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Termination Clauses in Physician Contracts

Termination is the most important provision in a Physician Employment Contract and a Physician Contractor Agreement. Your exit from the relationship is crucial -- everything must end, and most things will end bad, so be prepared. This article explains termination provisions and the consequences of termination of the contract.

Termination Clauses. Most physician contracts have a set term of years, for example 2 years, plus a provision for early termination before expiration of the term if things aren't working out. The grounds for early termination of the contract can be "for cause" or "at-will" (without cause). At-will termination usually has a notice period, typically 60 days. For cause termination usually is immediate but sometimes has a cure period.

The contract will define "cause" to include a host of negative events, for example, loss of license, loss of hospital privileges, loss of participation status with third-party payers, etc. Cause will also include more nebulous events such as material breach and willful misconduct.

Termination has consequences. In most contracts, the consequences depend on who is terminating the contract (the hospital or group practice, or the physician) and for what reason (for cause or without cause). The three most important consequences of termination are insurance tail coverage, reimbursement of recruitment costs, and restrictive covenants.

Tail Coverage. Medical malpractice insurance is usually written on a claims-made basis. With a claims-made policy, there is no coverage for claims reported to the insurance company after the end of the term of insurance contract. For an employee or contractor physician, the insurance contract can end at termination of employment, after which there is no insurance coverage. After termination of employment, however, patients may still bring claims for medical malpractice allegedly committed earlier. Both sides want a tail coverage policy to protect them from these claims. Premiums for tail coverage can be low or astronomically high depending on the medical specialty.

The issue is, who pays for the tail coverage? In many contracts, the deciding event is how termination came about. Some contracts require the physician to pay for the tail coverage if he

quit or was fired for cause, and require the hospital or practice group to pay if it fired the physician without cause. In my opinion, this type of contract is an invitation to litigation. Both sides will spin the termination of employment to avoid having to pay for tail insurance.

The better practice is to specify the allocation of tail insurance for all terminations regardless of cause. You might have the medical group pay the entire cost, or the physician pay all, or the two sides split the cost 50/50. Here, no matter how the end comes, or whose fault it is, the contract will be clear on the issue of tail insurance, and there'll be one less thing to sue about.

Reimbursement of Recruitment Costs. To help with the recruitment of a new physician, sometimes a hospital will pay a recruitment bonus to the physician, or to the group practice that hires the physician to work at the hospital. [Note that the Stark referral law restricts these recruitment payments, but that's a topic for another day.]

What's important in this article is that many hospitals require that the physician or medical group pay back to the hospital the recruitment costs if the physician's employment is terminated early or the physician fails to meet performance benchmarks. Sometimes the hospital even requires the return of salary paid to the physician.

This type of recruitment contract invariably is long, complicated and poorly drafted, the result being that no one knows when, how and how much money the physician owes at the end. Sometimes the drafting is so bad that the reader can't even figure out it's a physician recruitment contract. Frequently a promissory note and security documents are thrown into the mix thereby increasing an already excessive amount of verbiage by 20 to 30 pages.

Just say no to these contracts. Certainly a physician should refuse to sign a contract that requires that she reimburse the hospital or medical group for recruitment costs or salary at termination of employment. I also advise hospitals and medical groups to avoid these arrangements because they're simply not worth the pain and suffering, especially given that the Stark referral law severely restricts the arrangement anyway.

Restrictive Covenants. The third consequence of termination is the non-competition clause. I won't address this topic here, however, because I've already devoted an entire Newsletter to it. See the corresponding article on my website.

I hope this article helps you. Call me if you want to talk more.

Ben Franklin:

- Those who in quarrels interpose, must often wipe a bloody nose.
- There are more old drunkards than old doctors.
- Who had deceived thee so often as thyself?
- At 42, Ben left a profitable printing company: "I would rather have it be said, He lived usefully than, He died rich."
- Three may keep a secret, if two of them are dead.
- A good lawyer, a bad neighbour.