Red Flags in Physician Employment Contracting

Physicians need to be prepared when they negotiate with an employer regarding a job. In particular, physicians must be able, and willing, to identify potential "red flags" during negotiations that might provide insight into the future employment relationship. These red flags do not necessarily prove an employer's nefarious intentions. But a physician who encounters a red flag during contract negotiation may want to give extra careful consideration to the employer's terms before signing. This means that even before he/she signs a contract, an attentive physician can glean insight regarding potential problems with the contract itself and the position he/she is about to accept.

Here are some red flags physicians should watch for:

Refusal to negotiate

Despite the fact that potential employers, especially large organizations, may claim that employment contracts are "boilerplate," many contract terms are, to some extent, negotiable. The negotiation process can and should be collaborative; both parties should jointly seek to identify options that accommodate their respective needs. The demeanor and willingness to consider a physician's needs or proposed changes during the negotiation process can provide the physician with insight as to how the employer-employee relationship will play out in the institution.

Reluctance to reduce the agreement to a written document

All employment agreements should be in writing. Every important aspect upon which the physician and the employer have agreed should be included in a written and signed document. Details left out of the document may be difficult to enforce after time has blurred parties' memories or circumstances have changed. Be wary of verbal "commitments" an employer might insist on that are not included in the writing. This is especially important when customizing a "boilerplate" contract.

Unusual or Uncomfortable Timing and Pace of Negotiations

A physician should be wary if it appears that the employer is taking too long to produce and finalize the contract (dragging its feet). Unusual delays in producing employment documents might indicate the employer is trying to hide details of the contract. A physician cannot, and should not, burn any bridges or make any final commitment before reviewing and approving all relevant employment documents, particularly the contract. An employer should produce all documents in a timely fashion.

An employer raises another red flag if it seems to rush the negotiating process and pressure the physician to sign an agreement (doesn't give the physician enough time for him/her to review and consider all parts of the contract). In all cases the employer should produce all documents in a timely fashion and allow the physician ample time to review them with an attorney. If an employer tries to dissuade the physician from having a lawyer look over the contract, this is also a red flag and could indicate that there is something in the terms that may be unfavorable to the physician.

Employer is Less than Forthcoming with Information

Any attempt to dissuade or limit a physician's attempt to talk to other employees (current or former) constitutes a red flag. Employers should be willing to allow a prospective employee to speak with other physicians employed by the organization. Any reluctance to allow such contact may indicate the employer has something to hide.

In a similar vein, employers should be forthright about answering general questions regarding the finances of their business. Understanding the financial health of the practice is always important, but especially so for a physician who may become a shareholder in the practice at some point. A lack of transparency regarding the finances of the practice may indicate that the potential employer may be hiding larger issues.

Involve a Lawyer

An employment contract can have profound and lasting consequences that extend beyond the period of employment at that particular institution or practice. For this reason, physicians should have a lawyer review the contract before signing it.

How the WSMA Can Help

The WSMA Legal Resource Center can provide WSMA members with general information about employment contracts. The WSMA can also provide members with the contact information for one or more attorneys with experience in employment law who will be able to assist in review of the employment agreement. For more information about employment contracts and employment contract review contact Denny Maher, JD, MD, WSMA Director of Legal Affairs (dpm@wsma.org), or Tierney Edwards, JD, WSMA Legal & Policy Analyst (tee@wsma.org).