

6 Things to Watch Out for in a Podiatric Employment Contract

There's a lot more to consider than salary alone.

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An employment contract should ideally be drafted to protect both the employer and the employee. Here are six key areas that should be addressed:

1. Is It a Physician Employment Contract?

The first thing you must determine is if you were given an employment contract. "But that's what it says on top of the page." Saying so does not make it so. Are your social security, Medicare, and other taxes being withheld? Are you getting a 1099 or W2 at the end of the year? Are you getting paid via a percent-

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age of the money your work generates? How much autonomy do you have? These factors, among others, determine if you are being offered a bona fide employment contract, or if you are an independent contractor. The differences can be profound.

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contractor to be paid by a percentage of the money collected. Recent federal investigations into such situations will attest to that. There is potential civil and criminal liability with such illegal arrangements. It can also impact on 401K and IRA eligibility. It

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will affect available deductions. If you are an independent contractor, you will have to pay both parts of the Social Security withholding, not just half, as with a bona fide employee. Also, if you are being treated as an employee, but you are an independent contractor, the contract might not be enforceable. Best to have it reviewed by a reputable health law attorney.

2. Your Responsibility in an Audit

Delve into any contractual verbiage concerning the podiatrist's responsibility for keeping complete and accurate medical records on the patients treated. Further, note if you are required to accurately provide the diagnosis and treatment codes of each patient encounter. Can you review each HCFA type form prior to it leaving the office? Usually, you do not. Does the contract give you the ability to at least spot-check? Does the contract require you to fully reimburse the insurance company for any amount found due back because of an audit?

electronic or otherwise, is accurate. There should be a way to communicate with the billing people to ascertain if your bills are accurate. You should not rely on others to do this. You probably do not have the time to go over every bill. However, reviewing on a regular basis the various types of bills for various treatments is prudent. It can avoid huge problems down the road. Addition-

coverage with that company when the claim was made. A claim can be made a year or more after the alleged malpractice took place. By then, you may have a new employer with different professional liability insurance. If you did not procure a "tail" to cover you, you would not be covered.

To make matters worse, employment contracts often require you to obtain a tail on your own, out of your

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ally, it will demonstrate an intent to provide accurate information on the bills. Make sure the practice uses certified medical coders.

3. Professional Liability Coverage and Other Benefits

This is an area of utmost importance. Is the offered professional liability insurance policy under the rubric of your state's insurance

pocket. The reason for this requirement is that the practice does not want to be a deep pocket for you. They do not want their own coverage over-utilized for you. A tail can cost you up to three times the cost of the original policy. That can be quite expensive. Some Claims Made policies automatically "mature" to the equivalent of an Occurrence policy after a certain number of years, usually 5 years. You must ask.

How much are you covered for each claim? How much are you covered for in any policy year? If your contract states \$1.2 million/3.6 million, that means that for any one claim, you are covered for up to \$1.2 million; and for any calendar year, you are covered for multiple claims up to a maximum of \$3.6 million pay-out.

Lastly, are there other benefits such as life insurance, disability insurance, 401Ks with or without employer contributions? Is your CPME covered? What type of health insurance is being offered, if any? Is your family covered? Can they obtain health insurance through your job if you buy it?

4. Restrictive Covenants

Laws concerning restrictive covenants vary from state to state. Restrictive covenants for professional services are not supposed to be designed to prevent the healthcare provider from earning a living. They are supposed to be designed to protect the employer's investment in her or

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What percentage or amount is yours? Does it reflect your share of what was procured by your employer in treating those patients? Health law attorneys have seen employment contracts where the employee is responsible to return all of what was paid to the practice, even though the employee earned far less than that amount. This offends one's sensibilities. You cannot accept such a provision. You potentially can wind up working for free.

You generally are responsible to maintain complete and accurate charts. It is your responsibility to maintain sufficient knowledge as to accurate and complete charting. It is also your legal responsibility to make sure that an insurance form that goes out with your signature,

fund? That means: should it go out of business, is the policy still backed by a state fund? Offshore medical malpractice coverage is not usually covered by state insurance funds. If the professional liability policy's company goes bankrupt, you are stuck. Generally, if an onshore insurance company, licensed to sell insurance in your state, goes bankrupt, your state insurance fund will cover the policy.

Next, is it an occurrence or a claims made policy? Occurrence is more expensive and provides better coverage, as no tail is necessary. You are covered from whenever the alleged malpractice occurred if you had an occurrence policy at the time. A claims made policy only covers you if you had

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his practice or medical business. Podiatry employment contracts usually provide for a radius where the employee may not practice for a certain amount of time and a certain number of miles. They may also restrict you from practicing a certain number of miles from the hospital where you saw patients and were on staff.

It might also include restrictions concerning satellite practices. Ideally, the number of miles should protect the area where the employer generally draws patients from. Beyond a certain number of miles, the restrictive covenant may become unenforceable. However, do not count on this when you are contemplating signing an employment contract. You might need to defend a lawsuit to find out what is and is not enforceable. Make sure the terms are agreeable prior to signing the contract.

How many years are reasonable?

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5. Is Your Salary Guaranteed? Is Your Potential Bonus Obtainable?

The employment contract states you will earn a certain amount of money per year. Then it has a laundry list of reasons of how you can be terminated immediately. Read them carefully. If one of the reasons has already occurred, such as a prior conviction or prior disciplinary action against your license, disclose it. If the employer is willing to waive the

“problem”, get it in writing.

Next, check to see how many hours a week you will be expected to treat patients. How many hours a week will administrative duties be required? Which offices/hospitals will you be expected to cover? How often

are you on-call?

Are any benefits part of your compensation package? Is there a 401K? If so, does the employer contribute to it? Do you have to contribute a minimum amount before the employer adds a contribution? What is the vesting schedule for any employer contribution to the 401K? Is payment for disability insurance or

tives; if you go over the minimum required RVUs by a certain amount, a bonus will kick in. Are these numbers “pie in the sky” and thus unobtainable? Be truthful with yourself when sitting down and going over the numbers. Specialty averages as

Most employment contracts include a relative value unit (RVU) requirement to receive the “guaranteed” salary.

to RVUs do exist, but they are merely averages. You must know your own capabilities.

6. Are Your Employment Responsibilities Realistic?

How often are you on call? How many offices and hospitals do you have to cover? Is your RVU requirement achievable? Is it physically doable? What are your administrative responsibilities? Do they involve hospital committees? What are your marketing responsibilities, if any? Are you expected to make appearances at health fairs? What are your responsibilities to cover another podiatrist if s/he is out ill?

Conclusion

There you have it. As you can see, there is a lot more to understanding a podiatric physician’s employment contract than salary alone. Consult an experienced health law attorney before signing the contract. **PM**



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