



For Employers and Doctors in Private Practice hiring other clinicians: What You Don't Know About Physician Contracts Can Break You



Dr. Cheng Ruan interviewing
Jonathan Appino

Cheng Ruan, M.D.

Welcome back, everybody. I'm still with John here and we've been talking and now I'm gonna flip to the employer side. So we talked about on the previous segment of how doctors should look at the contract from an employee standpoint, but now we're gonna talk about from the employer standpoint. So I own Texas Center for Lifestyle Medicine and I want to make sure that in my contracts, I am protected, yet I want it to be fair with the people that I'm hiring as well. So what are some sort of best practices for practices to put in the contract that makes sure there's fairness on both sides and yet we're protected as well?

Jonathan Appino

Yeah, you know when we see the term mutually agreed upon, it's a phrase, mutually agreed upon, right? And you could apply to lots of things. We think that's a fair way of looking at things, right? It's not you dictating things as the employer, although sometimes that's what the employer wants. It's not giving the physician unilateral control, which is not what the employer wants, it might be what the physician wants. So how do you find a happy medium? Well, you can define it, right? You can define the schedules Monday through Friday from eight until five, more details, change with mutually agreeable terms, or you can just have the schedule, a physician who will work full-time on a mutually agreed to schedule. That means you guys can come together and agree to whatever makes the most sense for the physician, what they're looking at out of the practice, their lifestyle, what you need out of your employees, which of course we would assume would be set, those expectations would be set upfront in a job posting, in an initial interview and through due diligence of the candidate on your end and the practice on the physician's end. So we think phrases like with mutual agreement or upon the approval of make





sense. Having termination clauses in there. We generally see 60, 90 or 120 days for either party. So having those be the same. So sometimes we'll see the employer can terminate in 30 days, but the physician can't terminate for unless they give 120 days. Well, we don't think that that's fair, it should be the same. So having that termination provision be the same for both parties.

Obviously, depending on the state that you're in and the specialty that you're in, non-competes might be a real thing. So how do you have a non-compete that's fair? Well, it might be different, right? If you're a hospital-based physician, like a hospitalist or an intensivist where patients may not follow you to your next employer. So then the physician leaving may not damage the physician's business as much as a surgeon who is world-class, who's gonna take thousands of patients across the street. So I think understanding the differences in each situation and then accommodating those differences based on the state rules for the non-compete I think would make sense. Some places are just gonna have them. Oh go ahead.

Cheng Ruan, M.D.

Gotcha, so speaking of which, so when there's a doctor that's coming on board into our facility and we look and then we talk about our contracts, if they have a non-compete or some sort of restrictive covenants on their previous contract, who's liable for that? Is it just the doctor or is the new employer myself liable for that as well?

Jonathan Appino

Liable in terms of if the physician breaches the contract?

Cheng Ruan, M.D.

Correct, yes, yes.

Jonathan Appino

That would be something that would likely be state-specific and dependent on that contract. So some contracts that we'll see when it comes to restrictive covenants, there might be something called liquidated damages where it might say, and again, if the physician signed a contract with liquidated damages, it may just say if the physician breaches the non-compete, the physician is agreeing to pay X dollars. It might be \$1,000 per day that is breached. It might be a percent of revenue. It might be \$50,000. It might be one times their earnings last year. So if that's in the agreement, then the physician would be on the hook for the liquidated damages that they've agreed to when they signed their employment contract one year, 10 years, 20 years ago. But every situation like that would be different. And that would be something where having local counsel on would be super valuable.





Cheng Ruan, M.D.

Gotcha. And so I was recently approached by a gastroenterologist friend of mine and he wanted to expand his practice and gather more and he was asking me, "Well how much should I put as the base salary, right? I'm probably the last person to ask for that. So in the previous segment, we talked about some benchmark salaries, like from MGMA and stuff like that. So when an employer makes a contract, when the private practice, gastroenterologist or myself made a contract, should we be also looking at the same numbers that you guys are looking at when you're representing the physician, like either MGMA or some of the other ones?"

Jonathan Appino

MGMA does have very, very valuable data in terms of here's a single specialty in this market, here's a multi-specialty or a hospital-based or less than 50,000 physicians. So that data's good, but like I said, your small practice in a town of 1,500 people might be represented by the same dataset as somebody in Chicago. And so that could be challenging. If I was a practice owner and I was going to hire a new associate, I'd go to the internet, I'd look for jobs. I'd say what's in my area or in a market similar to mine? So maybe you live in Kansas City and there's no jobs in Kansas City. Maybe you look to St. Louis, right? Similar market and similar region or you could look to Cleveland or you could look to Cincinnati, kind of some of those same mid major cities or 100,000 person city to 100,000 person city in the same region. And I would just look online and see what am I seeing? Am I seeing base salaries? Am I seeing signing bonuses? If you had no frame at all.

And I think looking so locally, what's the data look like, and I think just looking at your earnings as a physician. So if you know, hey, I, as a practice owner, my physicians here, if you've got multiple ones, my physicians here tend to bring me half a million dollars in revenue and my overhead rate is 50%. So I've got two 50,000 to play with. Well, as the practice owner or entrepreneur, you're taking a risk on this individual so it makes sense that you're rewarded for the risk by a profit if there is one. So it's always, I mean even though you can look and see what are they paying in the town next door, it's always a calculation on your individual practice.

What allows you to feel like you're inspiring somebody, again if you want somebody long-term or just somebody to help out for a year? If you want to offer a long-term partnership and there's wonderful benefits with that, or if it's just you're gonna own the practice and run it and they're just gonna be nothing but an employee on an hourly rate. I think you look at all of those things, at what the practice can afford and what the market might bear and then I think you put a job posting up there and you see if you get any takers, knowing that as a smaller practice like yours, you can't offer \$200,000 in student loan reimbursement and \$50,000 for a signing bonus and





\$10,000 for relocation and a fantastic 401K with awesome healthcare benefits, like an organization that generates 10 or 100 or \$500 million of a revenue in a year. So knowing that you can't compete with those places, there's other benefits of working with a smaller practice that the physicians who are looking at those jobs can appreciate. So I don't think you have to feel like you can compete with the bigger practices because you have your story to tell, which again makes the job posting and the site visit all the more important if a physician who student loans are super important now, everyone wants student loan reimbursement, and a lot of times smaller practices just can't afford it and they also can't afford the salaries that are offered by hospitals. So having not just a financial package that is reasonable, knowing that it likely won't be lucrative compared to other offers out there, having something for a practice like yours that is reasonable and fair, at the same time, making sure that you're promoting all the other benefits to working with an organization like yours over maybe a large corporate account if that's what the physician is looking for.

Cheng Ruan, M.D.

Gotcha, gotcha. So the next thing I'm gonna ask you has to do with Scarlett Johansson. Learned an interesting lesson from her. So when Black Widow came out, the movie, it was released on streaming so Disney owned the rights to that. Her original contract says nothing about streaming. So she was locked out of that particular contract because of the coronavirus. So she's like I'm never doing a Marvel movie again, right? And so now coronavirus also happened to doctors. So originally, we were seeing about five percent telemedicine. It turned to 86% telemedicine within just two weeks of the lockdown, right? And so the original clauses that were in contracts had to do with showing up to offices and time and scheduling there, right? And so I don't think a lot of doctors and employers even think about what the original contract was or expectation was during the pandemic 'cause everything just shifted so rapidly, right? So before a contract is over, should we be offering new expectations within a newer contract to our associates?

Jonathan Appino

You mean like if you're going to be renewing a contract, what all should you change?

Cheng Ruan, M.D.

Well no, it's before the renewal is. Let's say that my associates signed up in January and then in February that the shutdown happened, with the original contract, said you got to be in the office Monday through Friday. Well we closed the office, most of the time we'll do telemedicine, right? So should that be like a new contract or should that be something that's like an addendum? What should that look like from an associate's perspective?





Jonathan Appino

Most of the time with changes like that that we were seeing during COVID, a lot of times we just saw addendums. Maybe they were gonna adjust the compensation structure of the physician or the call schedule. Most of the time, we just saw an addendum to that. Now, if it was something like a pandemic, as a physician, I would want to make sure that it wasn't like a permanent change, it was a temporary change. So in that addendum, you might want to word, "For the next 90 days" or "Until this particular date" and then maybe 30 days before, March 31st of '21, you guys would come together and talk about what does April look like. So I think if you're going to do a formal addendum like that, I think you sure can. We did see employers saying, "Forget the contracts. This is what we're gonna do." And right or wrong, sometimes it was just forced. We saw a lot of people just kind of doing handshake deals, we're gonna offer 30% less for pay over the next three months. Do you agree? Yes, the pay is changed or a smaller practice like yours maybe it doesn't have to be as formal. It could just be like, it's okay, go ahead. But I also think that intentions matter. So with Marvel, was their intent to exclude that of the contract and then roll it out through streaming to screw her over? Maybe right and we don't know.

Cheng Ruan, M.D.

Yeah, we don't know.

Jonathan Appino

Or could it be it was just an oversight? And if that was me, I would've said, look, it was an oversight. Of course we're gonna pay you your percentage for the streaming because that's the right thing to do. I don't know how Marvel and corporate works, but I think you also have to look at intent. So knowing that contracts are contracts, there's also a level of intent and how formal does everyone want to be knowing that as two reasonable people, especially in a smaller practice versus like a large corporate practice, it might be a little bit more formal as far as how things get done.

Cheng Ruan, M.D.

Gotcha. The handshake deals, verbal deals really scare me because I'm always fearful of violation of the original contract, you know?

Jonathan Appino

No and they can be, but I think, again, it depends on if you're saying, again, if you had like mutual agreement, right, in the contract, you know, maybe it doesn't matter, maybe it says you have to be written and addended, but it could be, I think it's a little different if you're talking a verbal





promise on don't worry about taking that extra day of call or I know you have three weeks of vacation, but don't worry about taking a fourth. I think those are different in terms of topics then, of course I won't enforce the non-compete. If somebody is verbally saying, I'm not gonna enforce a non-compete or of course I'll pay for your tail insurance, that might be different than don't worry about coming in next week, we'll do telehealth. It might be a little bit different. I might be a little more fluid if the schedule is something that can be modified or tweaked or called versus something that might cost me a whole bunch of money, like tail insurance or a non-compete or a compensation change.

Cheng Ruan, M.D.

Gotcha, makes sense. And then, so whenever you guys, whenever Contract Diagnostics is representing on the physician's side and talking to employers, you said earlier something that struck me which is that, hey, for those people looking for smaller practices, there are unique points of leverages to that smaller practice, even when the compensation or benefits may not be for larger institutions. What are those things that are more beneficial for a smaller practice in terms of those contracts that's sexier, I guess you can say, for the physicians?

Jonathan Appino

Yeah, I think just more autonomy and maybe more flexibility, maybe more fluidity. Private practices are, depending if it's a partnership opportunity or not, they're usually much more fluid and flexible with how much the physician wants to work or what their case load might be. They just tend to be more flexible on things. Depending on the situation, there might be much greater earning potential. And so I think there's many points that you can bring up that are a benefit compared to all the potential downsides. But lot of physicians, we saw, what I think it was 60, I think last year the stats were, the last couple of years, they've been new graduate physicians are signing with hospital-employed physicians 66 or 68% of the time I think the number is and then you've got some VA jobs and government jobs.

Then you've got private practices and a small fraction which start their own practice. So the vast majority of physicians, they do like being part of that larger employee base. Is it initially because they can get the signing bonuses and the student loans paid and have a bigger salary and then they want to transition out? Maybe. But I think there's many things that when we talk to physicians, and there's no right or wrong, I'll say. Everyone has their own thing that they want to do. It's not right to go to this type of practice or wrong to go to that type of practice. But we see physicians who are less, who don't like the large system, the large employer, the corporate side of medicine sometimes and they want to transition to a private practice where they feel like they've





got a little bit more autonomy to make their own decisions. There's not as much bureaucracy to get something done, such as hiring a PA or getting a technology in the office, maybe going part-time. So they tend to like the autonomy and the fluidity that a private practice or a smaller entity would offer over a larger company.

Cheng Ruan, M.D.

Okay, that makes sense. So I'll tell you what we recently did in our model to see this if sort of an attractive thing, so as we know, a lot of physicians, well no physicians are really trained very well in understanding financials and the business of medicine, and none of our employees are either. So we recently started a financial literacy benefit that I part-time teach and we have another corporation that also teaches financial literacy as a benefit for our practitioners, clinicians, doctors.

Jonathan Appino

Very cool.

Cheng Ruan, M.D.

So that's something that I was very much a core value of mine to teach financial literacy within our staff. So do you see things like this that are benefits of practices that people are starting to come on? Or maybe some of the other aspects are maybe not just financial literacy, but like spiritual health, employee wellness programs and stuff like that.

Jonathan Appino

You know, we're not seeing a lot of that right now. Sometimes like in larger organizations, like large hospital systems, they may have a larger HR department that offers spousal assistance or psychological care or those types of things, but we don't see it a lot in private practices. Some of the benefits that we see in private practices maybe are some of those things, they're the potential for buy-in, the potential to own real estate, the potential to be a partner in the surgery center. Sometimes we'll see those things, but I think that all those things that your, that you guys are doing there at your practice, I think are fantastic. And I think it tells a great story on why it's more of a family environment and a collegial environment where you want them to do well, not just for you and your practice, but you want them to do well in their personal lives and in their financial life. I think working for somebody like that is a huge benefit. So I congratulate you on those steps that you've taken, I think they're fantastic. And I wish that more employers would take those things into account. And so hopefully maybe you can lead the charge on that in the future.





Cheng Ruan, M.D.

Maybe, maybe. And so another thing that we really pride ourselves on exactly is the family atmosphere, right? So it doesn't matter if you're the janitor or the front desk or the physician, everyone should be treated with respect and we value our culture quite a bit. and we actually do a lot of culture training. Once a month, we shut the practice down and do interior cultural training. And so should stuff like that to be in the contract too in terms of expectations? Like we expect you not to, basically play nice, right, we expect you to play nice with everyone and show everyone that level of respect that you want to be treated as well? So would stuff like that be in an employer contract do you think?

Jonathan Appino

We'll see things like an expectation is to show up to meetings a certain percent of the time, but oftentimes, we would expect those types of things to be in a policy manual. Maybe the policy manual of the organization has core values, core values of respect and family and citizenship and those types of things and then a contract might reference, you will follow, as an employee of our firm, you will follow the policies. And so of course when we see that, we're like, okay, you should make sure you understand the policies because policies might include showing up to a certain percent of the meetings or participating in a certain training program or a patient or an onboarding, but they also could include dating policies or social media policies. If you're on social media, can you be connected with your patients? If you have a YouTube channel, can you talk about your job and your work and your company? So sometimes we'll see policies where those things would be baked in, I would assume, but we'll also see policy manuals that have many, many other aspects in them. And I think that's a nice document, we have a policy manual at Contract Diagnostics and we have to, we update it every single year and everyone reads through and signs it every single year. And it's not a 40 page or an 80 page document, but I have seen those in some places. Ours is pretty concise and it mentions some of the things that you talk about as far as your core values as an organization. And then every year we require everyone to read through it and then to sign it and that would be something that we wouldn't necessarily see in a contract, but we would see maybe a reference to follow policies and then of course we would expect the policy manual to be provided to the physician as they're either going through orientation or better yet before they're signing the contract.

Cheng Ruan, M.D.

Okay, that makes sense. Yeah, we currently don't have anything in our contracts that reference the policy, but our policy's very specific. We have everything from not smoking, no sexual harassment, breastfeeding intervals, what room to go in to breastfeed and we have a designated space and stuff like that.





Jonathan Appino

One of the things we'll see in an agreement often is like a termination provision, maybe like so under the physician's expectations, the expectation is to follow the policy manual. And then maybe under termination, there might be a section that says, the employer reserves the right to fire the employee if they don't comply with the policy manual. Now, as our frame at Contract Diagnostics, again, if we saw something that said, it's an immediate termination for violating the policy manual, I would immediately want to know what's in there? And if you violate something in there, should it be immediately terminated as the employee or should there be a remedy period? So maybe the physician accidentally breaks something, it's not with intent and there can be a remedy period and a training process. So maybe they say something they shouldn't have said and it's a coaching opportunity for the employer, the employer can bring them in and say, "Hey, I know you didn't intend to do this, but you said this and it bothered this person" or, "You made a you made a post on social media and that violates the policy. I'm gonna ask you not to do it again and to go through a training program. And if you do it again, we're gonna have to terminate you." So there might be some clauses in there that we wouldn't want that to be an immediate terminable offense, but that might have some fluidity as far as how the contract would be worded with a grace period.

Cheng Ruan, M.D.

Okay, gotcha. That certainly makes a lot of sense. And I think that we really have to update a lot of our policies and contracts based on social media these days.

Jonathan Appino

Well the great thing is you can update policy manuals whenever you want and just make sure that you keep up the employee. And if you just have a reference to the policy manual in the contract, you don't have to update everybody's contract, you can update the policy manual, which is a global manual for all the employees. So if you're a nurse, if you're a front desk, if you're in billing, if you're a physician, if you're the CEO, everyone follows the policy. So you can update that and then disseminate it to everybody for their review, not just the people who have contracts, where other people in the organization might just be paid hourly or a flat salary with no particular employment contract.

Cheng Ruan, M.D.

Right and if you're a physician listening to this and you're in private practice and you actually don't have a policy manual, I highly suggest creating one.





Jonathan Appino

What's funny Cheng is we'll see in agreements sometimes, smaller practices, because they're just using a templated contract that they found or they had some attorney in the state draft it from their files and modify some of the language, but we'll see in there, "The physician will follow a policy manual and if you don't follow it, you could be terminated" or fill in the blank. And then we'll tell our customer, "Hey, make sure you get a copy of the policy manual." And they'll call us and they'll say, "They don't have one." To your point, most people don't have this stuff in place, even though the contract may reference the policy manual. I think all companies should have a policy manual. They're easy to put together and I think they can help play risk with the organization and set expectations for very important things like you mentioned, treating everybody with respect and being socially aware and discrimination in social media. There's so many things that can go into a policy manual, super simple, that can apply to everybody in the organization, not just the employed physicians.

Cheng Ruan, M.D.

Yeah, absolutely. And so this may seem like a daunting task but it's actually relatively easy for most people. I actually have an online course coming up. It's about how to make the most exciting employee policy manual you've ever had. And it's an exciting is because once you understand what you really want for your practice and you put it into the policy manual, it's actually very exciting, just like I think contracts are exciting. Once you know the anatomy of the contract, know what you want, I'm like, wow, I have actually control over this.

Jonathan Appino

Yeah well you think they're exciting. I think most people think they're boring as all can be, but we've been reading these things and looking at these things and talking to physicians for a decade and we think they're fun and exciting, but not from our perspective is, we don't red line contracts, that's not our frame of course, but we love the story. We talk to everyone who we get to work with. We have a talk conversation about them and their goals and about why they want the job and if they want to stay there for a long time. All those things are relevant to the discussion and the due diligence, which is what we think makes it exciting, not just about taking a document, like a lawyer might just take a document and red line it and say, "Take this out, delete this, modify this", and then send it in and they're done. To me, that would be boring. Having a conversation, educating the physician, coaching the physician, giving them access to follow up with us as they have additional questions and problems and concerns, those are the things that we think are exciting. Maybe not the 20 page documents themselves, you know?





Cheng Ruan, M.D.

Oh absolutely, absolutely. Well I just want to close off here, by first of all, I want to thank you for this valuable piece of information. I learned so much on this segment and the segment before on the employer side as well. But I'm looking forward to going to contractdiagnostics.com. Guys, if you go to contractdiagnostics.com, you hover over the middle section that says Services and Education, the first tab is called Educational Lecture Series, the second one is Podcasts. If you want to learn more about it, go ahead and go there. So if you're watching this live, the link will actually be in your email and if you're watching this on replay, it'll actually be with a description of this video, depending on where you're looking at it. So I'm gonna close off with this one question. What is the one thing that you wish doctors knew about contracts? Out of everything that we talked about, what is the one most important thing?

Jonathan Appino

The one thing I wish that they knew. I wish I would say don't get, they don't have to be daunting, right? The process doesn't have to be scary. The process can be simple, the process can be easy and it doesn't, but not to sign something that they don't understand. So I would say the one thing is make sure that everything is reviewed and that process does not have to be daunting or challenging or confusing or stressful or anxiety-ridden or anything else. It can be, believe it or not, it can be a fun, educational process for the physician. And we all know that physicians love to learn and they love to grow and all that stuff. So I think it could be a fun educational process, not a daunting, stressful process.

Cheng Ruan, M.D.

Absolutely. Well John, thank you once again for being on. This is such a valuable thing.

Jonathan Appino

Absolutely, appreciate you having us.

Cheng Ruan, M.D.

And once again, guys, just go to contractdiagnostics.com very easily. Thank you very much.

