

Contract Negotiating


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Types of Employment


 Employee


 Independent Contractor


Types of Employers


 Corporation
Inc., Ltd., Corp.

 Professional Corporation
PC

 LLC
Limited Liability Corporation

 PLLC
Professional Limited Liability Corporation

 Partnership

 Limited Partnership
LP

Preamble

- ▶ WHEREAS
 - ▶ Purpose of contract
 - ▶ Employment
 - ▶ Independent Contractor

Duties

Full time and attention

- No other employment

May allow

- Discretion
- Not unreasonably withheld

Duties

- ▶ Bylaws
- ▶ Guidelines shall be determined by Employer
 - ▶ Submission of Charting
 - ▶ Call
- ▶ Standard of Care


Term


Evergreen Clause

- Days
- Months
- Years

Contingencies


- Fellowships
- Licenses
- Board Certifications


 **All fees earned**
Consulting
Honorarium
Research


 **Taxes**

Compensation

Expenses

 **UNIFORMS**

 **MILEAGE**

 **CME**

Malpractice Insurance

- Arising out of performance of professional duties
• Course & Scope
- State-required amount
- Amounts generally carried
- Claims-based
- Occurrence-based

Benefits

- Leave
Vacation
Sick days
CME
- Insurance
- Uniforms
- CME

Shareholder

- PERIOD OF TIME
- BUY-IN
- DISCRETION OF ASSOCIATION

Termination

- ▶ At will
 - ▶ With Cause
 - ▶ Cure Period
 - ▶ Without Cause
 - ▶ Notice

Duty to Defend and Indemnify


To the extent not covered by liability insurance carried by the Parties, each Party shall be solely responsible for its own claims, liabilities, damages, injuries, suits, demands, and expenses of all kinds (including, without limitation, attorneys' fees and court costs), that may result or arise from tortious or criminal conduct by such Party, or by any member, partner, employee, representative, agent, or contractor of such Party, and such Party shall defend, indemnify, and hold harmless the other Party and any members, partners, employees, agents, representatives, and contractors of the other Party from and against such losses or damages.

In the event that a claim is made against both Parties, it is the intent of both Parties to cooperate in the defense of such claim and to cause their insurers to do likewise. Physician agrees to cooperate in all litigation matters affecting Employer to the extent Physician does not have a conflict of interest.


Termination

- With Cause**
 - License Revoked
 - Death
 - Community property
 - Dissolution of Association
 - Failure to substantially perform duties
 - Period of days
- Without Cause**

Duties Upon Termination



Payment
Pro rata



Collection of receivables
Assign to Employer

Restrictive Covenants

- ▶ Reasonable Time
- ▶ Reasonable Geographic Region
- ▶ Tex. Bus. Org. Code Section 15.50

TEX CODE ANN. § 15.50 : CRITERIA FOR ENFORCEABILITY OF COVENANTS NOT TO COMPETE

(a) Notwithstanding Section 15.05 of this code, and subject to any applicable provision of Subsection (b), a covenant not to compete is enforceable if it is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made to the extent that it contains limitations as to time, geographical area, and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee.

(b) A covenant not to compete is enforceable against a person licensed as a physician by the Texas State Board of Medical Examiners if such covenant complies with the following requirements:

- (1) the covenant must:
 - (A) not deny the physician access to a list of his patients whom he had seen or treated within one year of termination of the contract or employment;
 - (B) provide access to medical records of the physician's patients upon authorization of the patient and any copies of medical records for a reasonable fee as established by the Texas State Board of Medical Examiners under Section 159.006, Occupations Code; and
 - (C) provide that any access to a list of patients or to patients' medical records after termination of the contract or employment shall not require such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to the contract;
- (2) the covenant must provide for a buy out of the covenant by the physician at a reasonable price or, at the option of either party, as determined by a mutually agreed upon arbitrator or, in the case of an inability to agree, an arbitrator of the court whose decision shall be binding on the parties; and
- (3) the covenant must provide that the physician will not be prohibited from providing continuing care and treatment to a specific patient or patients during the course of an acute illness even after the contract or employment has been terminated.

Solicitation




PATIENTS




EMPLOYEES

Disclosure of Information/Confidentiality



Patient Lists
HIPAA



Marketing Plans

Anti-Kickback Statute/Stark Law

- ▶ State laws
 - ▶ Texas Occupations Code, Chapter 102--Solicitation of Patients
 - ▶ Section 32.039, Tex. Hum. Res. Code - Medicaid Fraud
 - ▶ Section 36.002(5), a person commits a violation of the Texas Medicaid Fraud Prevention Act if the person accepts or charges any gift, money, or other consideration, other than the Medicaid payment, as a condition for the provision of services to a Medicaid recipient.
 - ▶ Texas Occ. Code § 105.002--Unprofessional Conduct
 - ▶ Niche Hospitals
- ▶ Federal laws
 - ▶ AKS
 - ▶ Stark

Arms-length transaction

Determined without consideration of volume or value of referrals or business otherwise generated between the parties for which payment can be made in whole or part under Medicare or a State Health Program.

Fair Market Value

Practice of Medicine

- ▶ Only a Doctor can practice medicine
 - ▶ Within acceptable standards
 - ▶ Pursuant to Bylaws

Severability


- ▶ If one provision is held unenforceable, the rest of the contract remains in effect
 - ▶ Restrictive Covenant


▶ Failure to enforce one provision does not disallow enforcement at a later date


- ▶ Sick time
- ▶ Call Schedule

Waivers


Amendments


 In writing

 Comply with Law


 Notice Addresses

Breach of Contract

 **Material**
Violation of Bylaws

 **Non-material**
Improper attire

Remedies for Breach of Contract

 Equitable Remedies	Injunctions
 Liquidated Damages	Difficult to Measure Not a penalty

Breach of Contract

- Notice
- Early Resolution Conference
- Legal Remedies
 - Mediation
 - Arbitration
- Statute of Limitations

Questions?
