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INTRODUCTION

For hospital managers or administrators the management contract is one of the most important documents you will ever live by. It is the source of all that is good and all that could become a nightmare. If it is drafted carefully and properly it is the yellow brick road of your relationship with the practice owner(s). You will both know what is expected of you and there will be little room for serious dispute. If not drafted carefully and properly it can be the cause of dissention and dispute. A poorly drafted management often leads directly to court. Better to avoid that by careful drafting. The contract may be drafted by either party. But remember, any ambiguities will be held against the drafter. All employment contracts, no matter who drafts them, should be reviewed by qualified counsel before signing.

NEGOTIATIONS

Probably the very first thing I would say about your management contract is that it must be negotiated. A contract that is not fairly negotiated by all parties is not likely to be effective because it will not reflect the interests of both parties. Non-negotiated contracts are also called “standard form”, “boilerplate”, or “adhesion” contracts. In most states standardized contracts are valid but many states have some restrictions on their use. Adhesion contracts are usually offered as “take it or leave it” propositions. These “adhesion” contracts are sometimes offered by practice owners who are ignorant of the real value of a fairly negotiated contract. Some just download something off the internet or take a form contract out of a book because they are too cheap to pay an attorney to draft one for them. Others are using the “take it or leave it” approach to take advantage of a naïve or needy prospective employees.

Whatever the motivation, an adhesion contract is not a good idea. When confronted with a “take it or leave it” deal, my best advice is to leave it, even when it appears, at least on the surface, to be the best deal on the planet. That kind of contract reflects nothing of you and, like a giant mound of chocolate cake, will taste good for awhile but eventually will become very unsatisfying.

If you are a skilled negotiator, then good for you, just remember to use those skills. If you are not good at negotiating, then I suggest you read up on it. There are any number of good books that can provide excellent guidance to the most raw of novice negotiators. If that does not work for you then I suggest you let an attorney or other qualified representative negotiate the contract for you.
OFFER, ACCEPTANCE AND CONSIDERATION

We have talked about these things to some degree in our earlier discussions, so I will not belabor them here. All three are required for the contract to be valid.

Apropos to our dissertation on negotiations, the employer makes an offer; accept it and you have a contract. Reject it and walk away or, make a counteroffer. That is negotiation. This offer-counter offer, counter-counter offer dance can go on for a short or a long time. There is no rule on that. The only rule is that offers and counter offers are presumed to be made in good faith with the intention of making a deal. Acceptance comes when there is agreement on the terms, where there has been, so to speak, a “meeting of the minds.” Consideration is, like I said earlier, the quid pro quo, the tit for tat. You get a job, the employer gets to pay you; you labor, the employer gets the benefit of your labor.

THE TERMS OF YOUR CONTRACT

The terms are what you, in fact, agree to. If you agree, sign it. If you don’t agree then don’t sign it. That is not to be interpreted as you get everything you want, the way you want it just because you want it. Please remember there are two sides to each contract and both sides look to protect their own interests. It has been said that a good contract makes neither party happy; both sides should walk away thinking they have been had. A bad contract is when one party walks away much too happy.

BUILDING BLOCKS

You can think of a contract as a structure built of building blocks. Each block has a particular place and purpose but the solidity of the whole is dependent on how they integrate and work together to accomplish the intended purpose. The contract, as a whole, has a specific purpose. Here, that purpose is to set the rules for the owner-manager relationship so that both parties can and will benefit from the arrangement.

In contracts, the building blocks are called clauses. Each clause has a particular function in the structure of your contract. There are no special or secret words required for a contract. You may use any language that conveys the intentions of the parties. Unfortunately, the language of clauses is often very dry reading. This is especially true if you a contract to read like a good book. It is not important that the contract reads like good prose what matters is that the language is precise and clear in stating the party’s agreements. Contracts should always be read very closely and carefully even if they are boring. After all, your livelihood could depend on what’s in those dry boring clauses.
CORNERSTONES

Besides the offer acceptance and consideration required of all contracts there are cornerstones to your contract/building that must be there or it will not stand.

The Parties: The parties to the contract must be specifically named.

The Purpose: The contract must be for a legal purpose. An agreement to buy illegal drugs would not be valid because the purchase of illegal drugs is an unlawful purpose. In this case the providing of management services is a legal purpose and must be stated clearly.

The Duration: Some contracts, like the sale of a car, are for an instant in time. There is one instant when the transaction takes place; the title is passed and money is exchanged. Others, like practice management contracts, run for a period of time. That period should be clearly stated with a specific beginning and a specific end. For example, this agreement begins at 12:00 AM PST, January 1, 2010 and expires at 11:59 PM PST, December 31, 2010.

The remainder of the agreement can vary according to need.

The Location: This is the specific address or location where the work will be performed. This is often a single address but, in some instances, there may be more than one location. For example, multiple hospital locations or hospitals with a mobile component that you may be required to supervise. These other locations should be identified with as much specificity as possible.

The Work Schedule: This clause should list the expected work hours. Hospital managers, as management level employees, don’t usually have specific work hours and generally don’t qualify for overtime. However, the hours of hospital operation should be specified along with any specific requirement for attendance. For example, whether the manager is expected to work nights, holidays, or weekends. If the work hours are to be flexible then that should be clearly stated. For example, recognizing that (Hospital Manager’s) duties will, on occasion, require long and irregular hours ABC Hospital will allow (Hospital Manager) to, during the term of this contract, set his/her own hours with the following limitations: A) (Hospital Manager) must work a minimum average of 40 hours each week, excluding holidays, vacations and other permitted absences, and B) (Hospital Manager must be available in hospital and available to clients and staff for a minimum of 4 hours each weekday, excluding holidays, vacations and other permitted absences.

Duties & Responsibilities: For hospital managers one of the most important clauses in your contract should fully describe the duties and responsibilities of each party. This clause should state clearly that this is a management position. For the employer, their primary duty is to will provide a safe working environment and the space, tools,
equipment and support that you will require to do the job they have hired you for. It doesn’t help to have a job if the employers won’t provide the tools you need to get the job done.

For you, this could be an extensive and detailed list with many sub-clauses, including your responsibilities for such things as: business planning, human resources (hiring, discipline, firing), employee training and monitoring, management supervision, communications, policy generation and manual maintenance, customer service, sales and marketing, bookkeeping and financial reports, budgeting, inventory, pricing and fees structure, health and safety, premises management, office management, pharmacy, insurance, pensions, and, I am sure, many others not listed here. This is a place where your association could do a job task survey and draft a model clause for others to use as a guide.

**Warranties:** There should be a clause that specifies what each party guarantees to each other. For example that the owner will maintain all licenses, permits and insurances required by law while the employee might guarantee that they are a certified practice manager and will maintain that certification during his/her employment.

**Compensation:** Many, if not most, contract disputes center around compensation issues. Consequently this is one of the more complex clauses in an employment contract. These are often along clauses with many sub-clauses. Salary should be specifically stated in dollars and cents and should specify how and when the compensation will be paid. For example a salary of $100,000.00 paid in 12 equal increments on the 5th of each month by check in US Dollars. Or, it might be 1/52nd ($1923.08) of the total to be paid on Friday of each week. If there is to be automatic payroll deposits that should be specified here. Any deductions from the salary such taxes, workman’s compensation or health insurance should also be mentioned here. Look to the standard in your industry to understand the prevailing payment schemes.

List any additional compensation separate from salary, such as paid pension plans, health plans, disability benefits, or bonuses, as individual items. Each should include specifics about the method of determining eligibility and vesting, the method of calculation and the method and time of payment. Also include what happens to each at termination of employment.

If you are expected to use your own equipment or automobile in your job, specify that as well as any compensation for insurance, wear and tear, insurance, registration, maintenance, etc.

In multi-year contracts include a thorough description of any salary escalation and the intervals and methods by which the escalation will be calculated.

**Holidays:** List all holidays you are not expected to work and what compensation, if any, there will be for working the holiday. For example, employee will not be expected to work Presidents Day and the 4th of July. Such holidays will be without additional
compensation. Should employee, of practice necessity, work any such holiday he/she will be additionally compensated by an amount equal to $48.08 for each holiday hour worked.

**Vacation:** Specify what vacation will be allowed and how it is to be calculated. For example, use the number of vacation days granted such as 10 days rather than the term two weeks. Specify the specific formula for calculating the vacation earned, i.e. vacation is to be earned at the rate of one day for each 25 full days worked. Also include whether or not the vacation is forfeit if not used within the year or if it can be carried over and accumulated.

**Personal or Sick Days:** Specify if there are personal days off allowed, or if there are allotted sick days. Also include what happens if they are not used. Are they forfeit or can they be carried over and accumulated.

**Non-salary Benefits:** List as individual items any other employee benefits agreed to. These could include such things as discounted veterinary care, uniform or clothing allowances, health club fees, etc.

Include, with specificity, any compensation for association membership dues or subscriptions to journals or magazines that the employer will pay for. Be specific as to whether the employer pays the costs or reimburses you.

Be sure to include any compensation for travel, hotel, and food expenses in attending seminars or association meetings.

**Performance Evaluation.** Specify when and how your performance will be evaluated. Will the reviews be on a specified interval and will they be written or oral. Specify the basis of the evaluations and whether or not the evaluation have any effect of compensation.

**Discipline and Termination:** There should be clauses here for both the employer and the employee that allow for the voluntary termination of the contract. These usually require some written notice, often three months. This clause provides an alternative to breach, in case things are not going well.

There should be specific ways that the employee can leave without penalty if the employer breaches his agreement as well as ways that the employer can out without penalty if the employee breaches. For example, say there is a flood and the employer fails to provide a suitable workspace for a given period of time or if the employee breaches any professional or ethical codes, dies or is convicted of a crime.

**Remedies and Damages:** There should be a clause that specifies the available remedies and damages available should there be a breach of the contract.

**Alternative Dispute Resolution:** There should be a clause, usually in a bolded font different from the rest of the contract, which allows for some form of non-judicial resolution to disputes arising from the contract. This may be any of a number of forms or
mediation or arbitration. State law often guides how this may be presented and used in the contract.

If these and other clauses pertinent to the agreed upon terms are not in the offered contract, insist that they be included or do not sign. Everything you agreed to should be written in the contract or it can, and often will, be denied later.

**BOILERPLATE:**

The remainder of most contracts is made up of clauses that have no direct relationship to the employment and its terms but rather relate to the legal need for clarifying the terms of the agreement. For example, there should be clauses for defining terms, the governing law forum, the severability of terms, the completeness or entirety of the agreement, the process for amendment and waiver, permitted assignment and delegation, merger, indemnification, applicability to successors and assigns, notices required, and others as needed.

As you can see the so-called building that is a management contract can be a very intricate and complicated thing with a number of necessary and complex building blocks. The need for each block or clause varies from situation to situation and from state to state. I can not stress enough the need for a qualified attorney in your state to prepare and review these contracts before you sign.