

Physician contracting: Understanding letters of intent

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What is a letter of intent? And what types of things should be included in yours? ?

In an episode of the AMA's "Making the Rounds" podcast, AMA senior attorney Wes Cleveland discusses letters of intent and when should you retain an attorney during the contracting process.

Cleveland has been a practicing attorney for over 23 years and, prior to joining the AMA, worked for the Texas Attorney General and the Texas Medical Association and in private practice representing physicians. This episode is the second in a six-part series on navigating contract negotiations from start to finish.

Below is a lightly edited full transcript of his presentation. You can also listen to the full episode on Apple Podcasts, Google Play or Spotify and explore our Career Planning Resource.

Wes Cleveland: One of the things that has kept showing up is this notion of a letter of intent. So, what is that? Well, a letter of intent is an initial letter that an employer may give you that kind of sets the expectations that are going to apply during a negotiation process. Basically, the employer will give you this letter of intent just to make sure that you are on the same page with the employer.

What does it mean to be on the same page? Well, the letter of intent will cover main elements of employment, like how long the employment's going to be. Is it going to be for a year? The initial employment I'm talking about. Is initial employment going to be one year? Two years?

What's the compensation going to be? What are the benefits going to be? You know, the car, health insurance, employer paying for CME. When's the start date going to be? And also, what are your duties going to be? For example, are you going to be working full time? What does "full time" mean? What are your call responsibilities going to be and so forth?

Now, this is an important point. Hopefully, everything I'm saying at this presentation is important, but this is particularly important. Usually these letters of intent aren't binding, which means just what I've said. You aren't necessarily bound by these. In other words, if the compensation would say \$300,000

and you sign it, that doesn't mean that you have to accept \$300,000 and leave or not work there. It could possibly be later negotiated to \$350,000 or \$400,000 or whatever it is.

That's what it means to be non-binding. However, in some states, and under some circumstances, it could be binding. And then you would be locked in, let's say, to that \$300,000.

So, if you receive a letter of intent, I would recommend at that point having a lawyer look at that. Again, a lawyer who specializes in representing physicians in employment agreements. At that stage, I would, because it's an important document.

Usually what you'll also have in there is, even if it's not binding, there will be a provision in this letter of intent called a standstill agreement, which basically says, "During the time we're talking about you possibly working for us, you're not going to negotiate with anybody else." That's typical.

But here's the kind of caveat I want to bring up about the nonbinding nature of letters of intent. Even if the letter of intent is nonbinding, it doesn't necessarily hamstring you, but what it can do is it can create expectations on the part of the employer, let's say in terms of your compensation, that may make it more complicated for you to depart from later on in the negotiations.

For example, let's say you receive a letter of intent and the compensation is listed, again, let's just say \$300,000. And you sign it, and then later you get a lawyer, and you look it over, and you do some research on the internet. Maybe you have access to one of the big national compensation surveys. For example, the Medical Group Management Association (MGMA) publishes those surveys.

You say, "Now wait a second, that's a little bit low. That's lower than the median for this geographic area and for my specialty." You could go back in there. You're not prohibited from going back and saying, "You know, I think \$400,000 really is more appropriate and more fair market value for my services in this part of the country." And then the employer could say, "Yeah, but I thought we kind of, you know, understood it was going to be \$300,000."

It's not that you'll be bound by the \$300,000. That's just kind of the situation, in terms of the expectations. That's why I just say, in this space, even when you're talking about a letter of intent, I would at that point try to identify a lawyer that might be able to assist you even starting with this, with the letter of intent.

One thing I want to also emphasize to you—and this is a matter of contract law, regardless of the conversations you may have had, promises that have been made to you during a period of discussion, or negotiation—none of it's going to matter unless it's in the contract. If there are promises that were made to you and it sounds great and they don't make it in the contract, the employer's not going to be bound to that. It's got to be in the contract, so that's why it's important really to review it very carefully. But just keep that in mind, if it's not reduced to writing, then it's not going to be part of your

agreement.

Let's talk about fringe benefits. These are important.

Obviously, I think probably the most questions I receive during presentations to residents is about compensation and how do I know what fair compensation is.

When I get these questions about what's fair compensation for my specialty, a lot of residents will say, "What about the MGMA survey or maybe some other national survey? How can I get access to that information?"

Well, those things are pricey, because they take a lot of work to develop. It's several hundred dollars to get those, probably more. I don't know, it's been a while since I checked. But, what's important to know is that you probably won't want to spend money on those surveys. But it's very likely that the kind of attorney that you would want to engage to review your contract will have access to that survey data. So, that's another thing that I want you to be aware of.

Now, we go back to fringe benefits. Typically, you'll have a litany of fringe benefits that will include vacation, personal time off, use of the cellphone, often times a company car, life insurance, license fees, credentialing application fees and also CME. A lot of times one of the bigger items is continuing medical education, where you'll be given time off to go to the conferences that you think are important and to what extent will your employer fund your attendance, your travel expenses and the registration fees for attending those conferences. That's an important consideration often for residents.

And then one thing I also want to bring to your attention is disability insurance. For some specialties, if you're physically disabled, that's it. Let's say for example, surgery. So, if you are in a specialty where if you were physically disabled for a period of time, let's say a car accident or whatever, I would think very carefully in terms of getting as much disability insurance as you possibly can. That's a special note I want to make for you with that regard.

One other thing I want to mention about fringe benefits also is you may be interested in having flexible time, so be sure to ask that as well. And if you're asked to work full time, make sure that, in addition to knowing the location of where you're going to be working and so forth, make sure that you understand how full time is defined. Is it, depending on your specialty again, 8–5, Monday through Friday, or does it include weekends or evenings? Issues like that. Definitions in contracts are very important, so that's something you want to think about as well.

I am a lawyer, and have been representing physicians for most of my legal career. Now, I'm saying this not because I'm a lawyer. What I do recommend to you strongly is that when you receive an offer of employment, or even, like I said before, the letter of intent, what you should really do is think about

hiring an attorney with expertise in evaluating and negotiating physician employment agreements. And there's several reasons why I say this.

There are many lawyers, many types of lawyers, that have as many different legal specialties probably as there are medical specialties. Lawyers that focus on patents, intellectual property, bankruptcy and real estate. I will tell you that physician contracting issues really are, kind of, a world unto their own. There are requirements in those contracts because of fraud and abuse considerations that don't show up in regular commercial contracts, whether it be real estate or any other kind of contract, typical rental agreements, things like that. It's really important for you to find an attorney with expertise in these kinds of contracts.

Not only can you use that kind of attorney, though, for legal advice, but there's also some practical reasons why hiring a lawyer who specializes in physician employment agreements is important, especially for an attorney who has a lot of experience. That attorney will know the market. That attorney will also, oftentimes, know the potential employer and the culture of that potential employer, and it may save you some time and money in negotiations.

Your attorney may say, "Yeah, I know there's this restrictive covenant here, but I can tell you I have several clients that work for this organization and it's a matter of institutional policy. This employer simply does not negotiate its restrictive covenants, does not do much tweaking with its compensation arrangements." Things like that. And that's just good information to know up front because then you know that during negotiations if you're receiving a no, it's not that there's gamesmanship going on, it's just simply an honest explanation of the employer's institutional policy.

We've talked about evaluating an employer, like I said before, in terms of its culture. If your attorney has been in that market for quite a while, that attorney will have an idea, potentially, of what kind of reputation that employer has in the community. It's going to depend on the size of the community, of course, but your attorney might be a good resource for trying to get an idea about what the culture is like at that employer.

For example, the attorney might have other clients that currently work for the employer, and have worked there for many years, and say, "I have some clients there I've represented over the years. They're very satisfied with working at this employer, and it's a good place to work."

And then when it comes in terms of paying an attorney, there's different ways that you can arrange that. You can pay them hourly. You can also say, "Look, I've got \$5,000 that I'm willing to pay. I don't want you to go over that. Can you review the contract for me? Maybe give me some pointers on what I might negotiate, for \$5,000." If you want the attorney to negotiate for you, they might expect to have a little bit higher retainer.

But I think it's really important to retain an attorney with expertise in physician contracts. And I hate to wax cliché like this, but what you can think of your career so far is, like, you've started off on your own one-yard line and you've driven 99 yards down, and you're ready to score. You don't want to fumble the ball right at the end.

In some cases you may have a couple hundred thousand dollars in debt, maybe more. A little bit more to hire an attorney to help you perform an evaluation negotiation is going to be well, well, well worth the money. Now, one thing before I leave this issue. You may say, "Well, how am I going to find an attorney who specializes in this work?" And it's very easy to do. Just think about what's the state in which you'd be working if you accepted the employment. Let's say it's Arizona.

All you would need to do is call the Arizona Medical Association, talk to them, say, "What physician attorneys do you know in the state that you think well of?" And that medical association, who will work with these attorneys all the time because it's a particular specialty that they consult frequently on all kinds of physician issues, will know who these attorneys are and can readily recommend at least two or three for you. So, that's where I would start.

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