

THE PHYSICIAN EMPLOYMENT AGREEMENT

BASIC CLAUSES AND NEGOTIATION STRATEGIES



Foundation Surgical Hospital
of Houston

June 27, 2016



PT LAW, PLLC

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THE PHYSICIAN CONTRACT LAWYER



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OBJECTIVES

- **Consider the entire employment package**
- Understand important terms of physician employment agreements
- Understand the negotiating process
- Learn negotiation strategy and tips
- Learn some hints and advice from alumni



WHAT IS A CONTRACT?

An oral or written agreement that specifies the rights and responsibilities of the parties.

- Oral contracts are enforceable but difficult to prove.
- Offer letters are generally not employment contracts.



SHOW ME THE MONEY!

- Salary
 - Annual salary – fixed every year
 - Productivity – “eat what you kill”
 - Hybrid – combination of salary and production
 - Base salary + Production
 - 1st year salary, subsequent years production based
- Bonus
 - Signing
 - Annual – discretionary versus production based



WHICH OFFER SHOULD YOU TAKE?

	A	B	C
Salary + Bonus	\$250,000	\$210,000	\$180,000

WHAT OFFER SHOULD YOU TAKE?

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Salary + Bonus	\$250,000	\$210,000	\$180,000
Term	6 Months	1 Year	2 Years

BENEFITS

- Health Insurance
- Dental Insurance
- Life/Disability Insurance
- **Medical Malpractice Insurance**
- Paid CME time
- Paid leave/sick time
- Board and state license fees
- Retirement Plans (401k, profit sharing, pension)
- Parking Garage, Cell Phones, Meals



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PHYSICIAN'S DUTIES

- A good contract identifies what is expected of you:
 - Locations of medical practice (clinics, hospitals, house calls, nursing homes)
 - Business hours of operation (8 am – 5 pm?)
 - Full-time versus part-time
 - **“On call”, holiday and weekend hours coverage**
 - Participation in networking and marketing activities
 - Participation in hospital medical staff committees
 - **No moonlighting!**



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Weekend calls?	Yes	No	No

EMPLOYER'S RESPONSIBILITIES

- Office and clinic space
- Equipment
- Supplies
- Staffing (receptionist, transcriptionists, MA's, nurses)
- Billing services



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Weekend calls?	Yes	No	No
Sufficient Staff?	No	Yes	Yes

RESTRICTIVE COVENANTS

- **Non-Compete** covenants prohibits physician from competing with prior employer (generally enforceable in State of Texas)
 - Geography – what is the geographic reach?
 - Scope – what is the prohibited service?
 - Term – how long?
- **Non-Solicitation** of patients and former employees
- **Confidentiality** obligation to former employer



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Weekend calls?	Yes	No	No
Sufficient Staff?	No	Yes	Yes
Non-Compete?	2 Years	1 Year	None

YOU'RE FIRED!



- Termination clauses are one of the most important clauses in the contract
- Termination by employer or by physician:
 - **With “cause”** – certain circumstances must occur and termination is immediate
 - physician fails to maintain license or staff privileges
 - employer fails to timely pay compensation
 - **Without “cause”** – no reason must be given but advance written notice is usually required (60 days or longer)
- What is the effect of termination on the parties?
 - Clawback of compensation? Restrictive Covenants?

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Weekend calls?	Yes	No	No
Sufficient Staff?	No	Yes	Yes
Non-Compete?	2 Years	1 Year	None
Without “Cause” Termination (60 days advance notice)?	Yes	No	No

POST-TERMINATION OBLIGATIONS

- Obligation to buy “tail” medical malpractice policy?
- Confidentiality obligations are often perpetual in duration
 - Patient medical records are often the property of employer
 - Must return all practice records and property!
- Restrictive covenants (non-compete, non-solicit)
- Intellectual property (patents, inventions) created by physician are often property of employer
- Reasonably cooperate in defense of claims
- Duty to continue to provide treatment during acute illness

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Weekend calls?	Yes	No	No
Sufficient Staff?	No	Yes	Yes
Non-Compete?	2 Years	1 Year	None
Without “Cause” Termination (60 days advance notice)?	Yes	No	No
Buy “Tail” Policy?	Yes	Yes	No

NEGOTIATION PROCESS

- You may receive an offer letter and/or a contract with an expectation that you must sign it by a certain date.
- **READ** your contract! Ask questions.
- Ask for all exhibits, addenda, policies and other documents referenced in the contract.
- Request changes in writing to the provisions that are not reasonable.
- Review any revisions they make and request changes again if not satisfactory.
- **Sign only if you are willing to live with all provisions.**

NEGOTIATION TIPS

- Realize that compensation is a small portion of your contract.
Negotiate for a better package.
- Negotiate – never accept a contract “as is”. They are drafted in favor of the employer.
- Put it in writing – or else it never happened
- Watch out for an employer who drags its feet
- Gain bargaining leverage by having several offers
- Negotiate several offers at the same time
- Note that large employers are less likely to change their form
- Be polite but firm

HELPFUL HINTS

- Think about how your job offer relates to your **overall career goals**. How does it fit into the “big picture”?
 - 50% of physicians leave their first job within two years.
- Do your due diligence and visit your potential employer
 - Talk to the nurses, MAs, and administrative personnel
 - Ask other doctors about the reputation of the practice
 - How often is there turnover?
 - Why is your position available?
- Hold off making major purchases until you are confident you are where you want to be
- Verify the local market salary for your position
- Watch out for a practice that has a spouse involved in management
- Request a signed copy of your employment contract
- Consider using a **physician contract lawyer** specialist to assist

ADVICE FROM ALUMNI

Dr. Bryce Karulak ('15 graduate):

- Use a physician contract attorney specialist and not a general lawyer
- Have options if things fall through or have a game plan in place

Dr. Onya Lemar ('15 graduate):

- Know your worth! Have multiple offers available. Be assertive and use your lawyer to negotiate what's important to you
- Always put things in writing and involve your lawyer to review everything before you sign and commit. Stay prepared for the worst case scenarios , and have your backup plan ready.



ANY
QUESTIONS
?



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