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Employment Agreements for Physician Assistants

### EMPLOYMENT AGREEMENTS FOR PHYSICIAN ASSISTANTS

Employment agreement, what are they and how they benefit both physicians and physician assistant. You are listening to ReachMD, The Channel for Medical Professionals. Welcome to the Clinician's Roundtable. I am Lisa D'Andrea, your host and with me today is Michele Roth-Kauffman. Michele is a physical assistant and an attorney. She is the Director of the Physician Assistant Program at Gannon University and the author of the Physician Assistant Business Practice and Legal Guide. Today, we are discussing PA employment agreement.

LISA D'ANDREA:

Hi, Michele welcome to ReachMD.

MICHELE ROTH-KAUFFMAN:

Hi Lisa, how are you?

LISA D'ANDREA:

I am good. Michele what are the legal considerations that a practice must be aware of when hiring a physician assistant.

MICHELE ROTH-KAUFFMAN:

Before hiring a physician assistant, a practice should obtain the state laws that govern physician assistants and they should also obtain a copy of the Medical Malpractice Act that covers the physician assistants in their state and review both of those documents so that they can better understand how a physician assistant can be utilized by their practice in their state.

LISA D'ANDREA:

Is there a difference between an employment contract and an employment agreement?

**MICHELE ROTH-KAUFFMAN:**

No, an appointment contract and an appointment agreement as long as they are written down will have the same effect as being a contract and it will be governed by contractual law.

**LISA D'ANDREA:**

If I am employing a PA, should I use an employment contract or simply maintain an at-will relationship?

**MICHELE ROTH-KAUFFMAN:**

Well, a contract really protects both the PA and the practice. That way, there is no misunderstanding of the requirements for the physician assistant or what benefits the physician assistant has. That way, everybody has everything in writing and there should not be any conflicts. Oral agreements can be held, but again when you have an oral agreement, it's very difficult to prove what was said, so it's much better to have things in writing for both sides.

**LISA D'ANDREA:**

Let's discuss the anatomy of the contract. There are many important topics that should be included, but compensation is a topic that causes more anxiety and disagreements than any other issues. How do you suggest entering into the conversation about compensation and can you list the pieces that should be included in the contract?

**MICHELE ROTH-KAUFFMAN:**

Regarding compensation, I think it's important for both the PA and the physician to do a little homework. You can go to AATA's web site and you can find the census and that will show you what PAs are making in an overall range. A lot of states also will put out for a nominal fee, I believe the Pennsylvania Society Physician Assistants for 35 dollars. You can obtain a salary scale for all the PAs in the state and for in their individual specialties because different specialties do have a different salary apply to them. Most often, people who are in surgical settings make higher salaries than anyone who is in family practice, but again they should both know about what that salary should be and it depends to also, are you dealing with a new grad or are you dealing with somebody who has worked in that area because someone who has worked in that area obviously is going to take less time to train and they will command a higher salary and for a person, who has been out there, they should come armed to their contract negotiations with how they are going to benefit the practice, how they see themselves bringing actually funds into the practice because obviously the physician is going to want to have the PA salary and benefits, you know, covered by the revenue that the physician assistant is bringing into the practice. So, the more information they have the easier the discussion will be.

**LISA D'ANDREA:**

What is the typical length of a contract? How often should it be re-negotiated and if it doesn't have an end date, can the contract roll over?

**MICHELE ROTH-KAUFFMAN:**

Contracts should probably be revisited on a yearly basis, that would be in a best case scenario for the physician assistants because you will want to negotiate your salary, hopefully higher, each year based upon your productivity and contract should really be revisited, you don't want them to keep continuing on and rolling over to the point where you may have to go to the court to decide what the benefits are and if the contract is still good. Again, my recommendation would be on a yearly basis that they are revisited.

**LISA D'ANDREA:**

So, have an end-date for a year and sit down every year and revisit the contract.

**MICHELE ROTH-KAUFFMAN:**

Right, but you would probably need a bit of a clause and they are to cover if this contract will continue for the next year or the next 6 months if it is not renewed by the state. You don't want it to just end. You want the PA to be covered by a contract and you know how hectic things can get if you don't get to the contract, you don't want it to just end. So, there needs to be a clause that it carries over. Now, you can, if you want to, do a 3-year agreement or a 5-year agreement and have some type of built-in schedule for increases. You know, you might have increases in vacation, you might have increases in salary, you may have increases in bonuses and it can be tied to the productivity or it can be tied to the rate of inflation or it can be just the set number, they will get a 5% raise each year, they will get a 10% raise each year. So, that way you can individualize the contract. It can't go for any length of time. You don't want it to be too lengthy, but you don't want it to be too short either.

**LISA D'ANDREA:**

Defining scope of practice is an important part of the physician-PA relationship. Could you define what that means and should it be written in a contract?

**MICHELE ROTH-KAUFFMAN:**

The scope of practice of a physician assistant first starts with state law. The physician assisting has to work within the scope of practice defined by state law. Okay, then if they work for a hospital or if they work for a supervising physician, that hospital or that supervising physician can then limit their scope within the state guideline. So, a physician assistant can never do more than what it says in the state laws and the regulations by the medical board, but a physician can decide that I want to employ you as a PA, I want to employ you to do my patient education and see my patients; however, I do not want you to write prescriptions. So, even if they are allowed by state law, a physician can make a decision to limit that PA's scope of practice.

**LISA D'ANDREA:**

And that should be in the contract or in the separate agreement?

**MICHELE ROTH-KAUFFMAN:**

That is usually in a separate agreement. That usually really does not have anything to do with the contract itself. For instance in Pennsylvania, we have to have a working agreement with our supervising physician and that has to go to the medical board and has to be approved by the medical board and so that can create additional issues because you do state the supervising capacity in that work agreement, so I have seen instances where you had an practice hire a new grad and they state in their working agreement they are going to see every patient that this physician assistant sees. Well, 3 years later, they are not still seeing every patient that that physician assistant sees, that physician assistant has his or her own patient load, but they have forgotten to go back and change their supervising agreement with the medical board and that opens up the supervising physician to a malpractice action for failure to supervise. So, it's very important that any type of working agreement that you have, whether it's maintained within the office or if it's at the medical board that it is being followed, that it is also reviewed on an annual basis and that changes are made appropriately and again I can't stress enough that if you have a written agreement as to scope of practice that it's being followed.

**LISA D'ANDREA:**

Michele, what is the difference between termination with cause or without cause and how should they be addressed in the contract?

**MICHELE ROTH-KAUFFMAN:**

A contract should specifically say whether or not it is going to be with cause or without cause. Without cause just means that either party can end the contract and without any reason. Usually, you want to have some type of notice guidelines in the contract, usually anywhere from 60 to 120 days so that that again protects both parties. You don't have the PA coming in and is booked out for the next 3 months saying "today is my last day, thanks, see you later," but you also don't want to have instance where a PA comes in to work and the physician just says "thanks, we don't need you anymore." If you have it without cause, there doesn't have to be a reason, either party can end. If you have a contract that is with cause that usually gives a physician assistant some protection. Their contract can't be ended except for the specific reasons and those reasons should be spelled out within the contract. Usually, typical reasons are any board action that's taken against the physician assistant, which removes their ability to practice, so they no longer can see patients, that gives a provider an apt cause, that gives them a reason to end this agreement. There could be other things that are put in there to protect if there are some reasons that the physician thinks they may not have enough patients. If the physician assistant's patient load falls below 50% for this number of months, you know then there could be a reason to end the agreement. Those should be very specific and they should be written into the agreement. The physician assistant should make sure they understand those reasons. They may also want to have this contract reviewed by a contract attorney, who deals with medical contract as well.

**LISA D'ANDREA:**

In the case of termination, how do you handle the payment of bonuses, severance pay, vacation, or sick time reimbursement?

**MICHELE ROTH-KAUFFMAN:**

Again, there should be a clause within the agreement that states that up until the time of termination, any accrued vacation time, any accrued sick time and bonuses would be calculated up until that date of employment and the physician assistant should be then paid for that with their last check, but again you wouldn't want that in the employment contract. In the event that the physician assistant is not paid, they then have a cause of action to move forward on in order to get their moneys from the practice.

**LISA D'ANDREA:**

What if they are terminated for cause?

**MICHELE ROTH-KAUFFMAN:**

If they are terminated for cause, again they are still eligible for anything they have earned up until the point that they are terminated for cause. So, again, they should also have a clause in the contract that states that they will be paid in full until the time of termination.

**LISA D'ANDREA:**

And if they don't have that written in their contract and they are terminated, what is the responsibility than of the supervising physician?

**MICHELE ROTH-KAUFFMAN:**

Again, that would be based on more of an individual basis. You would have to see the reasons for termination. Did the PA cause some loss to the practice that they are offsetting with those moneys? So, that might be something that again would need to be settled either in a court or by arbitration.

**LISA D'ANDREA:**

I want to thank my guest, Michele Roth-Kauffman for coming on the show. I am Lisa D'Andrea and you have been listening to The Clinician's Roundtable on ReachMD, the Channel for Medical Professionals. Please visit our web site at [reachmd.com](http://reachmd.com), which features our entire library through on-demand podcasts or call us toll-free with your comments and suggestions at (888-MD XM157) and thanks for listening.

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