

Contract Basics

Idaho State University
Office of Medical and Oral Health
Physician Assistant Studies
May 14, 2015

Presented By:

Patrick J. Miller
Givens Pursley LLP
601 West Bannock Street
Boise, ID 83702
208.388.1200
pjm@givenspursley.com

What is a Contract?

In common law legal systems, a **contract** (or informally known as an **agreement** in some jurisdictions) is an agreement having a lawful object entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations between them. The elements of a contract are “offer” and “acceptance” by “competent persons” having legal capacity who exchange “consideration” to create “mutuality of obligation.”

Common Questions

- Does contract have to be in writing?
- If I am employed but I don't have a written agreement, do I have a contract?
- Do employment agreements have to be in writing?
- Should I insist on a written employment agreement?
- Are employment policies a contract?

Essential Contract Terms

- How do I get into contract?
- How do I/they get out?
- What happens when I leave?
- What do I get paid?
- Who is responsible if something goes wrong?

Term and Termination

- Is the Contract “at will”?
- Is the Contract for a specifically defined term (one year, two years, three years, etc.)?
 - If the Contract is for a specific term, is the Contract terminable without cause on notice?
 - If the Contract is for a specific term, what are the “causes” for termination?
 - Are the causes for termination mutual?
 - If the Contract is terminated for cause, do the benefits payable upon termination (e.g., tail insurance, signing bonus, repayment, etc.) differ than if Contract is terminated without cause?

Term and Termination (cont'd)

- ❑ What other rights exist upon termination?
 - ❑ Who owns charts on termination?
 - ❑ Is there a restrictive covenant (see “non-competes” below)?
 - ❑ Do any benefits have to be paid (*i.e.*, signing bonus, living expenses, etc.)?

Compensation

- Will you be classified as an exempt employee?
 - Will you be paid a salary of at least \$455 per month and, therefore, qualify for exempt employment status?
 - Will you be paid on an hourly basis (in which case, employer may not treat you as exempt)?
 - Will your compensation be entirely production based (in which case, the PA would not qualify as an exempt employee and would be entitled to overtime pay)?

Compensation (cont'd)

- ❑ If any portion of your compensation is production based, what is the method for measuring your production (e.g., is it wRVU based, percent of collections, percent of billings, production minus overhead and if so what is overhead allocated to you)?
- ❑ If a bonus is paid on a percent of collections, percent of billings or wRVU basis, will work be available to you for purpose of generating a bonus (e.g., if you perform follow-up to physician's surgical cases, no billings may occur for such services)?
- ❑ If you are paid on a percent of collections, do you receive your collections after termination?

Compensation (cont'd)

- Does the Contract provide for a sign-on bonus?
- Does the Contract provide for a student loan repayment?
- Does the Contract provide for moving expenses?

Benefits

- ❑ Does the Contract provide for health insurance; and if so, what are deductibles, co-insurance, and co-payments (and is your family covered)?
- ❑ What benefits are provided for continuing education?
- ❑ Are benefits provided for licensure, professional memberships and medical staff memberships?

Benefits (cont'd)

- ❑ Does the Contract address medical liability insurance?
 - ❑ What is Claims Made Insurance?
 - ❑ Does the Contract provide for who is responsible for “prior acts” coverage?
 - ❑ Does the practice pay for your tail upon termination of employment (does this benefit vary based upon whether employment is terminated voluntarily or involuntarily)?
 - ❑ If medical liability coverage is not through third party insurance, how is the benefit administered?
 - ❑ Does the self-insurance coverage apply upon termination of employment?

Benefits (cont'd)

- How much personal leave do you receive and how is it calculated (i.e., are holidays, if they do not fall on a weekend, considered leave)?
- What retirement plan benefits exist (when do the benefits vest and what, if any, 401k or 403b matching is available)?
- Does employer provide life insurance?
- What disability benefits exist and what is the length of waiting period before they kick-in?

Duties and Qualifications

- Are duties spelled out in the Contract?
- If paid on a production basis (or salary plus production), do the administrative duties on non-productive activities adversely affect your ability to generate a bonus?
- Does the Contract address on-call requirements?
- Does the Contract address who is responsible for the accuracy of billings, who owns the proceeds of billings and who is obligated for any repayments?

Duties and Qualifications

(cont'd)

- Does the Contract specify your hours?
- Does the Contract address your licensure and medical staff membership requirements?
- Does the Contract address requirement for being a member of certain health plans (e.g., being a participating provider in Medicare/Medicaid)?
- Does the Contract require that you have never been debarred?

Duties and Qualifications

(cont'd)

- Does the Contract require you to disclose existing or prior investigations or claims against you?
- Does agreement specify practice location (can employer change your practice location)?

Employer Qualifications and Duties

- Does the Contract require employer to be licensed?
- Does the Contract require employer never to have been debarred?
- Does the Contract require employer to disclose any prior investigations or claims?

Employer Qualifications and Duties (cont'd)

- Does the Contract require employer to accurately code for all services appropriately documented by the PA and to accurately bill for such services?
- Does the Contract require employer to indemnify the PA for false claims, inaccurate billing or medical liability?
- Does the Contract address whether or not employer has a compliance plan?

Non-Competes

- ❑ Non-competes are generally enforceable in Idaho, but they must be reasonable to protect a legitimate economic interest.
- ❑ Is the radius clause of the non-compete reasonable to protect a legitimate economic interest?
- ❑ Is the length of time of the non-compete reasonable to protect a legitimate economic interest?
- ❑ Is the scope of services covered by the non-compete reasonable to protect a legitimate economic interest?

Non-Competes (cont'd)

- ❑ Items to evaluate in determining a legitimate economic interest:
 - ❑ Has the PA gained a “high level of inside knowledge, influence, credibility, notoriety, fame, reputation or public persona as representative of the employer” to meet the definition of a key employee?
 - ❑ As a key employee, does the PA have the ability to harm or threaten the employer’s goodwill and business interests upon departure including, but not limited to, employer’s goodwill, technologies, intellectual property, business plans, business processes, methods of operations, customers, customer lists, customer contacts, referral sources, vendors and vendor contracts, and financial and marketing information?

Non-Competes (cont'd)

- ❑ Is the restrictive covenant eighteen (18) months or less from the last date of employment?
- ❑ If the non-compete is longer than eighteen (18) months, is consideration in addition to employment or continued employment given in consideration of the non-compete?

Practice Buy-In

- ❑ Is there an expectation of ownership in employer?
- ❑ Are terms of buy-in set out in writing?
 - ❑ Is purchase price established?
 - ❑ Is compensation methodology upon buy-in established?
 - ❑ Is the time frame for buy-in set?
 - ❑ Is the decision to allow buy-in discretionary on part of employer?