

PHYSICIAN Contract Negotiation 101

Information provided by Foulston Siefkin LLP
in partnership with Rural Health Education and Services



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Whether you are a new physician straight out of residency or an experienced physician relocating to a new practice, negotiating an employment agreement can be just as overwhelming as that first week of medical school. That long-winded mess of legal jargon is harder to read than Steadman's Medical Dictionary, but it's no less important to your future. It should not be skimmed and signed based on the hospital or practice administrator's kind words and handshake. You should carefully review its terms and consider the requirements and consequences. After drafting and negotiating hundreds of physician employment agreements, Foulston Siefkin has developed a few tips that we think will assist you in negotiating your employment agreement.

All Contracts Are Negotiable. Don't be afraid to ask for revisions to your contract. Some employers simply won't change their contracts, but they will not be offended if you ask for changes. Most hospitals and physician practices are used to new physicians asking for additional compensation, incentives, or contract revisions. Of course, you should prioritize your requests and pick your battles. Don't expect your employer to accept every request. Also, if you don't understand your contract, or a key term is missing, request that the contract be revised.

Compensation. Physician compensation packages, especially in rural Kansas, come in various shapes and sizes. For new physicians, the compensation should probably include a combination of a guaranteed salary and a productivity bonus. Productivity bonuses should be objective and easy to calculate. To illustrate: 50% of collections in excess of 200% of physician's salary, or \$50 per work relative value unit performed in excess of 4,800 wRVUs per year. If you're a hard worker, you might request a tiered structure where the rate goes up as production increases.

Call Coverage. Call coverage is a big issue in rural Kansas, where you might be one of two or three physicians in town. Your agreement should identify the maximum hours/days/weekends of call that are included in your salary, and it should specify the regular call schedule. If you provide coverage in excess of the maximum, you should be compensated for the additional coverage. When negotiating call coverage compensation, you also should know whether the rate is for time on call or for time when you are actually furnishing patient services.

Non-Competition Agreements. Non-competes (or restrictive covenants) are generally expressed by two main criteria: duration and range. Three years and fifty miles are common limits. It means you can't practice medicine for three years after termination of your employment within fifty miles in any direction from your employer's office/facility. How does this affect you? If your agreement terminates, will your spouse have to change jobs? Will your kids have to change schools? Try to limit the scope and get exceptions, such as one or two years and 25-50 miles. Also, request elimination of the non-compete if your employer terminates the agreement without cause or if you terminate the agreement for cause. If you are working for a private practice, it might make sense to ask for an exception to work as an employee of a hospital inside the non-compete radius.

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Exit Strategy. Always have an exit strategy! Every employment relationship ends at some point. Ask yourself what happens when you're ready to quit your job. Will you have to give thirty, sixty, ninety days' notice? Also, how much notice does your employer have to give you? How quickly can you pick up and leave town? Consider your spouse, kids, house, family, etc. The employer's termination rights are often overbroad and should be narrowed or limited, if possible. For example, for most issues, you should have ten to twenty days to correct any misconduct. Engaging in conduct that *might* be grounds for revoking your license, privileges, or medical staff membership might not be sufficient cause to terminate. Your employer should seek to identify the specific conduct that would be grounds for terminating your employment.

Duties. Is medical staff membership at the local hospital(s) required? Is call coverage required? What about weekend rounds? Will you be allotted time to complete your charts? Will you have to supervise any advanced practice professionals? Make sure you understand what and how many hours are expected from you.

Benefits. Health, dental, disability, life, 401k – all of these are often included in physician benefits packages, but employers often don't explain these policies in advance. Request a copy of the current benefits summary. It is commonplace for employers to reserve the right to modify benefits. Consider requesting the same benefits that are provided to your employer's other full-time physicians. Paid time off ("PTO") should also be addressed. Some employers will make you find another physician to cover your patients while you're on PTO. Strike this requirement if possible.

Medical Professional Liability Insurance. Generally, your employer should pay for your insurance in at least the minimum amounts required by Kansas law. If the policy is a "claims made" policy (i.e., coverage for only those claims made during the term of the policy), you will need "tail" coverage that provides insurance coverage for claims made after your employment terminates for services furnished during the term of your employment. Consider asking your employer to pay for the tail coverage.

Expenses. Employers often cover licensing fees, medical staff membership, and CME expenses. Also consider professional memberships, trade journals, board certification expenses, etc. We often see expense limits of \$3,000 to \$8,000.

Don't Be Afraid to Ask. Many employers need you just as bad as you need them. Don't be afraid to ask for other perks. Rural employers often pay new physicians moving expenses (e.g., \$5,000-\$10,000) and signing bonuses (e.g., \$5,000-\$10,000) and provide loan repayment assistance (e.g., \$10,000-\$25,000) and other incentives. If employers are hesitant, offer to treat such incentives as debts subject to repayment if you leave before conclusion of your first, second, or third year. Of course, the amount owed should decrease proportionately the longer you stay. Or if your employer is a private practice, ask your potential employer if the local hospital might be willing to provide these payments as recruitment assistance. Hospitals often provide financial incentives to recruit a physician to their community, even to join a private physician practice.

Attorneys Aren't That Expensive. When you're living off of protein bars and cafeteria food, attorneys seem expensive. But an initial review of an employment agreement should cost only a few hundred bucks. Whether you hire Foulston Siefkin or another healthcare lawyer, we think the benefits of legal counsel will be well worth the costs.

The purpose of this article is to educate and stimulate discussion and reflection on the issues addressed herein. This article does not constitute legal advice or create any lawyer-client relationship. If you have questions or issues which raise legal concerns, you should consult competent counsel.

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