

A stethoscope is positioned diagonally across the frame, resting on a medical chart. The top portion of the image is covered by a solid blue rectangle. The medical chart below features various text elements, including 'ted: 01', 'Abnormal', and a list of numbers (4.0, 4.6, 12., 40., 81., 27.). A pen is also visible on the right side of the chart.

# *Physician Contracting Issues*

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A stethoscope is placed on a medical chart with various tables and text. The chart is on a light blue surface. The top of the slide has a blue header with the word 'Objectives' in white.

# Objectives

- **Employment Agreements:** Recognize the biggest mistakes physicians make in negotiating employment agreements;
- **Medical Practice Ownership/Buy-Ins:** Identify key issues and terms that need to be considered and negotiated;
- **Visa Waiver Issues**
- **Investment Issues:** Recognizing the fallacies in a sales pitch.

# Employment Agreements





# 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

## Key Metrics to Negotiate





# 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.





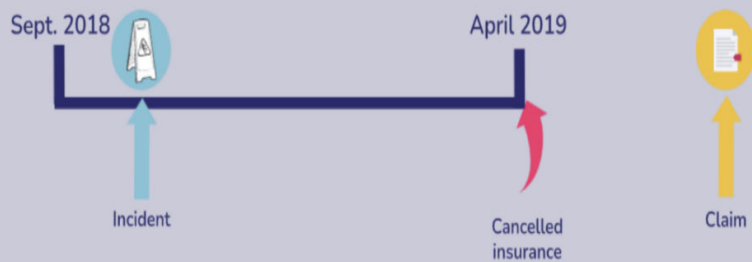
# Employment Agreements - Common Mistakes

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

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## Claims made



The **event** 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 Insured not renewed their policy or purchased an **ERP**, it wouldn't be covered.

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# 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



[BY-SA](#)

A stethoscope and a medical chart are visible in the top left corner of the slide. The stethoscope is silver and black, resting on a white medical chart with various fields and text. The chart is placed on a blue surface.

# 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)

A stethoscope is placed on a medical chart with various tables and text. The chart is on a light blue surface. The title 'Buy-In Terms' is overlaid on a blue banner at the top of the image.

# Buy-In Terms

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

A stethoscope is placed on a medical chart with various tables and text. The chart is on a light blue surface. The word 'Control' is written in large white letters on a blue background at the top of the slide.

# 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

A stethoscope is placed on a medical chart or document, which is partially visible in the upper left corner. The chart has some text and a grid, suggesting it might be a patient record or a medical form. The background of the slide is a light blue gradient.

# Compensation a/k/a Income Distribution

- Equally
- Production
- Combination

A stethoscope and a medical chart are visible in the top left corner of the slide. The stethoscope is silver and black, resting on a white medical chart with blue lines and text. The chart is partially obscured by a blue banner at the top of the slide.

# 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



A blue gradient background with a medical-themed image on the left. The image shows a stethoscope, a pen, and some papers, including one with a grid and the word 'CONTINUED' visible.

# 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.

The background of the slide features a medical-themed image. In the upper left, a stethoscope is draped over a stack of papers, including what appears to be a medical chart or form. The papers have some text and lines, but they are not the primary focus. The overall color scheme is light blue and white, with a darker blue header bar at the top.

# 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.

A stethoscope is placed on a medical chart or form, which is resting on a blue surface. The chart has some text and lines, but it's not clearly legible.

# 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.*

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