

Message from the Chair

By Eva A. Hurst, M.D.



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Greetings from San Francisco! Congratulations on completion of the in-service examination and on what I hope has been an exciting year of training. I think that the administration of the exam went even smoother than prior years. Preliminary feedback received specifically indicates improvement of clinical and pathologic images, both areas of resident concern on previous exams.


As we embark upon a new academic year, it is a challenging time to be a dermatologist. A new study released on April 6, 2005, and entitled "The Burden of Skin

Disease," reports that the prevalence of skin disease in America exceeds that of obesity, hypertension, and non-skin cancers. The annual cost of 21 specific diseases analyzed is estimated at 37.17 billion dollars. To that end, I am pleased to report that a large group (Steve, do we know how many lobbied in total?) of dermatologists met with legislative representatives in Washington to support vital NIH funding for skin disease research.

In other news, I recently represented the Residents and Fellows Committee at the first AAD Solutions Summit in Dallas, where representatives from all facets of dermatology met in work groups to address over a dozen key issues facing dermatology and the Academy. Many great ideas and plans for action were generated at the

Summit and reports from all groups were presented to the Board of Directors.

I hope this academic year proves to be an educationally fulfilling one for you all. I am always happy to hear about any issues or concerns that you may have.

Lastly, a reminder about the 2nd Annual Resident Roundup Campaign for Camp Discovery. It is the goal of the RFC to support the advancement of this special program, which provides an extraordinary experience for hundreds of children with severe skin disorders. In the next few weeks, you will receive a mailing asking you to consider providing monetary contributions to the AAD Teen Camp Endowment and/or volunteering your time at one of the Camp sessions. I encourage you all to participate! 

Physician employment contracts: what you need to know

Andrew E. Blustein, Esq. & Lawrence B. Keller, CLU, ChFC

As legal and financial advisors to physicians, we are often asked by graduating residents and/or fellows to comment on what issues they should expect to confront in an employment contract. This article will provide readers with an overview of the major provisions as well as help them avoid mistakes that are commonly made when negotiating their first employment contract.

Responsibilities/On-call

A contract should clearly delineate the responsibilities of the graduating physician to the Practice. Some contracts will specify the amount of hours that are expected, although this is becoming less common.

Many contracts will simply state that the job is a "full-time" commitment and may contain a restriction on outside activities. The graduating physician needs to consider whether he/she intends to have other commitments and, if so, negotiate for a "carve-out".

One of the most controversial issues is the physician's "on-call" obligations. Some contracts will include a specific on-call schedule or a statement that "call will be divided equally" — either approach is acceptable. If the contract is vague as to the on-call responsibilities the graduating physician's attorney needs to attempt to address this issue.

Termination Events

Physician agreements often contain provisions permitting the Practice to terminate the graduating physician "without cause" after notice of termination is provided. Some contracts lengthen or eliminate the "without cause" termination right after the passage of several years. While the graduating physician's attorney may be able to negotiate for more notice time, the effect of a "without cause" termination can still be considerable. The graduating physician could find that he/she has to suddenly find a new job. As discussed below, this situation could become more difficult if the

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graduating physician is subject to a restrictive covenant. The graduating physician needs to appreciate this insecurity, although it is unlikely to be removed from the contract.

Most contracts also contain provisions which permit the Practice to terminate the graduating physician for specific “for cause” events. This termination is usually triggered on much shorter notice than “without cause” termination rights. A typical contract can devote up to a page or more describing many “for cause” events. Some termination events are obvious, such as a breach of stated obligations or loss of a medical license. Other events may involve failure to obtain privileges in certain hospitals. This is why it is important for the graduating physician to attempt to obtain these privileges before the start date of the contract, where possible. Still other events may be very subjective and provide the Practice with the right to terminate employment for other reasons deemed important to the Practice. The attorney for the graduating physician should attempt to provide the employee with the ability to cure these issues before termination becomes effective and also to narrow the scope of these provisions.

Salary/Compensation

The question we are asked most frequently by graduating physicians is whether we believe the salary in their contract is reasonable. This is a difficult question for several reasons. First, while graduating physicians tend to be familiar with what they perceive as the “going-rate”, this rate varies depending on location (e.g., rural vs. major metropolitan area) and medical specialty. Second — and most importantly — a contract may offer a lower salary but be a better opportunity. For example, a Practice may offer a lower salary but the contract may contain a shorter time period to partnership with a lower buy-in price for the ownership interest. The cliché that “all that glitters is not gold” is very true in the context of selecting the right contract.

Incentive Compensation is another area of concern for graduating physicians. There are many different formulas for incentive compensation, but the most typical is to provide the graduating physician with a percentage of collections (e.g., 15%) above a specified dollar threshold

(e.g., \$400,000). Many graduating physicians become too focused on the dollar amounts (e.g., 20% instead of 15%), but the graduating physician is rarely in a position to determine if the Practice has selected a realistic goal. The answer to this question will arrive at the end of the first year and that is why we suggest that a graduating physician monitor whether this goal is likely to be obtained after 6-8 months into the contract year.

Opportunity for Partnership

Many employment contracts will not promise the graduating physician that he/she will be made an owner of the Practice. In fact, many contracts may end after one or two years. Other contracts may provide a timetable for partnership but state that this partnership is available “only if offered by the Practice”. In both of these cases, the graduating physician has no guaranty of partnership. For this reason, the graduating physician has to understand that he/she generally cannot be assured of a future with the Practice after the end of the contract. An attorney representing the graduating physician can attempt to negotiate provisions to remove some of the uncertainty. Also, the attorney should attempt to add a provision about the amount of the “buy-in” you may pay if you are offered partnership.

Malpractice Insurance

Many states have two types of malpractice insurance. The more beneficial type of insurance is called “occurrence” insurance and will protect the physician with coverage whenever the action is brought, even if brought after the contract is terminated or expires. The second type of insurance is “claims-made” insurance and will only provide coverage if the policy with the same insurer is in effect when (i) the malpractice was committed and (ii) when the actual action is commenced. While “claims-made” insurance is cheaper, the graduating physician can be left without coverage if he/she leaves the Practice and does not maintain the same insurance policy. For this reason, the attorney for the graduating physician will want the Practice to purchase an “occurrence” policy, but this is often not offered.

The good news is that “claims-made” insurance can be converted into “occurrence” insurance by purchasing something called a “tail” endorsement. The bad news

is that a “tail” endorsement can cost thousands of dollars. Therefore, one of the most crucial issues in an employment contract will be whether the graduating physician or the Practice bears the cost for the “tail” endorsement. An experienced healthcare attorney will be able to suggest some compromise positions so that the payments for the tail may be shared with the practice.

Restrictive Covenant

A restrictive covenant is a contract provision, which states that an employee cannot work for a given period of time after the contract terminates or expires (e.g., 2 years) within a given restrictive zone (e.g., 4 miles from each of the offices of the Practice). The provision may also require the physician to resign hospital privileges. Over the years, many physicians have told me of their belief that these provisions are unenforceable. This belief, however, is incorrect. While the laws of the state in which the Practice is located typically govern these provisions, most states will enforce a “reasonably” drafted restrictive covenant. What is considered “reasonable” is something that should be discussed with an attorney, but it is very important for the graduating physician to understand the size of the restricted area and its potential impact. But, in the vast majority of contracts, a graduating physician should expect to agree to a restrictive covenant and should consider these provisions in evaluating different contracts.

Benefits

A thorough discussion of the benefits that graduating physicians often obtain is beyond the scope of this article. However, health insurance is often provided by the Practice to the graduating physician, although family coverage is not always provided. Disability insurance is another important benefit; however, it is important to recognize that an employee will be taxed on any disability payments that are received under a policy that was provided as a benefit by the Practice. For this reason, the graduating physician may want to purchase a supplemental policy or consider some other alternative (e.g., if possible, opt out of the Practice’s policy and receive a higher salary). Many other benefits such

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as vacation vary greatly between different contracts. It is important for the graduating physician to understand his/her benefits but it is also important for the Practice to retain its ability to alter benefits during the contract term.

Summary

Whenever you are presented with an employment contract, you should consider hiring an attorney (that has significant experience in both drafting and negotiating physician employment contracts) to review it before you sign. You should expect the attorney to provide you with an engagement letter that specifies his or her fee arrangement. Most attorneys bill on an hourly rate. The attorney's invoices should include a breakdown of charges, including the date the service was provided, a brief description of the service, and the number of hours or minutes spent working on your behalf. Although some

young physicians feel that they cannot afford to hire an attorney, the truth is that you cannot afford not to hire an attorney. Remember, in all likelihood, your future employer has had an attorney draft the contract that you will be signing.


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New grant for residents completing training

The American Academy of Dermatology (AAD) has developed a Volunteer Grant Program that will cover the expenses for one or two AAD members annually who volunteer to teach for six months or more at the Regional Dermatology Training Center (RDTC) in Moshi Tanzania or another education program in a developing country.

Applicants must be physician members of the AAD or have completed residency training and have submitted all documentation to become a member prior to the proposed start date. International members are eligible but their volunteer work must be conducted outside their country of residence.

The deadline to receive applications for travel in 2006 is Jan 1, 2006. For more information, contact Linda Ayers at the American Academy of Dermatology, layers@aad.org. 

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