

Anatomy of a Contract

This article outlines basic points to consider in writing an employment contract. More detailed information on contract negotiation can be found in AAPA's PA career guide, [Contracts and Contracts](#).

PA compensation plans vary as widely as the multitude of specialties and settings in which PAs practice. Although oral contracts are common, putting all agreements into a written contract protects you if disagreements arise later. The contract should not be written until all parties have agreed on the essential components.

It is advisable to hire a lawyer to review any contract you intend to sign. Retain a lawyer who has knowledge of contracts, particularly health care contracts, and who can help you understand the responsibilities and expectations outlined in the contract. A local lawyer is best; he or she is more likely to be familiar with state and local laws. It also is important to know if the lawyer has handled PA contracts before and how many years of experience he or she has had in the area of contract law.

TERMS AND TERMINATION

The term, or length, of the contract must be stated, including your starting date and the duration of the initial contract. Perhaps more important, the contract should state whether it can be terminated early if notice is given. If so, the amount of notice and reasons for justifying early termination should be carefully described. Termination provisions are either "with cause" or "without cause."

Termination without cause means the contract can be ended by either party at any time without reason. Typically, a 90-day notice is required. You may be able to negotiate for a "balloon buyout" that provides extra compensation.

Termination with cause provisions protect employers from liability due to employees who engage in illegal or illicit behavior. Legitimate causes for dismissal should be clearly defined.

Payment of bonuses, severance pay, and vacation or sick time reimbursement should be addressed. Malpractice insurance premiums should be mentioned to

ensure you are not required to refund money your employer has paid for these premiums.

The contract should state how often a formal job performance review will be conducted — for a new position, this is typically at one-month, three-month, and six-month intervals.

CONTRACT RENEWAL

Every contract should include an option to renew or a provision to renegotiate based on a performance evaluation. Performance criteria should be included or attached to the contract.

EMPLOYEE VS INDEPENDENT CONTRACTOR

State and federal laws vary. It is important to specify the relationship, however, because your employer's liability regarding employment taxes and pension benefits will be affected. The Internal Revenue Service has guidelines that you and your tax advisor should examine.

SERVICES TO BE PROVIDED

The area of medicine in which you practice and your duties and obligations should be clearly defined, including working times, sites, and practice duties. Requirements for rounds and on-call duties should be clearly stated. Be sure to address whether clauses that may prohibit holding a second job apply to volunteer health care or nonmedical employment.

CREDENTIALS AND PRIVILEGES

The contract should specify the professional credentials, for example, NCCPA certification, that you must possess or obtain within a specified time. It also should specify whether you must apply for or obtain privileges at certain hospitals.

COMPENSATION

More disagreements arise over compensation than perhaps any other issue. Will you be paid a salary, an hourly rate, a percentage of fees billed or collected, or salary plus bonus based on productivity? If your compensation will be based on a

percentage of fees billed, specify which fees will be included in the calculation. If you will be paid an hourly rate, include a minimum number of hours per week or per month to ensure adequate income.

Terms should be clearly defined in the contract — not only the amount (and/or percentage of productivity income) but also the frequency of calculation and payment. For comparison purposes, find out what colleagues in your area earn from a customized salary profile provided by the AAPA for a nominal fee.

MALPRACTICE INSURANCE

Who will pay for malpractice insurance? How much will it cost? Will you be listed on your supervising physician's policy or have your own policy? Be sure to compare the options before you sign the contract.

Become familiar with both occurrence and claims-made policies. An occurrence policy covers alleged negligence that occurs during the policy period, regardless of when claims are reported. Claims-made policies cover incidents that happen and are reported while the policy is in force; for an extra premium, often a large one, tail coverage will protect you against claims filed after the policy ends.

Your malpractice policy should cover liability for services rendered (or not rendered) and all legal costs, regardless of the suit's outcome or whether the suit was fraudulent. Try to obtain an ultimate net-loss policy, which will cover all legal fees.

As a service to its members, AAPA sponsors a professional liability insurance program. For more information and an application form, call 877/356-2272.

FRINGE BENEFITS

The contract should describe both included and excluded fringe benefits. Typical benefits include vacation and education leave, travel expenses related to education leave, professional dues, licensure fees, hospital medical staff fees, books and professional journals, NCCPA fees, Drug Enforcement Administration registration fees, health insurance, disability, life insurance, and retirement plans.

SICK LEAVE AND DISABILITY

The contract should specify if you will continue to be paid if you become sick or disabled, and, if so, for how long. Often practices have different disability policies for physicians and other employees; it is important to understand which one will cover you. If you purchase the policy yourself, the federal government does not tax it; therefore, it may be advantageous for you to do this and negotiate a higher compensation package.

PURCHASING INTO THE PRACTICE

If you hope to buy into the practice eventually, the conditions of the buy-in and basic terms of purchase should be spelled out, usually in a separate letter of intent. This letter should include methods for valuing the practice assets and the physical site, and it should outline your participation in business decisions, the length of time it will take before you become a full partner, and the amount and terms of the purchase.

RESTRICTIVE COVENANTS

A restrictive covenant, sometimes called a “noncompete clause,” is a provision in the contract that prohibits you from practicing in a given geographic area or given medical specialty after you leave a practice. This is usually for a defined period of time, often a few years after leaving the practice.

These clauses are enforceable in most states if the terms are considered reasonable. A 10-mile restriction might be reasonable in a rural area but not in a metropolitan area. Consider the following to be red flags for undesirable arrangements: exclusions from practicing in entire countries or states; a prohibition from practicing at a particular hospital; or an employer who says, “Oh, don’t worry about signing that; we would never enforce it.” If you must negotiate a contract with a restrictive covenant, be sure it is something you can live with. Consider adding a clause that declares the restrictions void if you are dismissed without cause.

DISPUTES

Check that the contract specifies whether disputes between you and your employer will be settled by mandatory arbitration or in court and whether the prevailing party will receive lawyer’s fees and costs. The contract also should include a clause that

allows you and your lawyer access to patient medical records if a lawsuit is brought against you after you leave the practice. Otherwise, your lawyer may have to subpoena the records, which is a costly process that can take months.

SUMMARY

After meeting with your prospective employer, drafting a contract, reviewing the employee handbook, and discussing the contract with your lawyer, are you ready to sign on the dotted line? Perhaps. As you review each section of the contract, imagine situations that could arise. Ask yourself, "What would happen if...?" Then make your decision based on a knowledgeable review of the contract and good common sense.