

TOP 6 MISTAKES AND QUESTIONS WHEN DOCTORS ARE CONSIDERING EMPLOYMENT CONTRACTS



BLUESTEIN LAW FIRM, PC

HELPING DOCTORS AND OTHER HEALTHCARE PROFESSIONALS AND BUSINESSES
BUILD THEIR CAREERS AND PROTECT THEIR PRACTICES

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BY
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MISTAKE/QUESTION # 1

APPROACHING THE CONTRACT WITH THE WRONG MINDSET

Most Physicians will consider only a few new Employment Contracts during their career. Residents and Fellows completing their training and contemplating the next stage of their career are looking at new contracts. Their lives are about to dramatically change. As we like to say at the Bluestein Law Firm, “You are about to get your life back.” For graduating residents and fellows, their income will dramatically increase with the new position, often by 5 to 10 times or more than their current resident or fellow salary. In addition, and perhaps more importantly, their work time and lifestyle will change dramatically.

For Physicians who are already in practice, there can still be a dramatic difference. The practice they are currently at or recently left may not have been the right place for them. It is important to not to make mistakes with the new contract or position, and it is just as important for the practicing physician to consider, what they and their family’s needs are and how they want their career and life to be.

Quite often, physicians, as do most people, make new employment decisions from the perspective of where they currently are, rather than where they want to be and the life they want to have. The Bluestein Law Firm believes that consideration of any physician employment contract should start with questions like, “What kind of life and career do I want to have?” and “Will this employment relationship and contract help me achieve that?”

MISTAKE/QUESTION # 2

COMPENSATION AND LEAVING MONEY ON THE TABLE

Any successful employment relationship requires the employer and employee be satisfied with the compensation arrangements. However, not understanding or properly negotiating compensation can lead to missed opportunities as well as tensions between an employer and employee. Employers use several different methods to determine base compensation. In addition, many contracts have options for compensation in other forms. These may include a variety of benefits upon being hired and beginning employment. Many physicians do not know where to start with compensation negotiations and do not know what they can reasonably ask for or expect to receive.

If these issues are not properly explored and negotiated, opportunities for additional compensation can get left on the table. Small changes in compensation will have a big impact on your earnings over the course of your career. Failing to understand and address compensation questions before signing a contract can lead to a deterioration of the employer-employee relationship as the employee starts to feel he or she is not being properly compensated for their valuable work. At the Bluestein Law Firm, we believe it is important to work with experienced attorneys who understand the different compensation models as well as the opportunities for additional compensation. As we assist our clients, this helps reduce the chances of leaving money on the table.

MISTAKE/QUESTION # 3

TAIL INSURANCE AND CONTINUING COVERAGE

When entering an employment arrangement, it is important to also address what will happen if or when the employment ends. One costly area can be what is referred to as “Tail Insurance”. Tail insurance is a separate policy for professional liability insurance that continues to protect the physician when they leave their employment and/or cancel their insurance with a particular insurance carrier. Mistakes in this area can be extremely costly. Not only is there a concern of having to pay out sometimes tens of thousands of dollars for a Tail Insurance, but most contracts initially do not give the physician any options of how to handle professional liability insurance upon their departure. In addition, leaving a practice without resolving professional liability issues is even more dangerous, as a malpractice claim or law suit where there is no longer insurance coverage or an insurance company to pay for the defense can have devastating financial consequences to the physician. Therefore, understanding and negotiating the details of Tail Insurance requirements and alternatives to Tail Insurance is extremely important. Failing to properly address Tail Insurance when considering a contract can be an extremely costly mistake. At the Bluestein Law Firm, we believe that understanding and negotiating the details of Tail or alternative options can improve the lives of our clients by saving them headaches, stress and money in the long run.

MISTAKE/QUESTION # 4

PENALTIES AND REPAYMENT PROVISIONS ON TERMINATION

Few physicians enter into an employment contract or contract renewal planning that the employment relationship will end prior to the end of the contract term. However, it is still important to consider what obligations you may have if things do not work out as planned. Often Employers have committed resources to recruiting or retaining a physician employee and have provisions in the contract to protect themselves if the physician is terminated or leaves before the end of the contract term. These provisions can be quite burdensome to the departing physician employee. They may include repayment signing bonuses, moving expenses, and funds received under hospital recruitment agreements. In addition, some employers seek to impose penalties on the departing physician to recoup their costs of recruiting and training the physicians. The wording and formulas used by some employers often make it very difficult to determine the amount of these penalties or repayment obligations, which can run into the tens or even hundreds of thousands of dollars.

It is important to use experienced legal counsel when reviewing these types of provisions, since failing to address it can be an extremely costly mistake. We have worked with many clients over the years who did not address these issues properly when negotiating their contract, and ended up facing serious financial penalties. We believe it is always better to address these issues prior to entering into the contract rather than trying to negotiate out of them when you are leaving employment.

MISTAKE/QUESTION # 5

NON-COMPETITION CLAUSES

In most states, it is commonplace for a physician employment contract to contain some type of Non-Compete, Damages Upon Competition provision or Restrictive Covenant. Depending on how they are written, these restrictions can have a significant impact over the course of a physician's career; financially, professionally and geographically.

At the Bluestein Law Firm, the most frequent contract question we are asked is whether or not the Non-Competition clause in the client's contract is enforceable. The question is usually something like, "I've heard that Non-Competes aren't enforceable. Is that true?" As with any legal issue, the answer varies depending on the facts, the specific language of the contract and the law in that state. However, in most states, if properly written, a non-competition provision will likely be enforceable.¹ In addition, even where a provision is questionable or unenforceable, having a legal battle can be a lengthy and expensive process causing serious disruption to the physician's career and life, even if they win.

Therefore, it is a mistake not to fully understand these restrictions, whether they are enforceable or not. It is equally important to know and understand what your options may be upon the ending of the employment relationship. In many cases, these restrictions can be negotiated and modified to make them more fair to the employee. In addition, such provisions can be planned for or made more manageable. At the Bluestein Law Firm, we have found that in many cases, even where an Employer insists on a Non-Compete, that we can either make the provisions less onerous, or help the physician protect their career and finances by planning around the Non-Compete.

¹ This should not be relied upon as a legal opinion regarding any specific Non-Compete provision. Please refer to our disclaimer.

MISTAKE/QUESTION # 6

DOING IT ON YOUR OWN

At the Bluestein Law Firm, we are very conscious that our clients are well educated and extremely smart. We also know that most physicians do not have much experience with healthcare employment contracts. As in medicine, where physicians focus on their area of practice and refer to other specialties for care outside of their specialty, it only makes sense to turn to an experienced healthcare employment attorney for assistance with a physician employment contract.

The issues discussed in this booklet are only a few of the many questions and issues that routinely arise in physician employment contracts. In most cases, the employer had an attorney prepare the employment contract. We believe that in order to protect themselves, the physician employee needs someone just as knowledgeable, if not more so, on their team to protect the physician's interests and help them begin the new employment on terms that they can be most successful in the long term.

Regrettably, some physicians choose to not work with an experienced attorney, or they work with the wrong attorney for their needs. Sometimes everything works out; however, often problems later arise. The failure to properly understand the terms or the long term consequences of the contract provisions, or even understanding the different options can lead to extremely upsetting and costly results. Over the years the Bluestein Law Firm has worked with many physicians who did not have an attorney, or had the wrong attorney for their needs when entering into an employment contract. We work with these clients to address the situation; however, it is almost always easier and less expensive to address and change contract provisions before signing than after signing. Based on our own experience, we believe that for most physicians it is a serious mistake not to enlist the aid of an experienced healthcare employment attorney.

ABOUT THE BLUESTEIN LAW FIRM

The Bluestein Law Firm helps physicians with reviewing, drafting and negotiating employment contracts. We work with physicians relocating to and throughout Colorado as well as Ohio and also work with many other physicians all around the country. In addition, we help physicians, dentists, and other healthcare professionals and healthcare businesses build and protect their careers and practices. We assist our clients with employment matters, opening new practices, purchases and sales of practices, regulatory matters (Stark, Anti-Kickback, HIPAA, etc.), licensing and professional board matters as well as numerous legal and business matters that arise in the healthcare profession and practices. In addition, we help our clients with asset protection strategies and estate planning. If we can be of service or if you have any questions about your contract, please contact us at (720) 420-1777 or office@bluesteinlaw.com, or review our website at www.bluesteinlaw.com.

DISCLAIMER

We hope that you have found this booklet helpful as you consider your employment contract. The information contained in this booklet is not, nor is it intended to be, legal advice and should not be relied upon for your specific situation. You should consult an attorney for advice regarding your individual situation. If you have questions or would like us to assist you with your legal matters, we invite you to contact us by phone at (720) 420-1777, through our website www.bluesteinlaw.com or via email at office@bluesteinlaw.com. Downloading and/or reviewing this booklet or contacting us does not create an attorney-client relationship.