

Transcription for Navigating COVID19
October 27, 2020
6:00-7:00pm

Presentors:

Shawn Parker, JD, attorney, Smith Anderson

John Rusher, M.D., F.A.A.P., JD, pediatrician, Raleigh Pediatrics

Hugh:

All right. It is 6:00. Let's get started. First of all I thank everybody for taking time to join us for this month's chapter of our navigating series. I want to focus on employment contracts tonight. As a reminder this is cosponsored by the Community Care of North Carolina, North Carolina Pediatric Association, NC Psychiatric Society, NC Academy of Family Physicians and NC AHEC. Tonight is the 14th webinar we have put on together. I do want to observe that most of those have been about Covid. This is the first regarding issues that are important in addition to Covid. I want to thank Tom, Elizabeth, Robin and Greg for their leadership and identifying issues that we need to consider and for the great partnership in putting on these webinars on how we can help you all to respond to these issues. I also would like to thank everyone for the important work you are doing for your patients and for your staff. We hope the information that you get tonight will help you as you practice and care for your patients and communities.

My name is Hugh Tilson. I am the North Carolina AHEC director. My partner Tom Wroth, president and CEO of Community Care, will be MCing. Tom will handle all of the Q&A. The stars of the show are Shawn Parker, who has been on a couple of these. He is one of our go to's for a lot of the issues that we deal with. Thank you Shawn for all that you do and John Rusher who is a pediatrician as well as a lawyer. He is with Raleigh Pediatrics and has an incredible wealth of experience and is a good person. We are really lucky to have these amazing experts tonight. We thank both of you for taking time to present to us. You are going to hear their experiences and their stories, not just talk about the law and the contracts but what it all means. Thank you for that.

We are going to post these slides, I think they may be posted, we will get them up as soon as we can as soon as we get them ready. If you have questions you will need to submit those using the Q&A feature. It is on the black bar on the bottom of your screen. We will get to those at the end. Now I'm going to turn it over to Tom for opening comments.

Tom:

Thank you so much. Thank you everyone for coming together. It is kind of a relief to not be talking about Covid-19 tonight. We are talking about a fairly challenging topic. I can just say, I wish I had this webinar when I came out of training and a couple of other times as well. I just wanted to give a few comments, a few observations on physician employment trends just to tee up the conversation a bit. The narrative out there around physician employment is that the majority of physicians are becoming employed by health systems or other entities. But, there are still 46% of physicians that own their own practices nationally from 2018 data. 47.4% are employed. On the other hand, there have been some interesting trends in North Carolina and also other places. Folks probably heard a while back, a couple of years ago that 90 doctors employed by Atrium Health sued the system in 2018 and came out of the health system and formed their own group called Trion Medical Partners which is still out there. And recently this year, 42 family doctors, OB/GYN's who were employed by Novant left to join Holston Medical Group which is an independent practice. Interesting trends right here in our own state about folks coming back out into independent practice. The third trend that is also important is the healthcare disruptors that we have payers or entities linked to payers, like

Optum, who are starting to purchase private practices, and also private equity firms who are purchasing private practices. There is information from 2017, private equity firms purchased 172 practices. Could this be another route for positions for physicians to create partnerships in the business world. Whether you are offering a contract to a clinician as an independent owner or operating by yourself it is important to understand the issues and how to protect yourself. We are pleased to have Shawn Parker and Doctor John Rusher with related experience in contract. With that, Shawn, can you kick us off?

Shawn:

Sure. Good evening. I appreciate the introduction and Doctor Wroth for setting the table. Our goal is to share with you from our collected experience some items to look for when entering into an agreement or exiting an agreement and really how to best avoid a breach or potential litigation because even if the law is on your side, the cost to get the benefit of the law is not cheap. I am an attorney and I work with physicians and healthcare providers for a number of years and that has given me an opportunity to draft and negotiate employment contracts on behalf of practices as well as employees. Doctor Rusher, my colleague for this evening, is a unique animal combination of attorney and physician and he is currently a partner with the pediatrics office here in Raleigh. We will get a wealth of information on how he has utilized employment agreements. I think we can jump right into it.

What is an appointment agreement/ contract? It is an agreement for you to deliver professional services as an employee to an entity that is authorized under the law to employ licensed healthcare providers. It really encompasses two main areas of law, contract law which is long and well versed and employment law which is highly regulated. Making it further complex, you add in professional services of licensed individuals and you can see why there are many people involved. While you may have an employment agreement, it is enforceable to have an oral employment agreement, it is rare to find that in healthcare. Our focus will be on the written employment agreement.

The key term, the anatomy of the agreement, this is pretty standard no matter what agreement you are working on, you need to know who are the parties to the agreement, what obligations do they owe each other, what is the consideration for them doing the obligations and when does it start and how does it end. The key terms that we will go through, I will be brief on this slide, really is the flow of our presentation for this evening. I am interested in determination, if you're interested in the money and benefits, that will be coming up shortly with Doctor Rusher.

The key terms, the parties, what is unique and why is it interesting in your setting. You need to know who you are contracting with. You understand that it should be the medical practice. In many of these agreements you are contracting with an affiliate of that practice. Perhaps an owner or system. Why you need to know that is because of the restrictions that may apply based on either the practice, or the actual employer, the same with your ability to have any type of redress. It is important to know who you are signing the agreement with.

The term termination that we will speak to next is key, you have to know how long the agreement is for and how can either side get out of it? Compensation and benefits is always of interest. The key point is understanding how that is calculated. There is a lot of misunderstanding, sometimes you will have a goal to hit. If you don't understand beforehand how that goal is measured, it is a limiting factor.

Duty obligations and representation. These differ for all parties. You will have your responsibility under the agreement. The employer and lawyer have their responsibility and there is a number that you have to deliberate on together.

Further, what happens if there is a breach? I understand that we are avoiding Covid discussions as best as possible. Because of the pandemic you have seen where contracts that are in place, one side is not living up to their obligation, or you as an employee may have difficulty living up to an obligation based on reduced hours or otherwise. You want to look at what happens if there is a breach.

Finally, where I am used mostly, what are the restrictions in this agreement? Those can occur during the term of employment, what can you do while you are an employee? Many will carry on after the term. We will close our presentation, for those who are going to be in private practice. The opportunity for partnership and what does that mean? It is not merely the title, but what does it mean to be a partner and become the employer yourself.

A couple of tidbits here just high-level notes of interest. When you are reviewing a contract, the key is like all arrangements people believe the relationship is strong. As long as both of us understand what we are trying to accomplish it does not matter what is said. What I will tell you, rapport does not replace reading. I would go farther and say reading does not replace understanding. It is more important you know what your obligations are and what theirs are, then what you believe the relationship will take care of itself over time. We argue that you want to avoid overly subjective contract language, that will also protect your interest and if you are an employer, give some clarification.

I will jump right down to the last bullet on legal counsel involvement-- does it make sense to hire an attorney for these matters? I will break it down, there are three best times to have an attorney. I think the highest investment you can make on using an attorney is to hire one at the front end that says do I understand this agreement. It does not need a lot of time or money, but often an attorney can go through and make sure you understand what you are agreeing to. The second greatest investment is if you want to spend a little more money and have your attorney talk to their attorney in negotiating an agreement. Why this is beneficial is because the attorneys can speak partially to the other attorney and negotiate on your behalf without it looking like you are asking too much or you are ungrateful for the opportunity. Sometimes that is a good investment. The third time, which is often when attorneys are called is to get you out of a jam. You are ready to move on and you need to know how to get out of this contract. You have gotten to a point and you believe you have been wronged in your contract or your employer believes you have done something wrong. I think that is the least valuable time to bring one in.

A few more steps in negotiation. The pre-before the contract gets in front of you is the best time to clarify what each party will bring to the table. It is not uncommon to ask, is this what your other employed positions or you yourself have within your contract. There are going to be some opportunities that really are just take it or leave it, it is one-sided in a sense but it does not mean that you cannot make it more balanced. Lastly, whether you are doing it via redline, through an attorney, or you just want clarification from your employer, you want to pick a few key points to negotiate. You want to address just things that are deal killers for you. You want to counter with things that are fair. It is not the time to get the best benefit of the bargain by trying to be a used car salesman or get the best price. This is a relationship you are entering into and you want to come off as fair and reasonable. That is a good use of legal counsel to help set expectations of a reasonable parameter.

As I said earlier, one of the first things that I look for and you should as well, is understanding when does the contract start and the effective date and when your obligations may start accruing. Your actual start date may be different. You want to understand that. The duration of a contract. Typically you will see them coming in at about two years, that is a reasonable time that people believe they can get an investment. The duration whether it is one year, two years, or more can also be limited by the termination provision. If there is termination for convenience, like a 30 day notice, even if you are in a three-year agreement. Your agreement is really only 30 days long.

One of the last things you want to look at in this, does it auto renew? Will the agreement end naturally and therefore you have to renegotiate the agreement at the end date and sign a new one, or will it continue on its own if no one takes action? We have kind of traditional language that you will see on an auto renewal where it says it ends after this period and unless either side terminates, it will continue going. You want to balance that. Sometimes it is good to have it automatically end and you can renegotiate it particularly after a two years time you can get a better benefit or bargain. The other being that it is rather convenient that it auto renews. That is something to think about.

As I mentioned earlier, it is more important to know when or even better how it ends. What you want is a termination for convenience. This is generally on the employer side. Sometimes if you are successful you can negotiate to make that mutual. Really the termination convenient means that either party can terminate it just by providing notice they do not have to have a reason. Another way an agreement might be terminated would be for cause. Here we have offered a few languages to improve upon when an employer otherwise may terminate for cause. You will see some immediate ones that make sense, generally termination for cause happens when you die or you become disabled and often there is a definition of what it means to become disabled. If you lose your license or you have an action taken against you that would prevent you from doing the services that they believe they hired you to do. Those are pretty immediate. The other type generally is a material breach. That would be conduct that makes the practice look bad, a violation of the practice's policies. If you have an attorney review, they will push to say continued violation or knowingly and willfully violating the policy so it is not a surprise so someone cannot just come back and say you violated section 2 B of the employee handbook and therefore we are firing you. Those are things that you want to think through. Almost all circumstances if there is a termination for cause or your employer says we are terminating for cause, you want to be clear on did you have appropriate notice, did they follow what the contract said and have you had an opportunity to cure and who is the arbitrator of whether or not that it was cured and what does that mean. I like to focus on this because it is the most important context and where people hang up. We will move to this later. When you terminate and when it's over, one key thing to know at that point is what conditions end when the contract ends and what continues on beyond the life of the contract after a period of time. With that, I will pass it over to Doctor Rusher who will speak about one of the things in all employment agreements which is how you get paid and the benefits available to you.

Dr. Rusher:

Thank you. I will be the first to admit, when I got my first employment contract and the first page I went to was the salary, I wanted to know how much I was going to get paid. Learning over time and experience, it is important, but it is just one more important thing that you should consider when you are looking at your employment contract. I suspect that you will do the same thing when you get that employment contract. Let's talk about different compensation models. Much of my perspective tonight comes from helping to manage a 15 person pediatric practice of which I have been working for the last 24 years and helped to shape many employment contracts, not just here, but for other folks in town.

Salary only is a compensation model that most residents who are just entering into their first year of practice will probably see. There will be a set amount of how much money you will make that year and it is a firm amount and something that you should negotiate based on your location in the state for what the going benefit is. Production compensation is typically something that is discussed after you have had a couple of years of experience and you are seeing many more patients during the day then you would after starting and finishing residency. A common example would be, compensation model where 25% of what you get paid is the same amount that is paid to everybody else in the practice, kind of like a monthly draw and then the 75% of what you get paid would be based on productivity and that takes a compensation model looking at how much money you generate by seeing patients throughout the year. And then usually those production bonuses are often given quarterly as the employer looks at how much revenue was generated over the previous quarter and plug in that appropriate amount for productivity in that particular year.

It is important when you are thinking about any type of compensation to make sure you understand the taxable obligation if you are a first-time employee, you have a salary, almost always you will have a withholding where FICA and Social Security are already withdrawn. You may face a situation where you might get a bonus or a productivity amount that may not have withholding. You may need

to realize that is income for which you should set aside taxable dollars. Uncle Sam will consider that income and expect their share when you are ready to file your tax return.

One other tax hint, if you have a situation where your employer is going to help pay off your school or residency debt, for example, two or three year model where if you stay for a certain period of time, the practice or employer will pay off a portion of your indebtedness, remember, that money, even though it does not go to you, it might go towards your loan officer, it is considered taxable income to you when you are filing tax for that year.

Benefits. The first thing I wrote on this is go back to the very first slide. That is: get everything in writing. There are a lot of issues here about benefits and you need to have them spelled out. It may not be in the hard contract that you signed. Many employers will use addendums or exhibits which are a little more flexible when you try to shape a benefit package for an individual. Benefits that are important to all of us are of course, expectation for time off, how many weeks per year might you have paid time. Who is going to pay for association dues, continuing education, license renewals. Many of these are negotiated as part of a compensation package. There may be an opportunity to receive a moving bonus or signing bonus, depending upon your location in the state and the demand for your services. Group health insurance, disability insurance and often life term insurance are standard benefits that are given to first-time employees. It is important to realize that those are adding individuals to group plans that are set up by your employer.

401k is a wonderful savings device. Recognize that most 401k plans have a minimum requirement of working for a certain period of time before you are allowed to participate. It is about a year of employment before you can join. Make sure you understand that and realize that there is prerequisite time in the office before you have the benefit of joining a 401k plan.

Different types of insurance. I mentioned group health, disability, and life. These are other insurances that you need to be thinking about. You will have to think about as you are negotiating your employment contract. The first is malpractice coverage. I would suspect that most always, the employer is going to pay for malpractice insurance. The way that most of the malpractice carriers, they will start you at a premium for which her employer will pay and have an escalating premium probably for the first three or four years. That is because you are at greater risk for malpractice payouts if they have to get involved with the more people you see. The more experience you have, the more encounters you have, the more risk you are and therefore the premiums increase.

Usually after a four or five year period, your premium for which the employer is paying will probably be at the level of your senior partner who has, at that point, at least in the eyes of the policy carrier about the same risk.

Another important insurance coverage is called tail coverage. This can be somewhat confusing, I will try to make it as simple as possible. First of all, most insurance coverage for malpractice provides coverage for liability arises while you are at the practice and covers for a claim that is made for any acts while you are there. The claims made are the important part of that statement. If you happen to say after two years, it is time to move on to another practice, you will be asked to purchase a tail coverage policy. What that covers are claims that are made, that happened during your time to work there but you have already left the firm. Think of the tail coverage as you are covering your tail as you leave that practice. Of course employers have incentive to have that in place so if they are faced with a claim, that could take place as much as three years after you leave, that there is malpractice coverage in place. It is a separate purchase of insurance that you need to negotiate with your employer if you do leave. Who pays for the tail coverage? I can give you an example. Usually there is an escalated payment schedule based on time at that practice. If you leave within zero to 12 months of employment you will probably be responsible for paying all of the tail coverage. For example if you leave between 12 and 24 months of work, you might be responsible for 50% of that coverage premium. If you have been there for a full two years, often the employer will pay 100% of that tail coverage. That is something you can negotiate, but you should be aware of it ahead of time.

Shawn:

It really is something that comes up every time. I always say the employer will need it either way so why not just cover it for a short period of time. As times get tough and practices are looking for ways to have less risk, it has come back. One way that you can negotiate on this is sometimes you can tie it to who creates the departure. If they voluntarily terminate without cause, maybe they carry it. But maybe if they terminate because of cause, then you carry it. Those are things you want to consider. I like the example of it depends in the arrangement. This is one of the issues that seems to come up almost every time I'm looking at an employment agreement.

Dr. Rusher:

Physician duties. These will be listed in your employment contract as well as employer duties. We will talk about that in the next slide. Some common provisions that you want to work out and make sure they are in writing and that both parties agree upon. Number one, work schedule. For example are you expected to work for out of every five day work week? How many weekends and evening calls and evening clinics are you expected to work? How are the holidays determined? These are all things that should be in writing and understood by both parties before you sign. Call coverage can go across the board. I can tell you that our practice will set a call schedule in September or October for the next year as we are planning vacations and trying to realize who is going to be on call for the following whole 12 months. It is something that you need to look into and make sure that everyone understands how those obligations are made. Many practices have multiple offices. Make sure you understand that you will be expected to go to whatever office you are in most needed. That is something that you should figure out up front as to what that expectation is.

Nonclinical duties. Of course with the increased use of nurse practitioners, PAs, other licensed professionals, employees of the employer, who might need a mentor and the physician who is being hired will probably be asked expected to assist or will be expected to assist and render assistance for those mid-levels and often be the sign-off for those services. Many of you will want to do volunteer work. This is often fine. You just need to make sure that the provisions allow you to do that. Often you may have to get approval. It is reasonable to make sure the language spells out in detail about fees, billing arrangements, and you may have to get separate malpractice insurance if you decide to volunteer outside of practice obligation.

Employer duties are going to be listed in the employer contract. We talked about compensation, I think there is a good statement there about kind of a broad corporation will provide space and provide support and other things that are necessary for billing and other ways to perform their duties. It will be vague language, it will not be the corner office with their own secretary, but there will be information that will provide you with the support that you need to be effective in their practice. I think I will turn it back over to Shawn .

Shawn:

When we spoke earlier, it is even more complex that you are a licensed individual. When you are looking at these physician duties and employer duties, you want to make sure there is nothing in the contract language that will interfere with your medical judgment. You will often see that nothing is intended to be the service of practice of medicine by the employer because your licensing board expects you to use your knowledge on how you are delivering care to patients. There's also a question on if you leave, how does that relationship get interrupted-- is that the practice patient, your patient? You will find the language of the medical board that supports that the patient should have the right of choice and you really should not agree to things that will interfere with their choice or limit their choice.

Breach of duties. Let's say you have obligations, they have obligations, what happens if one person is not performing under the obligation? Unlike what would be considered common knowledge, if a contract is breached, the nonbreaching party is not released of its responsibilities. The nonbreaching

party has every obligation to perform the contract. There are small circumstances where you say it is an anticipatory breach and the other party has said there is no way they would be able to fulfill their obligation-- and that may give you an out. Otherwise, you are really responsible to do your side and they're responsible for their side. If there is a breach, you go to the terms of the contract and say what can be done because of this breach? Typically you have to give notice and the result may be that you can leave and you are out of the contract. What does it mean if you leave for cause or if you leave on your own without cause for further restrictions? There could be involuntary termination. There could be penalties associated with it. A good example during the Covid pandemic is that some practices were short on resources but there were contracts with physicians that had guaranteed salaries. The practice to fulfill its right had to pay that employee. There were a number of practices that tried to renegotiate those terms and sometimes they were successful and other times they were stuck with that amount. If there was a breach all the physician could get was the dollars owed to them for that service.

You will see two more terms that come up. Just because one party breaches does not mean the contract is over. The concept of waiver means you don't have to enforce a breach and you don't have to step in and assert your right and neither does the other party. The term force majeure, it is not in every contract but you will see more and more, it can temporarily limit one party from having to fulfill its obligation, or both parties in some circumstances. Is what we call an act of God or other things that are spelled what it is that prohibits them or limits them from being able to perform their obligation. Why we are saying that more and more is because of the pandemic. You found yourself in a circumstance where one side really could not perform. If they had this clause within the contract, the law would give them a reprieve for a period of time. If it wasn't in there, they really did not have an out. The force majeure clause also needs to be detailed, we will see a lot of them moving and adding this language of national pandemic or government actions that limit travel. That is what happens in a breach. I get a lot of calls that say they did not do A, B, C, am I free? No. You still have to follow your responsibilities but here is what you can do. The key is to have better communication and clear communication and expectations because it is hard to litigate. It is not fun to litigate for anyone, employer or employee. But, an employee coming up with resources to litigate a matter, it really takes a lot of resources and often the practice or the employer has greater resources than you. And so, a lot of unjustifiable breaches go forward. That is what they tell you about life. Physician restriction. This is probably a key thing that you need to know. What, by signing this agreement limits you now and in the future. As Doctor Rusher pointed out, there are often restrictions that you'll be dealing with as you're employed as a physician. This could include moonlighting, you cannot practice your craft elsewhere even outside of work hours. If you want to do volunteer work, you probably need to spell that out and get that permission to avoid being in violation of this kind of limitation.

Dr. Rusher:

Sorry to interrupt, would you please do the next slide. Thank you.

Shawn:

Sorry. Here's a good example of language that you will see that speaks to that type of restriction. Also with pandemic and other things, you want to be mindful of ways that they may limit your life outside of work hours. They can limit who employs you and what services. We are seeing more and more where they may try to limit quarantine status, what do you do outside of work hours and is it allowed? You will want to look to the contract to see if they have the rights to limit you. More so what I focus on, again, prior to you signing the agreement, what are your limitations after the agreement. These are things that happen after you are terminated. You will see things, non solicitation of patients or other employees, that is fairly common and very easy to meet. Protecting

the confidentiality of the practice. That is also well within your control. Ensuring that you closeout medical records and doing the right thing on your way out. All within your professional obligation. The next one tugs at me the most. That is the restrictive covenant of noncompetition. A noncompete physician, we will go to the next slide to keep this moving. We are coming up on our last few minutes. These are enforceable within the state. They are not limitless. But courts have determined that an employer can limit where a physician delivers services as consideration for employment in the first place. Some states don't allow this, I generally say they are frowned upon by the courts because judges are attorneys and in my profession they are prohibited. Our occupational board does not allow-- says they are unethical to impede between the attorney-client where the Medical Board of North Carolina does not have such limitation. The courts do have some limits. This kind of came around based on people arguing with it. When I get them, you generally cannot successfully say you have a noncompete, I am not signing it. That generally does not work. There are some ways to work around. There are some ways to create a cost share that will balance the employer's risk in bringing you on and not limit your right to freely practice medicine once you leave. I did not include the sample language. Forgive me.

This is kind of the framework of what you will see. They are enforceable. They are generally limited in duration. They cannot go on forever. Usually it is a year after employment, sometimes less, sometimes they will ask for more. It is limited in geographics, it cannot be across the United States. In our state it cannot be across North Carolina. Usually you will see a mile radius status, 15 miles from the practice or 15 miles from any practice and that is something you want to keep an eye on. When it says a distance, that is how the crow flies. It is not what you would punch in on your MapQuest and say where I want to go work is 20 miles from here based on taking Highway 40 through Durham. It really is a radius, you put a dot, you go out 20 miles and everything in that circle would be prohibited. The courts have said how much of it geographic scope and it depends on the circumstance.

Finally, like all contract law, it has to be supported by consideration. You have to have agreed and got something back in return, which can just be the job offer. And it cannot violate public policy. Here is where attorneys, and if you look at the case law of recent, is the limitation where we are in the pandemic or really in the state with health provider shortage where there are federal designation of shortage areas. Is it in the best interest of public policy to enforce these contracts? At least to certain specialties, the courts have come back and said no. It can be a violation of public policy and therefore it is not enforceable regardless of the reasonableness of duration or scope. For a short period of time you would see a lot of contracts offer a cost share provision where the contractor or the writer realizes to avoid this getting thrown out and avoid the public policy argument they can put a dollar amount that says, if there is a violation, you do not have to support it. You can practice medicine however you want, however you agreed in advance to pay this amount. The courts generally enforce that. Again, these are things, when you read your contract, if your counsel says this is enforceable, that can give you some pause on whether you should enter into it. I have been in a recent case where it is really hard even if it is unenforceable to convince the employer that it is. You have to be prepared to litigate. Everything you do with an attorney, no matter what you are doing, should be to avoid litigation and get to a reasonable resolution. Understand your agreement, understand your rights, and understand the cost benefit risk of taking action. If there's something in the contract that is not reasonable it does not mean you should not sign it, you just should know what it is.

I think we have one more slide. What does it mean when you become a partner? Doctor Rusher is a partner and he will speak a little bit more on how your role completely changes. Note an employment agreement, as a partner you may not have an agreement at all. I argue that you should have a shareholder agreement. This is for the benefit of the practice. What do you do if you need to terminate a relationship if you are an owner and an employee. How do you work for yourself and fire yourself? With that I will hand it over to Doctor Rusher to get more detail.

Dr. Rusher:

Thank you, Shawn. The shareholder physician agreement or partnership agreement kind of varies across many private practices. Of course, that is from my perspective. If you are negotiating and your employer is an institution, this is not going to quite fit. For example, if you had been a private practice for three or four years, there may be an opportunity to become an owner of that practice. Use of this will be spelled out in your initial employment contract if there is a “partnership track” of time served before you would be considered an owner. The important point to make about this because you may have a transfer situation where you have worked before and you might be coming in as a new partner. Most partnerships are going to have some sort of buy-in whether that buy-in is time, number of years worked there, or sometimes there is a cash payment to the remaining partners to join that partnership.

Once you join the partnership, it sounds wonderful and it is exciting. All of a sudden you are also sharing profits and losses. As you can imagine over the last couple of years, including 2020, it may not be a profitable year. Sometimes you just need to think ahead. Partnership can be a wonderful thing and it can also be a financial thing. If you have to pony up to keep your practice moving. Ending the partnership can be complicated. I think it is something that you will need legal help. Many practices across the state may own their own building and entry into the partnership is often dependent on the buy-in of the building. Make sure that you are clear. Other practices who are leasing, that becomes a partnership expense and don't have to worry much about it.

I think that is all we have, I wanted to move on and give time for questions and answers. I think Tom is going to help moderate that.

Tom:

Thank you, John and thank you, Shawn. That was a great, clear framework of employment agreement. Thank you so much for how you presented that. We have some great questions in the chat. This is a time for folks to put their questions in there for Shawn and John. While we are doing that, a quick public service announcement for those of you who work in independent practice is a reminder about the financial recovery program. This is funding appropriated by the General Assembly for North Carolina independent practices expressing economic distress due to the pandemic. This is for Covid related expenses incurred between March 1 and November 30. The key saying is that the deadline to apply is coming up on November 30 and that is why we are talking about it tonight. All of the information on the program will be in the slides. The slide set will be up on the NC AHEC website.

There is a definition of what an independent practice means to be eligible.

There is a description of what eligible expenses are. One piece of advice that we have gotten from our Medical Society colleagues, if you are not sure about whether something meets the criteria, put the question to them, or put it in the application anyway so that they can work with you on that.

Here is the application portal and the reminder of the deadline and the help desk email if you have questions please reach out to them and remember this opportunity ends November 30. That was sort of a public service announcement but I wanted to get that in there.

We have some great questions here. This is one I was wondering about. **For those who are looking at academic or hospital employed positions which are fairly generic agreements, how much negotiation is reasonable? Is it worth having a contract lawyer review these agreements? I think this is asking you about your experience and what folks can expect.**

Shawn:

You are correct, not only are they fairly generic and the hospital counsel does not like to revise that much. There is room for negotiation. It is worth it to have a contract lawyer at least initially so that you can understand what you are agreeing to, if you deal with a healthcare attorney or someone who

does this work regularly, you will get the resolution quicker because there is a good chance that that attorney has seen these type of agreements before and understands what that employer may expect or what they do not expect to change and that can benefit you. I think it is worth the early dollars to understand, and as well, it can get you to a resolution quickly so that you can know what they would do.

Dr. Rusher:

Just one piece of advice. Regardless of where you practice in the state, hire an attorney that has local experience and does not have a conflict with the institution that might be your employer. Sometimes that is harder in the rural areas. That is important because local standards of employment can have a bearing in different parts of the state. It is good to have an attorney that understands that.

Tom:

Good advice.

A couple of questions about the whole area of compensation. Around 401k match, is there typically a 401k match by independent practice employers versus just an employee only contribution? What is your experience on that?

Dr. Rusher:

I think over the last decade where things have been moving pretty well economically, many practices do offer a match. Again, there may be a time requirement before you would qualify for that. That is very individualistic among practices. It probably also ties into how they treat their other employees. You want one administrator administering the 401k plan for the whole practice. Some of that would depend on the size of the practice and the financial wherewithal to do the match.

Tom:

That makes sense. Shawn, anything to add?

Shawn:

Nothing to add.

Tom:

There is a good question here around productivity compensation models. Are these based purely on receipts or purely on RBUs typically? And part two is, are you seeing on the compensation models including performance with quality measures or administrative responsibilities and what about staff and patient satisfaction scores?

Dr. Rusher:

All good questions. Simply said, productivity issues are receipts. The quality measures that many of the third-party payers are using is going to be more of a whole practice type financial incentive as opposed to individuals within that practice. It is a little bit of a broader perspective of receiving money from quality care or MCO's because of meeting those quality standards. Go ahead, Shawn.

Shawn:

While it is on the upside only, I think it is broader that way, I'm interested to see how this changes when it becomes a downside risk. As Doctor Rusher said before, usually only the partners are the one subject to risk. You get the benefit of the growth but you also risk the losses. I see more and more where contracts are adjusted based on losses. It will be interesting to those compensation models. One thing that I also advise on is be sure that you recognize over the years that the compensation model varies. In year one or year two, where the model changes where you do go at

risk or you can withhold more than your guarantee. Finally, I always wanted to know how did they calculate it and to the best you can, how many of these are within your control as a physician versus in control of others. That is what you want to be sure of.

Tom:

Great. There is an interesting complex question around Covid. **I think it is related to perhaps a clinician that was impacted, maybe had to go into quarantine due to Covid exposure or contact. With the stay-at-home orders and quarantine restrictions, what is the typical language of out of practice behavior requirements? Is there a way to limit negotiation with the extent of a contract's typical wording. For instance, if a contract segment about unprofessional conduct is incredibly vague, how do you protect against innocence where an employer says that living with someone infected with Covid reaches conduct requirements?**

Shawn:

That is a good question. It goes back to that early part when they are limiting what are your requirements-- you want to be clear. What an attorney can do for you or what you can do on your own is get that clarity before you sign it. One other thing where you may not be able to get direct clarity because you cannot spell out every possible scenario, determine if there is a due process opportunity. Who makes the decision that you have violated or your action was unprofessional conduct. Many arrangements you want to know through the organizational bylaws that you have a right to say I don't believe it was unprofessional conduct or this was the reason for that behavior. I think the key is not to allow vague language where an employer can take adverse action against you. And whatever that action is fits within a reasonable reading. Clarity is best. Doctor Rusher, how do you handle this in your practice?

Dr. Rusher:

Things have been turned upside down this past year because of Covid and an example is given in the question. I think when these types of issues come up, if they have not been specifically addressed, many of them will not be because the practice parameters are changing, we have an executive committee within our own practice that looks at all of the arguments on either side and tries to come up with a solution. If that means having renegotiation or other rendering with that particular employee, that is how it is handled. Specifically, compensating or not compensating for something that is alleged has to work out with the employer's executive committee or managing partner to make that decision.

Shawn:

This is entirely a different presentation but be mindful of social media. A picture of you having pizza in a full bar during this time without a mask is troubling for the profession as well as the employer. Things like that. You are held to a higher standard as a licensee and my guess is your employer is going to insert that same concern and consideration.

Tom:

I think we have a last question. I have to ask this one. **How often are you seeing positions take salary cuts or negotiating to have a personal medical scribe?**

Shawn:

I know Doctor Rusher's scenario. In April in and March, that was the crux of my work on both sides where guaranteed payments were going to be difficult to maintain based on the practices that were operating at 50% or even less in some circumstances. That output was hard, I think with some of the government programs, PPP, it kind of offset the need where employers could honor their

contracts. That did not keep many of them from forcing amendments on the contract and forcing changes in pay. Again you have to balance what does the context say, they have to hold to it. If they want to turn it in in 30 days what does that mean for you? I did see a lot of salary cuts. I think a lot of reports said that earnings were down, perhaps some of these federal programs including some of the things that the Med Society are offering can try to keep the employees as whole as possible and I understand that was your intent, Dr. Rusher.

Dr. Rusher:

I think we made the choice to not let anybody go. That meant, of course, partners and employees. They took either time if they were hourly or pay cuts to keep the doors open. Again, I am in primary care and our most important goal was, of course to, survive financially, but also be available and to serve our patients as much as we had in the past.

Shawn:

I never had an opportunity to negotiate to get a personal scribe. During Covid, when there was a reduction we were able to negotiate childcare services reimbursed, things like that. You always have the right to ask and they have the right to determine what's in their interest and how important it is for you to start working at a certain time and if you are the one to work for that company. That would be a new one though. I think interesting enough making sure that you have it written on how it would improve your utility, it is worthwhile.

Tom:

It is little after seven. We still have some great questions. We will try to figure out how to save those and see if we can get some responses back. I really wanted to thank you both for such a great presentation. I think this one is durable. It will be a great go to for folks in the future. The recording will be there as well. Thank you so much for your time. I wanted to thank all of the participants who came out on a Tuesday evening and came together for this webinar. And thank you for all the work that you are doing out there. Employment contracts on top of Covid and everything else we are navigating. Thank you for all the work you are doing. John and Shawn, any last words?

Shawn:

I just want to say thank you for being here. I hope it was helpful and thank you for what you are doing in healthcare and hopefully we can partner to make your life a little easier and you can spend more time doing the things you want to do.

Dr. Rusher:

Take care of yourself during this crazy time.

Tom:

Very well said. Thank you. Have a wonderful evening.

[Event Concluded]