

Employment Contract Negotiation for Medical Providers

Legal insights for negotiating medical employment agreements



Presenters

John Schultz

John is a mainstay of the regional legal community. He has experience in all areas of law, but he focuses his practice on litigation.

Brian Doyle

Brian primarily handles business planning and estate planning, which incorporates contract review.

Transactional vs. Litigation Attorneys

Transactional attorneys largely draft and review contracts. Litigators take matters to court and engage more actively in the legal process when disputes or lawsuits arise.

INITIAL CONSIDERATIONS

Importance of a Thorough Review



Read the Contract

It seems simple, but it is the best advice. You need to read and understand the contract.

Early Review and Legal Consultation

Easier said than done, but months is a preferred lead time (rather than weeks or days). Review of changes take longer than anticipated.

Financial Impact

Often hundreds of thousands of dollars over three to five years. It's a contract worth many millions of dollars.

Almost Everything is Negotiable

People mainly focus on compensation (for good reason). Don't overlook nuances that only become apparent after a thorough review.



Role of the Attorney and Provider in Negotiations

Attorney's Advisory Role

Attorneys primarily help with understanding of contract terms and drafting proposed changes.

Provider Self-Advocacy

Providers must clearly communicate priorities and advocate for themselves during contract negotiations. Discussions have often already begun before the contract is ready for review by the attorney.

Additional Considerations

Legal negotiations can be costly and lengthy, so early clarification of the provider's priorities is very important. Lawyers are rarely involved in direct negotiations – you typically do the talking.

Compensation Models

The Options are Endless (and Confusing)

Contracts include salary, productivity-based pay, and profit sharing to suit diverse compensation needs.

Productivity Model Clarity

Simplicity and transparency in productivity metrics like RVUs ensure clear understanding and ability to verify accurate compensation.

Profit Sharing Documentation

Detailed documentation in profit sharing prevents misunderstandings and clarifies terms for all parties.

Keep an Eye on Outside Activities

Tinkerers beware! If you have outside activities, you need to except those activities from the agreement to ensure you maintain the IP associated with it.



Benefits and Paid Time Off



Importance of PTO Terms

Is it real time off or just a pause in productivity?

Reviewing Benefit Packages

Providers should carefully evaluate benefits including CME allowances, insurance, and retirement plans to optimize their contracts.

Clear Documentation Benefits

Properly documented benefits help physicians plan their time and finances effectively and understand their full entitlements.

Consider Involvement of Other Professionals

Consider contacting an accountant to help review and explain the tax implications of the various forms of compensation. Consider connecting with a financial advisor or financial planner to discuss retirement contributions and other investment opportunities.

Sample Clauses

1. Base Compensation. Physician's base compensation shall be _____dollars (\$_____) per each contract year, less deductions for withholding taxes and other deductions required by law or such other amounts as is determined periodically by [Employer] based upon the performance of _____ patient visits per contract year.

Beginning the third year, if the Physician does not perform at least 90% of the _____visits included in the base compensation (_____ * 90% = _____ visits) on an annual basis, the parties may renegotiate base compensation to be reflective of the productivity of the Physician.

2. Call Compensation. Physician shall be compensated for any on-call shift in excess of 25 days per quarter at a rate of one thousand dollars (\$1,000) for each excess call shift.

3. Incentive Compensation. For purposes of computing incentive compensation payable to the Physician, if any, [Employer] shall use the following formula:

To the extent Physician exceeds two (2) patient visits per hour worked, Physician shall be paid \$100.00 for each excess patient visit.

4. Signing Bonus. Signing bonus of _____ Thousand dollars (\$____,000) dollars is due upon completion of contract signing. If this Agreement is terminated within a three (3) year period from date of hire, other than termination of Physician by [Employer] without cause, the signing bonus shall be repaid on a pro rata basis.

5. Retirement Plan Contributions. Employer contributions to Physician's retirement plan shall commence upon first pay period of Physician's start date.

KEY CONTRACT PROVISIONS

Restrictive Covenants and Non-Solicitation Clauses



Age Old Provisions

Restrictive covenants and non-solicitation clauses commonly appear in provider contracts. They have been in use for centuries.

Must Be Negotiated and In Writing

These clauses must be clearly written and negotiated *before* employment.

Can they enforce it?

In Washington, yes. In other states, courts often scrutinize these clauses and deny enforceability.

This is the most common client question when attorneys are asked to review employment agreements. This is because people want to move on, but they do not want to be restricted from practicing.

Unfortunately, in Washington, the answer is yes, they can enforce non-competes, and you need to be prepared if they do.



Restrictions Contd.: Case Law and Statutory Changes

Wood v. May Case

The 1968 Wood v. May case allowed lawful post-employment non-compete restrictions if reasonable in scope and duration.

Statutory Changes 2020 and 2024

Recent laws restrict non-compete agreements to high earners with 18-month limits unless justified by employer. Limits are now \$120,599 for salaried employees and \$301,399 for independent contractors.

Added Employee Protections

Employers must pay base salary during enforcement if employees are laid off, ensuring financial protection. Plaintiffs can be entitled to attorneys fees.

Federal Developments



FTC's Non-Compete Ban Attempt

The Federal Trade Commission proposed banning non-compete agreements but the proposal was denied in 2024.

NLRB's Legal Position

The National Labor Relations Board argued non-competes violated labor laws, but this position was rejected.

Current Enforceability Status

Non-compete agreements remain valid and enforceable as of now, requiring ongoing legal awareness.

Advice for Providers

Providers should stay informed and consult legal professionals about federal legal developments affecting contracts.



Termination Clauses and Contract Term

Contract Length/Term

Start date, end date, automatic renewals

Types of Termination

Provider contracts include 'with cause' and 'without cause' termination clauses specifying conditions and notice requirements.

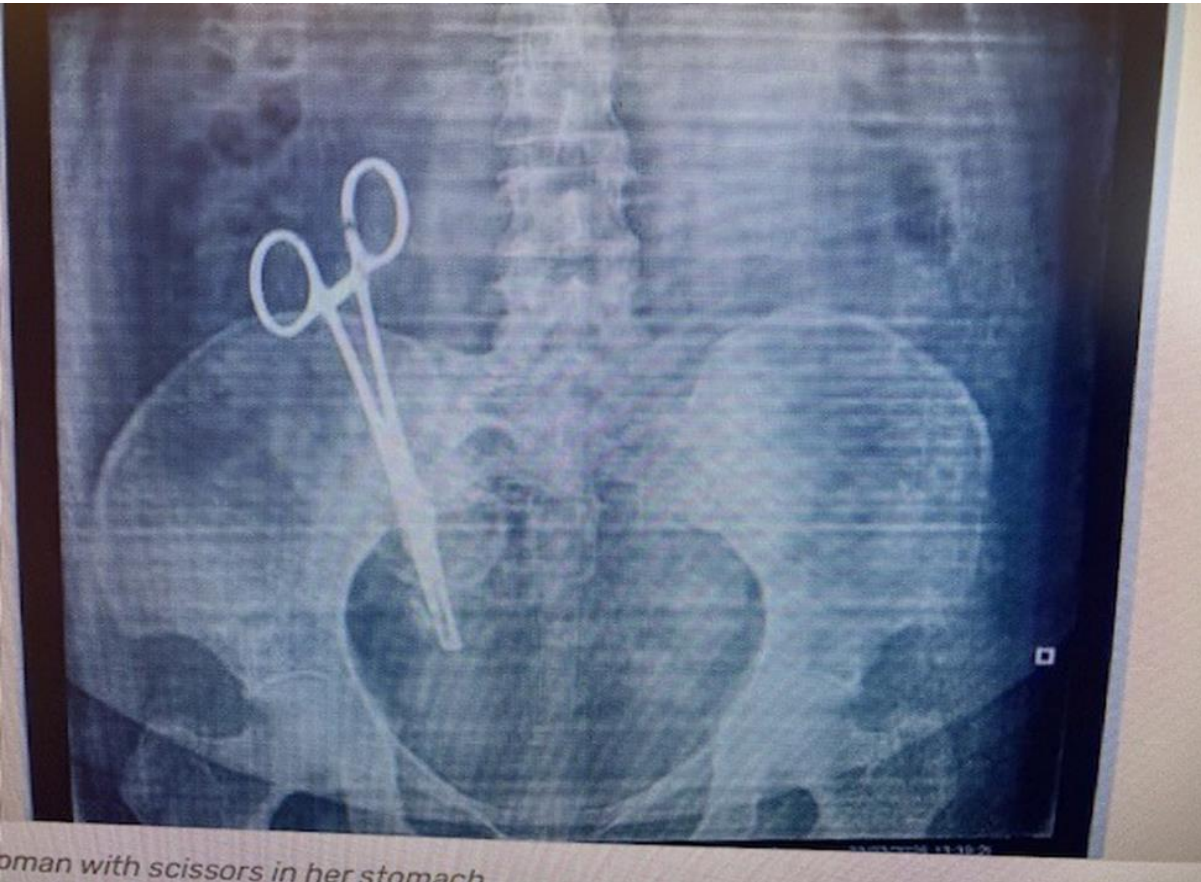
Conditions for With Cause

Termination with cause covers specific issues like loss of license, felony conviction, or substance abuse to protect parties involved.

Process and Protections

Contracts require written notice and allow contesting charges, with possible corrective measures for physician employment continuity.

Gap/Tail Insurance



Claims Made Policy

Most professional liability policies end coverage when a provider's employment terminates, requiring additional protection.

Tail Coverage Importance

Tail insurance protects providers from future claims after job transition, ensuring continuous liability protection.

Contractual Payment Provisions

Employers often pay for tail insurance if termination is without cause; otherwise, providers may incur the costs.

Ensuring Continuous Coverage

Understanding policies and contracts helps providers avoid coverage gaps and long-term liability risks.

Assignability Clauses



Role of Assignability Clauses

Assignability clauses define contract handling during mergers, acquisitions, or ownership changes.

Non-Assignable Contracts

Some contracts, especially personal service agreements, are often non-assignable and need renegotiation.

Protection During Transitions

Clear assignability terms protect providers during organizational and ownership transitions.



Boilerplate Provisions

Common Boilerplate Clauses

Boilerplate provisions are often overlooked, but can be very important if disputes develop.

Importance of Review

These clauses impact contract enforcement and interpretation, so careful review is essential for protection.

Most Common Clauses

Boilerplate provisions include:

- Dispute Resolution (arbitration and mediation)
- Venue selection
- Governing law
- Integration ("entire agreement")

OWNERSHIP AND PARTNERSHIP CONSIDERATIONS



Shareholders Agreements

Buy-Sell Provisions are Pivotal

You need to provide an exit strategy that makes sense for all parties *before* going into business together.

Consider Default Triggers

What are the events that would trigger a buyout of a partner?

Valuation is Key

Business valuations can be all over the map. You will want to ensure you are working with a valuation expert who is well-versed in valuing medical practices.

Sample Agreement Highlights

The buy-sell needs to be fair to everyone, but controlling shareholders can often retain more control. Consider having all providers *and* spouses sign. Consider impacts on your respective estate plans.

Building Ownership

Likely an LLC with an Operating Agreement

This would be like a Shareholders Agreement, just for the entity that owns the building.

Advice for LLC is the Same as the Operating Entity

You want to make sure you get along.

More Opportunity for Outside Investors

Medical operating entity ownership is often restricted by licensure, but building ownership can include anyone. Estate planning considerations are broader in building ownership. Do you want your partner's spouse to own your building when your partner dies?



Are you the Employer?

Is Ownership Potential Included?

Do you plan to hire providers with the intent to offer ownership in the future?

Employment Agreements for Shareholders?

Do you want to include an employment agreement for each partner/shareholder in order to outline collective expectations and duties?

Clear Expectations are Key

From an employer/owner perspective, it is important to ensure you and your provider-employees have a mutual understanding regarding future ownership opportunities and structure.



FINAL THOUGHTS



Case Study and Key Takeaways

Contract Review Example

An attorney spent 2.8 hours reviewing a physician's contract billed at \$350 per hour, totaling \$980. The physician gained peace of mind, but did a very thorough review before even contacting us.

Partner Dispute Example

Multiple attorneys spent about 20 hours reviewing and discussing partnership agreements billed at \$350 per hour, totaling \$7,000. *Then*, the client moved on to another firm with more capacity for litigation. So, \$7,000 was just the starting point, but they did eventually work it out.

Start Early and Review Thoroughly

This is not something you want to rush.

Final Tips and Suggestions



Hire a Lawyer!

We have not (yet) been replaced by artificial intelligence.

Balanced Negotiation Approach

Effective negotiation blends assertiveness with empathy to achieve constructive dialogue.

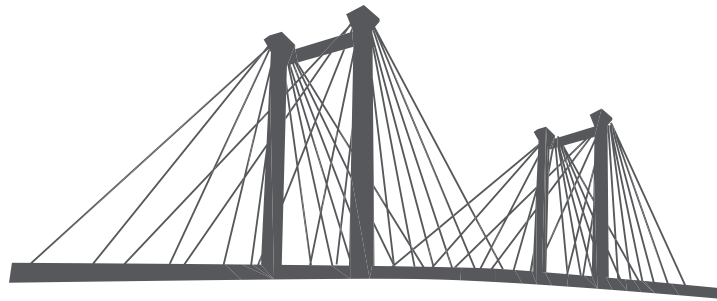
Understanding Employer Goals

Physicians should consider employer goals like revenue and workplace harmony during negotiations.

Prioritizing Critical Issues

Ranking priorities before negotiation helps focus on the most important topics.

QUESTIONS?



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