

The Employment Contract

There's more to it than simply salary.

BY LAWRENCE F. KOBAK, DPM, JD

For many young podiatrists finishing their residencies, the only thing they are worried about is the base salary. While that is an important consideration, there are many other considerations, and many are just as important. Malpractice insurance? Production-based bonuses? Restrictive covenants? Hours? Employee versus independent contractor status? Indemnity for insurance audits? The issues go on and on. Let's discuss, one issue at a time.

Employee versus Independent Contractor

Are you getting a W-2 or a 1090 for your taxes? In other words, is the podiatrist withholding your taxes on each paycheck and paying his/her share of the Social Security, etc.? If the "boss" is issuing a W-2 and paying his/her share of our Social Security,

most likely, you are an employee. That is a "safe-harbor" against the Federal Anti-Kickback law. If you are an independent contractor, you cannot get paid on a percentage of collected money basis; it is a violation

would also likely lose your license to practice podiatry.

Malpractice Insurance

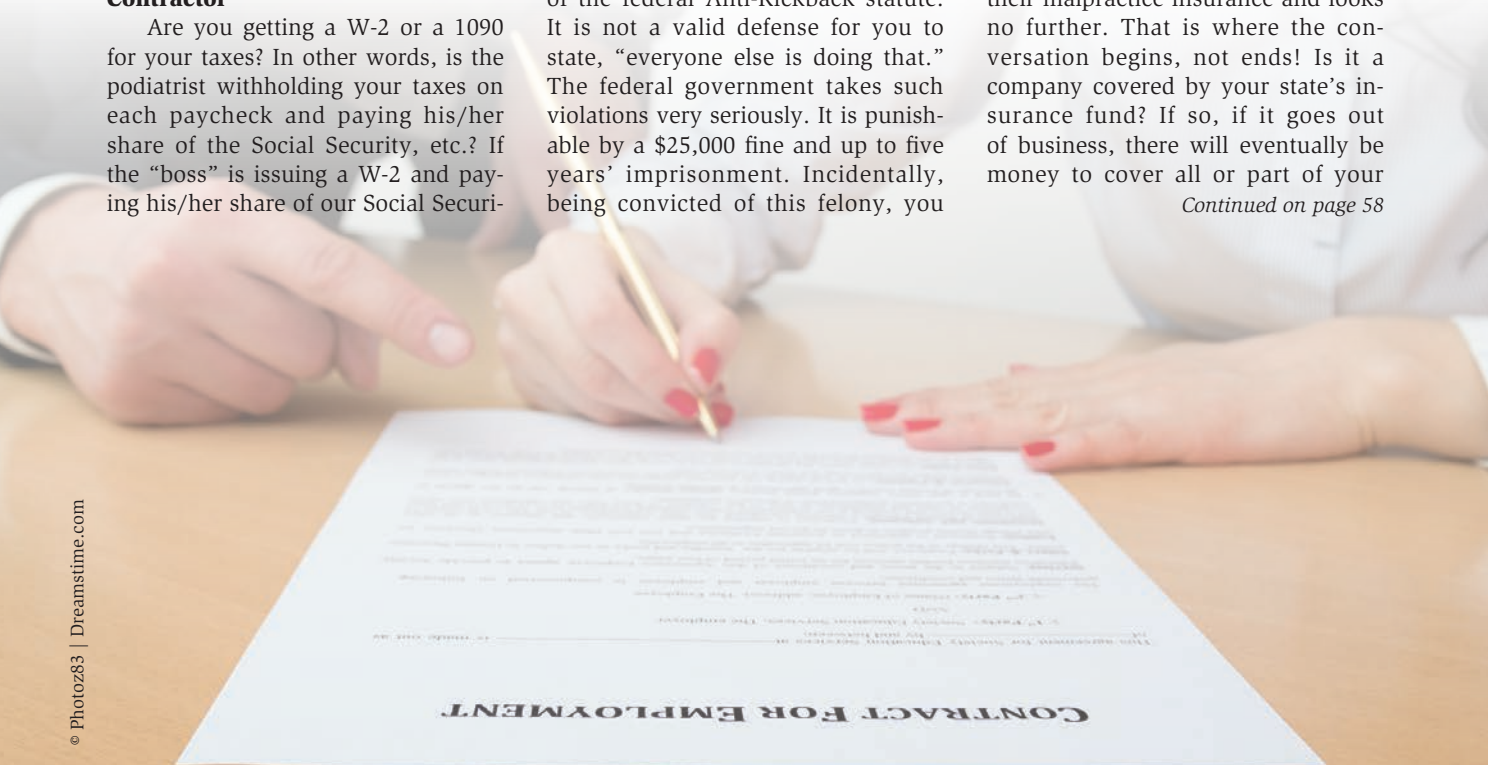
Often, the prospective employee hears that the employer will cover

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of the federal Anti-Kickback statute. It is not a valid defense for you to state, "everyone else is doing that." The federal government takes such violations very seriously. It is punishable by a \$25,000 fine and up to five years' imprisonment. Incidentally, being convicted of this felony, you

their malpractice insurance and looks no further. That is where the conversation begins, not ends! Is it a company covered by your state's insurance fund? If so, if it goes out of business, there will eventually be money to cover all or part of your

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personal costs as a result. If it is a risk retention group, it will not be covered by your state insurance fund if it fails; and some RRGs do fail. As important, you need to know if your employer is offering claims made or occurrence insurance coverage.

Without getting too complicated, occurrence is preferable. If you leave your job after a year or two, a claims made policy will not cover you for any case that brings suit after you leave. Remember, each state has a statute of limitations—they all allow a patient to sue you after your treatment of that patient ends. If you have left that job, and you are sued by a former patient, and all you had was a claims made policy, you are out of luck.

You may be able to purchase a “tail” which in effect converts your policy into an occurrence policy. Here, though, is the catch: a tail may cost up to 3 times the cost of a year’s premium. Some contracts will require the employee to purchase a tail at their own expense. This is to keep the employer from becoming “the deep pocket.” In other words, if you have no malpractice insurance, the owner who does will be more financially attractive for the plaintiff’s lawyer to go after. Again, obtaining an occurrence plan with a state-licensed company is the gold standard.

Indemnity Clauses

Do you still have a lot of student loans to pay off? You are going to love this one. Some employers make you liable for any money that must be returned to an insurance company for patients you saw as part of your job. This is even though you did not get to keep all the money that you are being asked to return! Usually, the language is tempered by something such as “you are responsible only if your coding is improper or your charting is inadequate.” Often, you have no say in the final coding. Inadequate charting is a very subjective term that might expose you to being responsible for returning hundreds of thousands of dollars to an insurance company. Frankly, these clauses can be deal breakers. Agree-

ing to complete all charts in a timely and complete fashion is one thing; agreeing to take 100% of the risk for the practice is another.

Bonus Clause and Wishful Thinking

The contract promises you that you might be considered for partnership after two years. You have been promised nothing other than good intentions. You have not been guaranteed anything other than best wishes and good intentions. It is not a negative, but that clause should not cause undue positive excitement.

As far as bonuses, the key is that the conditions of the bonus be realistic. Often, there are productivity incentives, calculated in RVUs, relative value units. Each CPT code is given

ers. You must find out the usual call schedule of the other podiatrists in the practice.

Benefits

What about other benefits such as a cell phone, continuing medical education course reimbursement, health insurance, life insurance, disability insurance, and 401K contributions? Vacation time? These vary tremendously from practice to practice. Generally, if it is not in writing, you do not get it. Sometimes you must ask for it.

Restrictive Covenants

What is a restrictive covenant? It is a clause meant to protect the practice interests of the owner of the practice. It is not there to benefit the

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an RVU number. Some specialties allow you to rack up a lot of RVUs; some do not. For example, it is not realistic for a podiatrist to accumulate 15,000 RVUs per year. It might be attainable by a neurosurgeon. You must do your research in this area.

Schedule

Does the contract spell out the number of hours you are supposed to work? Where? When? Does that include administrative time? What about public relations/marketing activities, such as manning a local health fair or talking about foot care at a local senior citizens center? Time off? Holidays? Religious observance? Often, the contract will refer to another document, such as an employee manual, when it comes to this. Make sure to obtain a copy and read it. It can be considered an integral part of the contract. Your employment contract might just state that your call schedule is the same as that of the other podiatrists in the group and is subject to change. Again, they are simply telling you that you will be treated like the oth-

employee. Every state has different law when it comes to this area. However, most if not all states will not enforce a restrictive covenant that goes beyond the owner protecting his or her practice from being “stolen” by an employee that is leaving the practice.

Usually, the two main elements of a restrictive covenant are space and time. That means how many miles from the office or hospital that your practice is restricted after you leave your current employer. In a very densely populated city such as Miami, Philadelphia, or Chicago, it can be measured in blocks; in a rural area such as Wyoming County in New York, it can be the entire county. Usually, it’s one or two years in the time restriction. Most states do not have hard and fast regulations as to time and distance. It is based on what is considered “reasonable”.

A judge may be the one that rules on what is reasonable. If you sign a contract thinking that no judge will enforce that, it is a foolish strategy. After your employer sues you for

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violating the restrictive agreement that you signed, the onus and cost will be on you to prove that the re-

being a team player and covering for a sick colleague at an ancillary office in the next county. For your troubles, you could have significant additional restrictions put on your ability to

care attorney to assist you. Your future should not be put into the hands of a “do-it-yourselfer”. Spend the money and do it right. The results of a well-negotiated and reviewed employment contract can beneficially affect the rest of your life, personally and professionally. **PM**

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striction is unreasonable. Who needs the headache and uncertainty? Some agreements include actual monetary penalties for violation.

Relatively recently, with various hospital takeovers and group expansions, contracts include these restrictions from any of the practice locations they may have worked in for even a short period of time. Imagine

practice. Again, we can argue whether they are enforceable, but meanwhile, it will cost you legal fees and uncertainty while you are defending that lawsuit.

Conclusion

Trying to navigate the complex issues of employment contracts requires the help of an experienced health-



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