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Navigating Coronavirus Series

Tonight: Employment Contracts

October 27, 2020

This series brought to you by



Today's Emcees

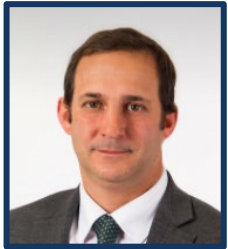


- **Hugh Tilson, JD**, director of the North Carolina Area Health Education Centers (NC AHEC) Program



- **Tom Wroth, M.D., MPH**, president and CEO of Community Care of North Carolina (CCNC)

Today's Presenters



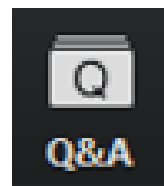
- **Shawn Parker, JD**, attorney, Smith Anderson



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

Logistics for today's COVID-19 Forum

Question during the live webinar



Technical assistance

technicalassistanceCOVID19@gmail.com

<https://www.communitycarenc.org/newsroom/coronavirus-covid-19-information>

What is an Employment Contract?

- Agreement between physician/employee and hospital or private practice/employer
 - All terms in writing: avoid any oral agreements



Anatomy of the Employment Agreement

Key terms

- Parties
- Term and termination of relationship
- Compensation and benefits
 - Insurance coverage, PTO
- Duties, Obligations, Representations
 - Yours, mine, ours
 - Breach of duties, recourse available
- Restrictions – during and after the term
- Partnership

Preliminary Process Considerations

- Contract review
 - Rapport does not replace reading
 - Look for overly subjective contract language
- Pre-contract negotiations
 - Maximum leverage is during recruitment process
 - “Is this the same as in your contract?”
 - Some opportunities will be take it or leave it
- Counter-offer/agreement mark-up
 - Pick your key points
 - Counter with something fair to both sides
- Legal counsel involvement?

Term and Termination

- Effective Date vs. Start Date
- Duration - 1, 2 or more years?
- Auto-renew (“evergreen”) clause?
 - *Physician’s employment pursuant to this Agreement shall begin on January 1, 2021 (the “Commencement Date”), and shall end one (1) year from the Commencement Date, unless earlier terminated as provided herein. Thereafter, this Agreement shall automatically renew for additional one (1) year terms, unless earlier terminated as provided herein (the initial term and all such renewal terms collectively referred to as the “Term”).*

Term and Termination

- Termination for Cause
 - Death, disability, loss of license, medical staff privileges, Medicare/Medicaid participation, criminal conviction
 - Unprofessional conduct; [knowing and willful] violation of policies, procedures, rules [which cause material harm to the Medical Group]
 - Unsatisfactory performance, negligence “as determined by the Medical Group in its [sole discretion] [reasonable discretion]” or “as reasonably determined by the Medical Group”
- Notice and right to cure?
- Termination for Convenience
 - **Either Party** may terminate this Agreement without cause at any time upon thirty (30) days’ written notice to the other Party.

Compensation and Benefits

- Common compensation models
 - Salary only
 - Production
 - Salary plus production bonus
 - Forgiveness of indebtedness



Compensation and Benefits

- Benefits
 - Paid time off
 - Dues/CME/License Renewal
 - Moving expenses/signing bonus
 - Group health, disability, life
 - 401(k)



Insurance

Malpractice

- Coverage limits
 - Increase premiums for 3-4 years
- Tail Coverage
 - Claims made
 - Liability coverage if claim made after physician leaves
 - Separate purchase
 - Who pays? (Depends?)



Physician Duties

Common provisions:

- Work schedule
- Call coverage
- Practice location
- Policies, procedure compliance
- Non-clinical duties

Physician shall supervise any technical or clinical employees of Employer or its affiliates who assist Physician in rendering medical services to patients.

- Volunteer work



Employer Duties

- Compensation
- Space available, professional support

“The Corporation shall provide for the use of Employee office space, equipment, nursing, technical, secretarial and clerical assistance and such other facilities, services and supplies as, reasonably necessary for Employee to perform the duties required of her hereunder in an efficient and professional manner. “



Breach of Duties

- Voluntary resignation
- Involuntary termination
 - Grounds/cause
 - Without cause
- Waiver
- Force Majeure
- Notice



Physician Restrictions

- During the Term
 - ... Physician shall devote Physician's full, entire, and undivided professional time and attention to the practice of anesthesiology with Medical Group and shall not engage in the practice of medicine (as an employee or otherwise) or in any other gainful occupation or activities which require Physician's personal attention outside of the scope of Physician's employment with Medical Group [without the prior written consent of Medical Group][which shall not be unreasonably withheld].
- Post-termination covenants
 - Non-solicitation of patients; Confidentiality; Medical Records
 - **Non-competition**
- Medical records/confidentiality

Physician Non-compete

- Enforceable in North Carolina
 - State laws differ
- Work around/penalties
- Sample language



Physician Non-compete

- Restricts physician's ability to practice medicine in a defined geographic area for a specified period of time
- Key issues: Duration, Geographic Scope, and Public Policy



Partnership

- Shareholder physician agreement
- Buy-in→ Profits + Losses Share
- Ending partnership
- Building buy/sell



COVID-19 Financial Recovery Program

Tom Wroth

COVID-19 Financial Recovery Program

- Funding appropriated by NC General Assembly to assist North Carolina independent practices experiencing economic distress due to the pandemic.
- Administered by the North Carolina Medical Society Foundation (NCMSF), Franklin Walker overseeing.
- Funding based on COVID-19-related expenses incurred between March 1 and Nov. 30, 2020.
- Deadline to apply is **Nov. 30, 2020**

COVID-19 Financial Recovery Program

- Funding aimed at *independent* practices, defined as ALL of the following being true for your practice:
 - Organized in accordance with North Carolina General Statutes Chapter 55B and registered with the North Carolina Medical Board as a professional corporation or professional limited liability company with the purpose of practicing medicine.
 - Currently provides or contracts for professional medical services.
 - Not owned, managed or otherwise controlled by an entity defined in G.S. 131E-76(3), such as a health system.
 - Not managed by a practice management company unless the practice management company is majority owned by North Carolina licensed physicians.

COVID-19 Financial Recovery Program

- Eligible expenses include, but are not limited to:
 - Telehealth equipment costs, e.g., computers, cameras, hotspots, etc.
 - Rent/mortgage/utilities expense during shutdown. (Office MUST be closed or have been closed in order to claim this expense.)
 - Infection control costs (PPE, thermometers, cleaning/ disinfecting/ sanitizing costs, etc.).
 - Renovations/cost to accommodate social distancing or improving ventilation (plexiglass installation, HVAC updates, HEPA filters, etc.).
 - Documentation for these expenses include W9s, receipts and invoices to verify expenditures.
- Expenses NOT eligible include:
 - Flu/pneumonia vaccines previously budgeted for this year
 - Revenue replacement funds

COVID-19 Financial Recovery Program

- Deadline to apply is **Nov. 30, 2020**
- Apply here: <https://frp.ncmedsoc.org/> and have the following info at hand:
 - Practice and Provider NPIs. *Note: Enter your NPI info and a password will be created for you*
 - Receipts/Invoices of allowable expenses
 - Bank account information
- Questions regarding the Financial Recovery Program should be directed to FRPNCMS@ncmedsoc.org.

Questions?

