

# Contracts, Negotiation, Deciding on a Position

## Type of Relationship

Employee – automatic taxes/more protections/more benefits  
Independent Contractor – more freedom/more tax writeoffs/self-employment tax/quarterly taxes/fewer protections  
Locum Tenens – “Wild West” of IC. Should *supplement* income.

## Duration of Employment

Contract Term  
Automatic Renewal  
“Out Clause”

## Compensation

Salary vs. Hourly  
Benefits? Who pays?  
Tax Implications - Employee vs. Independent Contractor  
Incentives - Night/Weekend Differential, Production Bonus

## Contract Termination

**For** Cause = IMMEDIATE – you’re done *NOW*.  
**Without** Cause – Usually effective on 30-90 days notice  
Avoid subjective language in “for cause” clauses  
*“appropriate authorities of a hospital . . . request that Employee no longer provide such services at the hospital.”*

## Exclusivity Agreements

Require that you work *only* for hiring entity. No moonlighting.  
DANGEROUS financial problem if immediately terminated and need to wait several months for staff privileges at another facility  
Dealbreaker. DO NOT agree to exclusivity.

## The Integration Clause

*“This Agreement constitutes the entire agreement of the parties...”*

### Significance

Buy-in as a group partner  
Shift schedules  
Coverage (NP or PA versus physician?)  
Added administrative duties?

### Minimizing the Effect of Integration Clauses

If you were promised something not in contract, write it in margin

*Notes*

### **Indemnification**

Deal breaker!

“Physician shall hold hospital harmless from any and all liability, costs, damages, judgments, losses or reimbursement and/or reasonable attorneys’ fees incurred as a result of . . .”

*Example*

“Violation of [government billing regulations] . . .”

- may make physician liable for overbilling plus *treble damages*.

### **Duty To Supervise - Potential Liability**

- Inadequate Supervision

Legal liability

Actions against license?

- Illinois Physician Assistant Supervision Act

“the supervising physician shall maintain the final responsibility for the care of the patient and the performance of the PA.”

- Improper delegation of authority

“Physicians don’t have “carte blanche to delegate any and all tasks to an assistant””

- *Gillis v. Cardio TVP Surgical Associates*

- Informed Consent

Does patient think your PA or NP is really a physician?

### **Malpractice Insurance**

A “deal breaker”

Annual likelihood of malpractice claim in ED ~7%.

8-12x that many patients may have compensable injuries.

Industry standard in emergency medicine to include malpractice insurance and tail.

### **Two Major Issues:**

#### **1. Coverage Limits**

Specific policy limits should be included in every contract.

“Sweet spot” = \$1 million/\$3 million

Should request “certificate of insurance” before signing contract.

#### **2. Type of Coverage**

“Claims-made” vs. “Occurrence-based”

Occurrence-based insurance protects you indefinitely

Claims-made insurance must be in force when the incident occurred AND when the claim is made against you AND when the claim is reported

## **Negotiating Tactics**

### Hospitals

#### - The Deadline

Have to sign a contract before certain date. Almost never enforced.

Used to force committal to contract

#### - The “Standard Contract”

Refuse to change contract because it is what all other doctors have signed.

ALL contracts are negotiable

### Physicians

#### - The Walkout

Walk out of negotiations if contract not acceptable. Have other positions available before using (should always be on staff at multiple hospitals anyway).

#### - Keeping Up with the Joneses

Another facility/group offering more compensation/better benefits

#### - The Red Herring

Pretend that something in a contract is very important to you when it really isn't. Then concede that point to get something else in the contract you want

*Notes*

## **Deciding on a Position**

### **Typical Considerations**

Location

Payment

- Salary/hourly
- Benefits

Work Environment

- Patient volumes
- Ancillary services
- Group longevity at hospital
- Administration goals

Advancement

- Partnership
- Academic vs. Non-academic

Administrative Roles - Director/Assistant Director

What are YOUR “Needs” and “Wants”?

### **Evaluating a Position**

Talk to employees

- Night shift docs
- Newest hires
- Person you are replacing or last to leave

Talk to nurse manager

Talk to spouses of group docs

Talk to hospital administration

***\*\* Unreasonable rigidity during interviews or negotiations may signal difficulties in future working relationships \*\****

### **Finding a Job**

In local area

- Cold-call hospitals/ERs
- ICEP EPIC
- Contact friends in locations you would like to work

Outside local area

- Ads in Annals, monthly emergency medicine magazines
- Contact ACEP or state branches
- National CMGs always looking for physicians

### **Search Firms**

Often utilized with jobs that are difficult to fill

Hiring entity usually picks up cost (\$30K+) – may be less willing to use

Maintain your right to seek own contract without owing them a fee

May help with preparing CV, marketing physician, interviewing, etc