



CONTRACTS: What You Need To Know

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Chance favors the prepared mind.

Louis Pasteur



Would you buy or sell your home for \$200,000 without a written promise between you and the other party?



Contract

- **A promise or set of promises**
 - the breach of which the law gives a remedy
 - the performance of which the law in some recognizes a duty

- American Law Institute

Contract Validity

- Two or more competent parties
- Mutual assent
- Consideration
 - Mutual exchange of value
 - Time = money
- Legal activity
- Mutual obligation



Let the buyer beware!





Translation for physicians:
Let the physician beware!

Our Agenda

- Basic contracting principles, with an eye toward employee contracts (group practices, hospitals, staff-model HMOs)
- Model managed care contract



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Contracts

- More than dollars.
- They are about relationships and expectations.

Contracts vs. Contracting

- The contract represents a documentation of the outcome.
- **Contracting** is the dynamic process of achieving your objectives, as reflected by the final contract.

Contracting Principles

- Learn about contracts
- Define your expectations and terms
- Investigate the situation
- Negotiate: the first contract is a draft
- Review the contract
- Understand every element of the contract

Expectations

- Income over a 5-year period
- Average working hours/day and week
- Personal and professional goals over a 5-year period: define your expected role
- Advantages of joining the group
- Disadvantages of joining the group
- Benefits and risks for the group

Terms

- Working conditions
- Call schedule and responsibilities
- Patient workload
- Potential, mechanism, and cost for buy-in
- Current and future compensation
- Single vs. multi-year, with cost-of-living increases

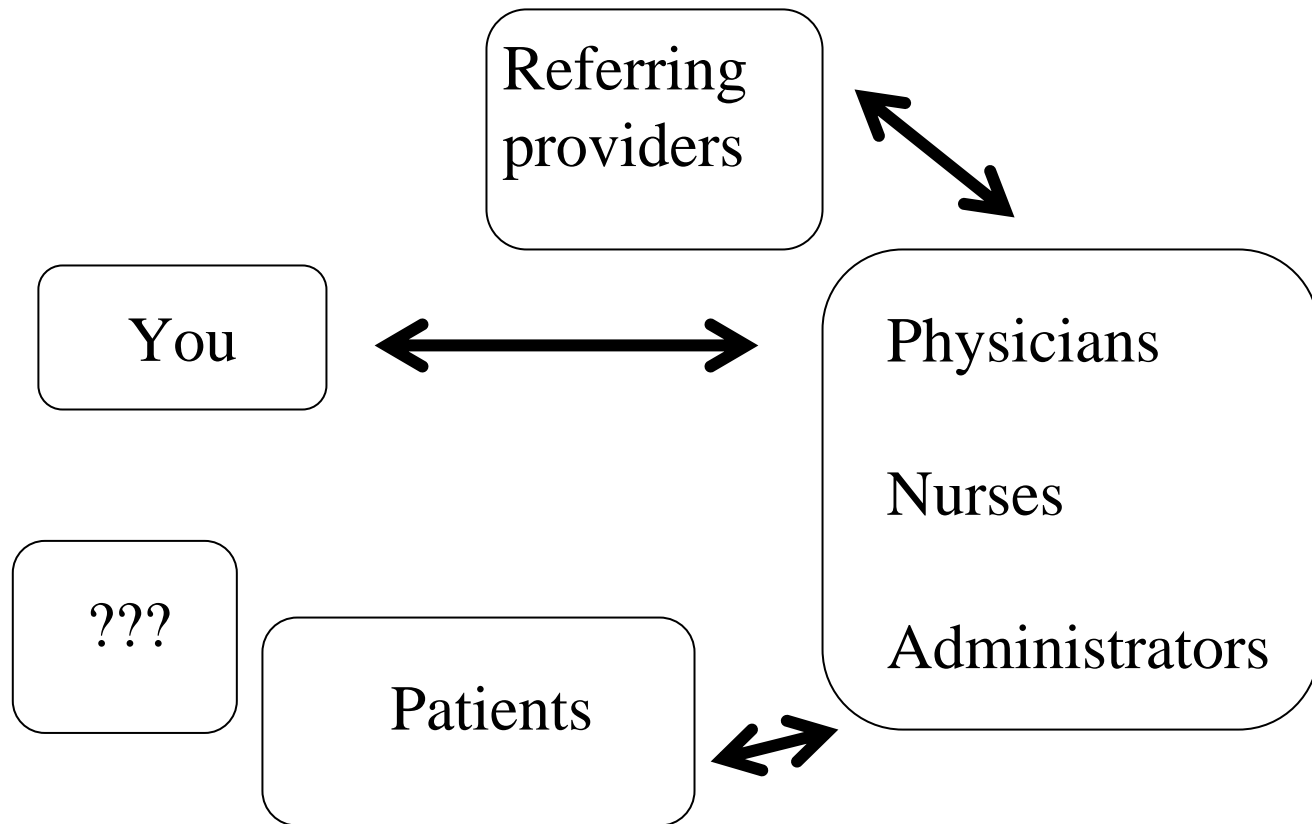
Investigate

- Ask questions of your prospective employer (expectations, why you are needed)
- Observe the practice style and working environment
- Talk with current and past employees
- Get a sense for the employer's reputation in the community

Investigate II

- Find out about the market
- Interview elsewhere for comparison
- Develop a map or chart to illustrate your role/relationship to all parties

Map



Negotiate

- Understand the goal: a clearly stated, equitable agreement that protects the legitimate interests, needs, and concerns of all parties
- Focus on the whole content, not on the number of concessions or isolated items
- Know the strengths and weaknesses of your position, as well as those of the other party

Review the Contract Ia: What You Must See

- Duties: specific
- Term of contract
 - Provisions for termination
 - Cause vs. no cause (available equally)
- Professional liability insurance
 - Provision
 - Premium payment
 - Tail coverage

Review the Contract I_b: What You Must See

- Compensation
 - Income relative to group earnings
 - Access to the “books” and financial statements
 - Pre-tax benefits: insurance, CME
- Medical records: access for you
- Conflict resolution
 - Binding arbitration
 - Non-binding arbitration



Review the Contract Ia: Things to Neutralize

- “Incorporation by Reference”
- Restrictive covenants
 - Time-limitation
 - Geographic restriction
- Indemnification

Incorporation by Reference

- Problem: “Employee agrees to abide by such rules and regulations as may be adopted by employer from time to time . . .”
- Solution: After your review and acceptance, make all exhibits, attachments, and documents with reference in the contract a part of the contract.

Restrictive Covenant

- Problem: “Employee will not compete with group for _____ years within a _____-mile radius of the group clinic.”
- Solution:
 - Don’t allow it!
 - Minimize it
 - Avoid injunction provision
 - Avoid liquidated damages clause

Indemnification

- Problem: “Employee shall be solely responsible for the medical management *[includes outcomes of utilization review decisions]* of the enrollee.”
- Solution: Don’t allow it!

Review the Contract IIb

- **No** vague generalities
- **No** provisions that allow rule, policy, and procedure changes which you are required to follow without your consent
- **No** empty blanks
- **No** verbal promises

Warning Signs I

- High turnover rate
- No one progresses to partner
- Vague assurances of support
- Ask a question, get an unrelated answer or “We’ll discuss this after you start here.”

Warning Signs II

- Muzzled conversations
- Financial information is not forthcoming
- Distribution formula is “top-secret” to you
- Discrepancies between what was agreed upon verbally and what is written
- Pressure to sign the contract
- “You’ve lost that trusting feeling.”

Understand Every Element I

- When you have a patient with a clinical problem outside your area of your expertise, do you just “wing it?”



Understand Every Element II

- Preventive care is just as important in law and business as it is in health care.
- Contract review by qualified legal counsel is essential!

Understand Every Element III

- It bears repeating:
Contract review by
qualified legal counsel is
essential!



Managed Care Contracts

- Same contract principles apply, simply new elements
- More complex business elements and devilish details
- Significant buyer clout
- Utilization review

Managed Care Contracts: Components

- Definitions
 - Medically necessary: prudent physician
 - Emergency services: prudent layperson
- Delivery of Services
 - Covered services clearly defined
 - Verification of enrollees in timely fashion
- Compensation





Managed Care Contracts: Components II

- Compensation
 - Fee schedule terms attached
 - Alternative mechanisms fully described
 - Capitation
 - Risk sharing on non-covered services
 - Withhold or bonus
 - Promptness of payment
 - Clean claims

Managed Care Contracts: Components III

- Medical services entity [physician] obligations
 - Noninterference by managed care organization with medical care
- Company's obligations
 - Notification: prohibits unilateral policy or procedure changes
 - Adverse UR/UM decisions: due process review



Managed Care Contracts: Components IV

- Company's obligations (continued)
 - Payment by parties other than the company: the right to pursue the appropriate party for payment
 - Physician grievances
 - Cooperation on care review and management
 - Provision of financial information
- Records and confidentiality



Managed Care Contracts: Components V

- Insurance
- Term and Termination
 - Negotiation of renewal of schedules/terms
 - Termination for cause
- Dispute Resolution
 - Mediation and arbitration



Managed Care Contracts: Components VI

- Provisions Required by State Law
- Miscellaneous
 - Notification of legal matters: no unilateral amendments
 - Survival: compensation, confidentiality, and dispute resolution provisions remain in effect even after the contract is terminated



Managed Care Contracts: What to Watch Out For I

- General offsets and adjustments
- Litigation
- Noninterference with Members: the “gag clause”
- Indemnification and hold harmless
- Terminate without cause: different standards for physician and company



Managed Care Contracts: What to Watch Out For II

- Evergreen clause: “Provider contract renews automatically each year.”
 - Security, but with a false sense
 - Does not factor in medical inflation, rates remain the same
- Liability: strips legal rights away from physicians in litigation with the managed care company



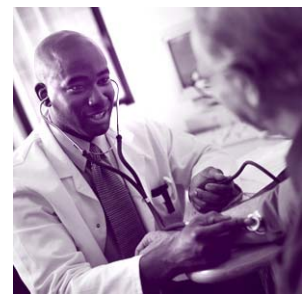
Managed Care Contracts: What to Watch Out For III

- Specialty referrals: “Provider is responsible for negotiating specialty referral contracts.”
 - You have less leverage than the managed care plan
 - Costly for you in capitated withhold pay arrangements
- Limitation on action: reduces statute on limitations

Fear and the Future

- Nothing in life is to be feared: it is only to be understood.
 - Marie Curie
- Control your destiny or someone else will.
 - Anonymous
- The best way to predict the future is to control it.
 - Peter Drucker

The time you spend in contracting is an investment, that will pay enormous dividends.



Final Thought

Trust,
but verify.



