

Employment Contracts for Physicians

March 9, 2018

Basics

- At Will
- Most contracts are not in writing
- Contract consists of mutual promises
 - › Full time and attention/exclusive
 - › Compensation/benefits

Terms

- "At Will" vs. guaranteed Term of employment
 - › Automatic extension of term
 - › Specific salary increases (or "agreement to agree")
- Services/Qualifications (Board Certification)
 - › Privileges at certain hospitals/facilities
- Compensation
- Benefits
- Termination
- Restrictive Covenants
- Partnership/Ownership issues
- Terms common to every Agreement
 - › Patients belong to Employer
 - › Collections belong to Employer

Compensation

- Salary—fixed amount
 - › Most common for new doctors
- Percent of collections
 - › Less common but seen in private practice
 - Percentage of what you bring in**
 - Increase work = increase collections
 - Advances for first few months**
 - Because of 60-90 day delay in ins. payments
 - Promissory note/repayment obligation for advances**
- Bonus?
 - › Based on collections
 - › Discretionary
 - › Fixed percent of profit/collections

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Benefits

- Medical/health insurance
- Dental/vision insurance
- Long-term/short-term disability
- Vacation/Personal Time Off (PTO)
- Malpractice Insurance
 - › Who provides/ Who pays?
 - Norm: Employer pays during course of employment
 - › Insurance Coverage during employment
 - Occurrence vs. claims made
 - Occurrence**
 - Mainly hospitals
 - Qualifying event must occur during coverage period
 - Claims Made**
 - Mainly private practice
 - Insurance must be active at time claim is made
 - Tail insurance
 - Employer may take money out from last paycheck to cover
 - › Insurance Coverage after employment
 - Occurrence**
 - Coverage already in effect
 - Claims Made**
 - Need to obtain Tail Insurance
 - Employer may take money out from last paycheck to cover
- Expense reimbursement
 - › Smartphone
 - › Automobile/mileage
 - › Entertainment
 - › Continuing Medical Education

Termination

- "At Will" -- termination w/o reason, w/o cause, w/o notice
- Most contracts generally for an initial term of 2-3 years
 - › Renegotiate?
 - › Automatic renewal?
- "For Cause"
 - › definition of "cause" is critical—objective criteria preferred
 - › Objective criteria
 - Conviction of felony



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- Conviction for theft/fraud/embezzlement
- Loss of license
- Loss of insurance
- Loss of privileges
- Repeated/public abuse of drugs or alcohol
- Falsification of resume, prior education/employment
- › Subjective criteria
 - Harassment/abuse of employees
 - Failure to comply with rules/policies
 - Insubordination
 - Other conduct
 - If possible, require written notice and an opportunity to cure
- Payment of Wages on Termination
 - › Salary must be paid through last date of employment
 - › If Compensation based on Collections
 - Remember that collections may continue after termination date
 - Continue payment on collections for services performed up to termination date
 - Consider reduction of percentage of collections
 - Example: First month: 100%, Second Month: 75%, Third Month: 50%, Fourth Month: 0
 - offset for cost of processing and pursuing collections
 - › Payment of "wages" governed by AZ statutes
- Continuing Cooperation in Billing/Collection
- Surrender of Personal Property

Restrictive Covenants

- Covenants Not to Compete
 - › Must be reasonable in scope, time, and geography
 - "practice of medicine" = too broad and contrary to public policy
 - Should be limited to actual practice area
 - "six months" = good guideline
 - "State of Arizona" = generally disfavored
 - › "Blue Pencil Rule"
 - Refers to the Court's ability to modify restrictive covenants to make them reasonable and enforceable.
 - In Arizona, Court cannot create new language.
 - A judge can only cross out complete sentences.
- Non-Solicitation or Anti-Piracy Agreements
 - › Protects employees and patients of the practice/hospital
 - › Generally enforceable

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- Confidentiality Agreements
 - › Protects employees and patients of the practice/hospital
- Public Policy
 - › Favors patients choosing and retaining their own doctors
 - › Need for physicians in rural areas
 - › Need for physicians with specialized practices?
 - › Balance of equities
 - Right to make a living vs protection of business
- Liquidated Damages provision
 - › Not uncommon, but cannot be a penalty

Partnership/Ownership issues

- May be built into the initial employment agreement
- Buy-In
 - › Cash payment
 - › Paid by retention of portion of collections
- Percentage of collections
 - › Negotiate increases with time/ownership?
- Shared vs. Unshared expenses
 - › Rent/separate offices
 - › Office personnel
 - › Dedicated P.A.s or nurses
 - › Office equipment vs. individual equipment
 - › Overhead costs vs. individual expenditures
 - CME, insurance, car, phone, clubs
- Voting rights
- Buy/Sell Agreements
- Operating Agreement (LLC)
- Bylaws or Shareholders Agreement (Professional Corporation)

Questions?

