

PHYSICIAN EMPLOYMENT CONTRACTS

Alan R. Singleton
Singleton Law Firm, P.C.
One East Main, Suite 215
Champaign, IL 61820-3654
Telephone: (217) 352-3900
Facsimile: (217) 352-4900
Email: singleton@singleton.law.pro

© 2001 Alan R. Singleton

I. Landing the Offer of Employment

- begin the job search process by outlining your goals
 - geographic location
 - type of practice (single specialty group, multispecialty group, employee of HMO, academic setting, solo practice)
 - compensation
 - amount of time to be spent at the job as compared to personal matters
 - 50 to 60 hours per week might be expected for a typical primary care position
 - whether eventually becoming an owner or partial owner in a practice is important
- prepare a clear, well organized CV
 - no typos!
 - good quality white bond paper (not photocopy paper)
 - name address, phone, fax
 - list educational history starting with the most recent
 - status of your license and whether you are board eligible or board certified
 - work experience including the title of the position, the name of the employer, and your responsibilities
 - medical committees, articles published, honors or awards, academic appointments
 - three or four professional references
- the job market for primary care physicians is very good
 - as a result, most of you will have a number of opportunities to practice in just about any geographic location you choose (with the possible exception of popular vacation spots)
- possible sources for job opportunities:
 - friends and colleagues who may already be in the work force
 - your specialty's professional organization
 - classified ads in professional journals
 - telephone yellow pages (if you have a narrow geographic region)
 - the internet, including professional organization web pages (reach through links at the

AMA web page located at www.ama-assn.org), Physicians Online (www.pol.net), employer web pages, and physician recruitment firm web pages

-professional directories

-physician recruiters

-make an informed decision before engaging the services of a physician recruiter

-you will likely receive numerous calls and mailings from physician recruiters. There are two to three hundred physician recruitment firms in the country and another 3,500 to 4,000 in-house recruiters, according to the National Association of Physician Recruiters (as reported in "Sourcing Physician Candidates" Group Practice Journal, March/April, 1996.)

-"in-house" recruiters are employees of your potential employer and have the employer's best interests at heart. They are typically friendly and are good promoters and sales people. They will be vested with a certain amount of information and authority and will have the authority to screen out candidates but will not likely have the final say with respect to your potential employment if you get to the interview stage

-out-of-house recruiters work to place you in a position but are not employees of the employer. They are paid substantial fees by employers for their services (\$20,000.00 for example)

two types:

a. contingency recruiter

-the recruiter does not get paid if the recruiter does not succeed in placing a physician. A contingency recruiter is not bound to any one employer and accordingly would have an incentive to show you as many positions as the recruiter thinks you might be interested in

b. retained recruiter

-the client (the potential employer) pays even if the position is not filled. If you work with a retained recruiter the recruiter will push you first to any positions which the recruiter has been retained to fill. The recruiter may not tell you about other openings the recruiter has available until he is sure that he cannot place you in one of his "retained positions"

Both types of out-of-house recruiters are working to fill a position. They may not have your best interests at heart. The recruiter's principal loyalty will be to the potential employer, which is the recruiter's client

-be careful about giving information to out-of-house recruiters about yourself over the telephone unless you are sure you want to work with the recruiter. They may be building a resume to circulate to potential employers. Since you will not have had a chance to proofread the resume, the resume may contain errors. They may contact the employer down the street (or in your home town) you were going to submit a resume to and then try to collect a fee when you and the employer get together and strike a deal on employment

-if you know you want to practice in a given city you probably will not need the services of an outside recruiter since it would be fairly easy to ascertain the identity of potential employers and contact them directly either by touching base by telephone or by mailing a

letter of introduction and resume

-it will decrease the odds of you obtaining a signing bonus if the employer has to pay an outside recruiter a fee of \$20,000.00 (or some other substantial sum)

-some employers refuse to work with outside recruiters

-to access these potentially good employment opportunities you would need to contact the employer directly (or they might contact you)

-on the other hand if you have trouble finding an appropriate position, a recruiter can help you, and the fee would be picked up by your future employer

-if you choose to work with an out-of-house recruiter or multiple recruiters you should choose the recruiter or recruiters carefully:

1. How long has the recruiter been in business as a physician recruiter?
2. How many physicians has the recruiter placed within the last year?
3. Who will pay the recruiter's fee? How much is the fee? How is it calculated?
4. Is the recruiter a retained recruiter (i.e., retained by a particular employer or groups of employers)? Is the recruiter in fact employed by your employer (an "in-house" recruiter)?
5. Does the recruiter specialize in a particular geographic area?
6. Will the recruiter guarantee that she will submit your resume to only those potential employers which you have approved?
7. Does the recruiter belong to the National Association of Physician Recruiters (and does the recruiter subscribe to the NAPR's code of ethics)? Request that the recruiter forward a copy of the code of ethics to you.
8. Obtain references. Verify the recruiter's references by contacting them directly.

(Source: "Is Your Recruiter Working for You?" Life in Medicine, September, 1994)

-while colleagues can be good sources for the name of a reputable recruiter, some recruiters pay referral fees (\$500, for example) to persons who refer candidates to them if the recruiter is successful in placing the candidate. Accordingly, if you get a recommendation from someone as to who to use as a recruiter, you might also inquire as to whether that person would earn a referral fee

-the National Association of Physician Recruiters has available a list of its members and a copy of its code of ethics at www.napr.org (1-800-726-5613)

-interview

-prepare for the interview by researching the employer ahead of time to the extent possible

-anticipate questions that the potential employer might ask

-ask questions at the interview to assist you in evaluating the opportunity and to show your

interest in the practice

-some employers will give you a "standard" version of their contract at the interview, especially if they feel it is likely they will make an offer to you

-the initial draft of the contract is typically prepared by the employer utilizing language which favors the employer. More than one draft of the contract may be exchanged by the parties before a final version is signed

-an offer of employment may be made during the interview or after the interview

II. Why is a Written Contract Usually Utilized?

-physician employment contracts became commonplace because employers wanted restrictive covenants (also referred to as a practice restrictions) which restrict physicians' rights to practice medicine in a given geographic area for a given amount of time

-reducing the employer's and employee's agreement to writing clarifies the benefits and responsibilities of the employment relationship

-both the employer and the employee are making a substantial investment in the employment situation

-serves as evidence of the parties agreement in the event there is later a dispute

-provides a good opportunity to clarify and document any special terms

III. Sections of the Contract

-an "integration" or "merger" clause is a paragraph which states that the written contract is the entire agreement between the parties and there have been no other representations or promises made

-it is typically the last paragraph of the contract

-any prior promises made by the employer (whether oral or written) would not typically be enforceable in the absence of fraud if the contract contains a merger or integration clause. Accordingly you should be sure to have written into the contract any promises the employer has made to you... **"Get it in writing"**

-restrictive covenant or "practice restriction"

-clause in contract which restricts your right to practice medicine in a given geographic area for a given amount of time

-are usually enforced by courts with respect to physicians if ancillary to a valid employment contract and if the geographic and time limits are reasonable

-what is considered reasonable in terms of geographic area will depend on the type of setting (a restrictive covenant that covers an entire county might be upheld by a court if the county in question is a rural county but most surely would not be if all of a county in which a large city was located was covered by the restriction)

-are not enforceable in some states

-employers often request that a practice restriction be included in the contract so that the

employer does not invest substantial resources in building a patient base and in training you with respect to the employer's business practices only to have you leave the employer (taking patients with you) and open a competing practice next door

-try to have the practice restriction removed from the contract. If the employer won't remove it, ask the employer to waive it for an initial period (the first year of the contract). Ask that it not apply if you are terminated. Bargain for a limit on the damages that would apply if there is a violation

-if you are looking at joining a practice in your home town, the practice restriction may be more important to you than if the opportunity is in a town in which you have no ties and in which you plan to stay for only a short time

-term of the contract

-beginning and ending date of employment

-status as an employee or an independent contractor

-if the contract calls for you to be an independent contractor you will have to pay a tax that would be paid by the employer in a normal employment situation

-at 15.3 percent, the self employment tax includes both the 7.65 percent social security and medicare that an employee normally pays on a certain part of the employee's income and the 7.65 percent that the employer pays

-reduce the independent contractor compensation level by 7.65 percent to make an "apples to apples" comparison between an employed pay and independent contractor pay

-duties of employee

-traditional outpatient practice during "normal" business hours, evening and weekend hours, "hospitalist", employee of HMO, academic setting

-number of patients which must be seen or the number of patient contact hours

-days and hours you will be required to work each week

-administrative duties

-location or locations where you would be required to perform your services

-call and hospital rounds

-it is possible that the employer contemplates (but is not telling you) that call or rounding duties will not be distributed evenly among all physicians but instead that the new employee would take a disproportionately large share of call or rounding duties. Have language included in the contract which indicates that these duties will be shared on a pro rata basis or place a limit on the frequency of these duties

-Does the employer have a nurse triage system to handle many of the after hours calls from patients by protocol? If it does, the call duties will be easier to handle

-rounds for nursing home patients handled on a pro rata basis?

-hospital rounds and hospital admissions

-rounding group for the weekends?

-hospitalist to handle all inpatient care for your patients?

-who admits one of your patients who presents at the emergency department during office hours and needs to be admitted?

-a vague reference to the employer being able to assign you additional duties at the employer's discretion may not be the best language from the employee's perspective

-employer's duties

-office building, office for physician to use to do paperwork, number of exam rooms, equipment, supplies

-support personnel (will you have your own nurse?)

-compensation

-compensation will vary from place to place and will depend in part on the duties required of the physician

-figures shown by different salary surveys will vary in part due to which physicians are being surveyed

-the salary surveys conducted by group practice associations (Medical Group Management Association and American Medical Group Association) generally report higher compensation figures since their surveys focus on group practice physicians and since group practices typically pay more than hospitals or managed care plans do

-the Weatherby figure includes a larger share of starting salaries and so is lower

-a starting salary or compensation level should reflect any added duties, such as a disproportionately large share of call or hospital

-starting salaries may actually be higher than compensation for some physicians who have been at the employer for several years. Accordingly you should find out what the other physicians in your specialty who have been at the employer several years are making. If their compensation is not any higher than what you are being offered to start, or is in fact lower, you should realize that the position may not be as attractive over the long term as a position with a lower starting salary but a brighter long term outlook

-**signing bonuses** are often available for primary care physicians

-it is important to look beyond the starting salary and signing bonus (if any) if you have any intention of staying with the employer over the long term

-systems for determining compensation include a straight salary with no bonus potential, a combination of a base salary plus a bonus based on production or some other criteria, and compensation based purely on how productive you are

-incentive compensation based purely on production with no minimum salary guarantee is probably not a good arrangement for a new physician because it may take the new physician a while to establish an efficient work style and to establish a patient base

-if you will have substantial administrative or management duties, if there are not sufficient numbers of patients available to keep you busy, or if the owner wants to do all of the high paying procedures herself, your ability to earn a bonus based on production may be affected

-a combination of a base salary plus a bonus based on production is probably the best situation for an initial employment situation because it provides the employee with a measure of security while rewarding the employee if the employee is productive

-be sure to include in the contract a description of how the bonus will be calculated and include sample calculations

-while many employers will provide a salary plus a bonus based upon production, there is a trend towards basing the bonus at least in part on other measures such as how effective the physician is at efficiently utilizing resources or on patient satisfaction

-don't confuse a salary with a draw. A draw merely allows you to take a certain amount from the employer at regular intervals. However if your production is not sufficient, using the applicable formula, to support the amount you have drawn from the employer, you will later owe the employer a refund. This could be particularly troublesome if you are just getting started in practice and perhaps work a little slower than some of the more experienced physicians

-repayment of student loan debt

-ask to review data on the range and average compensation for physicians at the employer to see how your compensation might fare over the long term

-fringe benefits

-many offer a tax advantage since they can be provided in a tax deferred or tax free manner

-can be worth 20% or more of cash compensation

-attach a copy of the description of the benefits to the contract and incorporate them into the contract

-life, health, dental, disability insurance

-does the health and dental insurance cover your dependents?

-is both short and long term disability insurance provided? Does it have "own occupation" coverage? Are benefits paid on a pre-tax or post-tax basis? At what percentage of prior compensation level?

-umbrella liability policy

-retirement plan

-401 k plan whereby you can contribute pretax dollars to your own 401 k account. The employer may or may not match a portion of your contribution

-defined benefit plan whereby after so many years of service the employer pays you a certain percentage of your pay

-parental leave (paid or nonpaid?)

-paid sick days

-vacation time

-paid holidays

-time to attend professional meetings

-professional expenses (professional license fees, DEA registration, dues for memberships in professional associations, continuing professional education expense, automobile expense)

-moving expenses

-termination

-should give you an adequate notice period. If possible limit circumstances under which you can be terminated to specific causes (loss of license for example). Make sure you have the ability to leave the position (upon giving proper notice) without a penalty

-buying an ownership interest in the practice

-there is a trend toward physicians becoming employees of a hospital, HMO, or practice without the opportunity to become a partial owner of the practice

-approximately 39% of the practicing physicians in the United States are employees of hospitals, group practices, managed care plans or other employers. This figure includes both physicians who are in a permanent employee status and those who may at some later point buy into the practice for which they are now working

-the idea of being an employee is attractive to some physicians because they like the concept of not having to worry about the "business side of medicine". However, becoming an employee without the opportunity for becoming an equity holder in the medical provider may ultimately result in less physician control over the practice of medicine. Becoming an employee is also not a guarantee of job security and employed physicians reportedly make less money than self-employed physicians

-will you have an option to purchase an ownership interest in the practice after a certain time period, an indication that the employer will consider allowing you to buy in at a certain point, or will you be a permanent employee?

-an option to purchase means you will have the right to purchase the practice when the conditions described in the option have been met

-cost of the "buy in"

-if the cost is not a fixed dollar figure, would the cost be calculated using a specific formula? If so, what would the cost be today if the formula were applied to current data?

-what would you be purchasing if you buy into the practice?

-benefits of being a partial owner in a practice might include the right to a share of any year end profits, the right to a vote as to how the practice is managed, the right to a share of the proceeds of any sale of the practice or practice assets, a higher level of base compensation, and a bit more job security

-will you be on equal footing with all other physicians in the practice or would the older physicians have a superior type of ownership interest that gives them rights which you would not have?

-possible drawbacks of being a partial owner can include, depending on how the arrangement is structured, the requirement that you assume liability for a portion of the practice's debt, an expectation that you would work longer hours, the cost of the buy in, and different treatment with respect malpractice tail insurance if you leave the employer

-will you need to use your own funds (or obtain a loan from a third party) to fund the buy in or will the buy in be funded through a payroll deduction arrangement?

-will you be required to execute additional agreements (a shareholder's or buy sell agreement) at the time of the buy in? What are the terms of the agreement?

-how will your compensation be structured after the buy in?

-does the practice currently owe money to a third party or one of the equity holders in the practice? If so would you be required to become a cosigner on the promissory note?

-malpractice insurance and who will pay for tail insurance if you leave the practice if the malpractice insurance is provided in the form of a claims made policy

-if you are covered by a claims made malpractice policy and you leave the employer you would typically not be covered if you are later sued for malpractice based upon care given while employed by the employer unless you or your employer purchase tail insurance

-will the employer cover the cost of any malpractice verdict or settlement in excess of the malpractice insurance limits (in legal terms will the employer "indemnify you")?

-hospital privileges - is there a requirement that you maintain privileges at certain hospitals

-employee manuals, handbooks, organization bylaws

-are they incorporated into the contract by reference?

-if they are and the employer has the right to change them without your approval, the employer can effectively unilaterally change the contract terms

-indemnification clauses whereby the employer requires that you indemnify the employer should not appear in the contract

-include a clause in the contract that gives you the right to inspect the books and records of the

employer. You need to know whether the employer is financially sound

IV. The Negotiation and Evaluation Process

-if you have received an offer and written contract from the potential employer, don't be afraid to negotiate, in a pleasant and professional manner, the terms of the contract

-you should interview at more than one place in the general geographic region in which you want to locate. Compare the positions to one another. A good source of questions to ask a potential employer is the employer's competitors since the employer's competitors will likely be aware to some degree of the employer's reputation

-have an attorney well-versed in professional employment matters review the contract

-if the attorney is experienced in physician employment matters he or she can assist you in evaluating the employment position, explain the contract, and provide suggested changes

-some people prefer to handle the communicating the needed changes to the employer while others find it helpful to have the attorney handle the communication

-an attorney can raise issues you would like to have addressed but would not feel comfortable raising on your own

-negotiating is a give and take process

-you probably will not get everything you ask for so it is a common negotiating technique to ask for some things you are willing to give up in addition to things which you really want or need

-on the other hand if you ask for too much you stand the chance of killing the deal

-you need to be aware of your bargaining strength (i.e. how badly does the employer want to hire you, do you have other acceptable opportunities, does the employer perceive that you have other acceptable opportunities)

-both you and the employer may use various negotiating techniques

-the employer may be willing to increase the amount of the initial offer

-good cop / bad cop strategy

-time - the employer may make you wait to get a response to a request for a higher salary or some other term in order to "soften you up". Same technique can be used by the physician

-know who makes the decisions with respect to hiring. An in-house recruiter will certainly have input into the decision making process but an administrator, department head, or board of directors may be the ultimate decision maker

-if the employer has signed thirty other physicians this year and the employer utilizes a "standard contract", there will still be room for negotiation on items that are important to you, but you will probably not be given a "blank slate" to draft a contract, as could be the case if a solo practitioner or a small group is looking at adding another physician

V. Special Considerations for Persons who Must Find a Position which Satisfies a Visa Requirement

-the positions that will meet visa requirements are more difficult to find. You will likely have to take it upon yourself to make a concerted effort to locate a position and sell yourself to the potential employer

-recent changes in immigration law have reduced the number of positions that will allow persons presently here on a J-1 visa to receive the needed H1-B waiver

-you will have less negotiating power than someone who does not have the visa requirement

-there are specific issues that must be addressed in your employment agreement in order to satisfy the requirements for obtaining an H-1B visa

VI. Information to Obtain Regarding the Employer

-the employer itself should be willing to provide you with much of the information you would need

- policies and bylaws for employer

- financial statements and reports depicting employer's financial status

- mean and range of compensation for all physicians in your specialty at the practice

- a description of any pending litigation and contingent liabilities

- description of major contracts

- an indication as to whether the employer has recently been or is currently being investigated for violation of Medicare fraud and abuse laws

- whether the employer has a "corporate compliance plan" in place to ensure compliance with Medicare fraud and abuse laws

- a history of the organization

- an overview of the business structure of employer

- the turnover rate for physicians and staff

- business practices with respect to managed care

 - does it own its own HMO?

 - is it a part owner of an HMO?

 - does it have contractual arrangements with one or more HMOs? Are they profitable?

- if the employer is not a hospital, does it have a symbiotic relationship with a hospital? Has it been formalized as PHO? How is the relationship working?

- has there been a sale or affiliation of the practice with a physician practice management company or other entity?

 - if one has occurred in the past you should find out the particulars of the

arrangement. Who was the buyer? Is there a right to repurchase if the buyer does not live up to its end of the bargain? Was it a move by the older physicians in the group to cash in the good will they had built up in the practice (did the money paid go directly to physicians or was it reinvested in the clinic in needed technology)?

-is there any talk of a sale at this point in time? Are the majority of the physicians in favor of a sale or against it? Would new physicians receive a share of the sale proceeds?

-hospitals, practice management companies, insurance companies, HMOs, and other physician practices all sometimes purchase physician practices

-physician control of medical care delivery versus control by Wall Street, hospitals or insurance companies is a continuing issue

-the trend in medicine towards loss physician of control of the practice has many parallels in other professions and markets, including optometry (Lens Crafters), dentistry (Orthodontic Centers of America, Inc.), pharmacy (Walgreens), and retailing (WalMart)

-talk to physicians who have not been a part of the "interview team"

-read the local newspaper

-ask the employer's competitors what the strengths and weaknesses of the employer are and compare the answers you get with what you hear from the employer and what you perceive to be true

VII. Keep in Mind the "Big Picture"

-a well drafted contract will not make a bad employment situation perfect, but it can provide you with a measure of protection if things do not go as planned

-the process of evaluating the contract and asking the potential employer questions about the position allows you to make an informed decision regarding the potential employer, which will hopefully increase your opportunity for a successful employer-employee relationship over the long run

-negotiating a contract is typically a give and take process. Each side typically asks for a little more than it will settle for knowing that it will have to give some things up in the negotiation process

-how tough a stance you can take in the negotiation process depends in part upon how many other options you have available to you, whether your potential employer perceives that you have other options available to you, and how badly the potential employer needs your services

-the key is to make an informed decision and to negotiate the things that are the most important to you to the best of your ability

The information supplied is intended to be general in nature and is not intended to be specific legal advice. For specific legal advice, please seek the advice of an attorney.

Revised 1-2001

ALAN R. SINGLETON
SINGLETON LAW FIRM, P.C.
One East Main, Suite 215
Champaign, Illinois 61820-3654
Telephone: 217-352-3900
Facsimile: 217-352-4900
singleton@singleton.law.pro

Practice Areas: General civil practice, including health care law, business representation, real estate and estate planning

Member of Bar: Illinois Bar, 1991 to present
U.S. District Court, Central District of Illinois, 1992 to present

Professional

Associations: American Bar Association (Member of Health Law Section)
Illinois State Bar Association (Member of Section on Health Care Law)
Champaign County Bar Association
American Health Lawyers Association
Illinois Association of Healthcare Attorneys
Eastern Illinois Estate Planning Council

Education: University of Illinois College of Law, Juris Doctor, 1991
University of Illinois at Urbana-Champaign, Bachelor of Science, 1988

Academic

Appointment: Adjunct Clinical Associate, Department of Internal Medicine, University of Illinois College of Medicine at Urbana-Champaign

Advisory

Boards: Advisory Council of Ekos Materials Corporation, Advisory Board of Illumigy, LLC and list of advisors at Illinois Technology Center

Lectures: *Physician Employment Contracts:*

University of Illinois College of Medicine Urbana-Champaign Internal Medicine Residency - February, 1996; December, 1996; November, 1997; November, 1998; January, 2000; January, 2001

Carle Family Practice Residency - September, 1996; April, 1998; December, 1999

University of Illinois College of Medicine Peoria Family Practice Residency - September, 1996; September, 1997; October, 1999

Carle Oral and Maxillofacial Surgery Residency - October, 1997; January, 2000

Southern Illinois University School of Medicine Quincy Family Practice Residency - September, 1998

University of Illinois College of Medicine Peoria Internal Medicine Residency - September, 1998

Indiana University School of Medicine Methodist Hospital Family Practice Residency - October, 1998

Southern Illinois School of Medicine Springfield Family Practice Residency - November, 1998; November, 1999; July, 2000

University of Illinois College of Medicine Chicago Emergency Medicine Residency - November,

1998; November, 2000

University of Illinois Chicago Orthopaedic Surgery Residency - November, 1998

MacNeal Hospital Family Practice Residency - December, 1998; February, 2000; January, 2001

Southern Illinois School of Medicine Springfield Practice Management Series - December, 1998

Southern Illinois School of Medicine Carbondale Family Practice Residency - December, 1998

Southern Illinois University School of Medicine Springfield Family Practice Residency - December, 1998

Indiana University School of Medicine General Surgery Residency - March, 1999

Union Hospital Family Practice Residency Program - March, 1999

Resurrection Medical Center Emergency Medicine Residency - September, 1999

Cook County Family Practice Residency - February, 2000

Illinois State Medical Society and SIU Springfield Residency Programs- September, 2000

Lincolnwood Family Practice Residency Program- June, 2000

Legal Check-Up For The Dental Practice:

Illini District Dental Society - January, 1999

Veterinary Employment Contracts:

University of Illinois Student Chapter of the American Veterinary Medical Association - January, 1998

Physician Licensure and Discipline:

University of Illinois College of Medicine Urbana-Champaign Internal Medicine Residency - February, 1999

Reporting Duties of Physicians:

University of Illinois College of Medicine Urbana-Champaign Internal Medicine Residency - April, 2000

Confidentiality of Medical Records:

University of Illinois College of Medicine Urbana-Champaign Internal Medicine Residency Program - October, 2000

Risk Management:

University of Illinois College of Medicine Urbana-Champaign Internal Medicine Residency - June, 2000