

# So you're an employed physician: What you ought to know

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Despite the fact that employment now rivals ownership as a leading practice arrangement among doctors, physician contracts are being terminated—or not renewed—with more frequency than ever before.

Much of that is physicians choosing to leave. One-fourth of physicians quit within the first three years working in a practice, according to data provided by the health care-recruiting firm Cejka Search.

An education session at the 2017 AMA Annual Meeting in Chicago, led by lawyer Richard Levenstein detailed this trend and how physicians can protect their interests in contract negotiations.

“The more you do on the front end, the better off you are on the tail end. That’s why negotiating a contract is so important from the beginning,” said Levenstein, a partner at Kramer, Sopko & Levenstein who has been representing physicians in Florida for two decades.

Per Levenstein’s presentation, contracts are generally terminated in two ways.

The first is **termination without cause**. This method is generally the least complicated form of termination. It can be utilized by either the physician-employee or the employer. It could be that an employer cannot afford to keep a physician or that a physician is opting to go into private practice.

The second is **termination for cause**. This type of termination typically means an employee or employer did not uphold their portion of the contract. It could involve a promise made by the employer in the verbiage of the contract—such as an assurance of partnership after a specified time frame—that is not upheld. In the case of the employee, something as simple as missing a few shifts, could trigger a termination for cause, were it stipulated in the contract.

## What to do when a contract is terminated

The termination of a contract does not always signify the end of a physician's responsibilities and obligations. Doctors have both professional and financial obligations they may have to meet. These may include completing health records and billing statements. Financially, a physician may have to repay vacation days or other vested benefits.

If physicians don't understand the compensation formula, they could be in for a rude awakening upon termination of the contract.

"If there's a draw against productivity or any other formula other than straight salary, the physician may find himself or herself in a position that the employer takes a position that they are owed money because of a lack of productivity," Levenstein said.

There's also the matter of future employment.

"If you're terminated for cause, most employers ask why you left your prior employment," Levenstein said. "Most of the time, when a physician is terminated for cause, either there is a dispute between the physician and the practice or the practice isn't satisfied with the physician's performance.

"If the prior employer is contacted, depending on the type of reference they give, it sometimes can be problematic," he added. "A separation or termination agreement can be important because it will contain a non-disparagement clause."

## Understanding restrictive covenants

Restrictive covenants—in some instances referred to as non-compete clauses—are commonplace in physician contracts, even if they may not be fully enforceable. Often these will impact when and where a physician can practice, but they can be much more wide-reaching than those basic restrictions. When you are in the process of dealing with a restrictive covenant, you should speak with a lawyer who knows the law on non-compete clauses and how it typically plays out for physicians in a particular jurisdiction.

Levenstein said the following factors may affect the enforceability of restrictive covenants:

- | Are there legitimate business interests at stake?
- | Is the scope (time, geography) reasonable given market conditions?
- | Is there unreasonable restraint on physician's trade, creating undue hardship?
- | Is there a public interest at stake?
- | Who and what triggered the contract termination?
- | Is there a buy-out option?

One of the biggest mistakes physicians make, according to Levenstein, is failing to tie the non-compete covenant to the contract's termination provisions. "If the employer terminates without cause, then the covenant not to compete should not apply," he said. "And if the employee terminates for cause, the covenant should not apply."

## How to resolve a contract dispute

If a physician cannot reach an agreement with her employer upon the termination of a contract, some of the other options for resolution include:

- | Courtroom litigation: The legal process offers extensive rights and the option to appeal, but it is costly and time consuming.
- | Binding arbitration: A less expensive alternative to courtroom litigation, but the arbitrators decision is final, meaning there's no wiggle room for the losing party and no right to appeal.
- | Mediation: The cheapest option for dispute resolution, but it is not typically binding for all parties.

The AMA provides many resources to help physicians understand employment contracts, including a variety of model contracts e-books (free to AMA members).

The Association also offers its members detailed guidance on the different practice arrangements available to physicians. The newest resource (login required), "A guide to joining or aligning with a physician-led integrated health system," helps physicians determine whether this kind of setting is the right practice option for them. The guide covers types of physician-led integrated health systems; tips for assessing the performance of a system; checklists to help determine whether an integrated system is the right fit; and alignment options for independent or small practices.