

# Getting What You Want:

## Advanced Contract Law Tips for the Practicing Rheumatologist

Association of Women in Rheumatology  
2018 National Conference – Hilton Head, South Carolina

Drew Erteschik and J.M. Durnovich  
Poyner Spruill LLP



Poyner Spruill<sup>LLP</sup>

ATTORNEYS AT LAW



# 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.

# Issues to Discuss With Your Law Partners

- What potential problems do you see?
- Which of the rules we just discussed were not followed?
- What changes would you make?
- Remember: Think *deviously*.

# Questions?

Drew Erteschik  
drew@poynerspruill.com  
919-783-2895

J.M. Durnovich  
jdurnovich@poynerspruill.com  
704-342-5344

