EMPLOYMENT CONTRACTS

As young psychiatrists leave their residency and fellowship programs and experienced psychiatrists consider becoming employed by others, all must contemplate signing an employment contract. Certainly, salary is a primary concern but there are other components that are equally important and often overlooked. The following is a non-exclusive/non-exhaustive list of things to keep in mind before you sign on the diet dotted line.

- **Have a written agreement.** While those who are becoming full-time employees typically have a formal contract, those who are independent contractors often do not. This can be especially problematic when the relationship ends.
- **Have a clear understanding of your duties.** Duties “as assigned” or “practice of psychiatry” leaves a lot of room for interpretation and for an employer to take advantage of you. Are you going to be expected to supervise others? What are your responsibilities for taking call? Will malpractice insurance cover these duties? (You would be surprised how often people engage in an activity that is not technically covered under their insurance policies.) Does your contract allow you to engage in outside activities that you may be interested in pursuing such as teaching or volunteering your services?
- **Avoid indemnification/hold harmless clauses.** Typically these clauses will look something like this:

"Each party agrees to indemnify and hold harmless the other party from any claims, liabilities, losses, damages and expenses asserted against the other party and arising out of the indemnifying party's negligence, willful, misconduct, and negligent performance of or failure to perform, any of its duties or obligations under this agreement.”

What this means in plain English is that in the event any of your actions - or inactions - cause the entity/individual for whom you are working to be sued, you will be obligated to pay any settlements or verdicts rendered against them. And even if they prevail, you will be required to pay their attorneys' fees. This sort of provision is far more likely to appear in an independent contractor agreement than a regular employment contract. They are problematic because malpractice insurance typically won’t cover liability assumed under a contract with another and thus, any monies owed must come out of the physician's own pocket. It is recommended that you have these provisions stricken from the agreement. Do not be fooled into thinking that you are in any way protected by a mutual indemnification clause whereby the other party agrees to indemnify you under the same circumstances. If you carry malpractice insurance, you are already protected.

- **Know the term of the agreement.** How long is the agreement for? How does it renew? Is renewal automatic? Do you have the ability to renegotiate after a certain period of time? You don't want to find yourself a few years down the road seeing the bulk of the practices patients and still receiving a starting salary.
- **Understand how the contract can be terminated.** What notice must you give before leaving the practice? If you have a lengthy notice, you may find it difficult to actually leave as your future employer may not be able to hold your position open for more than 60 days. Under what circumstances can your employer terminate the agreement? In many instances a contract will allow for immediate termination by your employer if you lose your license to practice medicine, your DEA certificate, or if you become permanently disabled. Can your employer terminate your employment without cause? If your employer can terminate your employment without cause upon 30, 60 or 90 days' notice, you do not have the one or two year contract you think you have. Your contract is merely as long as the length of the notice provision. What about termination for breach? Can each party terminate if the other fails to meet its obligations under the contract? Are there cure provisions - in other words, does each party have an opportunity to fix the problem once it has been identified to the other?
- **Understand what type of medical malpractice insurance you have.** If the practice covers you with a claims-made medical malpractice insurance policy (or switches to that type of policy in the future), tail coverage will need to be purchased. As this can be a fairly large expense, it is important that it be discussed and agreed to and documented in the contract.
- **Plan for continuity of care after treatment.** The general rule is that when a psychiatrist is employed by a practice, even though he or she may be the only one seeing a particular patient, the patient is deemed to be a patient of the practice as opposed to the individual psychiatrist's patient. Even so, there are often issues regarding continuity of care when a psychiatrist leaves a practice period for example, whose obligation is it to notify patients of the psychiatrist departure, and what will the patient's be told? This can be a huge point of contention if the psychiatrist departure from the practice is contentious. Ideally, it is the practice that should be required to send notice, but the departing psychiatrist should have input into the content of that notice. What about patients who wish to follow you to your new location? Will the practice allow you to have copies of their charts? Who will pay for the copies? Is there a non-compete clause that precludes you from seeing former patients at your new location? Non-compete clauses are often upheld

by courts so long as they protect the employer's business interests, are not too broad in terms of time and geography, and are not harmful to the public.

- **Avoid leaving anything to chance.** Ask for clarification of vague or ambiguous language and ask that it be clarified within the agreement. If your employer has agreed to terms that are not part of the contract, insist that they be written in. Somewhere within the agreement there will likely be a provision stating that the written contract represents the entire agreement between the parties which means that if it's not in the contract, it's not enforceable. Do not begin work, until your contract is signed by all parties.
- **Hire an attorney.** Your prospective employer will not be offended by this. But do involve the attorney early in the negotiation process rather than agreeing to terms and then having the attorney make changes. Just as physicians specialize, so do attorneys so it is important that you hire an attorney with a background in physician contracts. Even if you completely understand the terms of the agreement, unless you have experience with employment contracts you may not recognize what language should be in the contract but is not. Remember, an employment contract can affect your professional and personal life for many years to come. You owe it to yourself, to make certain that you have the best agreement possible.

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