

PHYSICIANS' EMPLOYMENT CONTRACTS (DOCTOR: YOU DO HAVE A CONTRACT, DON'T YOU?)

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What Constitutes a Contract?

Essential Elements are:

The Offer: I'll employ you and pay you lots of money but only if you provide certain professional services.

The Consideration: Okay, I'll provide services as a physician in return for that salary and certain benefits, agreed upon hours of work, etc.



The parties, smiling, look into each other's eyes and "done", agreed, or any other words or act(s) that amount to acceptance of the contract on the agreed upon terms.



Promissory Estoppel: What is it, and Why is it Bad?

Essential Elements are:

Performance of services, in our case.
With knowledge by the person benefiting from the services (your "employer", not the patient).

So that it would not be fair for you not to be paid the reasonable value of your services.

Bad Because:

Not recognized in Virginia; even where it is, your "employer" probably will not agree, so off to court we go (where you, but likely not your lawyer, can always lose).

I Thought I Had a Contract?

But not Really (darn it)
Impossibility, Impracticability, Incapacity, Illegality, etc.

Meeting of the Minds: Must address all essential elements or there is no contract, e.g., wages, work hours, services, etc. (courts are loathe to write the contract for you, and likely won't).

If there is a Contract, then it can be enforced.



Remedies:

Money damages, and maybe consequential damages, but duty to mitigate.

Specific Performance: Enjoin your Employer (and incidentally, your employer can enjoin you.)

Quantum Merit (when all else fails, but don't want to be here).

Negotiating Strategies:



Preparation:

What is it you want: Flexible hours? Lots of Money? Maintain a Reasonable lifestyle? Academic freedom? Research Capability?

Feasibility:

Is what I will be asking feasible, for my employer, and for me, and if not, why ask it?



Listen:

A real lost art, for all of us. You need to understand the employer's needs, and he/she needs to understand yours, and work toward an agreement that works for both of you.

Start High:

If you are buying a car, and are willing to pay at most "x", you wouldn't start at "x", would you?

Saying No:

Hey, if it isn't going to work, you need to say so now, but suggest an alternative that might (remember, you listened, so you know enough to propose an alternative that will likely break any impasse).

Be Persuasive:

Be prepared to point out how your proposal works for you but also for the practice/your employer. But being overpowering, heavy-handed and the like aren't part of that equation. After all, this person may be your employer soon; you want to get off on the right foot (and get off at all).

Very Nice Things to Employ When Speaking with a Prospective Employer while Asking for Lots of Money:

Be Likeable: Trust me on this, if people like you, they are more willing to be agreeable to accommodating you, regardless of what it is you are asking for.

Exude Credibility: Being prepared, being confident, maintaining eye contact, dressing appropriately (at least as well as the person to whom you are speaking), all play a part in sending a signal that you are one that cannot be fooled and one that it would be wise to employ.

Scarcity: If you are it, then you are it, but if there are a lot like you, then sorry, you can't push as hard.

Consistency: Be true to what you are saying; your conduct has to parrot your words, and vice versa. Otherwise, how can anyone deal with you, and this can be fatal in negotiating a contract.

Reciprocity: Be fair. Acknowledge the legitimate points of the other party, especially if you want them to acknowledge your legitimate points. Treat them with respect, dignity, etc., if you wish for them to extend the same to you.

What Others Have Done: You can't expect, unless something else is operative making your hire a must, that you will be treated differently than those already in the practice, or those similarly situated.

Be Prepared: A Footnote:

As part of being prepared, you must know:

What is your bottom line (by the way, have you chatted with your spouse, to see what his/her needs are?), as to pay, hours, benefits, support, etc., before sitting down to discuss employment.

You must know where you hope to end up (without a target, how do you know what to shoot at?).

Your bottom line may change during the negotiation.

What leverage do you have, and how are you going to share it with your prospective employer in a helpful, constructive (and subtle) way?



Considerations in Negotiating Contracts in Academia:

- Academic Obligations: Protected Research Time
- Clinical Obligations: Billings or Collections
- Obligations for Clinical Overhead: Are your obligations commensurate with your needs?
 - *Staff
 - *Malpractice Coverage

