



Contract Terms to Know

Part I in a Series

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Every practice, as a matter of course, enters into written agreements. These documents, whether referred to as contracts, agreements, memoranda of understanding, letters of agreement or letters of intent, memorialize the terms and conditions under which the parties agree to conduct business. Sometimes a medical practice has no choice but to sign what is put in front of it; other times there is room to negotiate. Either way, it is important to review and understand whatever documents you are asked to sign, even if the terms are non-negotiable. Even though contract terms may vary greatly depending on the nature of the deal, the questions you should ask before signing are surprisingly similar. In every case, it is critical to understand what your practice is getting into and how it can get out.

While, of course, it is best to have your legal counsel review all agreements before you sign them, several types tend to be more problematic. Hence, it is most critical that you consult your counsel before entering into agreements involving real property or major equipment purchases, third-party payer agreements and agreements with a referral source or


referral recipient. The compliance issues and ramifications to the practice of these types of contracts can be significant. This month's article is Part I of a series that provides a very basic overview of common contract provisions you need to understand in any proposed contract.

1. Parties — Each contract should identify the parties to the agreement. This is typically done in the first paragraph. Carefully review the names of the stated parties. Has your practice been correctly identified by its legal name? Is the contract with you as an individual? If you are the named party, then you individually, not the practice, are obligated under the contract. Is the other party correctly identified? If you don't recognize the stated name of the other party, ask your contact on the other side. It is critically important to know the exact person or entity you are contracting with since, in most cases, only the specific parties identified in the written agreement will be responsible.


2. Term — The term of the agreement is generally its lifespan and must be calculated from the date on which the agreement starts. While the agreement may become effective upon signing, you need to know whether services start then or on a different "commencement date." Also, if there is a stated "commencement date," is it acceptable? How long will the agreement last? Is it for a definitive term, such as three years, with a defined expiration date or does the agreement continue until one party terminates it? How does termination occur? Does it automatically renew for one or more terms after the initial expiration date? How can either party avoid the renewal? Is the agreement an "evergreen" agreement, one that automatically renews or has no set expiration date? In these agreements, there is usually a provision explaining how and when to give notice to terminate the agreement. Understanding such a provision can be crucial, because if the notice period is missed, the agreement continues on — sometimes for a considerable number of years.

3. Termination — Almost every agreement contains a provision explaining how it can be terminated before its natural expiration. Some agreements can be terminated if one of the parties materially breaches a term. Other agreements contain a "no-cause" termination provision, whereby one or both parties can terminate by simply giving notice that they intend to do so, irrespective of any wrongdoing. No-cause termination provisions can be good and bad, depending upon the circumstances. If the agreement involves a critical good or service without which the practice cannot operate, you may not want a no-cause termination provision. If the other side insists, you might want to ask for a sufficient notice period so that you can reasonably secure an alternative provider. On the other hand, if your practice doesn't want a binding, long-term relationship and would prefer an easy exit strategy, a no-cause termination provision can be valuable.

4. Scope of Goods and Services — Contracts should have several sections explaining what each party has agreed to do. These provisions are very important. Be sure the descriptions of what your practice and the other party must do are complete, unambiguous and accurate. This



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includes making sure that any terms that could be interpreted in different ways are clearly defined. Asking the other party, "What do you mean by that?" and then tailoring the language accordingly is a good approach. This raises another important issue — the role of oral representations made during negotiations. Many agreements contain a "merger" clause, which states that the written agreement "contains the entire understanding of the parties." This means that statements, whether oral or written, or other documents that are not either attached to or referenced in the agreement itself cannot be relied on in the event of a dispute to explain what the parties meant. The words of the agreement itself are all that can be consulted to understand the parties' intent. For example, a salesperson's e-mail stating "Monitors are included in the price" may be irrelevant if the written agreement has a merger clause and does not contain a similar written statement. If a particular representation or assurance is critical to the practice, you should request that it be included in the final written agreement.

5. Price and Payment — The agreement should specify how much each party will charge and/or pay for goods or services. While this term is often simple and obvious in the agreement, surprisingly, this language can sometimes be very ambiguous or absent altogether. In addition to basic price information, related details should be provided. Will the price increase over time? If so, is there a cap or other limit on the increase? Are there charges, fees, surcharges or penalties that can be added to the price? Do other items, such as after-hours service, replacement parts,

delivery charges, service calls or insurance, cost extra? If the practice is supplying goods or services to the other party, what is the rate and will it change over time?

Part I has merely presented an overview of various contract terms and issues to which a party to a written agreement should be alert. Part II will explore additional contract terms and issues. This series is not an exhaustive treatise on contract negotiation or interpretation. Every agreement is unique and must be evaluated — sometimes with professional assistance — on its own. While it is tempting to indulge the impulse to skip over the "legalese" and fine print, you do so at your own peril. Written and signed documents govern a practice's relationship with business partners and require serious attention.

See Part II coming in June's issue of M.D. News for other contract terms and issues to keep in mind.

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