The anatomy of a **physician employment contract**

Minnesota Medical Association

There is significant variation among physician contracts, most notably between a contract to join a private practice partnership and a contract with a hospital system. There are, however, key topics that are generally addressed in most physician employment contracts. This document is intended to identify and briefly explain the terms and provisions that are near-universal in physician employment contracts. The ordering of these terms and provisions may vary in an actual contract. For the purposes of this document, "employment" encompasses both physician-owned (self-employed) and hospital system settings.

This section identifies the key parties to the contract. Usually this is the "physician" and the "employer" or "group practice."

Start date

This should identify a specific start date. Often this section will address conditions that must be met before starting, such as licensure, credentialing and privileging expectations.

Term

This section will identify how long the contract is valid. Some contracts will have a discrete term, such as two years, and should describe the process for renewing the contract. Others are self-renewing unless and until there is a change of conditions. Understand the length of the contract and what responsibilities might arise when the contract has run its term, such as notice requirements. Beware of renewal processes that fail to provide notice to you in the event the employer wishes not to renew the contract.

Duties

Here is where your clinical, administrative, research, and other duties will be identified. This section can be quite long and will often incorporate references to quality expectations. This language should identify specific time you would like protected. If there is a workload requirement, be certain to understand how the requirement operates and be comfortable you are able to meet it. This section may also address qualifications expected to be maintained, such as licensure, board certification, and others. In most cases this language should be very specific; vague language here can lead to unaligned expectations of your basic duties.

Patient acquisition process

How patients and physicians are connected varies widely by practice setting. This section may identify the processes by which physicians will be assigned patients with no specific referral, how dissatisfied patients will be transferred within the practice, and any hierarchy or seniority that may affect these processes. Examine and consider negotiating any restrictions the contract places on your relationship with your patients, referral practices, or other limitations that may affect your clinical practice or your relationship with patients. Avoid language that prevents you from communicating with your own patients in the event you terminate your employment or the employer terminates without cause.

Location

The goal of this section is to ensure both parties agree on what locations the physician will and will not be providing care, including all clinic, hospital, outreach, or other rotational duties; in large systems, this can be a complex section.

Billing, fees, and ownership

Billing practices can vary widely by practice setting. The contract should explain who is responsible for billing and should also address Medicare billing (and likely assignment of Medicare claims to the employer/group). Fee-setting should be addressed here, as well as provisions for changing fee schedules. This section may include language around value-based payment models, if applicable. Finally, in this or a separate section on "equity," there should be a full explanation of the process by which physicians may acquire equity in a private practice, as well as the timeline and any performance criteria. Beware of equity and ownership structures that the employer is unwilling to fully explain.

Call coverage

Ideally, call coverage should be equitably split among physicians, and this section should detail how the employer accomplishes that. If a specific schedule is not stated, this section should state that coverage will be divided among all physicians in a manner reached through the group's decision-making processes. Avoid the temptation to just agree with the proposed terms; consider carefully what call schedule you desire and negotiate toward a more favorable schedule.

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The anatomy of a **physician employment contract** *(continued from previous page)*

Salary and other compensation

There is much variation among compensation models. A specific salary (whether base or fixed) should be identified and the payment schedule defined. Any performance-based incentive plans will be detailed here, as well as any non-performance bonus structures. Use national resources to understand what base salary is appropriate for your specialty, practice setting, and geographic location, such as the Medical Group Management Association's Provider Compensation Survey.

Benefits

This section will address benefits such as retirement, health, disability, life and dental insurance. Look for details regarding dependent coverage options, premium payment apportionment, and specifics regarding enrollment, coverage after termination of employment, and qualification dates.

Termination

This section should outline both "with cause" and "without cause" termination provisions that may be used by the employer. This should specify the standards for "with cause" termination, and timelines for giving notice of intent to terminate with or without cause. Avoid language that does not require at least 30 days notice of termination. A termination with cause should not take place until the physician has been given the chance to remediate problematic behavior. Often this section will discuss the employer's reporting obligations and the impact of "with cause" termination on privileges, such as reporting the termination to the state licensing agency and the National Practitioner Data Bank. This section may also address the process by which the employee may terminate, which may also include notice requirements, an opportunity to remediate, or other requirements on the employee wishing to terminate. This section may cover other aspects attendant to termination by either party, such as non-disclosure, non-solicitation, or retention of medical records.

Restrictive covenants

If present, this will restrict your ability to practice after the termination of your employment. Usually the restriction only applies to termination by the employee and/or termination with cause by the employer. A restrictive covenant should not attach to termination without cause. The restrictions will prevent you from practicing for a length of time and, generally, in a discrete geographic scope. Often this section contains a liquidated damages or "buyout" clause you can use to limit its application. Such clauses, however, can often be very expensive. Consider carefully the impact of the restrictive covenant on your ability to practice and, particularly for contracts with large systems, examine the language around "geographic scope". If this language is not carefully drafted, the restriction on practice will attach to all sites in a large system, which can render it impossible to continue practice anywhere in the same city or region.

Vacation and sick leave

The details of vacation and sick leave vary widely across practice settings. In large health systems there may be paid time off (PTO) or other bankable and/or interchangeable hours. The use, restrictions, notice requirements, transferability, and ownership of PTO hours should be addressed. In contrast, some contracts may not provide for any dedicated sick or vacation hours – meaning that those hours are self-funded by the physician. No matter what practice setting, consider the impact that productivity requirements or incentive programs may have on vacation and sick leave. It is important to reconcile leave policies against productivity requirements to understand the practice realities associated with use of sick and vacation leave.

Continuing medical education

Dedicated CME dollars, above salary and other compensation, will be identified here. This section also will provide for a protected time, separate from PTO and/or sick and vacation leave, for use on CME activities. There may also be requirements that relate to maintenance of certification or specific CME content the employer requires. Do not accept CME hours folded into vacation leave; insist on dedicated CME days.

Professional liability insurance

Your professional liability insurance premiums should be paid for by your employer. The minimum amount of coverage the employer will maintain should be identified in the contract. Confirm that the coverage amount is adequate for your practice location, specialty, and setting. If the policy is a "claims made" policy, make sure the contract requires the employer to pay for "tail coverage" (tail coverage is not necessary if the policy is an "occurrence" policy). If you fail to address "tail coverage" on a claims made policy, you will be responsible for obtaining your own "tail coverage" in the future, if you leave the employer – a costly and often complex burden to manage.

Dispute resolution

This section will vary widely by practice setting, but should identify processes for internal dispute resolution between employees and between the employee and employer. Often this section will include mandatory arbitration clauses, which compel disputes to be arbitrated rather than pursued in state court. Consider the breadth of a mandatory arbitration clause and carefully weigh the pros and cons of signing away your right to file a lawsuit in the circumstances covered by the clause; for example you may wish to retain the right to file a lawsuit if you believe you are discriminated against, but may feel comfortable agreeing to arbitration regarding a compensation dispute This section will also often identify what state law "controls" the contract; this is most often the state where the employer is located, but can be other states if the employer is a large multi-state system. This is not generally problematic, but can affect the interpretation of key provisions such as termination with cause and restrictive covenants.

For more information, contact:

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