

## CONTRACTS FOR THE EMERGENCY PHYSICIAN

BY RADE B. VUKMIR, M.D., J.D., FACEP

Simply put, a contract is a promise or set of promises, which are enforceable under the law. The basis of contract law specifies the components to include the offer, or written proposal; acceptance or agreement; consideration or value transferred, and performance or work product. This process should result in the proverbial “meeting of the minds”. The focus of this article is on employment contracting for the emergency physician.

A review of pertinent terms and provisions help with understanding the process of employment contracting. First, parties are not usually in a position of parity (although the demand for emergency physicians has put them in a much stronger bargaining position in recent years). Second, an “integration clause” precludes reliance on any verbal communication not memorialized in the body of the contract itself. Third, the use of precise unambiguous contract terms helps to convey specific intention. Fourth, defined initiation and termination terms are necessary for clarity and to facilitate smooth transitions in employment. Fifth, the method of determining salary, benefits and incentive or bonus pay should be as clear as possible. Sixth, the physician practice obligation however is often described in more general terms maximizing individual and group flexibility.

There are typical points of contention concerning the contract risks in several specific areas. Often, key clauses are often less precise than intended. For instance, shareholder or ownership status, an often contested area, is usually discussed only verbally. Termination or non-compete clauses often are associated with disparate expectations from both participants, and contract breaches often have specific causes and consequences for all involved parties.

The management model requires individualization based on the employee-employer relationship, and often involves employee benefits, such as health/disability insurance, retirement benefits and the like. The employee model has a lower cash transaction portion (IRS W-2 form), with taxes withheld, typically with no corporate liability. The independent contractor model has compensation typically paid as cash (IRS 1099 Miscellaneous Income Distribution), without benefits provided, taxes withheld or liability for the group assumed. The Partnership Model spans the gamut from limited to managing partner classification with increasing benefit and liability. Compensation is paid as cash (IRS K-1 Distribution) with no taxes withheld and cafeteria-style employee purchased benefit options.

Unfortunately, often the only time a contract is reviewed is after the fact, when a problem occurs. This should NOT happen, and emergency physicians must be careful to define the parameters of their contracts before they sign, which is when they have the most bargaining power. Areas of heightened vigilance should occur among several common scenarios encountered. First and foremost, as discussed above, before the contract is negotiated.

Second, the employee transition phase when leaving a place of employment is often problematic. The nature of the “at will” employment provision leaves either party able to sever the employment agreement at anytime, but remember that non-competes will limit your options if you do not negotiate them before your engagement begins.

Third, the advent of hospital closures and mergers test contract limits on compensation, benefits, and malpractice insurance coverage, as older agreements are not necessarily enforced.

Fourth, the area of post-employment relationships is rife with contract issues as well. The covenant to not compete, or restrictive covenant can limit the former employee and work options.

The enforcement of the emergency medicine non-compete provisions is more difficult than a primary care or specialty practice. However, they are venue based and can be enforced successfully if

“reasonable in scope” usually two (2) years or less, a limited geographical restriction, and specific to the contracted service line.

The non-interference clause is a term of employment covenant where neither partner can obstruct a valid contract by the group or the individual. Contract loss is a sensitive time for all parties with co-termination of privileges covenants requiring physicians to reapply for privileges at the same institution.

The typical emergency medicine physician service contract has standard features that are noted. (Table 1) First, the work expectation should be clearly delineated. Second, the issue of restrictive covenants should be clear, defined and understood. Third, the service model-continuum, partner or employee and compensation specifications should be reviewed. The work product expected for given compensation should be clear. Fifth, the quality of clinical time spent based on staffing and resources should be understood. Sixth, the scheduling process should be fair and equitable. Seventh, the termination process should be specified as well the methodology of beginning the engagement. Eighth, understand the severance process especially the co-termination provision as it relates to hospital providers. Ninth, understand the rights and obligations of partnership statutes before you sign. Tenth, recognize the documentation responsibilities and obligations of your position. Eleventh, care should be taken to become familiar with the usual legal terms and descriptions that apply to conflict resolution. Twelfth, the contract term and renewal or termination provisions should be understood.

The basis of the physician understanding of contract law concepts can be simplified to a few salient points. (Table 2) The physician should have a rudimentary understanding of the law, and perform their own research. Not appreciating the contract nuances is not a defense, if a problem occurs.

Remember, each contract is unique based on type of employment agreement, included covenants and venue for analysis. The complexities of [today's legal environment requires an understanding, of partner or employee contract types by an attorney with health law experience.](#) It is worth the [investment](#) to have it reviewed up front.

The physician service agreement contracts are complex so understand the process, do the research and retain competent counsel beforehand.

Table 1 - Contract Analysis Parameters

1. Work expectations
2. Restrictive covenants
3. Compensation
4. Work requirement
5. Work difficulty
6. Scheduling process
7. Termination provision
8. Co-termination of privileges
9. Partnership status
10. Documentation requirement
11. Legal parameters
12. Specified term
13. Physician qualifications
14. Malpractice insurance

Table 2 - Contract Legal Overview

1. Know the applicable law
2. Do your own research
3. Read and understand your contract
4. Attorney review is essential
5. Case outcome can vary widely
6. Balance advice and situation
7. Contract disputes are costly for all parties