Getting What You Want:
Advanced Contract Law Tips for the Practicing Rheumatologist

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Overview

• Part 1: Contracts 101 Refresher Course
  – 20 minutes of class

• Part 2: Graduate from the AWIR School of Law
  – 15 minutes in groups

• Part 3: New and Advanced Contract Concepts
  – 40 minutes of class

• Part 4: Pass the AWIR Bar Exam
  – 15 minutes in groups
PART I: *Practical* Contract Law Concepts

- for those who were here in 2017: refresher course
- for those who *missed* 2017: crash course
- why: physicians are common victims of bad contracts
Rule #1: Consider investing in a lawyer.

• You don’t know what you don’t know!
• online legal forms = self-diagnosis with WebMD
• get a reliable referral
Rule #2: Everything is negotiable!

- physicians often undervalue themselves
- don’t be afraid to walk away
- parties can make changes to contracts: amendments, schedules, exhibits, or terms
- even salaries: recent study
Rule #3: There is no such thing as a “standard contract.”

- all 50 states have their own contract law peculiarities
- landmines: “corporate practice of medicine,” Stark, anti-kickback laws, etc.
Rule #4: Amend the contract to reflect any negotiations.

- contracts are not sacred papers: you may write on them, attach notes, etc.
- the key: all changes should be in writing and signed
- at a minimum, changes should be initialed before signing
Rule #5: All that matters is what is in writing.

- “We’ll work this out later.”
- “I know it says x, but don’t worry, we both know it means y.”
- what is an integration clause?
Rule #6: Contracts should be clear and written in plain English.

• “plain English” vs. “Queens English”
• contracts should be easily understood by the parties
• avoid legalese whenever possible
Rule #7: Watch out for “boilerplate” provisions that are really game changers.

- “common” provisions doesn’t mean you want them
- examples: liquidated-damages provisions
Rule #8: Be consistent.

- definitions of parties and terms
- consider whether provisions create inconsistencies
- multiple documents: be extra careful about inconsistencies
Rule #9: Make sure your contract is actually a contract.

- general contract formation: offer, acceptance, consideration
- problematic examples: letters of intent, MOUs, and “agreements to agree”
Rule #10: Define any potentially vague terms.

- be sure that all terms, especially key ones, are crystal clear
- example: termination for “professional misconduct”
PART 2: Graduate from the AWIR School of Law

- real life example of *bad* contracting
- each table will be its own group of future law partners
- 5 minutes to study and discuss the contract being passed around
Issues to Discuss With Your Classmates

• what potential problems do you see?
• which of the rules we just discussed were not followed?
• what changes would you make?
• remember: think *deviously*
PART 3: New/Advanced Contract Concepts

- for those who were here in 2017: brand new concepts
- more difficult to grasp than Contracts 101
- goal: ensure that AWIR members’ contracts are *indestructible*
Rule #1: Examine termination provisions.

- every contract ends, so plan your exit strategy
- termination at will vs. for cause
- notice and “opportunity to cure”
- how much notice before termination
Rule #2: Add “intent of the parties” clause.

- courts first look at plain language, then intent
- proving intent after the fact = problematic
- can include intent in a “recital” section
- real-world example
Rule #3: Agree on a way to resolve disputes.

- types: mediation, arbitration, bench trial, jury trial
- advantages and disadvantages of each
- know when you’re David versus when you’re Goliath
Rule #4: Avoid long-term contracts.

- common mistake, especially with third-party vendors
- the “honeymoon phase” vs. the “seven-year itch”
- automatic-renewal provisions
- limit to two years at most, and reserve the right to terminate for poor performance
Rule #5: Define the relationship.

- this is where you want to get *really* specific
- employees vs. independent contractors
- naming conventions vs. reality
- types of employees, partners, and shareholders
Rule #6: Watch your conjunctions and modifiers.

• “and,” “or,” and the inclusive-vs.-exclusive problem
• real world example
• “reasonably,” “actively,” “knowingly,” etc.
Rule #7: When in doubt, keep it confidential.

- provisions for sensitive business information
- non-disclosure agreements
- non-disparagement agreements
Rule #8: Include a forum-selection clause.

- forum-selection clauses: what are they?
- disadvantages to litigating miles away
- key component: consent to exclusive jurisdiction
Rule #9: Beware of non-compete covenants.

- what are they, really?
- negotiate *before* agreement is signed
- consider: (1) geography; (2) time; (3) what is prohibited
- legal in your state? *illegal* in your state (California)?
Rule #10: Choose (or avoid) an indemnification clause.

- indemnification clauses: what are they?
- no: if you’re the only party doing the indemnifying
- yes: if the other side is doing the indemnifying
- maybe: mutual-indemnification provisions
- negligence vs. reckless vs. intentional
PART 4: Pass the AWIR Bar Exam

• You know the drill: 5 minutes to study and discuss
• Much more difficult than the previous exercise.
• This is big: All of your AWIR legal studies have prepared you for this moment.
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- What changes would you make?
- Remember: Think *deviously*. 
Questions?

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