







Employment Agreements - Common Mistakes

- Not thoroughly reviewing the contract.
 - Assuming you can't negotiate.
 - Failing to get verbal commitments in writing.



Physician's Options

Get a legal review	Request changes w/o legal counsel	Utilize books and online resources
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Key Metrics to Negotiate

Salary	Sign-on Bonus/Relocation allowance
Vacation/CME Allowance	Call Coverage



Employment Agreements - Common Mistakes

- Failure to conduct adequate due diligence or research on employer and employer culture.





Employment Agreements - Common Mistakes

- Failure to ensure understanding of terms.
 - Defined terms
 - Vague provisions
 - Obligations incorporated by reference
 - What's there and what's not





Employment Agreements - Common Mistakes

- Failing to understand compensation formulas and benefits.
 - What circumstances may negatively impact comp.
 - Supplementing benefits if needed.






Employment Agreements - Common Mistakes


- Failing to recognize one-sided nature of most agreements and considering impact of termination.
 - Tail insurance
 - Repayment of any loans/advances.
 - Restrictive covenants.






Types of Insurance

Occurrence




Because the **incident** occurred during the policy period, the **claim** is covered. It doesn't matter when the **claim** was made.

Claims made




The **incident** occurred after the retroactive date and the **claim** occurred during the following policy period, so the claim was covered under the following year's policy. Had the hospital not renewed their policy or purchased an **ISO**, it wouldn't be covered.

insurance
Medicaid Center



Restrictive Covenants

- Covenant Not to Compete
 - Prevents departing physician from competing with employer in specific geographic area for defined period of time.
 - Not enforceable under current Oklahoma law.
- Confidentiality Provisions
 - Trade secrets
 - Proprietary information
 - HIPAA - patient identifiable information
 - Enforceable
- Non-solicitation Clause
 - Cannot solicit patients
 - Cannot solicit other employees or contractors of the practice
 - Enforceable



Restrictive Covenants

- Under current Oklahoma law, a non-compete in an employment agreement is not enforceable, but in the ownership context, it is enforceable.
 - Geographic restrictions
 - Time
 - Services/Scope of restriction




Practice Buy-In






Negotiating Practice Buy-In

- What does your initial employment agreement say?
 - Hopefully, it said something. . . .
 - Prospective nonbinding buy-in terms




Know what you are buying

- **Liabilities**
 - Has the practice been subject to payer audits or recoupments?
 - Compliance issues?
 - Debt? Personal guarantees?
 - Lawsuits?
 - Is it as profitable as you think it is?




Major Issues

- Buy-In terms
- Control/decision making
- Transferability of ownership
- Compensation/allocation of expenses
- Restrictive covenants
- Tax Issues (Consult CPA, LLM)



Buy-In Terms

- Formula
- Flat Amount
- Valuation (What is it based on?)
- Sweat equity
- Lump-sum
- Pay-out




Control

- **How are decisions made?**
 - A senior physician manager (founding owner)
 - Management or executive committee
 - All owners
- **Minority owner protections**




Transferability of Ownership

- Sale/assignment/transfer of an ownership interest: permitted or prohibited?
- Right of first refusal on sale
- Triggering events for repurchase
 - Death
 - Disability
 - Voluntary?




Transferability of Ownership

- **Valuation of ownership interests**
 - Certificate of agreed value
 - Valuation formula
 - Book value
 - Multiple of earnings
 - Multiple of compensation
 - Other
 - Appraisal method




Transferability of Ownership

- **Payment method and terms**
 - Insurance funding of death/disability
 - Payment terms and security
 - Lump sum
 - Installments
 - Promissory note
 - Interest rate
 - Events of default
 - Security



Compensation a/k/a Income Distribution

- Equally
- Production
- Combination



Expense Allocation

- Equal assessment
- Direct cost allocation
 - Each owner calculated separately.
- Indirect cost allocation
 - Fixed costs such as rent and utilities are charged to each physician.
- Allocation based on time worked/productivity.

Visa Waivers




Options

- Two of the most commonly used waiver programs for physicians who hold J-1 nonimmigrant visa status are:
 - Conrad 30 waiver program and
 - HHS's waiver program.
 - Only primary care physicians are eligible to apply for an HHS waiver, but they are unlimited.

HHS Waiver

- Primary care
 - Family medicine
 - General internal medicine
 - General pediatrics
 - Obstetrics & gynecology
 - General psychiatry
- Must agree to practice in HPSA



Conrad 30 waiver

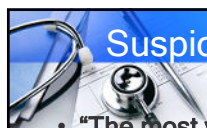
The J-1 foreign medical graduate must:

- Have been admitted to the United States under section 101(a)(15)(J) of the INA to receive graduate medical training;
- Enter into a bona fide, full-time employment contract to practice medicine in H-1B nonimmigrant status for at least 3 years at a health care facility located in an underserved area;
- Obtain a "no objection" statement in writing from their home country if they are contractually obligated to return to their home country upon completion of the exchange program.
- Agree to begin employment at the health care facility, specified in the waiver application, within 90 days of receipt of the waiver, not the date their J-1 visa expires.
- See each state's public health department (or its equivalent) website for specific details.




Other Issues - Investments






Suspicious Sales Pitch

- **"The most you can lose is your investment."**
 - Not true.
 - If the investment/venture is not structured properly and violates the Stark Law or the Anti-Kickback Statute, you can incur significant fines and penalties and face false claims act liability.
 - Be very cautious about "loaning" your medical license to others who want to use it to make a profit.




Suspicious Sales Pitch

- **"Don't worry. Our attorney has approved this."**
 - You need to have YOUR attorney look at the agreement or arrangement - someone who is looking out for you.
 - Sometimes deal promoters do not tell their attorneys all the important details.
 - Sometimes they had their attorney look at a prior version of the documents.




Suspicious Sales Pitch

- **"We've been doing this for years."**
 - This is why the fines and penalties are so high. To deter people from trying to get away with something.
 - You may get away with pushing the envelope, but if you get caught, the consequences can be devastating.



Suspicious Sales Pitch

- **"We've 'carved out' Medicare /Medicaid."**
 - If the entity or investment is being formed to accept only private payers, but you are referring patients to another entity owned by the same people or business, you are still making a prohibited referral.



Suspicious Sales Pitch

- Sales rep says, **"We use this CPT code all the time and it gets paid."**
 - The code you use has to be for the service or product actually provided.
 - You cannot document what you didn't do or provide and think that solves the billing issues.



Thank you.
 Cori H. Loomis, JD
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