

## Finding a Job and Addressing Contract Issues in the COVID Era Speaker: William Sullivan, DO, JD

### Disclosures

I have the following potential conflicts to report:

- Owner, Law Office of William Sullivan ([www.sullivanlegal.us](http://www.sullivanlegal.us))
- Owner, BAM Medical Staffing, LLC ([www.bammedicalstaffing.com](http://www.bammedicalstaffing.com))
- Senior Editor, EP Monthly Magazine

### *Job Considerations*

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**What are YOUR “Needs” and “Wants”?**

**What are EMPLOYER’s “Needs” and “Wants”?**

**How does job market affect these desires?**

Freestanding EDs, urgent care centers, telemedicine, ED closures, increase in APPs, increase in residency positions all create staffing saturation for emergency medicine

“Exit block” – graduating residents can’t find jobs

“Zero hour contracts” – no guarantee of regular hours

- Haas et al., 2019

**What are your priorities?**

Practice setting

Patient volumes

Staffing/coverage – hours vs. volume, midlevels

Night support

Patient transfers

EMR

Administration goals – Patient throughput? Satisfaction?

TURNOVER – physicians and nursing

Advancement/Partnership

Administrative Roles

Compensation

- Independent contractor or employee
- Salary/hourly
- Night incentive/RVUs/Bonuses
- Benefits (CME, retirement, insurance, maternity, etc)

## *Finding a Job*

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### **In local area**

- Cold-call hospitals/ERs
- State medical society
- Contact friends in locations you would like to work
- Former grads from your program in same area
- Get involved in organized medicine and develop contacts

### **Outside local area**

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

### **Evaluating a Position**

- Talk to employees
- Night docs
- Newest hire
- Person you're replacing
- Talk to nurse manager
- Talk to spouses of group docs – dinners, parties, etc
- Talk to hospital administration

## *Contract Basics*

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### **Basic Contract concepts**

Contract = Offer + Acceptance + Consideration

The “Mirror Image” Rule

By signing a contract, you are bound by its terms

Breach causes liability for damages

Every contract is negotiable!

### **Benefits of Being an Employee**

- Worker's compensation
- Unemployment insurance
- Discrimination laws apply (age, gender, race, etc.)
- Family Medical Leave Act
- Americans with Disabilities Act
- OSHA
- Protections against retaliatory discharge

- Retirement protection laws
- Benefit package?

### **Benefits of Being an Independent Contractor**

- More tax breaks
- Employees get few if any deductions
- Independent contractors can generally write off everything related to performance of job
- More freedom to contract
- Theoretically ... more control over manner of work
- Downsides:
- Self-employment tax
- Less legal rights than employees

### **Compensation Considerations -----**

- Salary vs. Hourly
- Employee vs. Independent Contractor
- Tax Implications
- Signing Bonus ... or is it a loan?
- Benefits - who pays?
- Incentives
- Night/Weekend Differential
- Production Bonus (RVUs)

### **Termination For Cause vs. Termination Without Cause -----**

- Important Distinction
- For Cause = IMMEDIATE
- Without Cause - must give notice (30-90 days)
- Make all efforts to 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 -----**

#### **Problem:**

If you are terminated, you're going to be *immediately* terminated

Getting on staff at another hospital takes *months*

- Pre-application/ Application
- Check references
- Check previous hospitals
- Billing
- Committee meetings/ approval

Then must work another month before paycheck

## **Solution:**

**ALWAYS** be on staff at more than one hospital  
NEVER agree to exclusivity clauses

## **Integration Clauses -----**

“This Agreement constitutes the entire agreement of the parties with respect to the matters contained herein, and supersedes any and all other discussions, statements and understandings regarding such matters ....”

Significance of Integration Clauses

- Hours required
- Shift schedules
- Hospitals staffed
- Coverage (NP or PA?)
- Buy-in as a group partner
- Administrative duties
- Paid? Required? Evenly distributed?

GET EVERYTHING IN WRITING!

## **Indemnification -----**

Obligates physician to reimburse agency for ANY financial liabilities it sustains based on terms of indemnification clause

- Malpractice awards in excess of insurance limits
- Civil monetary awards
- IRS penalties – Independent Contractor vs. employee
- Government fines
- EMTALA
- False Claims – amount of overbilling plus 3x damages

## **Importance**

Indemnification **may** invalidate malpractice insurance coverage

- Liability related to medical treatment becomes a “contractual” liability

May have to pay out of pocket for:

- Errors made by third parties (resident/NP/PA)
- Fines for statutory violations (HIPAA)
- Legal expenses paid by hospital/group
- Judgments against hospital/group

## **Solution**

**Absolutely a deal breaker!**

Burn contract, throw holy water on ashes

*Find another opportunity*

## **Duty To Supervise -----**

### **Problem**

Agreeing to contractual responsibility for supervising other parties may not be covered under medical malpractice insurance policy

- Not a “medical malpractice” issue, but instead a “contractual liability” issue
- Liability could potentially be sole responsibility of physician if due to a failure to provide required supervision to resident, mid-level provider, or student
- Failure to supervise becomes another way to involve physician in medical malpractice lawsuit
- Bad outcome equates to “failure to supervise” in many jurors’ eyes

### **Inadequate Supervision**

- Improper delegation of authority
- Physicians don’t have “carte blanche to delegate any and all tasks to an assistant”
  - o Gillis v. Cardio TVP Surgical Associates
- Informed Consent
  - o Does patient think your PA or NP is really a physician?

## **Malpractice insurance -----**

Confirm ADEQUATE malpractice insurance

### **Importance**

- Possible low limits \$250,000/occurrence. Need minimum \$1 million/occurrence
  - o Specific policy limits should be included in every contract
- Range begins from \$100k per incident/\$300k per year to multimillions per incident
- Yearly limits cumulative for all physicians?
- Average coverage is \$1 million/\$3 million
- Per-patient or hourly subsidy?
- Get certificate of insurance before signing contract