

PHYSICIAN EMPLOYMENT AGREEMENTS

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DISCLAIMER

- ▶ The information in this presentation is general educational information. It does not constitute legal advice.





Contract Basics

- ▶ Employment Agreement should include all material/important terms
 - ▶ Parties
 - ▶ Position/Duties
 - ▶ Compensation
 - ▶ Duration - Termination
 - ▶ Restrictive Covenants/Non-competition/Non-solicitation
- ▶ Dispute Resolution
- ▶ Most EA state that the document is the complete agreement
- ▶ References to Exhibits/Attachments (Compensation, PTO, Non-Compete)
- ▶ Avoid Assumptions

Who is the Employer?

- ▶ Private Practice/Hospital/Medical College
- ▶ Could overlap on duties, compensation, etc.
- ▶ Successors/Assignment

Figure 1: Four practice options



Source: AMA 2015

A hand holding a pink piggy bank in front of a doctor in a white coat with a stethoscope.

Physician Compensation

- ▶ Specifics regarding: Amount or Rate or Formula
- ▶ Incentives: RVU or Collections or Discretionary; Verification; Post-termination receipts
- ▶ RVU Formulae: Baselines and per RVU amounts must be “reasonable”

Benefits

- ▶ Paid Time Off (Vacation, Sick, Personal, CME)
- ▶ Health, Dental, Vision insurance
- ▶ Retirement Plans
- ▶ License, CDS/DEA fees
- ▶ Hospital Medical Staff Dues
- ▶ CME
- ▶ Life/Disability Insurance
- ▶ Business Expenses (Car, Cell Phone)
- ▶ Board certification/Recertification Expenses
- ▶ Society Dues
- ▶ Disability/Leave
- ▶ Ownership
- ▶ Any changes should be consistent with others similarly situated

Malpractice Coverage

Occurrence Coverage vs. Claims Made
Coverage vs. No Coverage

Tails and Noses: Who pays?

RRG's and Self-Insurance



Moonlighting

- ▶ What can/cannot do outside of providing services for employer
- ▶ Volunteering/Expert Witness/Research
- ▶ IP or revenue generated
- ▶ Approval required?

Restrictive covenants/non-compete/non-solicitation clauses

State by State Analysis

Non-compete

Non-solicit

Resignation of Privileges

Confidentiality

Non-Disparagement

Violations

Employee Obligations

- ▶ Specifics regarding: Amount/Rate/Formula
- ▶ Incentives: RVU/Collections/Discretionary; Verification; post-termination receipts
- ▶ RVU Formulae: Baselines and per RVU amounts must be “reasonable”

Employer Obligations

- ▶ Should be outlined in EA
- ▶ Examples: equipment, supplies, staff, billing, malpractice
- ▶ Compensation/Benefits: insurance, PTO, expenses, CME



Contract Duration/Termination & Due Process

- ▶ Automatic/Cause/Not Cause
- ▶ Waiver of hearing/due process rights
- ▶ Linkage of employment and privileges
- ▶ State/NPDB Reporting

THE CORONAVIRUS CRISIS

An ER Doctor Lost His Job After Criticizing His Hospital On COVID-19. Now He's Suing

May 29, 2020 · 2:33 PM ET

An emergency medicine physician from Washington state has filed a lawsuit to get his job back at a hospital. He was fired in late March after criticizing his hospital's response to the coronavirus pandemic.

Boilerplate Language

- ▶ Assignment
- ▶ Amendments
- ▶ Governing Law
- ▶ Severability
- ▶ Waiver
- ▶ Mediation/Arbitration/Litigation
- ▶ Force Majeure
- ▶ Counterparts
- ▶ Electronic Signatures



Negotiating Strategy

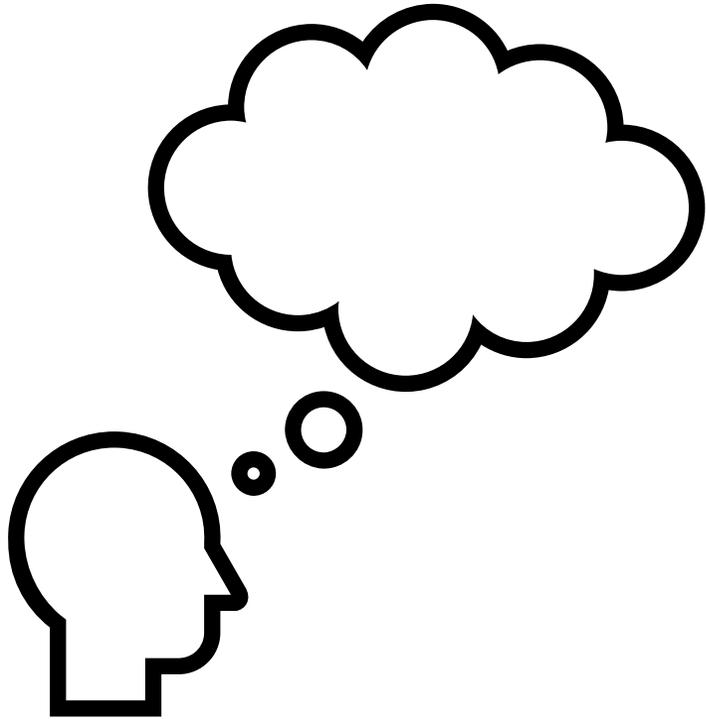
- ▶ Beginning a New Relationship
- ▶ Don't Ask/Don't Get
- ▶ Importance of Writing
- ▶ Trust
- ▶ Go In Eyes Wide Open

Physician Unions

- ▶ AMA supports right of physicians to engage in collective bargaining
- ▶ In 2019, there were 67,673 physician union members which represented 7.2% of actively practicing physicians in the US
- ▶ Increased interest as increasing numbers of physicians now work as employees and for prevention of burnout

Additional Resources

- ▶ PERLA Academy: A Guide to Physicians' Employment Agreements
 - ▶ A guide organized to follow typical format of a contract with sections listing common provisions
- ▶ Guides from specialty organizations
 - ▶ AAFP: Employment Contracting
 - ▶ ACP: Physician Employment Contract Guide
 - ▶ ACEP: Employment Contract Resources
- ▶ NEJM Career Center



Questions?

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