Anatomy of Contracts

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I am not an attorney and this presentation is not intended to be legal advice. Every contract or agreement needs to be reviewed by the attorney representing the individual midwife

Objectives for Anatomy of Contracts
• Identify the common contract documents in midwifery practice
• Identify common provisions and their purpose in contracts for practice/education
• Recognize provisions that may be problematic for the individuals or the intended practice function
Definition of a Contract

• an agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a valuable benefit known as consideration.

Requirements of a Contract

• an offer
• an acceptance of that offer which results in a meeting of the minds
• a promise to perform
• a valuable consideration (which can be a promise or payment in some form)
• a time or event when performance must be made (meet commitments)
• terms and conditions for performance, including fulfilling promises;

Provisions are the skeleton of the Contract

Parties to the contract
Intellectual property
Salary
Benefits
Non compete
Termination
Dispute resolution
Ownership of records
Rule of law
Confidentiality Agreement

- Agreement to hold all conversations and information obtained as confidential
- Often required during interview process for employment
- Common in proprietary practices and research
- May be required for education

Letter of Intent

- Outline intentions before final agreement is reached
  - Parties involved
  - Roles
  - Plan for next step
- Example: signing to join a practice or university—similar to the LOI with college athletes

Memorandum of Understanding (MOU)

Agreement for common action

- Lists areas of agreement
  - Agree to develop a birth center owned by CNM with MD consulting
- States the planned action to reach a contract(s)
  - Find space near hospital
  - Develop contracts and guidelines
  - Open by January 1, 2015
- Legally binding
Categories for Contracts

• Confidentiality agreement
• Letter of Intent (LOI)
• Memorandum of Understanding (MOU)
• Employee contract
• Employer contracts
  — Employees
  — Consultants
  — Vendors

Examples of Contracts

• Practice relationships
  — Consultants/independent contractors
  — Radiology/lab services
  — Hospital/birth center
  — Billing/financial services
• Business structure
  — Ownership
  — Partnership
  — Leases
• Education program contract
• Research contracts

Goal of Contracts

• Contracts set the method and details of the relationship
• Sets the role, responsibilities and compensation
• Specifies an agreed upon understanding between the parties to avoid conflict
• Provides a method of resolution when conflicts occur
• Incorporate and define legal requirements (prescriptive authority, EMTALA)
• Signature indicates agreement to all provisions
Lessons Learned

• My old view: contract was the “marriage agreement” describing the professional relationship that would live happily ever after

• My new view: contract is more like a “prenuptial agreement”. You hope it lasts forever but if it doesn’t, you must be protected

Provisions Standard in Most Contracts

• Description of the parties
• Purpose of the contract
• Dates of effectiveness and manner of renewal and renegotiation
• Applicable law/authority
• Nonassignment
• Legal compliance: contract does not dictate medical practice, express compliance with corporate practice of medicine laws and STARK laws (self referral), HIPAA

Familiar and Essential Provisions

• Job description and responsibilities
• Consultant role and responsibilities
• Prescriptive authority provisions
• Work schedule: hours, call, “in house” call
• Compensation
• Benefits
• Business services
• Termination
• Dispute Resolution
Compensation Provisions

- Compensation
  - Base pay
  - Sign-on bonus
  - Productivity bonus
  - Profit sharing
  - Role of RVUs
  - Computed on billing or collections?
  - Eligibility for corporate partnership?
  - 401K/retirement plan participation
  - Education loan repayment

Compensation Provisions

- Compensation
  - Interview expenses (could be in MOU)
  - Relocation expenses
  - Multiple office travel costs
  - Lab coats, pager, cell phone, tablet/computer
  - Professional association dues
  - Professional licenses
  - Support for continuing education/graduate study

Insurance Provisions

- Insurance
  - Professional liability—who pays the tail?
  - Corporate or Directors and Officers (D&O) insurance
  - Facility insurance
  - Employee benefit insurance
    - Family/dependent coverage. How is family defined?
    - Social security/Medicare participation
  - Disability and Long Term Care
Benefit Time Provisions

- Vacation model or Paid Time Off (PTO)
- Sick time: just employee or also used for family
- Humanitarian mission time
- Holidays (which ones?)
- Professional development
- Required business travel

Technology Provisions

- Technology licenses and expenses
- Training
- Hardware maintenance and expenses
- Software update requirements/costs
- Security and HIPAA requirements

Billing and Financial Reports

- Billing mechanisms and practice
- Financial reports
- Fee schedule determination
- Overhead reports and determination of costs
- Prohibition against assignment
Intellectual Property

• Clinical practice documents
• Teaching materials
• Curriculum or courses
• Books written while employed in university or practice
• Developed online products
• Articles developed for sale (model to practice suturing)

Credentialing

• Hospital privilege applications/updates
• Third party payor credentialing
• Inclusion as key provider or preferred provider
• Maintenance of records for reappointment and recredentialing
• Inclusion of midwifery on all physician negotiated contacts

Marketing

• Marketing plan
• Cost
• Business cards, website, written materials
• Handouts/teaching materials
• Website and social network usage and oversight
Termination Provisions

- Specific grounds for termination
- Termination for cause
  - Loss of license to practice: RN, midwife, DEA
  - Loss of hospital privileges
  - Ineligible to be credentialed with state agencies or third party payors
  - Conviction of felony
  - Insurance fraud
  - Abuse of patient or staff

Termination Provisions

- Termination without cause
  - In “right to work” jurisdictions, may not need to be a provision to be allowed
  - May be written as provision in any contract
- De Facto: physicians withdraw coverage
- Notice requirement for “termination without cause” or resignation

Dispute Resolution

- Process for dispute resolution
- Mandatory mediation
- Cost of dispute resolution
- Penalties
Less Familiar Provisions

Beware the Fine Print!

Noncompete Provisions

• Noncompete/restrictive covenants
  – State the distance required to establish a new practice
  – State the years an employee may not practice within a certain distance
  – Protects the old practice—and that could be you!
  – May not be considered “enforceable” in certain jurisdictions
  – Will be a costly fight if challenged at termination

Non solicitation

• When employee leaves, employee may NOT recruit staff to go with them
• Employee may not solicit granting agencies/individuals and/or request the grants move with them (Centering)
• Employee may NOT solicit patients to follow them to the new site
Ownership of charts and Records

- Should be a clear provision in the contract
- If the corporation or hospital owns the charts and records, employee will not be able to take the records
- Employee will not be able to do a easy mass mailing if the records are not accessible
- Whomever owns the records, is required to store them in HIPAA compliance and make them available to other providers upon lawful request

A Thought........

- Not since 1865 have persons been owned in this country—except in the eyes of corporations
- It is an ethical responsibility to tell patients where to find the provider who has left
- Write the contract to specify the mechanism and limits of notification
- An employer has NO LEGAL OBLIGATION to tell patients where the provider has moved—only an ethical one

If I knew then what I know now

- Severance package-
  - How long will salary continue
  - How long will employer pay their portion of employee benefits?
  - Who pays the insurance tail?
  - Who owns the equipment and supplies that were used?
  - What happens to the uncollected billing that will be coming in to the company?
Non Disparagement

- Employee may not say or write anything that would reflect badly on the former employer
- Employer has same responsibility
- May extend to a "gag order"
  - May not discuss terms of termination or severance agreement
  - May not discuss the disagreement or any events or circumstances
  - Only exception is a subpoena and subsequent legal testimony

Remember

A good contract prevents misunderstanding and establishes a mechanism for resolution of disagreement

Friendship is not a Contract

- Relationship is never important when compared to money and time
- The closest friends will ignore the relationship if there is a disagreement over work/benefit time or money
- Put it in a contract
Key Reminders

• Put everything in writing that you can
• “Everything is negotiable”
• “All things are possible with the right contract”
• Ignorance or “I didn’t mean/understand that” will not relieve you from compliance

Get a Lawyer

• Consult an attorney before signing anything and everything

• The contract process will be prolonged in proportion to the number of lawyers involved

Taking the time to develop a good contract is worth every minute
Online Resources

• Multiple online sites with templates to serve as a starting point
• Review all documents with your lawyer
• Take the time to do it right----even if you start with a free online template