

## **Physician Employment Contract Informational**

Hi my name is Michael Schaff, a shareholder with Wilentz Goldman & Spitzer. Today I will be discussing several key issues physicians need to be aware of when negotiating an employment agreement.

The first key issue is a compensation of fringe benefits. An employment agreement should make sure that the amount and timing of the compensation of benefits are specifically set forth in a clear and concise manner. Many agreements contain a provision whereby at least a portion of the compensation is based on productivity measures. If your agreement provides such clause, then the methodology for calculating productivity-based compensation should be clearly spelled out in the agreement. An example utilizing the applicable methodology or formula should be set forth in the agreement so in order to avoid any ambiguity. The agreement should also specifically set forth when incentive compensation would be paid to the physician and whether the physician is entitled to any portion of any accounts receivable he or she generates prior to termination. If a bonus is based upon collections, the physician should add a covenant that patient shall be scheduled equitably so that the physician gets a fair share of patients based upon procedures and \_\_\_\_\_ and that the practice will use its best efforts to collect all fees. If the term of the agreement is for more than one year the annual compensation increase should be included and set forth in detail in the agreement. Fringe benefits are a major portion of total compensation and are sometimes overlooked. They should be specifically set forth including, vacation, continuing medical education, sick days, expense reimbursement, like cell phones and PDAs, dues, journals and periodicals, automobile allowances, health, life, dental, disability and malpractice insurance. The second key issue are duties and work schedule. The agreement should set out a detailed job description including projected hours, what day you are supposed to work, are you supposed to work evenings or weekends, what days will you have off during the week if any. If the agreement specifies a minimum number of work hours per week or month, be careful, that number should be listed as an average to take into account vacation days, sick days and days off for CME. Clearly spell out any coverage or on-call obligations. A third key issue is malpractice insurance. An employment agreement should specify whether the practice will provide malpractice coverage for the physician and whether the policy is occurrence based or claims made. An occurrence based policy provides insurance coverage for an alleged malpractice action that occurred during the policy period no matter when the claim is brought against the physician. A claims made policy provides coverage for a claim that is brought within the policy period no matter when the alleged malpractice occurred. If the applicable policy is claims made, the agreement should identify which party will be responsible for obtaining term coverage on the physician's separation from the practice. A fourth issue is term and termination. The employment agreement should set out what the initial term is and how the agreement can be terminated. The agreement can provide for termination with cause or termination without cause. If the agreement includes a without cause termination provision, you should note that no matter how long the term is set forth, the term is really the period of notice without cause. Termination with cause should be spelled out and provide the physician with a reasonable opportunity to cure. A fifth key issue is moonlighting which is the ability to work elsewhere during the term. If you intend to work elsewhere during the term you should make sure the agreement is clear and concise and permits you to work on the side. The sixth issue is a restrictive covenant. Practices try to restrict physicians during the term for a period after termination when opening up an office or practicing within some radius and not soliciting patients or employees. Physicians should make sure that they can live with the restrictions and they are reasonable in scope and duration. A physician may wish to carve out certain pre-existing patient and referral relationships developed in prior employment. If you would like more information about physician employment contracts or anything else related to physicians or physician practices, please feel free to contact us at any time. Thank you.