



Test the Waters Before Signing an Employment Contract

■ JOHN SHUFELDT, MD, JD, MBA, FACEP

It sounded like a great job. You saw the ad in the back of *JUCM* and contacted the person listed at the bottom. He seemed pleasant enough on the phone and the pay was what you thought was the market rate for the area.

The next day, you drove over for the interview, which consisted of only four questions (the first being “If you were a tree...” and the last being “When can you start?”), toured the center, and signed the employment contract over lunch at the Arby’s with the retail clinic inside.

Are you beginning to hear the music from *Jaws*? You should be! If a scenario like this has already happened to you, don’t feel badly because you are a member of a large club which most of use have already joined once or twice.

Let’s face it; we are victims of our own success. If you have gotten this far in your career, it is fair to say that you are very bright and are used to making critical, even life-and-death decisions at a moment’s notice. Thus, consulting a lawyer to read a bunch of words on a contract seems like a waste of hard-earned money. Right?

Let’s look at the corollary, though: If you were a lawyer would you trust yourself to diagnose your child’s abdominal pain? I rest my case.

Lawyers who have experience reviewing physician contracts are trained to interpret, as a court would, seemingly innocuous language, spot the loopholes and ambiguities, and to know what terms should be included in the contract but aren’t.

When a patient shows up with a large fungating mass growing out of the side of his neck with a cigarette dangling from his lips, what is the first thing that goes through your mind (other than please put the cigarette out)? It’s probably, “Why on earth did you wait so long?”

It is the same in the legal world. The time to consult an attorney is before you sign or agree to sign anything. This includes letters of intent, an e-mail with a multi-bulleted job description, or anything else which may bind you in the future. Once you have narrowed it down to one or two offers, consult your attorney to help you review the offers and contracts.

Spending Wisely

Let’s change paradigms for a moment.

If you were paid by a health plan based upon how much time you spent with the patient, do you think efficiency would matter as much to you? Most attorneys are paid on an hourly rate unless you can find one that will review your contract on a flat rate basis. The time and money spent reviewing a contract is well spent.

However, you do not need an attorney to *negotiate* your contract. The fear, of course, is that your five-page contract negotiation will turn into a protracted AFL-CIO management dispute and that before you know it you will be out thousands of dollars.

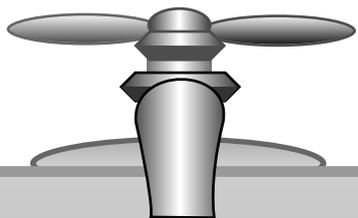
Trust me, no owner wants to talk to a prospective provider’s attorney. Learn what you need to know about the changes you are requesting and sit down face to face, if possible, with the manager or owner. You will earn her respect, forge a relationship, and simply elevate yourself in her eyes.

Think of researching a job as akin to taking the history on a 40-year-old mute patient with chronic fatigue syndrome, migraine headache, and fibromyalgia: It is not easy and it is certainly not quick.

At the same time you are looking for the perfect job, you may also be relocating, taking boards, finishing training, etc. It is easy to understand how someone with limited time would focus only on pay rate and time off. Before you interview, though, you should spend considerable time researching the market, the demand for providers, approximate salaries, malpractice rates, managed care penetration, and provider migration.



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HEALTH LAW

Once you have a few potential targets identified, talk to as many people as you can about the group or practice. Pretend you are a patient and "secret shop" them. (One important safety tip however: you may not want to pretend you have an STD for obvious reasons.)

*"It is rare that the
first contract offered will be the
best possible one."*

Anyway, during your interview, observe everything you can and ask the tough questions:

- What is the physician turnover rate?
- Why are physicians leaving, if there is turnover?
- What is the group's malpractice history?
- What does the practice do to ensure quality and customer service?
- What electronic medical records system does the group use?
- Does the practice have any pending or past compliance issues?
- Is the practice profitable?
- Are you able to meet with other physicians in the group and spend some time observing the culture? This will also allow you to observe how the office and support staff is treated by the owner/manager.
- What is the reputation of the practice in the medical and lay community?
- Do the physicians and staff seem tense, overworked, or harried?

Once you are done with the interview and have observed everything you can, do not commit either orally or in writing. Thank them for their time and let them know you are seriously considering the offer and will be back to them in a defined time frame. Ask who you should contact if you have additional questions. Use this time to work with your attorney to review the contract and to continue to gather information.

It is rare, except in large groups, that the first contract offered will be the best possible one. In some large groups with many providers, the manager will probably not be in a position to make any substantive contract changes since the provider contracts need to have some degree of continuity.

That said, in those groups the contract has probably been "cleansed" so thoroughly by your predecessors that it is equitable from the start. However, do not rely on others; have it looked at by your attorney as well.

In the next issue, we will review certain clauses which can bite the unwary physician much like the first scene in *Jaws!* ■