

## Key Issues to Consider Before Signing an Employment Contract: The Employee's Perspective

Contemporary physician employment contracts are fraught with “red flags” for pediatricians seeking employed positions. The contract is the only document that specifies one’s job description and benefits – promises given orally may be difficult to enforce because they are difficult to prove later.

A contract could be one page long or thirty pages. Either way, it is important to read your contract carefully and analyze *every* single clause. Your employment contract is likely to be written with terms that are much more favorable to your employer than to you. It is important to try to negotiate as many terms as possible so that it is more favorable to you.

Some examples of important issues found in employment contracts include the following.

- 1) Malpractice insurance: Be sure to know who pays for this, what the policy limits are, and the fiscal stability of the company. The contract should specify who pays for any possible deductibles before or after contract termination. You should also be “covered” under your employer’s general liability policy which will cover other alleged acts of negligence (e.g. a patient breaking a wrist after tripping on a damaged rug in your office)
- 2) “Tail” coverage: Your malpractice insurance may require “tail” coverage if you leave the position. A “tail” covers you for any malpractice lawsuits filed against you after your malpractice insurance is no longer in effect (which may be the day you leave your position). Because lawsuits can be filed many years after the alleged malpractice, it is important to have this “tail” coverage. It can be very expensive and you want to make sure that you are not responsible for paying for it. Remember, young pediatricians are much more “mobile” than they used to be and it is conceivable that you may have several employers over your career.

- 3) Be wary of clauses that will require you to pay for your employer's legal bills if a lawsuit occurs by either party for breach of the contract. A vindictive employer can drag a lawsuit on for years, costing you large legal fees. It happens!
- 4) A restrictive covenant or non-compete agreement is likely to be included in the contract. If you leave the practice, this will prevent you from practicing within a certain distance from the practice for a certain period of time. If the clause is reasonable regarding the time or distance, it is likely to be legally binding. The "reasonableness" of a restrictive covenant will vary according to the geographic region. For instance, a restrictive covenant of 50 miles for a general pediatrician in rural Montana may be considered "reasonable," but the same distance in New York City may not. Sometimes a restrictive covenant will include a "damage" clause. For example, it may require you to pay damages equivalent to six months of salary if you violate the covenant.
- 5) General pediatricians tend to receive many after-hour phone calls from parents. If a cell phone is not provided by your employer, your hours included on your monthly personal cell phone bill may be "used up" very quickly by these "on-call" phone calls. Make sure the phone is on a HIPAA compliant platform.
- 6) Moonlighting: The contract should specify whether you are permitted to work elsewhere on your "days off." Be sure that you have malpractice coverage for any "moonlighting" jobs as it is unlikely that your primary employer's malpractice insurance will cover you for this.
- 7) Termination: The contract will likely have a "termination for cause" clause. This will specify reasons when you can be terminated; these tend to be very similar from contract to contract. However, you may want a "termination without cause" clause as well. This gives an employer freedom to terminate you without a reason, and it has less stigma associated with it. Often, there is a window of time associated with it, e.g. "termination without cause can occur with four months' notice." The time period is important: too short of notice gives you less time to seek another employment opportunity; too long of a notice may cause you to lose an opportunity because the new employer does not want to wait so long for you to start employment. Most

contemporary contracts include both a “termination with cause” and “termination without cause” clause. Remember: if an employer wants to terminate you, they will. Always try to leave on good terms.

- 8) There is a trend to base salary on work productivity. Thus, a base salary will be given with “bonus” money dependent on reaching a certain amount of relative value units, or RVUs. If you are not familiar with the RVU system, you need to become familiar with it. Although it is considered an “objective” way to assess productivity, there are flaws with a RVU-based salary system. It is preferable to get as high of a guaranteed base salary as possible.

There are many other issues that may arise in an employment contract. These are just some representative examples. It would be wise to have an attorney who specializes in this area review your contract. You may not understand the ramifications of some of the clauses which are written with “legal language” which can have a significant impact on your future. It will be money well spent.

*Dr McAbee served as Chairperson of the AAP Committee on Medical Liability and Risk Management from 2004-2008 and remains an invaluable resource to that committee.*

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