



Contracts for Emergency Physicians



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Objectives

- ◆ Provide a general overview of employment contracts and their composition.
- ◆ Review critical points of the agreement between the parties.
- ◆ Review a sample contract to evaluate its make up and answer questions.



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Introduction

- ◆ Lecture is not meant to be a substitute for evaluation of a contract by competent legal counsel.
- ◆ Provide information and insight into contract points to maximize the time spent with your attorney.
- ◆ Massive topic with many subparts that could never be completely covered in an hour lecture.



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Definition

- ◆ **Contract:** An agreement between two or more people to do something, esp. one formally set forth in writing and enforceable by law.



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Golden Rules for working with contracts

- ◆ Rule # 1 -- Read the contract
- ◆ Rule #2 – If you don't understand the contract, don't sign it



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Goals

- ◆ Well-written contract can get your employment off to a good start.
- ◆ Provide a clear understanding of what services your employer expects of you.
- ◆ And what to expect from your employer:
 - *Salary and potential bonuses
 - *Benefits package.
- ◆ Helps to avoid misunderstandings that can sour the relationship between the parties.



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Goals

- ◆ Risk is inherent in any business venture.
- ◆ Impossible for a contract to provide for all contingencies.
- ◆ A good contract will fairly allocate the risk between the parties.



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Parts of a contract: Preamble

- ◆ “recitals” or “witnesseth”
- ◆ Describes the parties to the contract and the purpose of the contract.
- ◆ Be aware of the “party” to which you are contracting. (Corporation, Individual, Group, Hospital, etc.)
- ◆ You are relying on that entity to fulfill the obligations of the contract.



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Parts of a contract: Obligations

- ◆ Should be able to read through a contract even as a nonattorney and understand the duties and services required of you.
- ◆ Will be found in the body of a contract or in addendum entitled “job description.”
- ◆ Schedule A, B etc.
- ◆ If referenced in the contract it is an enforceable part of the agreement.



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Obligations

- ◆ Minimum and maximum numbers of hours to be available clinically (Min for you / Max for them).
- ◆ What administrative duties are you required to perform if any? (Q/A, hospital committees, EMS Director, Assistant Director)



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Obligations

- ◆ “On Call” obligations (Big one!) expectations, +/-, whole days?
- ◆ Board Certification required? What Board? (ABEM, AOBEM, ABPS) Is there a monetary reward or medical staff requirement?



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Obligations

- ◆ Teaching obligations.
- ◆ Obligation for coverage of clinical emergencies outside of ED (Is coverage such that it is realistic to perform this vs. a clear statement of priority to ED patients over inpatients).
- ◆ Unusual obligations: County medical examiner, etc.



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Obligations

- ◆ Be aware that there may be more obligations upon you that are not specifically referenced in your contract.
- ◆ Other than a reference to the group / hospital contract. Should be allowed to review the agreement if this is the case.
 - *ME duties, Codes, Moonlighting ability



Parts of a contract: Standard Obligations

- ◆ Medicaid/Medicare participation.
- ◆ Medical staff membership.
- ◆ State License.
- ◆ State DEA.
- ◆ Federal DEA.
- ◆ Takes significant time for state medical license and hospital medical staff membership applications to be approved (3-6 months)
- ◆ Start early and make sure the contract allows you enough time for completion.



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Parts of a contract: Compensation

- ◆ Assign rights to professional fees from patients and payers to the hospital or group.
- ◆ In return you will receive a fixed or hourly salary.



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Compensation

- ◆ Compensation for clinical and administrative duties.
- ◆ What benefits are provided (Life, Dental, Health, STD, LTD, PTO) are they fixed in the contract or subject to change?
- ◆ Bonuses (What triggers? How are they divided?)
- ◆ Retirement contributions (401k, profit sharing, matched savings)
- ◆ CME account, license paid, society dues, moving expenses.



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Parts of a contract: Medical Malpractice Insurance.

- ◆ Who pays?
- ◆ If employer or group should state that you will be named as an insured party.
- ◆ Insurer should be obligated to provide you with proof of coverage.



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Medical Malpractice Insurance

- ◆ Which party is responsible for purchasing?
- ◆ Who pays premium?
- ◆ What kind? (Claims made or occurrence).
- ◆ What policy limits?
- ◆ Who pays the tail? (HUGE!!!! Issue)



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Parts of a contract: Termination

- ◆ Most are written for a fixed term. (1-2 years) with automatic renewal.
- ◆ Usually can be terminated by either party with reasonable notice. Should always retain this right.

*Standard 90 days.



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Termination

- ◆ Employee: Without cause.
- ◆ Employer: For and Without cause .
 - *Usually will retain the latter. Despite potential unfairness. (Physician out more than the company).
- ◆ For cause:
 - *Felony, loss of license, loss DEA, Medicare exclusion, etc.



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Parts of a contract: Indemnification

- ◆ Broad clauses in IC contracts more so than employee.
- ◆ Obligates you to reimburse the hospital or group for financial liabilities they incur as a consequence of your conduct.
- ◆ Ex. Awards greater than malpractice limits, civil awards, EMTALA, IRS penalties.
- ◆ Not usually covered by malpractice.



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Indemnification

- ◆ If employer insists on this clause:
 - *Should try to limit to specific situations (what are they saying or protecting specifically)
 - *Should insist on a mutual clause, they agree to indemnify you from loss caused by their breach of contract.
 - *Agreeing to this is like agreeing to act as an insurer of the group for certain losses.
 - *Stakes are potentially very high. (attorney)



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Parts of a contract: Misc.

- ◆ “Complete agreement”
 - *written document is the complete agreement between the parties.
 - *Any promises before or after signing are unenforceable.
 - *May politely use this section to insist that any promises bonus, moving expenses etc. be “memorized” in the contract.



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Parts of a contract: Misc.

◆ “Waiver”

*Ignoring a breach of contract at one time does not preclude enforcement of a subsequent breach.



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Parts of a contract: Other

◆ Covenant Not to Compete.

*Prohibits setting up a practice or joining another practice in a covered radius for a period of time.

*Protect the contract and group.

◆ Noninterference.

*Prohibits members of the group from negotiating on their own with the hospital during the term of the contract.



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Parts of a contract: Partnership

- ◆ Equity. (ownership)
- ◆ Income distribution.
- ◆ Buy-in.

*sweat equity (schedule inequity... Nights, reduced hourly rate)

*Cash out of pocket.



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Partnership

- ◆ Multiple ways to do this.
 - *Most times laid out in years of employment.
 - *More equitable in terms of hours of employment or combination of the two.
- ◆ Handshake or promise of partnership.
 - *Risky / but done (Do you trust them?)
 - *Should try to have some contract reference to the time frame at which eligibility occurs.



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The DO NOT Forgets

- ◆ Know what is negotiable and what is not.
- ◆ Always know what you are signing.
- ◆ If you are unsure ask an attorney.
- ◆ Just like a medical record. If it is not in writing it was not done, and is not binding.
- ◆ Contracts work both ways, it should be negotiated as such.



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Specifics

- ◆ IC vs. Employee.
- ◆ Do Not Compete.
- ◆ Malpractice and Tail Coverage.
- ◆ Hours of obligation
 - *Clinically scheduled (range 120-180)
 - *24/7 specialty (holidays, weekends, nights)
- ◆ Watch indemnification.



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Summary

- ◆ The relationship that you establish is more important than than the contract.
- ◆ No contract will ever be perfect for either party. It is a negotiation.
- ◆ Contract is a tool to bring clarity to your mutual relationship.
- ◆ It is a means to an end and not the goal.



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Closing

- ◆ Negotiation is an art form, and an exercise in strategy.
- ◆ In the end, the side with the most information leaves the table with the greatest satisfaction.
*Car dealer.



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Reference

- ◆ Wood, Joseph P. MD JD, *Contract Issues for Emergency Physicians*, Emergency Medicine Residents' Association, c. 2000.



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Author Credit-Contracts for EP: Anthony Franks Jr MD

Questions



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Postresidency Tools of the Trade CD

- 1) Career Planning – Garmel
- 2) Careers in Academic EM – Sokolove
- 3) Private Practice Career Options - Holliman
- 4) Fellowship/EM Organizations – Coates/Cheng
- 5) CV – Garmel
- 6) Interviewing – Garmel
- 7) Contracts for Emergency Physicians – Franks
- 8) Salary & Benefits – Hevia
- 9) Malpractice – Derse/Cheng
- 10) Clinical Teaching in the ED – Wald
- 11) Teaching Tips – Ankel
- 12) Mentoring - Ramundo
- 13) Negotiation – Ramundo
- 14) ABEM Certifications – Cheng
- 15) Patient Satisfaction – Cheng
- 16) Billing, Coding & Documenting – Cheng/Hall
- 17) Financial Planning – Hevia
- 18) Time Management – Promes
- 19) Balancing Work & Family – Promes & Datner
- 20) Physician Wellness & Burnout – Conrad /Wadman
- 21) Professionalism – Fredrick
- 22) Cases for professionalism & ethics – SAEM
- 23) Medical Directorship – Proctor
- 24) Academic Career Guide Chapter 1-8 – Nottingham
- 25) Academic career Guide Chapter 9-16 – Noeller