

# Understanding Physician Contracts - The Art of Physician Employment Contract Negotiations

By

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# Disclosures

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# Learning Objectives

- Objective 1: Review the basic components of a standard contract
- Objective 2: Discuss medical malpractice insurance
- Objective 3: Identify hidden red flags
- Objective 4: Recognize how to effectively negotiate for what you want and deserve
- Objective 5: Understanding your goals and wants

# Components

- Contract period
- Scope of work, responsibilities, hours
- Salary/Pay
- Benefits, PTO
- Incentive pay, Productivity/RVU
- Support Staff/Facilities
- Reality of Negotiations
- Non Compete/Restrictive Covenant
- Malpractice
- Termination
- Goals and Give Aways
- Leverage and Timing

# General Principles

- If its not in your contract you are not protected.
  - Handshakes and words don't count. For all you know the person that gives you a verbal may forget, or may not be there when it counts.
  - The employer is serving their own interests. You do the same.
- “this is our standard contract” does not mean it is industry standard
- Seeking employment and job hunting is like dating.
  - Know your strengths.
  - Know your value
  - If they aren't putting in effort in the courtship phase → They never will
  - Don't make excuses on their behalf for things that don't sit right with you.

# Contract Period

- Duration of the contract Date X to Date Y
  - Implications become important based on
    - Termination requirements (no cause out timelines – standard is 60-90 days)
    - Financial Claw backs – Bonuses, production
    - Tail coverage – Beware of claims made + tail vs language to payback percentage of premium on occurrence made policies
    - Avoid overly long contract terms as this serves more to tie you down than support you

# Scope of work, Responsibilities, Hours

- All contracts will have language to the effect of “other duties as assigned”
- Supervision – If you do not want to supervise a midlevel – ensure that your contract does not say that you will.
  - Often times employers will say “this is our standard contract”
    - Standard for them does not mean this is industry standard.
    - if you leave the language in, you have no recourse later.
- Special provisions need to be spelled out
  - 4 day a week schedule vs hours vs days – clinic vs procedure/OR vs admin time
    - If its not in your contract it will likely change (having it in an email will likely not be actionable if not in your contract)

# Salary and Pay

- Understand the Market (always look at multiple jobs)
  - Your Pay is based on your Value. Your value to an employer is based on the revenue you generate.
  - Lots of bad information out there, often from other doctors.
  - If your pay is greater than your revenue → **Fraud Red Alert**
- Don't get Trapped – standardize the pay to a unit of work
  - May look like lower pay but have lower hour requirement
  - Look at pay as a unit value (\$/hr, \$/visit, \$/RVU, % collections [for this need to know contracted rates and AR])
  - Final month Collections (many employers will keep your lagging collections after your last day of service – rarely negotiable but important to know)
- Fair Market Value – tool used for pay suppression.
  - If cannot negotiate it out – negotiate in as you approach FMV pay cap, work load toggles to also not exceed FMV equivalent work load.



# Incentive pay, Productivity/RVU

- In General Base pay will not get you as far as productive pay.
- Hospitals/Clinics are businesses.
  - Revenue you generate >> your pay + your overhead + profit margin.
    - If not → You will get renegotiated lower pay or Fired
  - Employers like flashy Flat salaries because once you are productive you do not get to share in enhanced pay on production.
    - Somewhat generational also with younger generations pushing Lifestyle over Pay
  - Productivity models RVU vs %Collections – each with pros/cons
    - RVU – normalizes payor mix and efficiency of collections team (but this is usually baked into RVU rate). Less lag.
    - %Collections – Better payor mix → Better pay. Collections Lag. Dependent on strength of collections team.
  - Going into productivity pay to soon can handicap earnings (get busy on base then pivot)
    - Ideal negotiate Guaranteed base period and then option to transition to Productivity
  - RVU values and % collections vary by specialty and work model – again do your research
  - Avoid Rebase claw back (some employers give you a base based upon expected collections and then clawback shortfalls – this is a **DEBT TRAP**)

# Benefits & PTO

- Its not all about Base salary other factors to consider
  - Amount of PTO
    - Can PTO be cashed out?
    - Negotiate that PTO is still valid even after submitting Notice to term with or without cause)
  - Amount of CME (time and dollars)
    - negotiate not to be forfeited upon submission of notice
  - Relocation vs Sign on Bonus
    - repayment/claw back schedule – this is often negotiable
  - Retirement Matching (pay attention to vesting schedule)
  - Benefit cost share (important in high deductible/high premium world)

# Negotiate

- Never hurts to negotiate
- Know when to engage in soft negotiation vs hard negotiation.
  - **Soft Negotiation**
    - Is there flexibility in the pay?
    - How much flexibility is there in the pay?
    - Can you share with me what that salary range is based on?
  - **Hard Negotiation**
    - I cannot consider anything less than XYZ.
    - Would you consider XYZ.
- Do not get emotional when negotiating.
- Avoid statements that are confrontational.
- Ask questions that force them to share justification/data on how they came up with salary → then research and share data to justify higher salary.
- Remember who you are talking to may not be a decision maker.

# Negotiation 2

- Watch for the Neg –
  - Subtle → mild comments meant to put you in defensive posture
    - This is to distract you from negotiating and to focus on defending yourself.
    - “We care about more than just the money here. So if that is your main focus then we’re not a good fit.”
      - Response → Ok thank you for your time. (you don’t need to convince the world)’
      - Response → If you are in fact not focused on money than can you meet XYZ salary?
      - Response → By providing a salary that is in market range you are allowing me to focus on my primary objective which is patient care.
  - Direct → declarative statements making assumptions that put you in a bad light.
    - This is again a distraction
    - “Sounds like your more money minded than patient care oriented”
      - You do not need to engage. In general avoid conflict, though if they press it’s a choice (this is not a place I want to be or mirror them)
      - Response → What makes you feel that way. After they respond, simplify and repeat it back to them to have them affirm. (it will be uncomfortable, that’s ok)
      - Response → I’m sorry you feel that way, though it sounds like you are as focused on the money as I am. How about we find something that works for both of us as that is in the best interest of the patients.

# Support Staff and Facilities

- Where will your practice be? – Single vs multiple locations?
- How many other doctors/providers? (important to understand productivity dilution vs support)
- How many exam rooms do you get?
- How many MA's do you get?
- How many days OR time vs clinic time vs admin time?
- Cross Coverage (you should not have to find your own cross coverage and your PTO/coverage concerns)
- If staff leave and your work load goes up – Specific timelines to obtain support coverage – if these specifics not met → Retro Pay escalation vs comp time off (if they say pay cannot be adjusted or FMV argument)

# Restrictive covenant/Non-compete

- Understand distance and duration limits and where they are set from (primary site vs any site of work vs any site of entity).
  - Make it reasonable. You will hear “this is our standard contract”
    - Standard for them does not mean this is industry standard.
- Understand limitations to outside work.
  - May have limited recourse regarding direct competitive work during and briefly after employment.
  - Write in exceptions for non-related work
    - Legal consulting, Writing, Teaching, Business medical consulting, Lectures, Pharma, and non medical etc

# Malpractice

- **Occurrence made** Coverage – covers all acts that occurred during coverage period  
Regardless of when the claim is filed
- **Claims Made** Coverage – covers all acts that occurred during coverage period –  
Only if claim is filed during coverage period
- **Tail Coverage** – Covers all acts that occurred during working coverage period –  
only for claims filed in tail period
- Occurrence made = Claims made + Tail
- **Self Insured** – large hospitals/entities backstop their own risk and then re-insure for risk greater than their tolerance.
  - Include in the contract that if they file for bankruptcy they pay for occurrence made + tail coverage and those funds be set aside in funds that are not liability to creditors
- **Blended Model** – Some self insured will buy claims made group/TIN policies and include your name on it. The way they make it equivalent to occurrence made is that even after you leave they include your name on the group claims made policy for the statute of limitations.

# Termination

Method by which to end contract prior to completion of contract period.

- **No cause** termination – Ending contract without cause “not a good fit”, this usually requires a reasonable period of notice
  - Must be spelled out clearly in contract
  - Should be bilaterally equal (notice period same for employer as for employee)
  - 60-90 days is standard
  - Some hospitals and Equity backed entities now asking for 6-12months → **HARD NO!** You will hear “this is our standard contract”
    - Standard for them does not mean this is industry standard.
- **For cause** termination – Ending contract with cause
  - Does not require notice
  - Does require employee to default on contract requirements
    - Beware of Vague language “Not supporting company morale” etc.
    - Some companies tie tail coverage to termination type – aka decline coverage of tail coverage if for cause termination. – look at entire contract not just subsections



# Goals and Give Aways

- Understand your short and long term goals.
  - Work life balance
  - Flexibility
  - Income/Money
  - Family
  - Minimum administrative burden
  - Foresight for change
- Understand your goals may change.
- For the new grads → It is not uncommon to leave your first job out of training within the first 3 years.

# Goals and Give Aways 2

- Understand what is and is not in your control.
- Even the best negotiators can hit a wall.
- Some employers do not negotiate. (you have to ask yourself is that inflexibility also pervasive in their management style.)
- Know the → must have vs wants
- When negotiating ask for your must haves and wants. Know which ones you are willing/able to give up in the negotiation.
- Before you start – **KNOW YOUR LINE IN THE SAND**
- As your goals change be open to change

# Reality

- What we envisioned may not exist in the market
  - Options
    - Make the best of whats available
    - Make what you want
- Some things are out of our control – know what those things are
  - Options
    - Tolerate
    - Avoid
- Job Searches are like dating
  - compromise goes both ways.
  - You probably wont get everything you want, but that doesn't mean you wont be happy.
- Always keep your eyes open
  - Your goals and wants can change
  - The direction of your organization can change as well
  - Or even worse nothing changes (pay, benefits etc) as the market evolves

# Which is the best option?

- Employer 1 offers a base salary of \$300k a year based on 6000 RVU's annually. If you don't hit 6k RVU's they claw back prorata salary. This is a relatively new practice.
- Employer 2 offers base salary of \$200k a year there is no RVU or production bonus. The practice is well established and bursting at the seams. You will have 4 exam rooms and 1.5 MA's.
- Employer 3 offers a base salary of \$180k a year. They will give you 45% of gross collections annualized once your production exceeds your base. Relatively early mid stage practice.

# You don't have enough information yet!!!

- Knowledge is power →
- What questions should you be asking?
  - What kind of malpractice coverage?
  - What are the hours like? Weekends required?
  - What staffing? What ancillaries are there?
  - Is there a salary cap?
  - Are there value/quality bonuses?
  - What is/are the non-compete restrictions?
  - How much PTO/sick time/CME. Are these able to be cashed out?
  - Is there partnership available? (double edge sword – think pandemic closures)

# Best Practice

- Practice, practice, practice – get exposure
- Even if you are set on a single job still explore, interview and negotiate 3 places at a minimum
  - This will get you some practice as well as an understanding of the market.
  - You may be surprised and end up liking one of the practice interview employers
  - Some times the one we have our heart set on doesn't work out.
    - Just because your only looking at them doesn't mean they aren't looking at other candidates. Sometimes they may not even be really hiring but they passively recruit so that when they do want to hire they have resume's and candidates on hand.

# Thank You

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