



A Primer on Employment Agreements for New Physicians

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What is the "law?"

- U.S. & Maine Constitutions
- Statutes or legislation - created by elected legislative bodies
- Administrative rules or regulations - created by executive agencies
- Case law or common law - created by judges



What is a "contract?"

- An agreement between 2 or more persons which creates an obligation to do or not to do a particular thing.
- Its essentials are:
 - Competent parties
 - Subject matter
 - A legal consideration
 - Mutuality of agreement
 - Mutuality of obligation
- Black's Law Dictionary, 5th Edition



Finding the Law in Maine

- Maine legislature's web site: <http://www.maine.gov/legis>
 - Bill status: L.D. #
 - Session laws: P.L. or Resolves Chapter
 - Statutes: 24 M.R.S.A. sec. 2851
- State agency rules online: <http://www.maine.gov/sos/cec/rules/rules.html>
- AMA's Code of Medical Ethics: <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics.shtml>



Employment Law 101

- Employment "at will" is the common law presumption in all 50 states, meaning that the employment relationship is terminable by either party at any time
- Affected by variety of specific state or federal statutes protecting employee rights, such as Title VII of the Civil Rights Act of 1964, the Maine Human Rights Act, FMLA, ADA, FLSA, ADEA, PDA, & Equal Pay Act
- Employers & prospective employees are free to negotiate "employment agreements"



Employment Agreement Key Terms

- Parties
- Duties & Responsibilities
- Compensation/base & incentive
- Fringe benefits
- Ownership opportunities
- Term & termination
- Restrictive covenant/non-compete clause
- Professional liability insurance
- Indemnification
- Other



Parties

- Hospital: non-profit, tax exempt corporation
- Group practice: business corporation, professional corporation, or limited liability company
- Individual physician: sole proprietorship or professional corporation; John Doe, M.D. v. John Doe, M.D., P.A.



Duties & Responsibilities

- Physician services within legal & ethical guidelines
- Location(s)
- Work Schedule
- Call schedule
- Administrative duties
- "Professional judgment" - degree of autonomy
- Credentialing requirements - payers & hospital(s)
- Hospital/Medical staff bylaws
- "Moonlighting"



Compensation

- Base: may be guaranteed for first year, then may be based upon productivity
- Incentive: based upon productivity
- Common benchmark: Medical Group Management Association (MGMA) Annual Productivity & Compensation Surveys



Fringe Benefits

- Health insurance coverage
- Life/disability insurance coverage
- Retirement plan
- Vacation or "paid time off" (PTO)
- CME
- Moving expenses
- Loan repayment



Ownership Opportunities

- May be relevant for private group practice, but not for hospital employment
- Criteria: timeframe & productivity requirements?



Term & Termination

- Term: initial term may be for specific number of years; may provide for automatic renewal, sometimes called an "evergreen" provision
- Termination:
 - Upon period of notice (such as 90 days) by either party for any or no reason
 - For "cause" with or without notice - material breach of agreement; loss of license



Restrictive Covenant/Non-Compete Clause

- Provision limiting a professional's right to practice in the geographic region of the employer for a period of time
- Frowned upon by AMA Code of Medical Ethics because reduces availability of medical care to the public - **Opinion 9.02, Restrictive Covenants and the Practice of Medicine**
- Enforceable in Maine if reasonable in duration, geographic area, & interests to be protected - Brignull v. Albert, a 1995 Maine Supreme Judicial Court decision regarding optometrists in the Ellsworth area
- Liquidated damages provision



Professional Liability Insurance

- Provided for work within scope of employment agreement
- "Moonlighting" not covered
- Maine's "Good Samaritan" statute, 24 M.R.S.A. section 2904, recently expanded
- Since policies are "claims made" need "tail" coverage upon termination of employment



Indemnification

- "To save harmless; to secure against loss or damage."
- Often for negligent acts or omissions
- Scope should be reasonable
- In the health care setting - for false or fraudulent claims



Other

- Ownership of/access to patient medical records
- Dispute resolution



Other Employment Law Resources

- MMA contract review service: flat fee \$250 for written assessment
- Referral to appropriate member of the private bar



Questions?

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