

Leaving Your Job

Here are 6 important steps to take.



BY LAWRENCE F. KOBAK, DPM, JD

Podiatrists and other health-care professionals often ask what they are required to do to leave their current job. The following will discuss, in depth, the requirements and possible consequences.

1. Current Employment Contract

The first step is reviewing your current employment contract if you have one. Just because you still have the physical signed contract does not mean it is currently valid. It might be many years old. You must carefully look at the terms of the agreement. First determine when it commenced. What was the length of the initial term of the contract? Does it have an automatic renewal if no notice is given? For how many years? Your healthcare attorney can determine if you have a valid current contract.

2. Reason for Leaving

Next, determine if you are leaving due to a material breach in the contract by your employer. A material breach

of the contract is one that goes to the heart of why you have a contract. It should involve an important term of the contract that is being violated—one that hurts or destroys your ability to

Many employment contracts have a clause stating that either you or your employer may terminate the contract for no reason if written notice is given within “x” days or

Many employment contracts have a clause that states either you or your employer may terminate the contract for no reason if written notice is given within “x” days or months of the date you want to leave.

obtain why you signed the contract to begin with. Do not try to be an attorney when determining if the breach is material or not. If you chose incorrectly, you might be the one breaching the contract. Review the section of the contract that involves the employer’s duties to you, the employed podiatrist. It may require a notice of breach with a certain amount of time given to correct the contract violation, once the employer is put on notice.

months of the date you want to leave. Most attorneys strongly advise that the notice is given via certified mail, or some commercial carrier that requires the other party to sign upon receipt. Keep that documentation. Be careful, as your employer might be able to, according to the terms of the contract, let you go prior to the date you told them you would be leaving. Occasionally, you will see an

Continued on page 38

Leaving Your Job (from page 37)

employment contract that requires six (6) months notice prior to leaving for no reason. If the employer chooses to let you go immediately, you might have a half a year on your hands. Of course, you could try to get your new employer to allow you to start your new job earlier. The devil is in the details. Prior to taking your new job, it is best to know the notice requirements. Your new employer will want to know how long she/he must wait prior to your starting your new job.

3. Where Can This New Job Be?

When discussing the restrictive covenant section of your prior contract, most employers, both past and future, take this section seriously. Your current employer looks to protect his/her business. Your future employer is not looking for a lawsuit from your prior employer in helping you violate your current employment contract. Your new contract will usually have a clause that ensures your new employer that you are not violating any prior legal obligations you might have. Remember, the geographical restrictions may include the mileage from more than one office or hospital. You must know which physical structures apply from both your current place of employment and your new place of employment. Some contracts will include all your employer's locations, whether you primarily worked there or not. Sometimes, there is a minimum percentage of time or number of hours worked in a location to qualify for application of the restrictive covenant. One of the easiest ways to measure the geographical distance of one location to another is simply to run a standard directions application giving both locations.

4. Further Restrictions

Most contracts will contain language restricting your ability to lure employees from your current employer. Your current employer does not want its workforce poached. The key here is that you cannot be the person encouraging the other employee to "jump ship" to your new employer. On their own, without your encour-

agement, they can work wherever they want, absent their own contractual restrictions.

Employment contracts will not allow you to take physical possession or make any copies of patient information, copies of medical records, or financial information. They are proprietary and owned by the practice, not you. However, a patient can request a copy of their medical records to be sent elsewhere, including your new employer or practice. Nobody owns the patients. If you need a patient's chart due to a state board investigation, a criminal investigation, or a medical malpractice action, the practice must make that record available to you after the appropriate paperwork is filled out.

You must properly terminate your doctor-patient relationship with your

give speeches in that neighborhood's senior citizen center, attempting to obtain those patients. You may not advertise in South Oakland's local newspaper or church bulletin. However, you may advertise in the Pittsburgh Post-Gazette. That is a newspaper whose circulation serves the general population of metropolitan Pittsburgh; it does not target the South Oakland area. Consult your healthcare attorney for more specifics and legal advice as to what is allowed in your state, and within the restrictions of your employment contract.

5. Notify Third Parties

It is your responsibility to make sure that all managed care companies with whom you had a contract, insurance companies, Medicare, and Tristar are notified that you will not

Employment contracts will not allow you to take physical possession or make any copies of patient information, copies of medical records, or financial information.

patients. A letter should be sent by the practice, notifying the patient that you are leaving the practice but will be available at a different location, unless you won't. Your new job might be in a different state or a remote location. Usually, your current employer has a rather generic letter prepared for such an occasion. Keep a copy of this letter for your records. You will not get a copy of every letter sent to every patient by your current employer. Review the template and make sure that it suits your needs as well as the contractual requirements. It is meant to be merely informative of the change of situation. You must not attempt to encourage the patient to leave the original practice. That must come from the patient.

You may not target your former practice's patients with marketing directed specifically in the geographic area of the prior practice. For example, if the practice is in the South Oakland neighborhood of Pittsburgh, you may not participate in health fairs or

be practicing or billing from whatever locations as of whatever date. If your now prior practice will be doing that for you, obtain written confirmation that it was done. You do not want to find out later that subsequent bills went out under your name as a provider, mistakenly or not.

You must update your practice information with your state board and state physician profile. You must notify any hospital where you have privileges of any change in your employment. In fact, your privileges may have been secured by your prior practice and are dependent on it. If necessary, you will need to procure privileges at a new hospital or surgery center closer to your new employment. Your new employer may require that you successfully obtain privileges at a certain healthcare facility.

Notify your professional liability insurance company of the change of practice and employer. You may or may not be staying with the same

Continued on page 40

Leaving Your Job (from page 38)

professional liability coverage in your new employment. If you have occurrence coverage, there is no problem. You are covered as to professional liability, for any patient you treated while you have this type of coverage, even if you are sued after you left that practice or hospital. If you have a claims-made policy that is not matured, or if your current employer has not secured a tail, then you must secure a tail. If you do not secure a tail, you will have no coverage for any services if you are subsequently sued. This might be expensive. Your now prior contract may require you to obtain such coverage.

6. Other Things to Update or Destroy

Make sure to destroy any prescription pads, business cards, or stationery with your name on it from

your current location. If your car had any additional coverage based upon business use, change the address. Update any disability policies you might have purchased while at your current employer to your new place of business. Do not forget to update your state and federal DEA information as to place of practice. This is not meant to be an exhaustive list.

You must return your computer to your current practice if they provided one. You must delete any proprietary information from your own computer, if you were using your own computer to log in remotely to the practice you are about to leave. This includes proprietary templates.

If you have any physical documents that belong to the current practice, you must return them to that practice; they are not yours.

Conclusion

There is a lot to do to get ready for your new job. Much of this in-

volves properly leaving your prior job. Finally, if possible, leave your job with a smile and mean it. Thank your employers for the opportunities they gave you. Do not burn any bridges. Podiatry is a small profession. A handshake may pay dividends in the future. **PM**

.....



Dr. Kobak is Senior Counsel in Frier Levitt's Healthcare Department in New York. Larry has extensive experience representing physicians in connection with licensure issues, as well as successfully defending physicians before Medical Boards, OPMC, OPD investigations, as well as Medicare Fraud, Fraud & Abuse, Hospital Actions, RAC Audits, Medicare Audits, OIG Fraud, Healthcare Fraud, Medical Audits, and Health Plan Billing Audits. As a licensed podiatrist prior to becoming an attorney, he served as the international president of the Academy of Ambulatory Foot and Ankle Surgery.