

**COLORADO MEDICAL SOCIETY/
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PHYSICIAN EMPLOYMENT AGREEMENT CHECKLIST

September 2018

Section	Title	Red Flag Summary	Reviewed?	Your Issues/Concerns
I	<u>Introduction/Recitations</u>	Be careful not to assume these introductory provisions are unimportant. Many times, obligations and representations may be included in the introduction section, and your failure to meet these obligations or representations may result in you breaching the contract.		
II	<u>Physician Representations/ Physician Qualifications</u>	Review the qualifications section carefully to ensure that any representations you have made regarding your experience, qualifications, and practice history (including any disciplinary action) are 100% accurate, as other provisions in the contract may provide that any misrepresentation of qualifications will result in termination of your employment. To the extent that qualifications are expected to be attained in the future, make sure that you feel comfortable that you will be able to meet the deadlines, as failure to do so may result in termination of your contract, as well.		
III	<u>Commitment to Employ</u>	Although frequently brief, these provisions should not be overlooked. Pay attention to the term of the contract and the arrangements for renewal. (<i>E.g.</i> , does the contract automatically renew on the same terms—including compensation—unless you provide notice, or does the contract end unless you provide notice?) Non-compliance with these terms can have significant consequences, including a termination of the contract, or a loss of the right to bind the employer to prior, more favorable terms.		

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IV	<u>Duties and/or Responsibilities</u>	Duties and responsibilities are critically important contract terms. You should fully understand these terms, but also be aware that the employer may have additional expectations for your employment that are set out in other relevant documents (e.g., medical staff bylaws, separate non-compete agreements, or an employee handbook). Additionally, the employer may have other expectations that are orally communicated, but are not put in writing; try to get these reduced to writing and made a part of any contract, if possible.		
V	<u>Standards of Care/ Standards of Practice</u>	Be sure you understand and can satisfy all the standards and obligations imposed on you in the contract, including any that are outlined in other documents that may be referenced, but not recited specifically, in the contract (e.g., medical staff bylaws, policies and procedures manuals, rules and regulations, employee handbooks). Failure to meet any of these obligations is ordinarily grounds for termination of your employment.		
VI	<u>Compensation</u>	It is very important to understand how your compensation will be calculated and what activities or events may result in an increase – or a decrease – in your compensation levels. You need to be comfortable that anticipated levels of compensation are adequate and appropriately calculated. You should also determine whether pay adjustments may be made due to increased seniority, training, experience, or credentials. Also, you should verify that you are provided with access to appropriate documentation to verify any production-based compensation.		

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VII	<u>Employee Benefits</u>	Physicians should review benefits provisions in the contract and in the employee handbook carefully, not only to determine the types and levels of benefits provided, but also to determine the extent of the employer's right to modify what benefits are provided, with or without notice to the physician employees. An employer's right to modify benefits lessens the value of any benefits promised.		
VIII	<u>Performance/Conduct</u>	It is important that you carefully review the expected standards of performance and conduct to ensure that you understand your obligations and can meet them. Typically, these provisions include a means of dispute resolution, but such means may be located only in the employer's bylaws, the employment handbook, or in other documents. You have the most protection where there is a requirement that the employer provide you with written notice of poor performance or conduct, and an opportunity to cure, before it can take employment-related action against you. Performance/conduct provisions are critical, as they often form the basis for termination of employment.		
IX	<u>Records/Files</u>	Be certain you are comfortable with these terms, including whether and how charts will be provided if you cease working for the employer. Additionally, the terms of this section may impact your ability to obtain records for reasons other than patient care, such as defending a malpractice suit, a credentialing investigation, or some other claim.		
X	<u>Employer's Responsibilities</u>	Review this section carefully to verify that the employer is providing you with all the resources and support you believe you will need in order to practice medicine effectively and to satisfy the provisions of the contract. Be careful not to overlook items or support, or assume that the employer will provide anything not listed, as the employer may not agree to do so after the contract is signed.		

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XI	<u>Confidentiality and Non-disclosure</u>	<p>Make sure these provisions do not inappropriately limit your access to records and other information, including electronic medical records. Also, be aware that the Uniform Trade Secrets Act impacts your ability to use certain confidential information regardless of any contractual provisions.</p>		
XII	<u>Termination of Employment/ Employment Agreement</u>	<p>Termination provisions are critically important contract terms. You should be sure that you retain some acceptable means to terminate the contract and cease working for the employer if the terms and conditions of employment become no longer acceptable to you.</p> <p>You should verify that the employer's ability to unilaterally terminate the contract for its own convenience is not unlimited, or at least that the process for such a termination provides you with adequate advance notice so that you can protect your interests.</p> <p>You should determine whether any post-termination benefits (e.g. severance, tail insurance coverage, etc.) are acceptable, and whether you can accept any post-termination obligations and limitations regarding future employment and practice (e.g. non-compete provisions).</p> <p>The permissible scope of a non-compete provision is a topic frequently addressed by courts. The allowable scope is very situation specific and the standards are regularly refined by court decisions. It is well worth consulting an attorney if non-compete provisions are included in your employment agreement to determine whether the restrictions comport with current case law and are enforceable.</p>		

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XIII	<u>Dispute Resolution</u>	Verify that these provisions provide an opportunity to resolve claims in an acceptable manner, and that any provision precluding you from pursuing claims in court (<i>e.g.</i> , a binding arbitration requirement) is acceptable. Be careful how these provisions allocate costs of pursuing a claim, as a provision that requires the losing party, or the physician, to cover all costs of a claim may be sufficient to dissuade you from protecting your rights. Also remember that dispute resolution provisions may be covered in the employer's bylaws or other documents if not included in the employment contract.		
XIV	<u>Notices</u>	You must understand and follow any notice requirements in the contract. Rights and claims can be lost, and obligations may be imposed, if you fail to properly give notice to the employer under the exact terms of the contract.		
XV	<u>Miscellaneous</u>	<p>You should not assume that contractual provisions included in the "Miscellaneous" section are unimportant by virtue of their location. Provisions in this section are often crucial to the interpretation and enforcement of the contract, such as a forum selection clause that requires you to file suit on the contract in a state other than Colorado. Many of the provisions outlined above may be included in the "Miscellaneous" section of the contract, rather than in separate, dedicated sections.</p> <p>Make sure that all agreements and terms that are important to you are reduced to writing in the contract, as an integration or merger clause may render any other oral promises or statements, or even prior written promises, unenforceable.</p>		

