

EMERGENCY PHYSICIAN CONTRACTING

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NOTE: **I am NOT a lawyer.** This handout is looking at contracting from a business perspective. You must also have your contract reviewed from a legal perspective. Use the information to help you negotiate. Use your lawyer to make sure what you negotiate is legally reflected in the document you sign.

You are done with Residency! Now is the time to begin living a life. You are leaving indentured servitude. Your new job is no longer your life. Instead it should be a way to support your life – You practice the medicine for which you have spent your life preparing; and they provide you reliable, dependable tools (principally: wages, insurance, and retirement benefits) with which to live.

The idea is to balance employer's need to protect their staffing contract with the employee's need to earn a living.

Key questions:

- **You are working where; when; how hard; for how much; & with what resources?**
- **What control do you have over those variables?**
- **And, who is watching your back (insurance, scheduling, termination)?**

The primary purpose of the contract is mutual understanding of the terms of an agreement, not basis for litigation/argument. (See the paragraph below.)

Do you have/know your BATNA (best alternative to a negotiated agreement)?

Are you negotiating with the right person? Is the authorized/right person signing?

If it is not documented (in writing), it didn't happen / wasn't said (sound familiar?).

The contracting process is a kind of integrity test of both parties. I have never seen a contract that didn't offend me in some way. Remember, it was written by their lawyers for them, not for you. How it was written and how they negotiate it tells you a lot about their attitude towards you as a colleague versus a worker. If the going should get rough, this is the treatment you can anticipate. But remember; **they have deeper pockets.** They can out wait, out maneuver, and outspend you! Enforcing your agreement may well cost you more than it would be worth. (i.e.: Don't rely on the agreement for enforcement purposes.)

In practical terms, the most important purpose of the contract to make sure both parties fully understands each other. (At least for today.)

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1. **Consideration** (describes a need and an exchange – such as a price paid for services received)
2. **Term**
 - 2.1. Effective date
 - 2.2. **Termination date**
 - 2.2.1. Evergreen (automatically renews)
 - 2.2.2. Early Termination
 - Voluntary** (either party – for any reason or no reason)
Failure to perform
 - 2.2.3. Automatic Termination
 - They lose contract** (see exclusivity / non-compete)
You lose license
You become disabled (see disability insurance)
Your exclusion from reimbursement (Medicare/Medicaid or insurance)
You arrested for Felony (see deferred income)
Your death
3. **Relationship**
 - 3.1. Independent Contractor (tax flexibility, but have to provide own bene's; and must meet IRS rules.)
 - 3.2. Employee (less take home pay, but get bene's and employer pays half of social security and Medicare)
 - 3.3. Partner – shares/options, or terms to become partner (time & buy-in amount)
Ask to see copy of their Partnership Agreement, Corporate By-Laws, and/or Articles of Incorporation?
Ask to see their most recent financial statement. Have adequate cash-flow? How leveraged are they?
 - 3.4. Respondent Superior
4. **Restrictions**
 - 4.1. Confidentiality
 - 4.2. **Non-compete** (period and distance; buyout)
 - 4.3. **Exclusivity** (Allowed a second job? Have to report outside activities? Limit to hours or type?)
 - 4.4. Automatic Termination of hospital privileges?
5. **Responsibilities** (services or obligations)
 - 5.1. Yours
 - 5.1.1. Physician – **provide medical care (How much, where, who decides when, what pay?)**
 - Volume per acuity** (patients per hour per physician for different degrees of complexity)
Maintain valid license / hospital privileges
Show up when scheduled (Do you have any say about schedule?)
Document (medical record, billing/coding) & Sign (timely)
Follow policies and procedures
 - 5.1.2. Teaching & Academics (how much, what pay?); Research & Publishing – who owns?
 - 5.1.3. Administrative (how much, who decides when, what pay?)
 - 5.1.4. Call (Optional/required? Compensation for taking call, or only if called in?)
 - 5.1.5. Community Service (BLS, EMT, health fairs, etc)
 - 5.1.6. Any responsibility for attracting patients?

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5.2. Theirs

- 5.2.1. Patients!
- 5.2.2. Leadership (appointed or elected)
- 5.2.3. **Maintain contract**/relationship with hospital
- 5.2.4. Billing services
- 5.2.5. EMR (tic sheet/dictation/transcription)
- 5.2.6. Office space, support staff, & equipment (ultrasound?)
- 5.2.7. Performance evaluations

6. Compensation

6.1. **Payment**

6.1.1. **Amount**

Hourly – minimum number of hours guaranteed, or at will

Salary

Fee For Service or Percentage of Gross / Net (need to know collection profile and quality of billing company)

Performance (Both Volume and RVU measures set up potential internal conflicts)

- 6.1.2. Incentive compensation / bonus / profit sharing – eligibility and terms (clear or arbitrary? Based on your or their performance?)

- 6.1.3. **Overtime / last minute shifts** (voluntary, compulsory)

- 6.1.4. Biweekly or monthly paychecks – how far after service provided (up front payment?)

- 6.1.5. Expense Reimbursement

6.2. Benefits

- 6.2.1. Paid time off / Vacation / Sick Pay (who finds replacement?)

- 6.2.2. **Insurance** – Health [hospitalization, major medical, dental, nursing home, life (term v whole), disability (short & long term – illness, accident, injury, pregnancy)]

- 6.2.3. **Malpractice (CRITICAL)**

Occurrence v **Claims Made (TAIL!!!!)**

Co-Insurance

Limits (1/3 => 2/4)

Hold-Harmless / Indemnification

6.3. Perks

- 6.3.1. Signing Bonus

- 6.3.2. Moving Expenses

- 6.3.3. Holidays

- 6.3.4. CME – Time and Money (books, journals, professional dues, conferences)

- 6.3.5. Car Allowance

- 6.3.6. Club Membership (ACEP/AAEM, SAEM, AMA, Golf)

- 6.3.7. Financial Planning

- 6.3.8. Parking

- 6.3.9. Daycare / Childcare

6.4. **Termination**

- 6.4.1. Parachute

- 6.4.2. Severance

- 6.4.3. Outplacement

- 6.4.4. Moving expenses to new job

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6.5. Deferred Income

- 6.5.1. Deferred Income: Pension, Trust, 401k (matching & vesting), Non-Qualified Accounts
- 6.5.2. Tax-Sheltered Income: Flexible Spending Accounts (FSA's), Healthcare Savings Accounts (HAS's)

7. Legalese

- 7.1.1. Non-solicitation (contract/staff)Enforceability
- 7.1.2. Injury
- 7.1.3. Mediation / Arbitration (who chooses, who pays – loser, each own, employer?)
- 7.1.4. Notice
- 7.1.5. Assignment
- 7.1.6. Governing Law

8. Entire Agreement

8.1. Changes

- 8.1.1. One party at will, or by mutual agreement
- 8.1.2. New document, addendum (refer to it in main document), or write in margin (initials)