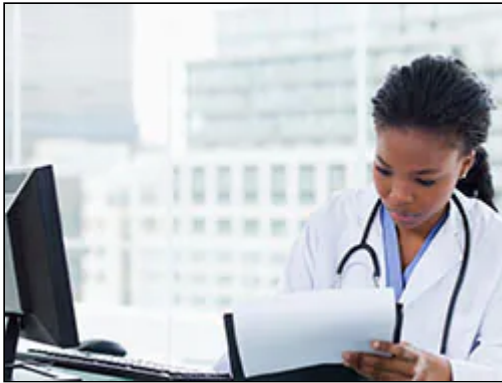


# Watch Out: Minefields in Your Hospital Contract

Batya Swift Yasgur, MA, LSW

December 29, 2022

Savitha Bonthala, DO, MPH, a Houston, Texas–based physiatrist, had been offered an exciting position as medical director of a brain injury rehabilitation program.



Prior to the offer, "I was in private practice and burned by a bad contract I signed right out of fellowship with a billing company because didn't know how to read contracts and didn't understand what a typical revenue cycle looked like," she told Medscape.

So before signing on the dotted line, Bonthala decided to have a lawyer review the contract. She consulted Amanda Hill of Hill Health Law, a healthcare practice based in Austin, Texas. "Amanda pointed out that the contract had a 1-year noncompete covenant that would have prevented me from working anywhere within a 30-mile radius of the facility should I choose to leave or should my employment be terminated."

Bonthala had not been familiar with noncompete covenants because they do not exist in certain states, including Delaware, where she completed her brain injury fellowship. "I never would have thought about it if Amanda hadn't brought it to my attention," she said.

Noncomplete covenants — and other aspects of employee termination clauses — are only one component of a contract that need to be attended to, Hill told Medscape.

"Physicians graduate from medical school with vast clinical knowledge, but they're not expected to be legal experts. I've seen doctors sign overwhelmingly unfair contracts and then feel stuck."

---

## Look Beyond "This Is Our Standard Contract"

Bonthala encourages physicians to consult an attorney before signing anything. "Often doctors — especially young graduates — will sign anything that's put in front of them because they're eager to work and pay off their loans, and the recruiter says, 'That's our standard contract, everyone signs it.' But make sure you understand what's in the 'standard contract' and that it's fair."

Dennis Hursh, managing partner of Physician Agreements Health Law, a Pennsylvania-based law firm, advises physicians not to blindly accept that statement.

In over 30 years of legal practice, Hursh "can probably count on one hand" a situation in which the employer refused to change anything. Even in one of the contracts that couldn't be changed, there was still room for negotiation. Hursh, author of *The Final*

By using this site, you agree with our use of cookies. [Cookie Policy](#)

[Manage Preferences](#)

Accept Cookies

On the other hand, she says, it's all about leverage. "If something 'standard' can't be changed, don't waste your time. But often, what's 'standard' is just a line they tell you. Doctors often have a lot more power than recruiters want them to believe."

Hill, whose video series [Guard My Practice](#) covers many of these areas, advises physicians to "look at what's realistic and fair and come back with reasonable requests."

---

## Think About Your Exit Strategy

Although a physician may be excited about an upcoming job and may not anticipate having any reason to leave, things don't always work out. They may be unhappy or have to move for family reasons. The employer may terminate their employment owing to budgetary constraints or unmet productivity metrics.

So before walking in the door, you need to consider a "fair and reasonable exit strategy" in case you have to walk out the door, says Andrew Knoll, MD, JD, a former hospitalist who is now a partner with Cohen Compagni Beckman Appler and Knoll PLLC in Syracuse, New York.

For example, most contracts require that the employee give advance written notice of an intention to resign. The period can range from 30 days to as long as 180 days. Hursh advises making sure that a similar time frame is established within which the employer must inform you if they're terminating your employment. "If you have to give 90 days' notice before you resign, your employer should similarly give 90 days' notice before terminating your employment."

If the employer won't agree to full reciprocity, Hursh suggests trying to at least "close the gap." So if a provider has to give 90 days' notice, the employer must give 60 days' notice. "If an employer is unwilling to show any flexibility in closing the gap, this is a warning bell that should give you pause."

Hursh also advises being wary of incentives, such as sign-on bonuses, relocation assistance, and student loan forgiveness, because a physician may be forced to repay them if he or she leaves before the contract ends — even if it was the employer that terminated the doctor.

"I have even seen health systems go after a physician's heirs if the physician dies or becomes disabled before the end of the contract period," says Hursh. He suggests requesting to prorate the payback of the bonuses or other incentives on the basis of how long you have been in the position and to build in verbiage that, in the event of death or disability, your heirs will be protected.

And make sure you know what your employer considers to be grounds for termination — for example, failure to reach certain quality or productivity metrics.

---

## The Tail End

A physician's vulnerability to malpractice litigation doesn't end when his or her employment ends. For this reason, the physician requires "tail coverage" — a colloquial term referring to an insurance policy that, in Hill's words, "wraps up your coverage in a tight little bow." Tail coverage deals with events that took place during a physician's employment, even after the physician is no longer employed by the facility and is no longer paying premiums to that particular insurer.

"Unfortunately, a more common type of coverage is called 'claims-based,' which means that the insurer covers only claims filed while the physician is still on the policy," Knoll told Medscape. "So when you're no longer employed at that facility and that premium is no longer paid, the alleged malpractice that took place at your old position won't be covered."

Tail coverage can be purchased by you or by your employer once the claims-based policy is canceled or has expired, but it's very expensive. Hursh recommends asking your prospective employer to pay either all or some of it, such as a portion of it for every year of employment, and making sure it's clearly written into the contract.

---

## A Short Leash

By using this site, you agree with our use of cookies. [Cookie Policy](#)

Hursh advises clarifying exactly what "practicing medicine" in the specified area means. Are you allowed to have visiting privileges in a nearby hospital and only your new office must be located outside the 'off-limits' area? Are you barred from seeing patients in Veterans Affairs centers or being a physician in a local school?

And make sure these provisions apply only to patients whom the provider has personally seen. "The verbiage should include only your patients, not any patient who was treated in that hospital by someone else. Let's say you're a gastroenterologist and a patient was seen at the ER for a broken arm. It would be absurd to be restricted from treating that patient in a different practice in the future."

Jon Appino, MBA, principal and founder of Contract Diagnostics, a Kansas City–based consulting company that specializes in physician employment contract reviews, advises making sure the contract specifies that it applies only to existing facilities rather than facilities that the health system may one day acquire or merge with.

And don't accept it if a recruiter says, "Don't worry, we never enforce this." Once you've signed a contract, it's enforceable. "And even if your old employer won't enforce it, a new employer will be reluctant to hire you if the facility falls within the restricted area," says Hursh. Increasingly, physicians are being asked by new would-be employers if they have noncompete clauses from their previous position.

Hursh describes a client whose noncompete clause covered 65 miles. "This physician was offered a position 63 miles away from his old facility. The prospective employer's attorney agreed that the original employer would almost certainly not come after my client but decided the risk was too great, and my client's offer was rescinded."

It's unlikely that a health system will completely eliminate a noncompete provision from the contract, but you can negotiate reducing the amount of time and the restriction radius, which is what Hill did on behalf of Bonthala.

After 5 months of negotiating, the health system was willing to reduce the radius to 15 miles, but ultimately, Bonthala made the "hard decision" that the risk of accepting the offer was still too great. "Fifteen miles may not sound like a lot, but it meant that if I left the employment of this health system and wanted another directorship position, I would still have to drive over 25 minutes from my house, which — because of other life considerations — I wasn't willing to do."

---

## The Complexities of Compensation

Compensation has become an increasingly complex amalgam that typically includes some combination of base salary, productivity (determined by work relative value unit [wRVU] thresholds), and bonus. To make a wise decision, you need to look at the entire picture, not only the alluring salary figure.

It may be in the physician's best interest to have a flat salary for the first year rather than rely on wRVUs, because a new physician has not yet had the opportunity to build up a patient load. And the wRVU quota should be reasonable and not too high. If it's too high, a physician is less likely to meet that metric and may be penalized, not only with a reduction in salary but also with a reduction in bonus.

Hursh emphasizes that a contract should include the right to view productivity records so a provider can keep track of his or her wRVUs. It helps to keep your own log of your patients as well. One of Hursh's clients had apparently failed to meet the wRVU quota. As things turned out, most of his patients had not been entered into the system.

Appino adds that quality metrics, which include patient care quality and "customer service," are often folded into the compensation formula. "Understand what they are, how they're calculated, and how they figure into your compensation package."

---

## Know Your Worth

When you're presented with a salary, you may either be delighted because it's more than anticipated or disappointed because it's less than hoped for. But where did your expectations come from? How "great" is the salary, really? And if the salary seems low, do you have a leg to stand on in asking for something higher?

Hill calls it "doing your homework." The more solid figures you cite to substantiate your request for changes in compensation, the more strength you have in your negotiation stance.

---

## Make No Assumptions

Make no assumptions about what the employer's verbiage means, even when using commonplace words. For example, Hursh says, you may agree to work a certain number of shifts per day. Does a "day" mean daytime hours, or does it refer to a "24-hour period" — meaning that you could be asked to do all your shifts at night? If they own multiple facilities, are they expecting you to work at multiple places?

And don't make assumptions about call coverage. Find out exactly how many hours are expected of you and under what circumstances — if any — the employer might want to increase that number. This is important even if you're seeking part-time employment because a part-time position doesn't necessarily equate with a part-time call schedule, says Appino.

Hill adds that you should "dig in" to call coverage to ascertain whether nights and weekends are involved, and make sure there is a cap on the amount of call you're asked to do.

---

## A Harmful Clause

Knoll warns physicians never to sign a contract with an indemnification clause because it means you're agreeing to provide full reimbursement to the employer in the event of any legal proceeding against the employer. While that might be acceptable if the physician has engaged in egregious misconduct, it's unacceptable in any other situation and should always be avoided.

---

## You Are the Prize

Hill encourages physicians not to get "wooded" in the interview process and "to see beyond the fancy dinners and enticing come-ons." A good healthcare attorney can help you do that.

Hursh adds that you have more power than you realize. "Physicians are super competitive, which is how they got to where they are. But once you have a job offer, you're not in competition anymore. They've chosen you. You've won the competition. In fact, you're the prize. So don't be afraid to ask for reasonable changes in your contract."

*Batya Swift Yasgur, MA, LSW, is a freelance writer with a counseling practice in Teaneck, New Jersey. She is a regular contributor to numerous medical publications, including Medscape and WebMD, and is the author of several consumer-oriented health books as well as *Behind the Burqa: Our Lives in Afghanistan and How We Escaped to Freedom* (the memoir of two brave Afghan sisters who told her their story).*

For more news, follow Medscape on [Facebook](#), [Twitter](#), [Instagram](#), and [YouTube](#).

Credits:

Images: Wavebreakmedia Ltd/Dreamstime

Medscape Medical News © 2022

Cite this: Watch Out: Minefields in Your Hospital Contract - *Medscape* - Dec 29, 2022.