

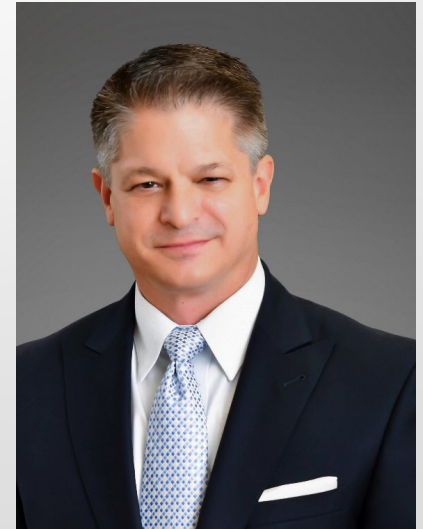
Setting Up for Success: What New And Experienced Psychiatrist Must Know About Contracts & Practice Moves

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WHERE TO START MAJOR CONTRACT ISSUES

- Compensation – both salary and additional compensation opportunities.
- Term and Termination
- Obligations and Duties
- Details matter – if it ain't in writing it ain't
- Post-employment obligations like tail insurance and restrictive covenants like non-competes

THE START OF NEGOTIATION

- It must be in writing. Do not rely on a handshake or someone's word. That is no disrespect to who you are negotiating with, just the reality of how people remember things – which can be quite differently.
- Honest people should not object to reducing their agreements to writing. It is not acceptable to move forward when someone says “don't worry about that.”
- Ask for help and ask for changes. It is your career that you have spent a great many years training for or working in. It is a negotiation between the parties. You do not get what you do not ask for. Find people that can provide you insight on what the Agreement means.
- If they are unwilling to change the proposed Agreement, then you go into the arrangement with open eyes.
- Remember your priorities.



HOW TO NEGOTIATE

- Fully review the Agreement and identify the most important items to you. Summarize those items on a list and see if they align with your goals and expectations.
- Engage counsel and have a good sense of what to negotiate. Not all employers are willing to negotiate, in fact the bigger the practice you join, the less likely there is room for negotiation. Do remember however, almost no two contracts are exactly alike.
 - Is there market tight, is there a shortage of your services where you look to be employed, are there other opportunities where you want to live?
 - Hire an experienced health care attorney that does employment agreements. Who you retain can help significantly in your understanding of contract terms and potentially the market.
 - Negotiate non-competes.

NEGOTIATION CONTINUED

- Negotiate yourself. The prospective employer has chosen to hire you because the relationship that has been developed. It is rare that they have an issue with an attorney reviewing the proposed agreement, but they prefer to interact with you.
 - You gain insights into what it will be like working there when you begin the negotiations.
 - You can demonstrate to your prospective employer your demeanor, thoughtfulness and responsiveness to issues.
 - Counsel can ensure that any negotiated changes are incorporated into the Employment Agreement before it is signed. This is where it is important to make sure all changes are in writing. Almost all Agreements contain an “Integration” or “Merger” provisions where the parties agree that the entirety of the contractual relationship and obligations of the parties is reduced to the four corners of the contract.

NEGOTIATION

THE END IN MIND

- Know your exist strategy.
 - Know how you can get out of the contract if you are not happy.
 - Know what the limitations are on you when you leave. Things like restrictive covenants.
 - Non-competes
 - Non-solicitation provisions
 - Confidentiality provisions
 - Non-competes are enforceable under Florida law. This is routinely misunderstood by physicians. They must be carefully reviewed to determine their geographic scope, scope of practice and duration. Eliminate them or seek make them as narrow as possible in scope and duration.

IMPORTANT TO DOS

- Have a health care attorney review your Agreement. Health care is full of unique and specific laws that govern financial relationships and compensation. It is important to have someone that is familiar with the law.
- Do negotiate. It is ultimately expected that you will. You do not get what you do not ask for but do your homework first. Know the market, know the area, use the power of the web to get information.
- Remember, the employment contract is for you so prioritize your needs. Things like work-life balance, student loan repayment, children, compensation, and career goals. If it is not for you, consider moving on somewhere else.

TO DOS - COMPENSATION

- Understand your compensation structure. In our experience, providers rarely do. Be clear about your salary, your bonus structure, how it is calculated, your access to the data behind the additional compensation, whether it is a fixed salary, or wRVUs, or some combination of the two.
- How does your compensation change over time, what control do you have with it. Can your employer summarily change it.
- What tax is subject to, are there fraud and abuse issues, anti-kickback or self-referral issues. It should be fair market value which includes the full compensation package and potential partnership.
- For employers, how to you protect yourself against market swings, changes in the Medicare Physician Fee Schedule, commercial payor fee schedule changes or pandemics or other acts of God.



A decorative graphic on the left side of the slide. It features a hand holding a glowing, golden orb. The background is dark with a bokeh effect of many small, glowing golden circles of various sizes, creating a magical or ethereal atmosphere.

TO DOS – DUTIES AND OBLIGATIONS


- Understand your obligations, your duties including clinical, coverage, supervisions, administrative and any other anticipated responsibilities you may have.
- Depending on how you are compensated, many duties and responsibilities will cut into wRVU methodologies.
- Understand what outside activities you are permitted to do and under what circumstances. Things like moonlighting, volunteer work, expert witness work, and teaching. Who gets that compensation?
- Clarify your work schedule, expectations for both clinical and administrative work, including supervision of mid-level providers or others, the locations in which you will be providing services, and the Group's call coverage and how it is determined.

IMPORTANT ITEMS

- It must set forth the legal names of the parties.
- Anyone who has obligations under the Agreement should be identified and importantly sign the Agreement. That is what makes it enforceable should there be any issues.
- It should provide for termination provisions, how it is done and the obligations of the parties.
- It should provide for how disputes are to be addressed – mediation, arbitration or litigation. What law applies and where do the parties agree for disputes to be heard and judged.
- It should likely contain a prevailing attorneys fees and costs, or similar provision should there be any litigation as it relates to a breach of the Agreement.

MALPRACTICE INSURANCE

- Most employers provide it malpractice coverage. What type is it? It should indicate in the Agreement if it is “claims made” or “occurrence” based.
- Claims made policies are what you primarily see in private practice and group practice settings. It covers the physician only if the claim is brought within the policy period. You need tail coverage for these policies and most employers require it of a departing employee. Important questions – who pays for it and under what circumstance.
- Occurrence based covers a physician for any alleged malpractice or other acts that occurred while a physician was employed , even if the claim is made after employment termination.

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- The termination clauses are very important in the Agreement. Understand the grounds for termination, with or without cause provisions, and what happens to unused PTO, bonuses, and accounts.
 - Does the Employer of a right to set off any compensation you are owed against asserted or debts you may have to the Employer.
 - Can you fire the Employer or get out of the Agreement?
 - Do you have access to patient records post-termination for malpractice actions, credentialing matters, or Department of Health investigations.
 - “Biolerplate” language does matter.
 - Watch for “incorporated” documents in the Agreement and various exhibits. How are they changed? Can they be changed.

THE DONT'S



Do not assume the Agreement is FAIR, even if you like the owner or owners.



Do not focus solely on salary, the entire compensation matters, including your benefits, professional development opportunities, work-life balance.



Do not sign a contract you do not understand.



Do not rely on verbal promises.



Do not overlook state laws that may impact the Agreement.



Do not wait until the last minute to review an Agreement.



Lastly, do not be afraid to walk away.



We are pleased that we are able to offer our clients fast and cost-effective representation.

We use our intimate knowledge of the health care industry and relationships that we have built with various specialists and consultants to provide quality service.

We are mindful that the practice of law is a service business and we treat each of our clients that way.



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