WDS Young Physician Career Pearl: Negotiating Contracts

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Before joining Martin/Wight, Brian spent a decade practicing law as an attorney in the financial services industry. His experience with complex individual and corporate financial matters, including representing clients in private equity capital raises with multiple classes of stock as well as senior and subordinate secured and unsecured debt facilities, allows Brian to leverage a unique prospective when advising individual clients and physician practices.

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What questions should I ask when negotiating a contract?

- You should start by asking where you will be practicing. Is there more than 1 practice location? Will you be practicing at multiple sites?
- If negotiating a contract for an academic position, ask about teaching opportunities and protected time. Will you have protected time to teach, prepare lectures and write?
- Be sure to ask about expectations. What will be your patient volume? Your patient population? Number of clinics per week?
- Ask who you will be working with. What kind of staff support will you have? Are the current providers going to share patients with you?
- Ask what your future is going to look like. Will you be an employee forever or are there partnership opportunities? Will your ability to make decisions about the practice change over time? Be sure to find out about what will happen to your compensation and when.

What is the basic structure of a contract?

- Base pay + some sort of compensation
  - Some employment agreements will contain a guarantee period where the employee receives a guarantee until they switch, after a prescribed period of time, to more of an “eat-what-you-kill” model. When considering either a RVU/WRVU heavy role or one that involves an eat-what-you-kill model following a guarantee period, it’s important to ask to speak with another physician in the group that has only been there for 2-4 years.
- Restrictive Covenants (aka “non-competes”) are common in many states for physician contracts. There are 3 components to look for: duration, distance and penalty. You should be familiar with and understand these clauses and this is where an employment attorney with knowledge in your particular state can assist you.
- Many physician contracts have some sort of bonus. Some employer contracts provide for a relocation allowance as well as a sign-on bonus. Some specialties may also receive a fellowship stipend or student loan debt assistance
• Most physician employment agreements will contain language providing for different methods of terminating employment (terminating with cause versus terminating without cause). It’s important for the physician to fully understand these terms and conditions.
• Don’t forget about benefits, which have monetary value (medical malpractice, life and disability insurance, 401K/pension plans).

Do I need a lawyer to review my contract?
• This really depends on the setting. If you are entering into a well-established large practice like an academic institution or Kaiser Permanente, probably not. These types of settings are not as flexible in their general structure because they must keep parity across the group.
• For private practice, you absolutely need to have a lawyer review your contract. Specifically, an employment lawyer with knowledge in your particular state. There are state-dependent separation clauses and non-compete clauses and these differ significantly between states. You need to understand all of these ahead of time and this is where a lawyer can assist you.

What general advice do you have before negotiating a contract?
• First, don’t forget that you, the physician, have some leverage. By the time you have received an offer letter, the employer is indicating their desire to have you join the team.
• Remember, you are entering into a relationship. Be open and authentic; be comfortable selling yourself.
• Ask yourself, what’s the least amount of money you’ll settle with and still be happy?
• Lastly, it’s important to have multiple offers going simultaneously until the final contract is executed.
Negotiate
First, don’t forget that you, the physician, have some leverage. By the time you have received an offer letter, the employer is indicating their desire to have you join the team. Many employers (more common with the smaller employers) will negotiate some of the terms in the contract as well as compensation, bonuses, etc. If there is something of particular import to you, don’t be afraid to discuss it with your prospective employer. At the same time, be very mindful not to overplay your hand. The best way to strike a balance is to work with a financial advisor and attorney who each have vast experience with compensation rates in the particular market, and often times may have experience with the particular employer. They can help guide you through what’s often one of the most uncomfortable parts of the job search- the compensation debate/negotiation.

Restrictive Covenants
Restrictive Covenants (aka “non-competes”) are common in many states for physician contracts. The key is making sure the non-compete is limited and reasonable in time and geographic scope. In order to be enforceable in a particular state, most non-competes have a prohibition period of 1-2 years and a fairly limited geographic scope. Watch out for language that applies the geographic to any location run by the hospital/practice, especially if it’s not one the physician regularly works in. Also, note that geographic scope (e.g. within 8 miles of...) is as the crow flies, not the distance a mapping program depicts. This can obviously have a much different impact in an urban area versus a rural area. For example, a geographic scope of 10 miles in Manhattan is monumentally different than a 10-mile scope in the middle of Nebraska. Sometimes, there are deeply flawed (and likely unenforceable) restrictive covenants in physician employment agreements. Sometimes, this can be viewed as a red-flag to the prospective employee. Common mistakes employers make in this regard is making the geographic scope and time limitations unreasonable, or inserting restrictive covenants in states that don’t allow the same (e.g. California).

Treatment of Bonuses
Many employer contracts provide for a relocation allowance as well as a sign-on bonus. Some specialties may also receive a fellowship stipend or student loan debt assistance. It’s important for the physician to understand the terms and conditions surrounding the respective bonus payments. For example, many employers will style the stipends (probably not verbally, but rather in the employment agreement) during fellowship as well as sign-on and other initial bonuses as actually being forgivable debt. So, they function as “golden-handcuffs” in the sense that the employer conditions the “forgiveness” of the debt upon things like years of service. It’s fairly common to see a 2 to 3-year debt forgiveness period for such bonuses. So, what’s this mean, from a practical perspective? First, if the physician leaves employment prior to the debt (bonus) forgiveness, they will have to re-pay a portion or all of the same to their employer. On the other hand, since it’s technically styled as forgivable debt and not a true bonus, tax obligations may not accrue up-front but rather as the debt is forgiven (*Note: you should always involve a CPA for any tax questions). A common example is the employer requiring a 2-year service period and the debt forgiveness equating to 1/24th of the debt during each month of employment. So, if the physician left employment in month 13, they may owe around 50% of the bonus payments back to the employer. Unfortunately, most physicians would prefer to incur the tax burden up-front during residency or training, or at least when only a portion of the year is at their higher attending level income. With forgivable bonus payments, this may not be possible, which can actually increase the tax liability on the bonus payments. Physicians should speak with a CPA regarding tax treatment of their sign-on, relocation, student loan debt and fellowship stipend bonuses.
Terminating With Cause Versus Terminating Without Cause

Most physician employment agreements will contain language providing for different methods of terminating employment. While most agreements will require a certain notice period (e.g. 60-90-days) for either party to terminate “without cause”, they generally also have language allowing the employer to terminate “for cause” immediately. “For Cause” is typically defined very broadly in the agreement. While it’s understandable why an employer would need to carve out a reason to terminate “for cause”, the reciprocal arrangement for the employee is often missing from physician employment agreements. This can often be added into an agreement during the negotiation process. Why is that important? Because the type of termination will generally determine a physician’s post termination obligations. For example, when an employer terminates “for cause”, the agreement may indicate that the employee must purchase their own “tail insurance” for medical malpractice claims. Whereas, if the employer terminates without cause, they may pay the cost for the tail insurance. However, from a fairness point of view, the employee should also be provided the right to terminate with cause. Otherwise, what happens is the employer stops paying the employee or the job duties (e.g. clinical versus research) are markedly different than initially represented? There’s nothing that can force one to work for another. The concern is rather about post-termination obligations. In the event the employee terminates for cause, ideally the restrictive covenant and bonus repayment obligations would not apply.

Compensation Topics

Some employment agreements will contain a guarantee period where the employee receives a guarantee until they switch, after a prescribed period of time, to more of an “eat-what-you-kill” model. Is this a good thing or a bad thing? Well, it depends. If the practice has a thriving patient base and is willing to help market the physicians’ services, it can be a good thing. If the practice is a small group that is simply throwing the employee physician to the wolves after a year without much support, it’s obviously a bad thing. The most important piece of advice I provide to all of my clients when considering either a RVU/WRVU heavy role or one that involves an eat-what-you-kill model following a guarantee period is to ask to speak with another physician in the group that has only been there for 2-4 years. Provided they’re will to be honest with you, that conversation can be the single most important aspect when conducting your due diligence, even beyond the words in the contract. Ask them about the marketing support provided by the group. Don’t feel awkward or afraid to ask about the exact compensation that person received during each of their first couple of years following the guarantee period and the level of effort involved to ensure their income did not take a drop from the guarantee period. It is an exceptionally rare occurrence where that person is not perfectly happy to share that information, despite compensation generally being regarded as more of a taboo conversation. It cannot be overstressed just how important this conversation can be.

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