The Quick on Contracts and Malpractice

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Disclosures:

- Jan Reisinger has provided no disclosures.

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You've found your ideal practice setting…

- the perfect location, the perfect group of peers and you now have a verbal offer that sounds pretty darn good.

- Your future employer hands you a written employment agreement.

- The agreement sounds OK ….it is just a formality, right?

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Negotiations

- Some believe the original contract should be accepted as it is originally presented.
- Some believe that everything is negotiable.
- The truth usually lies somewhere in the middle.
- Goal for negotiations is to create a win-win solution.

*TIP: Consider your posture during the negotiations and that of your perspective employer as these will be remembered for quite a while into the future.

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Industry trend is now moving towards mega-systems and "super groups"

- Employment contracts are becoming more uniform
- Restrictive covenants are becoming more complex
- Less flexibility in contract terms
- One positive using a uniform-contract approach – less likely to be an unfair contract, by virtue of the fact that the agreement has already been used with colleagues before them

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Restrictive Covenants

- Also called non-compete clauses continue to be a key issue
- Stipulate what physicians are not permitted to do once they leave an organization
- Problematic area is often geographical boundaries – large hospital systems may have a 60-80 mile radius around an urban area
- Common not just in health care, but many industries

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"Will perform services at the company's office and other locations as the company requires"

- Can be problematic as health systems merge and expand
- To avoid this scenario, try to have the contract specify a principal place of service and require the physician's consent if the company asks the physician to practice beyond a certain distance – i.e. outside 25 miles

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Contract length/Benefits

- Length of contracts now often shorter.
- In the not too recent past, 3-year contracts were common
- Now most organizations moving to 1-year, renewable contracts
- Good for some, not good for others
- Another general trend is that benefits are being pared back
- Loan forgiveness has become less common
- CME allowances are being squeezed

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Payment Structures

- Shift away from volume and more toward value or quality structures, through the Medicare Quality Payment programs and shared-risk arrangements
- This is still a learning process, so organizations are trying to incorporate potential bonuses with at-risk compensation
- During contract discussions, make sure that this is clearly understood and that all of your questions are answered!

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Other trends and pitfalls

- Tail coverage responsibility shifting.
- Academic medical center contracts become more complex. Tend to have more attachments than private sector contracts.
- Signing too early could be costly!
- Possible issues about whether a non-compete should apply to you.

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Third Party Involvement

- Seek legal counsel to at least review the contract.
- Be sure to select a knowledgeable health law attorney recommended by colleagues, or the local/state medical society or bar association.
- While having legal counsel review is important, it is also important that the physician fully understand the contract provisions.

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Negotiating Strategies

- Do your homework – be prepared and gather whatever information that you need ahead of time.
- Always be respectful.
- Negotiate from the perspective of mutual benefit and fairness
- Set priorities – rank and list critical factors. (what can you live with/what can't you live with)
- Return to unresolved issues after most of the bargaining is done
- Always get everything in writing – particularly any changes

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Key Components of the Contract should include:

- Compensation, Benefits, Income Guarantees, Forgiveness of Guarantees, Educational Loan Forgiveness
- Future Ownership or Partnership Opportunities
- Outside activities – i.e. can the physician do research, publish articles, teach, consult or other activities
- Duties and Requirements – FT or PT, After-hours call schedules
- Restrictive Covenants & Non-Solicitation Clauses
- Contract Term
- Termination
- Gap/Tail Insurance
- Assignability

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Avoid these 8 Common Legal Mistakes before Signing Your Contract

1. Underestimating your compliance obligations
2. Forgetting to ensure you have audit rights.
3. Neglecting to check for unilateral provisions.
4. Failing to limit your liability.
5. Not checking for restrictive covenants.
6. Not reviewing rights related to the medical records.
7. Not caring about governing law and venue.
8. Failing to carefully read termination provisions.

*TIP: Seek tax, investment, and legal counsel to guide you as your make contract decisions. Never sign a contract until you understand it.

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Introduction to Medical Malpractice Insurance

- What is Medical Malpractice Insurance or Medical Professional Liability (MPL)?
  - Insurance, in general, is the practice of sharing your risk with a large number of individuals or groups who have a similar risk.
  - While it is impossible to predict the future for an individual, insurers can predict the outcomes for a large group of individuals based on statistical data
  - For physicians, surgeons, and other medical practitioners, this insurance protects them financially in the event of a medical malpractice lawsuit or other claims of medical negligence alleged by a patient or his/her family.

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For a Lawsuit to proceed as Medical Malpractice, it must fulfill these criteria…

- 1. The medical provider must have a duty to the patient.
- 2. The medical provider breached that duty as a result of action or inaction.
- 3. An injury resulted from the breach in duty.
- 4. There must be an established link between the injury and the medical provider.

*Note: All four of these elements must be present for a medical malpractice lawsuit to be warranted.

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Who Provides Medical Malpractice Insurance?

- Admitted Carriers
- Excess and Surplus Lines
- Risk Retention Groups
- Captives
- Joint Underwriting Associations

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Occurrence, Claims-Made, Tail Coverage – What does it all mean?

- Occurrence policies are the same type of policies carried for a car or home. These policies assign payment of claim to when it occurred.
- Claims-Made policies are based upon when the claim is filed, not when the incident occurred.
  - Most employers provide "claims-made" coverage during the time the physician is on the "practice payroll"; however when the physician leaves, the employee is deleted from the policy. Thus this type of policy will generally cover claims during the physician's employment, but will not cover claims arising thereafter.
  - To insure against this gap in coverage "Tail" insurance can by purchased by the physician. Appended to the original claims-made policy, the "tail" provides coverage after the physician's termination for any events that may have occurred during his/her period of employment.

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Malpractice Insurance Rates

- Determined by risk factors
  - Associated with physician's specialty
  - Location of practice
  - Physician's claims history

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Other Important Terminology

- Consent to Settle Provision
- Hammer Clause
- Defense Costs – Inside, Outside
- Guarantee Funds

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QUESTIONS ??????
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