

**COLORADO MEDICAL SOCIETY/
NEMIROW PEREZ P.C.
PHYSICIAN EMPLOYMENT CONTRACT HANDBOOK
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Introduction

The Colorado Medical Society (CMS) has partnered with Kevin Perez from Nemirow Perez P.C. to develop this Handbook and attached Checklist to serve as resources for member physicians who wish to review and evaluate the terms of their current or proposed employment contracts. The goal is help familiarize you with key provisions of typical employment contracts to allow you to engage in an informed discussion with your employer or prospective employer.

In addition to this Handbook and Checklist, CMS has secured a discount from Mr. Perez to provide you with advice and counsel regarding your specific employment contract (provided that Mr. Perez and his firm do not represent your prospective employer or have some other conflict of interest). The flat fee for CMS members for this contract review is \$500 for a hospital/health system employment contract, and \$700 for other employment contracts. The flat fee includes a review of your contract and up to a one-hour discussion with you to provide you with advice and suggestions regarding the contract's terms. CMS has also arranged for a discounted rate of \$220 per hour for you to engage Mr. Perez' services for other or more extensive involvement (such as assistance with contract negotiations, or re-writes of contract terms) after the flat fee initial contract review is concluded.

Though each contract is different, this Handbook has been organized to follow the typical format of a physician employment contract. Each section contains a summary of the purpose(s) of the section, along with any "red flags" that highlight important elements for you to consider, followed by examples of the substance of some common provisions. The examples provided are not all-inclusive, however. At the end of this Handbook is a Checklist of suggestions to consider, along with a summary of the "red flags" set forth in the Handbook.

Disclaimer

This Handbook and Checklist are not intended to, and do not, convey legal advice or provide any recommendations regarding the content of any term of any employment contract. The Handbook and Checklist do not, and cannot, serve as a substitute for legal advice from an experienced attorney. Instead, they are intended to provide you with a general outline of typical terms found in physician employment contracts, along with commentary about the importance of, and variations of those terms.

Ultimately, you must reach your own conclusions regarding the benefits, detriments, and ultimate acceptability of each contractual provision, with or without attorney assistance, in light of the specific contract offered and your own particular situation.

CMS and Mr. Perez have developed this Handbook and Checklist as an educational tool for CMS members. It may not be used in any manner that violates the law or the rights of any party. It may not be copied, modified, disseminated, or otherwise used for commercial purposes, or for any other purpose than that specified by CMS or Mr. Perez. Neither CMS, Mr. Perez, nor Nemirow Perez P.C. have any liability whatsoever to any user or any third party resulting from use of this Handbook or Checklist.

Scope

This Handbook addresses the typical provisions used by many Colorado employers in their physician employment contracts. A given contract may contain some or all of the provisions listed below, and/or it may address similar topics in different ways than outlined here. Contracts may also include provisions not listed below, as it would be impossible for any summary to provide an exhaustive list of the manner in which each subject could be addressed, as each employer and each physician will want those subjects addressed in the manner that best fits their situation.

Many Colorado and federal laws govern employer-employee relationships, as well as set out the responsibilities of physicians as healthcare providers. As a result, physician employment contracts can involve complex legal issues relating to healthcare regulatory provisions as well as contract, employment, tax, and other applicable federal and state laws. Further, the contracts may establish not only the working relationship between the parties, but also the day-to-day operational and clinical obligations of the physician. However, because the employment contract is rarely the only document that governs a physician's employment, physicians should familiarize themselves with other relevant documents—such as medical staff bylaws, employer policies and procedures, and employee handbooks—in order to better understand the terms and conditions of their employment.

Due to the complex nature of physician employment contracts, this Handbook and Checklist cannot, and are not intended to, provide a substitute for legal advice by experienced legal counsel. As noted above, this Handbook and Checklist are intended to make physicians aware of the topics that are typically included in physician employment contracts, both to illustrate the possible content of those topics, and to make them aware when certain topics are not addressed. The laws, regulations, and court and agency decisions governing physician employment relationships in Colorado are constantly changing and, therefore, no summary or checklist can ever substitute for up-to-date legal advice.

Lastly, while the Handbook and Checklist may be helpful to you in evaluating many types of employment contracts, other issues can arise that are outside the scope of this Handbook (*e.g.*, transitions into shareholder, partner, or ownership status with private practices, and the interplay of hospital salary guarantee contracts with employment agreements). This Handbook also does not address independent contractor arrangements, which are governed by specific provisions of both federal and state law that are not applicable in the typical employment context. Should you need assistance on those issues, feel free to contact Mr. Perez as well.

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I. Introduction/Recitations

Purpose: The purpose of the Introduction/Recitations section (sometimes known as the “whereas” clauses) is ordinarily to set forth the nature and reasons for the contract by defining the parties and reciting the parties’ general intent. Often, when a contract (or specific term of a contract) is being disputed, the issue of intent is raised. Thus, this section of the contract may provide guidance to the parties and outside finders of fact (such as judges or juries) when they seek to determine what the parties intended when they entered into the contract, in order to interpret specific contractual provisions that later become disputed.



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.

Common provisions:

- A. Names and addresses of the parties
- B. Basic “whereas” terms:
 - 1. Whereas, physician shall complete his/her residency by [date]
 - 2. Whereas, physician wishes to be employed as a full-time/part-time physician
 - 3. Whereas, employer wishes to employ physician as a Board Certified [specialist]
- C. Licensure or experience required:
 - 1. Physician is licensed to practice medicine in Colorado
 - 2. Physician has applied to be licensed to practice medicine
 - 3. Physician is a Board Certified [specialist]
- D. Employer and physician agree that physician will be hired to practice medicine
- E. Physician will begin practice on [date]

II. Physician Representations/Physician Qualifications

Purpose: This section of the contract ordinarily outlines the qualifications that the physician warrants that he or she has, or those that the employer understands or expects the physician has attained or will attain by some date certain.



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.

Common Provisions:

- A. Being a physician in good standing to practice medicine in Colorado
- B. Statements of current or anticipated licensure:
 1. Physician is qualified and duly licensed to practice medicine without restriction or limitation in Colorado, or has applied for licensure
 2. Physician is and will remain Board Certified by the applicable Board
 3. Physician is Board eligible or will obtain Board Certification by [date]
 4. Physician is not aware of:
 - (a) Any pending or threatened action, investigation, or proceeding which might result in suspension or termination of physician's license to practice medicine (other than what was previously disclosed)
 - (b) Any disciplinary or corrective action taken by any medical licensing or certification authority, or any reprimand, fine, or penalty threatened, pending, or imposed by any medical licensing or certification authority relating to the rendering of medical services by physician (other than what was previously disclosed)
- C. Privileges/application for privileges and maintenance of privileges:
 1. Physician has privileges at listed hospitals
 2. Physician has applied for privileges at listed hospitals, and will obtain such privileges by [date]
 3. Physician's medical staff privileges have not been suspended, restricted, or terminated at any hospital
 4. Physician is not aware of:
 - (a) Any pending or threatened action, investigation, or proceeding which might result in suspension or termination of privileges at any hospital (other than what was previously disclosed)
 - (b) Any disciplinary or corrective action taken by any entity, or any reprimand, fine, or penalty threatened, pending, or imposed by any entity relating to the rendering of medical services by physician and the existence, application, or

maintenance of privileges by physician (other than what was previously disclosed)

- D. Physician is not a party to any threatened or pending malpractice or other patient-related litigation, nor any such litigation or complaint before any professional licensing board (other than those disclosed)
- E. Physician is and will remain eligible for professional liability insurance coverage
- F. Physician has and will maintain all requisite approvals, licenses, and certifications necessary to prescribe and dispense controlled substances under applicable Colorado and federal laws
- G. Physician's status on insurance panels and with participating providers:
 - 1. Physician is and will remain a participating provider for Medicare and Medicaid
 - 2. Physician is and will remain a participating provider with other named or unnamed third-party payors
 - 3. Physician has never been removed or excluded from the Medicare or Medicaid program of any state; from any provider panel of a managed care organization, indemnity insurer, or other third-party payor; or from any physician organization or provider network
 - 4. Physician has never been required to pay any civil monetary penalty under federal law regarding false, fraudulent, or impermissible claims caused by physician
- H. Physician is not subject to any obligation, restriction, or limitation, whether contractual or otherwise—such as a non-competition agreement—that could prohibit or impede him or her from undertaking and/or performing the duties and responsibilities outlined in the contract
- I. Physician is physically and mentally able to perform the duties of this position, with or without reasonable accommodations, under the Americans with Disabilities Act
- J. Physician has provided evidence of liability insurance in amounts acceptable to the employer to insure against potential malpractice claims arising out of any possible occurrences prior to employment
- K. Physician has never been convicted of:
 - 1. Any offense related to the delivery of an item or service under the Medicare or Medicaid programs;
 - 2. A criminal offense relating to neglect or abuse of patients in connection with the delivery of a healthcare item or service;
 - 3. Fraud, theft, embezzlement, or other financial misconduct in connection with the delivery of a healthcare item or service;
 - 4. Obstructing an investigation of any crime related to 1 – 3 above; or
 - 5. The unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

III. Commitment to Employ

Purpose: This section outlines the employer's commitment to employ the physician, and often includes a statement of the area of practice and the duration of the contract.

 Although frequently brief, these provisions should not be overlooked. Pay attention to the term of the contract and the arrangements for renewal. (*E.g.*, whether the contract automatically renews on the same terms—including compensation—unless you provide notice, or whether it ends 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.

Common provisions:

- A. Employer wishes to employ the physician, and the physician wishes to be employed under the terms and conditions of this contract
- B. Employment position, title, and/or area of practice
- C. Statement of duration of the contract
- D. Arrangements for contract renewal

IV. Duties and/or Responsibilities

Purpose: This section typically outlines the physician's work-related responsibilities, and the anticipated hours the physician is expected to devote to fulfilling those responsibilities.

 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.

Common provisions:

- A. A job description, which summarizes the duties and responsibilities of the position, may be provided in the terms of the contract, or a separate written job description may be attached to, or incorporated by reference in, the contract
- B. Anticipated work hours
 1. Full-time or part-time (sometimes listed as a percentage of full time)
 2. Providing best efforts and full professional attention
 3. Specified hours of work or practice
 - (a) Patient/appointment/clinical/hospital/office time
 - (b) Administrative duties
 - (c) Rounds
 4. Call responsibilities
 - (a) Outpatient
 - (b) Inpatient
 - (c) Back up
 5. Call sharing with other physicians
- C. Patient care responsibilities
 1. Office hours
 2. Charitable care
- D. Administrative duties
 1. Medical records
 - (a) Keeping and maintaining adequate records, including electronic records
 - (b) Timely completion of such records
 2. Billing documentation and responsibilities
 - (a) Keeping and maintaining adequate records relating to services rendered
 - (b) Properly coding all medical services and procedures rendered or performed
 - (c) Completing all necessary forms as required to facilitate billing
 - (d) Assignment of all earnings from practice of medicine to employer
 - (e) Participation in post-payment reviews (see also Section VIII(I))
 3. Attending hospital, department, and staff meetings

- E. Supervision of other physicians and/or staff
 1. Medical director or department head duties
 2. Nurses, etc.
- F. QA/QI/Compliance/Risk management activities
- G. Consulting with other physicians as necessary
- H. Attending professional meetings
- I. Performing marketing or other practice development activities
- J. CME and other education and/or training
 1. Personal education and/or training
 2. Provision of education/training for other physicians and/or staff
 3. Participation in CME as required for continued licensure
- K. Professional associations and/or societies
- L. Other duties as assigned
 1. How direct workload and patient care responsibilities are assigned
 2. Employer's rights to assign additional duties
 3. Notice of change of services provided by employer, change or termination of any managed-care plan or other third-party payor contract, or duties assigned to physician
- M. Limitations on other activities
 1. Non-competition provisions
 - (a) During employment
 - (1) No moonlighting
 - (2) Limited moonlighting
 - (b) After employment (see also Section XII(K)(4))
 2. Permitted outside activities
 - (a) *Per diem* work
 - (b) Charitable services/care or volunteer work
 - (c) Military service
 - (d) Training or teaching
 - (e) Publishing
 - (f) Expert witness work and testimony
 3. Required authorization
 - (a) So long as does not interfere with work for employer
 - (b) Approval requirements (e.g., prior written permission)
 4. Compensation for other activities
 5. Purchasing limitations
- N. Compliance with governing policies and practices

V. Standards of Care/Standards of Practice

Purpose: Most of the time, contracts will detail the employer's expectations regarding the applicable standards of care, the physician's obligations, and CME/training requirements.



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 perhaps 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.

Common provisions:

- A. Services to be rendered in a competent and professional manner at all times
- B. Services rendered consistent with qualify assessment/improvement standards of the medical staff
- C. Compliance with:
 1. All applicable federal, state, and local laws, rules, and regulations governing physicians and the services performed by physicians, including Medicaid and Medicare
 2. Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or Center for Medicare and Medicaid Services standards
 3. Currently accepted and approved methods and practices applicable to physician's practice
 4. Currently accepted standards of physician's specialty board(s)
 5. Medical staff bylaws, policies and procedures, and rules and regulations
 6. Quality improvement/assessment programs, compliance plans, and related programs
 7. The "generally accepted standard of care"
 8. Personnel policies to the extent they do not conflict with other bylaws, rules, or regulations, or other professional standards of care applicable to physician's provision of medical services
- D. Completion of all CME requirements to maintain or renew physician's license to practice medicine, and as required to maintain Board Certification or eligibility in physician's specialty
- E. Physician's ethical duties
 1. Physician/patient relationship
 2. Ethical duties to patient
 3. Confidential relationship between physician and patient

VI. Compensation

Purpose: Here, the employer defines the manner in which the physician will be paid for his or her work, including any wage increases, stipends, or bonuses. Compensation provisions may be outlined in the contract itself or in a separate attached schedule.



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.

Common provisions:

- A. Salary
 - 1. Straight salary or hourly rate
 - 2. Salary plus bonus/incentive compensation
 - (a) For starting work (signing or hiring bonus)
 - (b) For remaining employed for a period of time (retention bonus)
 - (c) For individual or department/practice productivity or performance
 - (d) For facility-wide productivity or performance
 - (e) Determination of bonus/incentive amount
 - (1) Measures and metrics used
 - (2) Method of computation
 - (3) Payment triggers and dates
 - (4) Requirement to be employed at time of payment regardless of when bonus is earned
 - (5) Availability of documents to verify bonus/incentive amount
- B. Additional stipends
 - 1. For additional duties (*e.g.*, as medical director or department head)
 - 2. For additional services (*e.g.*, charitable services)
 - 3. For on-call services
 - 4. For the provision of training
 - 5. For participation in clinical trials of drugs, devices, etc.
- C. Provisions for compensation adjustments (increases and decreases)

VII. Employee Benefits

Purpose: Benefits can often be worth 25% to 33% of wages, and many employers offer a range of benefits to their employed physicians. These benefits may be the same as, or substantially different from, those provided to non-physician employees as outlined in an employee handbook.



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. A right to modify benefits generally lessens the value of any benefits promised.

Common provisions:

- A. Insurance
 - 1. Types
 - (a) Health
 - (b) Dental
 - (c) Vision
 - (d) Life
 - (e) Short- and/or long-term disability – Physician Own-Occupation provisions
 - (f) Accidental death and dismemberment
 - (g) Long-term care
 - 2. Levels of coverage, as applicable
 - (a) Employee
 - (b) Spouse
 - (c) Dependent(s)
 - 3. Physician's contributions toward the cost of insurance
 - (a) Amounts
 - (b) Arrangements for pre-tax contributions toward cost
- B. Leave
 - 1. Vacation or other paid time off
 - 2. Holidays
 - 3. Time to attend CME, medical conventions, and post-graduate educational meetings
 - 4. Sick days
 - 5. Bereavement leave
 - 6. Medical leave
 - 7. Disability leave
 - 8. Maternity and/or parental leave
 - 9. Family and Medical Leave Act (FMLA) leave
 - 10. Jury duty or other civic leave
 - 11. Military leave (USERRA, etc.)
 - 12. Leave for volunteer or community service
 - 13. Sabbaticals
 - 14. Personal leave

- C. Other “benefits”
 - 1. Professional liability/medical malpractice insurance
 - (a) Acceptable carrier
 - (b) Acceptable limits of coverage
 - 2. Indemnification clauses that hold physician harmless from and against named claims
 - (a) Limitations on source of claims (only patients vs. all persons/entities)
 - (b) Limitations on nature of claims
 - (1) No claims arising out of any intentional, malicious, bad faith, or reckless conduct
 - (2) No claims arising from conduct outside the scope of physician’s employment responsibilities
 - (3) Claims arising out of physician’s performance of his/her obligations under the employment agreement
 - (4) Billing fraud claims
 - (c) Liability for costs of defense
 - (d) Control of litigation by employer or physician
 - 3. Other financial support
 - (a) Time away for CME
 - (b) Professional membership activities
 - (c) Publishing in professional journals and periodicals
 - (d) Purchases of medical equipment, software, and other materials
- D. Electronics
 - 1. Laptop
 - 2. Tablet
 - 3. Cell phone
 - 4. Pager
- E. Expense reimbursements
 - 1. Mileage
 - 2. Express Toll/other tolls reimbursement
 - 3. Parking
 - 4. Cellular and data service, limits
 - 5. Moving costs
- F. Retirement plans (403(b), 401(k) and/or pension plans)
 - 1. Eligibility
 - 2. Employee and employer contributions
 - 3. Vesting
 - 4. Other forms of deferred compensation

VIII. Performance/Conduct

Purpose: This section lists the expected standards of conduct which may range from the specific, such as mandating compliance with certain contract terms or bylaws, to the vague, such as acting in a professional manner or accommodating staff requests.



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 medical staff 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.

Common provisions:

- A. Maintain a professional relationship with medical staff
- B. Comply with the terms of the employment contract, the provisions of medical staff bylaws, rules and regulations, the employee handbook, and written policies and procedures
- C. Comply with all applicable federal, state, and local laws and restrictions, including but not limited to Medicare and Medicaid fraud and abuse law and regulations and the Stark law and regulations
- D. Comply with all third-party payor participating provider agreements, including Medicare and/or Medicaid agreements
- E. Use information systems and forms required by the employer in both clinical and billing documentation
- F. Participate in any educational and training programs as required
- G. Promptly notify employer of any inquiries, investigations, or claims received related to activities conducted under the employment contract
- H. Means to address concerns regarding employee conduct or performance
 - 1. Notice requirements
 - 2. Performance reviews
 - 3. Opportunity to cure
- I. Post-payment reviews by third-party payors
 - 1. Notify employer immediately
 - 2. Participate and cooperate fully in resolving such claims and demands

IX. Records/Files

Purpose: This section outlines the parties' rights and obligations regarding medical records and other documents.



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.

Common provisions:

- A. Generally, records are the employer's property
 - 1. Unless otherwise specifically provided by law (*e.g.*, Colorado law provides that medical records in the possession of a healthcare provider are the patient's property, and a copy must be provided to the patient upon request.)
 - 2. Unless otherwise agreed upon in writing by the physician and employer
- B. Maintenance of and access to records during employment
- C. Ability and process to obtain copies of records upon separation from employment or other circumstances (*e.g.*, upon patient request and/or to defend claims involving breach of contract, violation of law, malpractice, etc.)
- D. Employer maintains records, charts, and federal reports, and provides physician with access during employment

X. Employer's Responsibilities

Purpose: These provisions generally outline the resources and support the employer is obligated to provide the physician. They may also identify what items the physician must purchase, as well as who will retain any equipment or other items if and when the contract terminates.



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.

Common provisions:

- A. Provision of space and equipment
 - 1. Office space
 - 2. Furniture
 - 3. Equipment
 - 4. Supplies
 - 5. Medications
 - 6. Payment of expenses for same
 - 7. Maintenance and repair of same
- B. Provision of non-physician support staff
 - 1. Number and nature of staff
 - 2. Physician's role in selection of staff
 - 3. Duties of supervision
 - 4. Nature of employment relationship to physician
- C. Establish fees for professional medical services
- D. Assignment of right to collect fees for services from physician to employer
- E. Billing for all services provided by physician, whether for employer or not
- F. Provision of insurance
 - 1. General insurance during agreement
 - (a) Property
 - (b) Casualty
 - (c) General liability
 - (d) Workers' compensation
 - (e) Employment practices liability
 - 2. Professional liability insurance during employment
 - 3. Professional liability insurance for previous practice
 - 4. Professional liability insurance after termination of employment
 - 5. Physician's responsibility for notification of claim or suit

XI. Confidentiality and Non-disclosure

Purpose: Sets out confidentiality obligations both during and after employment.



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.

Common provisions:

- A. Acknowledges duty of confidentiality
- B. Acknowledges information that is confidential and the employer's property
- C. Defines what information the employer considers confidential
- D. Restricts physician's disclosure of confidential information such as:
 1. Information regarding employer's business and operations such as marketing strategies, pricing policies and fee schedules, business plans, methods of operation, trade secrets, financial information, and compensation methods and formulas
 2. Patient- and treatment-related information including billing records, insurance records, reports for patients, and any documents showing names of patients treated during employment
 3. All other information or data reasonably identified and treated by employer as being confidential
 4. Exceptions exist for information that has become a matter of general public knowledge, where such knowledge is not the result of a disclosure by the physician in violation of the contract
- E. Authorized disclosures
 1. Use during employment
 2. Use in pursuit of employer's activities
 3. With employer's express written permission
- F. Duration of restriction, including post-termination
- G. Return of confidential information and documents after separation from employment or upon employer's request including, but not limited to, documents, patient records, operational or employment materials, and billings or billing information.
- H. Agreement to comply with all laws and regulations regarding confidentiality, such as HIPAA
- I. Access to and use of employer's computer network and electronic patient records
 1. Assurance of confidentiality during use
 2. Use of passwords

XII. Termination of Employment/Contract

Purpose: To identify the circumstances where physician's employment will or may be terminated.

 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.

 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.

 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).

 The permissible scope of a non-compete provision is a topic that often needs to be addressed by courts. The allowable scope is very situation specific and the standards are 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.

Common provisions:

- A. Defined term of agreement
- B. Renewal or non-renewal
 - 1. Automatic renewal unless either party provides timely notice of non-renewal
 - 2. Non-renewal unless parties agree upon renewal and terms
 - 3. Notice period for non-renewal or renewal
- C. Termination for breach of provisions of employment agreement
- D. Termination for convenience by physician or employer
 - 1. Notice period for termination without cause
 - 2. Employer process
 - (a) Who makes decision on behalf of employer?
 - (b) Any review or discussion process?
- E. Termination for cause by employer
 - 1. Immediate termination without notice
 - 2. Opportunity for physician to cure breach
 - 3. Suspension during investigation of events
 - (a) If physician's presence would be adverse or detrimental to the employer's interests, operations, employees, or patients

- (b) With or without pay
 - (c) Physician required to cooperate in any investigation by employer
 - (d) If allegations unfounded, reimburse physician for unpaid compensation
 - (e) Limits on duration of suspension or ability of physician to challenge
4. Reasons for termination for cause may include:
- (a) Any materially false or misleading representation regarding physician's qualifications to render professional services
 - (b) Any impairment that prevents physician from adequately performing duties
 - (c) Failure to obtain, or suspension or revocation of, license to practice medicine in Colorado
 - (d) Failure to pursue or maintain required Board Certification
 - (e) Failure to obtain, or loss of privileges to practice at (any) hospital
 - (1) Any failure
 - (2) Failure/suspension/revocation lasting more than ___ days
 - (3) Exception for failure due to administrative error
 - (f) Abandonment of duties under contract
 - (g) Physician's professional misconduct that (significantly) undermines the integrity of practice operations or creates serious concerns regarding the health or welfare of patients
 - (h) Failure to meet established patient care quality standards
 - (i) Denial of coverage by medical malpractice insurance carrier
 - (j) Exclusion from participation in federal Medicare/Medicaid programs or other public or private insurance programs
 - (k) Failure to maintain approvals, licenses, etc., to prescribe and dispense drugs under applicable federal and state laws
 - (1) Any failure
 - (2) Failure/suspension/revocation lasting more than ___ days
 - (3) Exception for failure due to administrative error
 - (l) Imposition of any restriction or limitation on physician by a governmental or professional authority (to the extent physician cannot practice medicine)
 - (m) Failure to meet productivity or performance standards
 - (n) Physician charged with criminal act which has had or will (reasonably) be expected to have an adverse impact on employer's business
 - (o) Conviction or plea of *nolo-contendere* to crime such as:
 - (1) Embezzlement or other theft of employer property
 - (2) Any crime involving moral turpitude or a felony
 - (3) Sexual assault or battery
 - (4) Any crime which has had or will (reasonably) be expected to have an adverse effect on employer's business or financial condition
 - (p) Subject of a governmental investigation or indictment on alleged violations of Medicare or Medicaid laws or reimbursement regulations
 - (q) Violation of applicable standards of professional conduct, or of any statute, regulation, or ordinance applicable to physician or physician's practice
 - (r) Violation of contract terms
 - (1) Willful and continued negligent violation or disregard
 - (2) Mere failure to comply
 - (3) Failure that exceeds _____ days
 - (4) Failure that remains uncured for more than _____ days

- (s) Disregard for, or violation of the employer's policies, including any anti-discrimination/anti-harassment policies
 - (t) Failure to maintain a collegial and cooperative working relationship with co-workers, administration, or other staff members
 - (u) Failure to timely provide appropriate information and records required for appropriate medical records and/or billing
 - (v) Failure to comply with the employer's requirements regarding maintenance of medical records
 - (w) Any intentional or willful misconduct while acting as employee
 - (x) Any conduct by physician that (materially) interferes with or (materially) impairs the treatment, care, or safety of patients
 - (y) Acts or omissions which harm the employer's reputation or jeopardize its good relations with patients, hospitals, third-party payors, other healthcare providers, or the community at large
 - (z) Conduct by physician which is disruptive to proper employer functioning
- F. Termination for cause by physician
- 1. Immediate termination without notice
 - 2. At sole discretion of employee
 - 3. Opportunity for employer to cure breach
 - 4. Reasons for termination for cause may include:
 - (a) Breach of terms of agreement
 - (b) Failure to make payments in timely manner
 - (c) Change in ownership, control, or governance of employer or practice area
 - (d) Employer bankruptcy
 - (e) (Material) change in terms and conditions of employment
 - 5. Duration of notice to be provided
- G. Disability
- 1. Definition of disability and inability to work
 - 2. Duration of any leave provided and conditions on leave
 - 3. Provision of reasonable accommodations
 - 4. Severance payments if unable to return to work
- H. Death
- I. Advance notice requirements
- 1. Duration
 - 2. Opportunity for physician to cure breach or other concern
 - 3. Option for employer to pay wages for notice period but implement termination immediately
- J. Physician options
- 1. Challenge decision regarding termination
 - 2. Pursue any appeal procedure provided in contract, medical staff bylaws, employee handbook, or other policy

- K. Rights and obligations upon termination
 - 1. Payment of all amounts due and owing by employer
 - (a) Wages
 - (b) Payment for unused vacation and/or sick leave, etc.
 - (c) Payment for expenses incurred but not yet paid
 - (d) Any other payments or benefits due under contract or other policy or practice
 - 2. Severance
 - (a) Payment of monetary severance
 - (b) Continuation of benefits
 - 3. Provision of tail coverage for professional liability insurance
 - 4. Non-compete provision
 - (a) Will be narrowly construed when imposing restriction
 - (b) Must be reasonable given the particular circumstances
 - (1) No greater restriction than necessary to protect the employer's "legitimate interests"
 - (2) Must not impose an undue hardship on the physician
 - (3) Must not prevent the physician's practice of medicine
 - (4) Must be reasonable in temporal duration and geographic scope
 - 5. Agreement to not solicit other employees from employer
 - 6. Removal of personal property and equipment
 - 7. Return of employer property
 - 8. Provision of reference and agreed upon statement regarding basis for separation from employment
 - 9. Ability to challenge termination decision
 - (a) Internal appeal process
 - (b) Arbitration
 - (c) Mediation

XIII. Dispute Resolution

Purpose: To set out a process to resolve disputes, often in a more expeditious or cost-effective manner than filing a claim in court.

 Verify that these provisions provide a meaningful opportunity to resolve claims in an acceptable manner, and that any provision precluding you from pursuing claims in court (*e.g.*, 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 medical staff bylaws or other documents if not included in the employment contract.

Common provisions:

- A. Any and all disputes related to employment and/or agreement to be resolved by:
 - 1. (Binding) arbitration
 - 2. Legal proceeding in specified court or any court of competent jurisdiction in State of Colorado or elsewhere
 - 3. Mandatory, non-binding mediation in advance of arbitration or lawsuit
- B. Location of proceeding
- C. Procedural rules to be followed if alternative forum to proceeding in court (*e.g.*, American Arbitration Association)
- D. Allocation of costs
 - 1. Split between the parties
 - 2. Borne by losing party
 - 3. Borne by physician

XIV. Notices

Purpose: To define the manner in which the parties agree to communicate with each other.



You must understand and carefully 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.

Common provisions:

- A. Names and addresses of parties who must receive notices
- B. Required copies to others (*e.g.*, a party's legal counsel)
- C. Written notice required
- D. Manner of delivery
 - 1. Delivered in hand personally or by courier
 - 2. By Federal Express, UPS, DHL, or other overnight delivery, with appropriate tracking
 - 3. By facsimile
 - 4. By registered or certified mail, return receipt requested
 - 5. By first-class mail
- E. Time of receipt of notice
 - 1. Upon receipt
 - 2. When delivered in hand or by overnight delivery
 - 3. ____ days after being tendered to the carrier
- F. Process to change names and addresses of notice recipients

XV. Miscellaneous

Purpose: A catch-all section to cover anything that does not fit within the above sections.

 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.

 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.

Common provisions:

- A. Governing law for interpretation of the contract in the event of a dispute
 1. Agreement governed by Colorado law or those of some other designated state
 2. Effect of any change in law (new regulations, legislation, etc.)
 - (a) The remaining provisions shall not be affected and shall continue in full force and effect
 - (b) The provision will be enforced to the fullest extent allowed by law
 - (c) If a change in law results in an adverse consequence (to a party), the parties agree to cooperate in making reasonable revisions to the agreement
 3. If any provision is found to be invalid or unenforceable under the law:
 - (a) The remaining provisions shall not be affected and shall continue in full force and effect
 - (b) The provision will be enforced to the fullest extent allowed by law
 - (c) The parties agree to cooperate in making reasonable revisions to the agreement
 - (d) The parties agree that the court can modify the terms to fit the law
- B. Forum selection clause, requiring any lawsuit to be brought in Colorado or in another state
- C. Waiver of breach
 1. Any waiver of an earlier breach by a party will not be deemed a waiver of any subsequent breach
 2. Any waiver must be prepared in writing and signed by the physician or a duly authorized representative of employer
- D. Merger or integration clause
 1. The contract represents the entire agreement between the employer and physician, and all prior negotiations, agreements, and understandings, whether written or oral, regarding the physician’s employment are superseded by the contract
 2. The contract, along with the employee handbook, medical staff bylaws, etc., will govern the relationship between the parties

- E. Amendments allowed only with written consent of both parties
- F. Assignment
 - 1. Physician's responsibilities under the contract may not be assigned by physician to someone else
 - 2. Physician may not assign responsibilities without prior written consent of employer
 - 3. Employer may assign the obligations of the contract to some other entity, with prior notice
 - 4. Employer may not assign the obligations of the contract without prior written consent of physician
- G. No remuneration for referrals
- H. Binding effect—contract is binding upon and shall inure to the benefit of the employer and the physician, and his/her/its respective heirs, successors, and permitted assigns
- I. Counterparts
 - 1. Allow two or more counterparts of the agreement to be executed
 - 2. Each of which is deemed an original
 - 3. All of which together shall constitute one and the same instrument
- J. Section headings
 - 1. For reference only
 - 2. Do not affect the meaning or interpretation of the agreement

[END]