

UNDERSTANDING WHAT YOU SIGN:

COMMON CONTRACT ISSUES FOR MEDICAL PROFESSIONALS

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

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ATTORNEYS AT LAW

DISCLOSURE SLIDE

No disclosures.

CONTENT OBJECTIVES

01

Increase familiarity with
common contract terms and
provisions

02

Implement strategies to
improve negotiations skills
for contracting

OVERVIEW

The Five Basic Rules of Contracts (10 mins)

Physician Employment Agreements 101: Key Provisions (15 mins)

Contract Review Activity (15 mins)

Real World Examples (15 mins)

Questions (5 mins)

THE FIVE BASIC RULES OF CONTRACTS

1. Invest in a trusted lawyer

2. There is no such thing as a standard contract

3. Everything is negotiable

4. Get it in writing

5. Read the entire contract

RULE #1: IF IT IS IMPORTANT ENOUGH, INVEST IN A TRUSTED LAWYER

- Online legal forms = self-diagnosis with WebMD
- What does “important enough” mean
- Finding the right lawyer: get a reliable referral



RULE #2: THERE IS NO SUCH THING AS A “STANDARD CONTRACT”

- All 50 states have their own contract law peculiarities



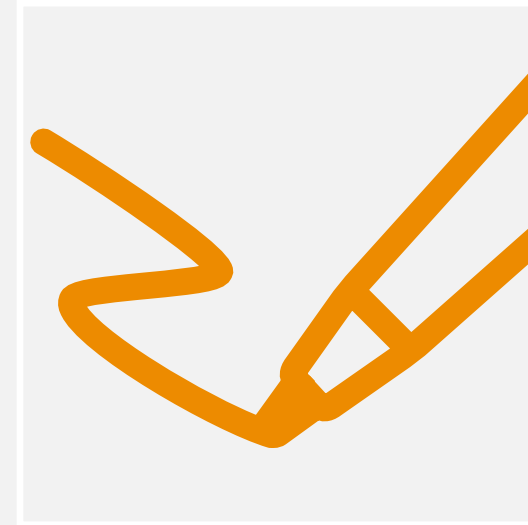
RULE #3: EVERYTHING IS NEGOTIABLE!

- Parties can make changes to contracts
- Make sure you amend the contract to reflect any negotiations!
- All changes must be in writing and signed (at a minimum initialed)



RULE #4: GET IT IN WRITING

- Red flags: “we’ll work this out later”
“I know it says x, but don’t worry, we both know it means y.”
- Make sure you have a signed and complete copy of your contract



RULE # 5: READ THE ENTIRE CONTRACT

- Make sure you have read and understand every aspect of your contract
- Beware of “boilerplate” or “fine print” provisions that are really gamechangers
- Read any definitions of terms and any exhibits or schedules that are referenced in the contract



PHYSICIAN EMPLOYMENT CONTRACTS 101: KEY PROVISIONS

Termination
provisions

Salary
provisions

Restrictive
covenants

Indemnification
clauses

Arbitration
clauses

Governing law

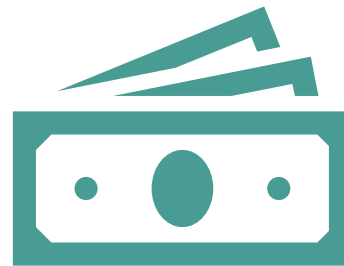
TERMINATION PROVISIONS

- Plan your exit strategy
- “At will” termination vs. “for cause” termination
- Notice and opportunity to cure
- How much notice before termination?



SALARY PROVISIONS

- Make sure you understand the compensation structure
 - Base salary
 - Stock options
 - Performance incentives



RESTRICTIVE COVENANTS

- Non-compete vs. non-solicitation
- Enforceability of restrictive covenants
 - Are they legal in your state?
 - Many states limit the enforceability of restrictive covenants (California)
 - Generally, restrictive covenants must protect a legitimate business interest.
 - Consider: time, territory, and scope



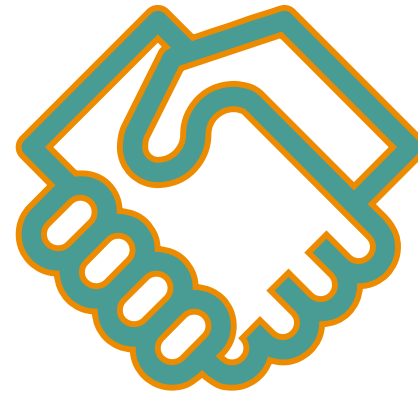
INDEMNIFICATION CLAUSES

- What are these?
- Consider who is doing the indemnifying
- Enforceable?



ARBITRATION CLAUSES/ GOVERNING LAW PROVISIONS

- What is arbitration?
- Make sure you understand how you have agreed to resolve disputes
- What law governs? All states have different law regarding employment contracts so this matters!





POLLING
QUESTION

- Which of the following is true regarding non-competes?
 - A. They are never enforceable in physician contracts
 - B. Generally, they must protect a legitimate business interest
 - C. The law on non-competes is the same in every state
 - D. They are non-negotiable

CONTRACT ACTIVITY



Take five minutes to identify the key provision in this contract



What's wrong with the contract?

AGREEMENT:

WHEREAS, hencetoforth Employer has been without the services of and need of the services of one Physician Assistant;

WHEREAS, said Employer hereby represents, covenants, and warrants its intent and desire to employ any bargain for the Employment of one Physician Assistant;

WHEREAS, hencetoforth Employee hereby represents that Employee is eligible to serve as a Physician Assistant; and

NOW THEREFORE, in consideration of mutual covenants and obligations, agreements and conditions hereinafter setforth, the Parties agree and covenant as follows:

TERMS:

THE Premier Rheumatology Group of Hilton Head ("Employer") hereby agrees to employ the Employee identified below under the following terms and conditions, and Employee hereby agrees to accept those terms and conditions.

1. Duties. Employee has been hired for full-time Employment as a Rheumatology practitioner in Employer's Hilton Head office.
2. Payment. Employer shall compensate Physician Assistant at the rate of \$95,000 per year, unless otherwise provided. Employee shall have no eligibility for Stock Purchase in accordance with the Practice Group Stock Subscription Agreement until the Partnership Date. Employee shall be eligible for annual Performance Incentive Compensation equal to 35% of collections from patients and Designated Third-Party Payors to the extent generated from Employee's services rendered, for such collections in excess of Base Salary, to the extent reasonably earned.

3. Timing. The term of this Agreement shall be for an indefinite time, commencing on December 1, 2021. This agreement will become effective immediately upon signature of all required signatories.
4. Termination. This Agreement may be terminated by Employer upon Employee's failure to perform duties or otherwise for good cause upon notice to Employee.
5. Indemnification. Employee agrees to defend, indemnify, and hold harmless Employer and its affiliates from any and all damages, liability, and expense (including legal costs, other expenses, and attorneys' fees) in any way related to Employee's provision of medical care, even if caused in whole or in part by the negligence, gross negligence, or other fault of Employer or its affiliates.
6. Non-Competition Terms. During the Employment and for a period of 2 years following Termination, Employee shall be prohibited from working in any capacity for any other Rheumatology Practice Group in the South-East area, except upon payment to Employer of an amount equal to the Fair Value of foreseeable damage to Employer's economic interests.
7. Non-Solicitation Terms. During the Employment and for a period of 2 years following Termination, the Employee shall not, directly or indirectly, on behalf of herself or any other person or entity:
 - a. Solicit for treatment or otherwise make use of any patient name in competition with the Employer. For this purpose, "patient" shall mean any person who received services from the Employer at any point in time prior to, during, and following this Agreement; or

7. Non-Solicitation Terms. During the Employment and for a period of 2 years following Termination, the Employee shall not, directly or indirectly, on behalf of herself or any other person or entity:
- a. Solicit for treatment or otherwise make use of any patient name in competition with the Employer. For this purpose, "patient" shall mean any person who received services from the Employer at any point in time prior to, during, and following this Agreement; or

 - b. Solicit for employment or as an independent contractor any employee of the Employer who was employed by the Employer during the term of this Agreement.
8. Arbitration of Disputes. Any dispute or claim that arises out of or that relates to this employment agreement, or that relates to the breach of this agreement, or that arises out of or that is based upon the employment relationship (including any wage claim, any claim for wrongful termination, or any claim based upon any statute, regulation, or law, including those dealing with employment discrimination, sexual harassment, civil rights, age, or disabilities), shall be resolved by arbitration.
9. Governing Law. This Agreement will be interpreted in accordance with the laws of Delaware, USA, notwithstanding the principles of conflicts of laws thereof, and any dispute shall be submitted to the courts in the State of Delaware



REAL WORLD EXAMPLES: COMMON ISSUES
WITH PHYSICIAN EMPLOYMENT CONTRACTS



QUESTIONS?

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