

BUSINESS

Contracts can make hospital employment less secure than doctors think

Contract Language. By STEVEN M. HARRIS, AMNews contributor. Posted April 30, 2012.

Many physicians seek hospital employment as a refuge from what they see as the increasingly volatile world of operating their own practices. But in doing so, they might not realize that their seemingly safe environment could create heretofore unknown professional risks.

Physicians could agree to sale or employment models with hospitals that offer what appear to be attractive terms but upon minimal scrutiny are not. Rushing to be the first in, doctors often are blinded by traps in contracts that are discovered only well after signing. Two such traps are highlighted.

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Trap 1: All physicians sign the same contract

As I'm reviewing proposed hospital contracts, I hear this statement from physicians more often than any other.

Here is how it works: A physician is handed an employment contract by a hospital along with the statement that "all of our physicians sign identical contracts." The reference is to what attorneys might call a contract of adhesion, or what physicians might be told is a standard contract, or a contract containing boilerplate language. There are plenty of situations when a contract is truly an immediate take-it-or-leave-it offering. When was the last time you negotiated a life insurance policy? Or sent annotated notes back to a software company instead of agreeing to the terms of service before downloading?

The hospital statement serves as a chilling reminder to have an attorney review the contract. Hospital administration will encourage a potential hire to have the contract reviewed but reminds the physician that it is at his or her own cost, which will be a waste of time and money since "all physicians sign the same contract without changes."

The problem is not all physicians sign the same contract. Often, modifications are made to the contract or an addendum is attached that supersedes the terms of the underlying agreement. The latter approach is most effective by agreeing to sign the boilerplate contract yet negotiating an addendum. This allows the hospital to represent to future candidates that indeed "all of our physicians sign identical contracts." The addendum is seldom, if ever, mentioned.

Recently I was confronted with this situation. A physician repeated to me exactly what the chair of the department of the hospital told him. My response was simple. I asked if he believed that the chair signed the same contract that was handed to him. After thinking about my question, he answered, "No way." When I asked how he reconciled his answer with the statement made by the hospital, he smiled and asked me to edit his agreement.

Trap 2: Employment by hospitals is less risky than private practice

Physicians join hospitals in large part to avoid the risk of private practice. In many cases, however, safety is illusory. Risk always has been present. Contracts described in terms of years most often are subject to a 30-, 60- or 90-day termination period. Accordingly, while owning your practice provides for an unlimited employment term, a hospital's commitment may be extended for only a few months.

More recently, a new risk has found its way into employment agreements. Some hospital contracts now hold a physician personally liable for expenses that exceed productivity. The irony, of course, is that a physician leaves the risky business of private practice only to find that the exposure is not reduced in the hospital employment model.

In fact, a compelling argument can be made that the exposure in the hospital setting is riskier than in private practice. At least while in practice, a physician can have some control over costs. At a hospital, a physician has no control over costs, as those are set by the employer. In such contracts, a physician can be required to pay the difference to the hospital with personal funds.

There are several strategies to address this exposure. However, the first step is to identify the risk, which is not always apparent from reading the contract.

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