

# Employment Contracts Part 2: Troublesome Clauses

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Congratulations, you have found the perfect job! The chemistry is right, the pay is adequate, and the working environment is somewhat better than a sweatshop. So what's missing?

Ah yes, the contract—that little document designed to protect both parties in the event of a disagreement. Although that description sounds innocuous, employment contracts are usually written by employers and tend to be slanted to their needs, as opposed to those of the employee or contractor. Therefore, it is incumbent upon the physician to thoroughly understand the contract provisions prior to signing the agreement.

For example, a recent client of mine who was right out of residency signed a contract with a large office-based practice. At the time, she did not want to spend the money to have the contract reviewed by an attorney; nor did she negotiate any clauses which she found confusing or ambiguous.

Not surprisingly, the job did not turn out to be what was described in her initial interview. She was treating 60+ patients per day without a break, the clinic was staffed to bare bones minimum, and consequently, results were not being communicated to the patients nor entered into the chart.

All in all, the practice was a disaster and she was afraid that the set-up of the office was a malpractice event waiting to happen. When she approached her employer, his response was basically the same one Flounder received in *Animal House*: "You screwed up, you trusted us."

She wanted out as soon as possible. To her chagrin, however, the contract did not provide an out clause for the physician except in the event of breach of contract by the employer. No examples of what would constitute such a breach were illustrated.

In addition, the contract had a restrictive covenant of one year and 10 miles around each office practice. In effect, this radius locked her out of the metropolitan area where she lived.

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Finally, the contract did not mention responsibility for the tail or extended reporting provision. Unfortunately, her religious persuasion did not allow her to "start drinking heavily" (more sage advice from the Delta Tau Chi house); thus, she was forced to seek legal guidance.

## Preventive Medicine, Legally Speaking

Remember the phrase "an ounce of prevention is worth a pound of cure"? Reviewing a contract is one of those times it's more than just a catchy saying. Take the time and spend the money to have your contract reviewed. It is money very well spent.

Following are some things to consider:

- Assume the contract will be enforced as written. Too often, physicians assume that the person who negotiates the contract will be the one who ultimately has to enforce the contract, and that the enforcement will be tempered by what was orally agreed to. The typical phrase that a physician hears is, "Don't worry about that, we would never hold you to it."

  People change jobs, however, and the person with whom you have a great relationship may be long gone when it comes time to interpret the contract language.

  The take home point is this: Assume the contract will be strictly enforced as written.
- A corollary to the preceding point is to never rely on oral promises not reflected in the written contract.

  For example, you may have been told during your interview that you will only be required to work one weekend per month. However, when you get the contract it is silent on this issue, or it states, "The physician's work responsibilities shall include weekends in accordance with the rotation schedule established by the practice."

  Since the written contract controls, make sure before you sign that what was promised during the interview is contained in the written contract.
- Be very wary of covenants not to compete. Most physician employment contracts contain a provision that if the physician leaves the practice, he or she will not compete with the practice for a specific period of time in a specific geographical area.

Therefore, when a physician tries to set up a new practice or join another practice, he or she may be open to suit.

It is much easier to negotiate this clause prospectively than it is to defend your actions after the fact. Most states do allow a noncompetition clause, provided that it is reasonable in scope and time. Consult with an attorney on whether your state's law permits such covenants and what terms are reasonable and enforceable.

- Malpractice clauses can often be very difficult to understand. It is critical that you have a clear understanding of the employer's obligations before signing a contract.

  Make sure the contract spells out who is responsible for paying for malpractice insurance. The contract should specify the amount of insurance provided, as well as the tail or extended reporting provisions. The cost of the tail provision is often 150% to 200% of the last year's premium; consequently, the cost of this coverage can be quite substantial. Do not sign a contract that is silent on the terms of the tail provision, since the cost of the tail or extended reporting provision is typically absorbed by the employer. That should be spelled out.
- I have heard a number of physicians comment that they signed a three-year agreement containing annual cost-of-living increases. While this clause is very useful, the length of the agreement is defined by the out clause.

  Thus, if you sign a three-year agreement with a 30-day out, you have a 30-day contract. There is no "preferred" duration of an out clause. The only caveat is that it should be bilateral. In other words, the same terms should apply to both parties.

Your employment contract may include every possible clause which benefits you. However, if your employer can terminate you at their discretion, your contract is not worth much. Make sure you completely understand what events can trigger termination. If the clause is vague, insist that it be clarified in writing. If the prospective employer refuses to negotiate, give serious thought as to whether or not you will sign the contract.

Here are some typical termination provisions:

- Sixty or 90 days' notice by either party
- Loss of medical license
- Accusation of impropriety (fraudulent billing, sexual harassment, conviction of a felony, etc.)
- Material breach of the contract with a failure to cure
- Illness or disability

In summary, you can protect yourself during contract negotiations by following three basic principles:

- Research your prospective employer's history and understand their practice environment.
- Get everything promised in writing.
- Consult a knowledgeable attorney. ■