

DO NOT FOCUS ONLY ON SALARY: POINTS TO CONSIDER BEFORE SIGNING A PHYSICIAN EMPLOYMENT CONTRACT



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a resident. Here are some points a physician should consider before signing an employment contract.

TERMINATION CLAUSES

Almost all contracts (regardless of term) allow the employer to terminate the physician “without cause” upon prior written notice, which typically ranges from 60 to 180 days. “Without cause” means the employer needs no reason (or “cause”) for the termination. A physician can minimize the adverse impact of this type of termination by requiring the employer to waive the non-compete or pay for the physician’s tail coverage (more on these below) if the employer terminates without cause. Further, while without cause termination provisions are prevalent, they are also almost always reciprocal, thus allowing the physician the right to terminate without cause with the same notice as the employer.

CALL

It is important for the physician to understand their call obligations at the outset. The physician should understand how many physicians are in the call pool and whether the physician provides a certain service that will make it difficult for others in the physician’s specialty to take a call for physician. If the contract requires active privileges at neighboring hospitals, what do the hospitals’ bylaws require regarding unattached calls? Often, bigger practices loathe to mention a specific amount of calls in the agreement because they have robust and time-tested call policies and need flexibility if someone in the call pool leaves. Nonetheless, even if an employer is unwilling to address call in its agreement, it is important for the physician to have a full understanding of call.

TYPE OF WORK

It is sometimes difficult to get an employer to put in writing exactly what type of work a physician will be performing. However, for certain specialists, it is extremely important to find out what type of work they will be doing. This is especially true if the physician must do a certain number of procedures in order to obtain board certification.

COMPENSATION

A popular method of compensating physicians is to provide a guarantee for one to three years and then pay the physician based on work relative value unit (often abbreviated “wRVU”). Sometimes, the guarantee is a floor, and the physician gets a bonus if they exceed wRVU expectations. Payment on wRVUs requires the employer to accept the risks of collection. A physician may want to use outside resources (like MGMA) to determine if the amount of compensation per wRVU and the minimum number of wRVUs for the year are reasonable. After the guarantee period expires, a physician may be at risk if he or she is paid more in salary than earned in wRVUs, which could trigger a repayment obligation.

PARTNERSHIP POTENTIAL

Many independent practices are being purchased by hospitals, management service organizations and bigger practices, often resulting in one-time lucrative payouts to the practices’ owners. If a physician is in an arrangement where they have a long partnership track, and the practice is sold the day before they become a partner, then the physician will receive nothing for their sweat equity in the practice.

NON-COMPETE COVENANTS

Non-compete clauses are unenforceable in some states, and the Federal Trade Commission has recently proposed rules that would make non-competes unenforceable in all states. Even in states where non-compete covenants are enforceable, physicians can challenge the covenants for being unreasonable or against public policy. Nonetheless, prior to signing a contract, a physician should assume that the covenant is enforceable as written. This means it is important to limit the tem-

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APA ANNOUNCES NEW HONOREES

Congratulations to the following NCPA members who have achieved 50-Year member, 30-Year member, Distinguished Fellowship, and/or Fellowship status! New honorees will be formally recognized at the APA Annual Meeting in New York in May. Please note, honorees listed below may hold additional distinctions than those most recently awarded.

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poral and geographic scope, and to attempt to require the employer to waive the non-compete in certain circumstances, such as the employer’s termination of the physician without cause.

COVER YOUR “TAIL”

Many employers provide “claims-made” malpractice coverage for their employed physicians. If the physician’s employment terminates, the physician’s coverage is also terminated. Generally, if a claim is made during the term of the employee’s employment, there is coverage. However, if a claim is made after the employee has left the employer, then the former employee would not be covered.

This gap can be insured by the employee’s purchase of what is known in the insurance industry as a “tail.” The tail covers for acts or omissions occurring prior to his or her termination, but for which the claim is made

after termination of employment. The tail could be costly, often twice the amount of the annual premium. Some bigger health systems have an occurrence policy which obviates the need for tail. However, if the employer has a claims-made policy, the physician should consider whether to push the cost of the tail to the employer under certain circumstances.

CONCLUSION

Often, contracts that look very generous because of starting salary might not be as generous when the physician considers other factors.

Mr. Wall is a Managing Partner at Waldrep Wall Babcock & Bailey PLLC where he practices health care law and corporate law. He has reviewed hundreds of employment contracts for physicians and the practices who employ them.