

Top 10 things to look for in a job contract

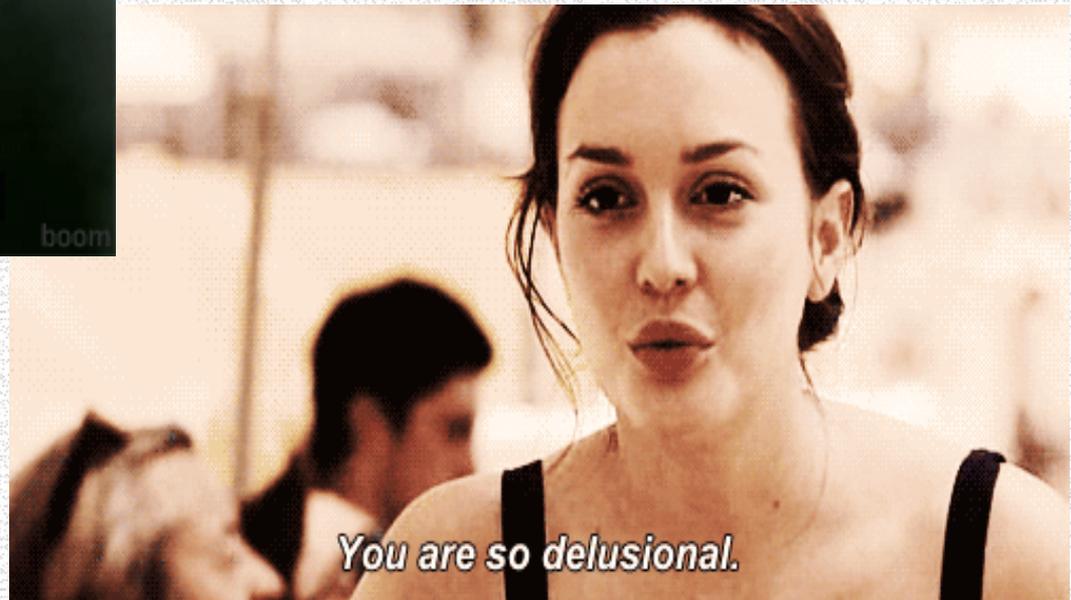
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Ten Top Things in a Contract



Ten Key Terms

1. Introduction/Recitals.
 - a. Remember the Parol Evidence rule: if anything is important, get it in the agreement.
 - b. Also, what is the full extent of the agreement?
 - ✓ Integration/Whole Agreement/Prior Agreement clause(s).
 - c. Clearly identify employing entity.
 - d. What is employer's "home" state: is it that state's law that applies? Does that matter to you?
 - e. "Whereas" clauses count: they set parameters and intent.
 - f. Watch recitals and "warranties"; e.g. licensure, accuracy of resume, etc.

Ten Key Terms (cont.)

2. Nature of the Relationship.
 - a. Employment or independent contractor?
 - b. Full time/part time/*locum tenens*?
 - c. Is an equity position given?
 - ✓ Amount
 - ✓ Vesting schedule
 - ✓ Exercise price
 - ✓ Anti-dilution provision
 - ✓ Other terms of stock agreement
 - d. Exclusive?
 - e. Outside activities allowed?
 - f. Subject to a corporate or practice handbook/manual?
 - g. Intellectual property: is it yours or a “work for hire”?

Ten Key Terms (cont.)

3. Term.
 - a. Set term or “at will”?
 - b. Confirm start date.
 - c. Is any of it “guaranteed”?
 - d. Compare to termination provisions. Why?
 - e. What happens if the corporation or practice sold?
 - ✓ Is the agreement assignable?

Ten Key Terms (cont.)

4. Duties.
 - a. What is your title?
 - b. What is expected of you?
 - c. Is there a job description?
 - d. Where will you be practicing? Can that change?
 - e. What is the schedule: daily and weekly?
 - f. What level of authority do you have?
 - g. Is there management responsibility?

Ten Key Terms (cont.)

5. Compensation.
 - a. Signing bonus.
 - b. Salary or draw against productivity payment.
 - c. Bonuses: make sure you understand the formula.
 - d. Check on raises/reductions: range and time.
 - e. COLA?
 - f. What, if anything do you have to pay?



Ten Key Terms (cont.)

6. Benefits/Insurance.
 - a. What benefit plans does the employer offer? Cafeteria or set plans?
 - b. Insurance: health, dental, vision, disability, life.
 - ✓ Dependent coverage?
 - ✓ Your cost?
 - c. Malpractice: occurrence/claims made/tail.
 - d. D & O protection: if you have a management position.
 - e. 401k or pension.
 - f. Supplies/equipment.
 - g. Professional expenses (memberships, journals, etc.) and licensure.
 - h. Continuing education.
 - i. Indemnification.

Ten Key Terms (cont.)

7. Termination.
 - a. Check “for cause” reasons.
 - b. Make sure terms are clearly defined.
 - c. Is there an “opportunity to cure”?
 - d. Is the employer’s breach addressed?
 - e. What about “not for cause”: what notice do you get?
 - f. How much notice are you supposed to give if you decide to quit?
 - g. How is “disability” defined and handled?
 - h. Under what conditions, if any, is there severance pay?

Ten Key Terms (cont.)

8. Covenants and post-employment obligations.
 - a. Covenants = No. 1 thing to avoid, if possible.
 - b. Types:
 - i. Non-competition;
 - ii. Non-solicitation (patients/vendors);
 - iii. Anti-piracy;
 - iv. IP; and
 - v. Confidentiality.
 - c. Check and seek to limit time and geographic scope of covenants.
 - d. Return of property: what do you get to keep?
 - e. Access to records.
 - f. References.
 - g. ADR.
 - h. Indemnification/cooperation.

Ten Key Terms (cont.)

9. Future purchase.
 - a. Are there prerequisites; e.g. time in the practice, productivity, etc.
 - b. To whom has the offer been made?
 - c. How will the practice be valued?
 - d. What will be included, e.g., goodwill.
 - e. If more than one candidate, is there a bidding procedure?
 - f. Must the full price be paid up front?
 - g. What about the existing owners: do they stay on and/or will they have restrictive covenants?
 - h. What you want, in essence, is a term sheet, up front, containing all *material* terms.

Ten Key Terms (cont.)

10. Boilerplate.
 - a. Choice of law.
 - b. Integration: what is the full extent of the deal.
 - c. Notices: how do the parties communicate officially.
 - d. Loser pays.
 - e. Amendments.
 - f. Savings/severability clause.
 - g. Blue pencil provision.
 - h. Assignment clause.

Dental Practice Agreement

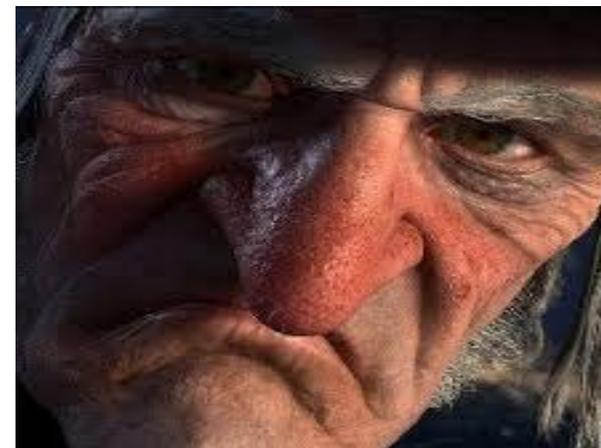
1. What is the nature of the Agreement?
 - a. Who are the parties?
 - b. What is an LLC?
 - c. What about DDS LLC Management?
 - d. Who is favored?
 2. “Recitals”, sometimes “Whereas clauses”:
 - a. Licensure of dentist;
 - b. Mutuality of intent; and
 - c. Acknowledgement of consideration (“Now, Therefore”).
 3. Nature of the relationship: employment.
 4. Term: 24 months....really? See section 9 a).
- <http://www.dentaldevelopmentsolutions.com/assets/templates/2010/pdfs/associate.pdf>

Dental Practice Agreement (cont.)

5. Scope and purpose: unique here: predicate for covenants and possible buy out.
6. Duties and nature of employment (full time):
 - a. Involvement in management somewhat rare;
 - b. Fees up to the practice; and
 - c. Record keeping responsibility specified.
7. Compensation and benefits:
 - a. Salary: “piece of the action”; daily min.; yearly max.
 - b. Supplies and equipment:
 - i. Problem: what is the “set up investment amount”?
 - ii. Dentist pays for “specials.”
 - c. Note: no benefits.

Dental Practice Agreement (cont.)

8. Obligations of Associate:
 - a. Malpractice insurance + LLC an additional insured.
 1. Claims made or occurrence?
 2. Tail?
 - b. Association fees.
 - c. Licensing fees.
 - d. CPE fees.
 - e. Benefits.
 - f. Expenses.
 - g. Charges for care of family members.



Dental Practice Agreement (cont.)

9. Covenants:
 - a. Another statement of “consideration”.
 - b. Limited access to business records.
 - c. Non-disclosure and confidentiality.
 - d. Non-competition: 2 years; 20 miles.
 - e. Non-interference.
 - f. Two year anti-piracy.
 - g. No “bad mouthing”.
 - h. Two year non-solicit of patients.
 - i. Acknowledgement of enforcement + “blue pencil” provision.
10. Patient records:
 - a. Reference to state Practice Act.
 - b. Sell back provision.
 - c. Post-termination transmittal to dentist at patient’s request.

Dental Practice Agreement (cont.)

11. Termination.
 - a. Sixty day notice for no fault/non-cause termination.
 - b. Death or permanent disability (watch ADA/FMLA).
 - c. Cause.
 - d. By dentist for “material breach”; and dentist gets... what?
12. Notices.
13. “Boilerplate”:
 - a. Applicable law;
 - b. Binding effect/beneficiaries;
 - c. Severability;
 - d. Integration (prior agreements superseded);
 - e. Prevailing party attorney’s fees;

Dental Practice Agreement (cont.)

13. “Boilerplate” (cont.):
 - f. Waiver;
 - g. Headings;
 - h. Ambiguities (protection of author; facts and circumstances test);
 - i. Other instruments; and
 - j. Assignability (one way).
14. Payment to management company.
15. Purchase by dentist: Price + recoupment of “cost.”

Conclusion

1. Rookies usually don't have much bargaining power, unless.....
2. But, if you don't ask, you don't get.
3. Identify every document in play: the contract, work rules, stock option agreements, bonus plans, benefit agreements.
4. Read every word of every document.
5. Understand, there is no such thing as a perfect contract.



And **crowds** of happy patients...



