back in later issues with more information on contracts. Meanwhile, here are a few key areas to think about.

A parting of the ways: Restrictive covenants

I frequently speak to physician groups about contracts, and hands down this topic is always the first to come up in audience questions: restrictive covenants, which include non-compete clauses. It's such a burning issue, in fact, I've moved it to the beginning of my talks.

Non-compete clauses are a challenging topic, difficult—although not impossible—to negotiate and potentially expensive to challenge. Our membership is split on whether they are good or bad.

Typically, such a clause might specify a physician cannot practice medicine for two years within a 10-mile radius after leaving an employer. Not all states allow these clauses—California doesn't. But we don't have anything in Washington state law about how they work; it's all case law based. The short answer is our courts have allowed them, but they need to be reasonable and should be no more restrictive than necessary.

The reason they are controversial is something like this: A new doctor coming in wants the freedom to move around. But if you have a group or small practice that spent $10,000 moving that physician into the area, plus even more money and time setting up an office and a patient load for that doctor, you don't want that individual quitting after a year or two, taking your patients away and setting up shop next door. Larger employers, for their part, want to protect their investment for much the same reasons.

There are usually other things to consider in this arena, including non-solicitation clauses, which are also common. Typically, under these clauses, a doctor cannot actively solicit patients to leave a practice to join him or her in a new practice. Also, a doctor who leaves might not be allowed to solicit other employees to leave—for instance, you wouldn't be able to take the office manager with you to your new business.

Whenever possible, you should negotiate a clause in your contract that states if you leave, you should be able to place an ad in a publication of public distribution, i.e. a newspaper, such as "Mary Smith is opening an office in Tacoma," or "Mary Smith seeks to hire an office manager in her Tacoma office." Some proposed contracts will prohibit any and all forms of solicitation, so this is something to watch for. It could make your professional life difficult should you decide to leave.

Red flags to watch out for when you're negotiating a job offer

- **INSISTENCE ON AN ORAL, RATHER THAN WRITTEN AGREEMENT BY THE PROSPECTIVE EMPLOYERS**. Oral agreements can be enforced, but it is difficult.
- **UNILATERALLY REFUSING TO NEGOTIATE ANYTHING**. Some potential employers, especially large organizations, may claim that employment contracts are "boilerplate," but many contract terms are, to some extent, negotiable. The negotiation process can and should be collaborative; both sides should jointly identify options that accommodate their respective needs. The employer's attitude in this respect and willingness to consider a physician's needs or proposed changes during the negotiation process can provide you with insight as to how the employer-employee relationship will play out in the institution.

- **BEING GIVEN ONLY A SHORT TIME FRAME IN WHICH TO MAKE A DECISION**. Don't be rushed. You're going to have to live with the contract for a year or more.
- **CONVERSELY, A PROSPECTIVE EMPLOYER DRAGGING OUT NEGOTIATIONS MORE THAN IS REASONABLE SIGNALS PROBLEMS**. Listen to your gut. Are they trying to hide vital details?
- **DISCOURAGING LEGAL REVIEW OF CONTRACT**. If the employer feels the contract is fair, why discourage a legal once-over?
- **AN UNWILLINGNESS TO SHARE FINANCIAL DETAILS OF A PRACTICE**. This is vital for anyone who may become a shareholder.
- **DISCOURAGING DISCUSSIONS WITH CURRENT OR FORMER EMPLOYEES**. This is a big, fat red flag. A story: In one situation a doctor was coming in after another left, and the candidate wanted to talk to the former employee. He was told the person who left wasn't available and had nothing of value to offer the new physician. It turned out the new doctor ran into predictable problems with the employer, and the candidate could have learned this if he had been able to talk to the former employee. These things happen all the time.

It's more than the money

Sure, money is a key part of a contract. But you need to think about other critical areas, which may ultimately prove just as important.

For one physician I advised, the key issue was location. The physician only wanted to work at one facility, but the group had multiple locations. The initial contract said she could be reassigned to any of them. She didn't want to end up driving 30 miles each way to those locations, so she was able to have her contract reflect that she could not be reassigned to the other facilities.

Other things you need to be clear on include the number of hours working and the on-call coverage requirements. We'll see things in contracts that are very vague, such as "On-call responsibility is shared evenly with the other members of department." But if there are only two physicians in your particular group, then you're on every other week. It can be crazy.

Also, do the hours specified in the contract include administrative time? The contract must be clear on that point or you could find that you are working a great many uncompensated hours. Or else be sure you are compensated for administrative time.

You should know

The WSMA Legal Resource Center can provide any WSMA member with general information about employment contracts, although we cannot give individual legal advice.

We can, however, provide you with referrals to attorneys with experience in employment law who can assist in the review of an employment agreement.

Need more information? We're happy to talk with you. Contact Denny Maher, JD, MD, WSMA director of legal affairs (denny@wsma.org), or Tierney Edwards, JD, WSMA legal & policy analyst (tee@wsma.org).