



## legal matters

**Name That Term** Hitting the right note with the termination provisions of your employment contract can make the difference in the tone of your tenure in a practice.

BY BRUCE D. ARMON



A good relationship is a foundation for happiness. It does not matter whether the relationship involves a best friend, a spouse, or your col-

league in a medical practice. The end of that relationship can be a traumatic event—emotionally, spiritually, and yes, financially. Music is filled with examples of song titles that reflect an artist's feelings about a "break-up." In this article you won't find today's Top 40, however, you will soon see why for many physicians, "Breaking Up is Hard to Do" and gain some helpful tips about term and termination provisions in your employment contract.

I always counsel my physician clients when they are job searching (whether it is for their first job or their fifth job) that finding the best practice opportunity is, in many respects, a dating game. You should

### PLAYLIST (IN ORDER OF MENTION)

- "Breaking Up is Hard to Do"* (Neil Sedaka)
- "Dazed and Confused"* (Led Zeppelin)
- "A Day In The Life"* (The Beatles)
- "Forever"* (Bee Gees)
- "Forever Man"* (Eric Clapton)
- "Promises In The Dark"* (Pat Benatar)
- "Time After Time"* (Cyndi Lauper)
- "Changes"* (David Bowie)
- "Oops!.. I Did It Again"* (Britney Spears)
- "Time Is On My Side"* (The Rolling Stones)
- "Not Fair"* (Shaggy)
- "The Times They Are A-changing"* (Bob Dylan)
- "Because"* (Beatles)
- "Tuesday Afternoon"* (The Moody Blues)
- "There's No Way"* (Alabama)
- "Ain't No Stoppin' Us Now"* (McFadden)
- "Fifty Ways To Leave Your Lover"* (Simon and Garfunkel)
- "Ready To Take A Chance Again"* (Barry Manilow)
- "The End of the Innocence"* (Don Henley)
- "Can't Stand Losing You"* (The Police)
- "I Will Survive"* (Gloria Gaynor)

SOURCE: [LYRICSXP.COM](http://LYRICSXP.COM)

be looking for a practice that shares your long- and short-term goals, the same criteria most people look for in a companion. Accordingly, your employment contract (I don't have to tell you to be sure you get the contract in writing) should clearly define the term and termination provisions so you are not left "Dazed and Confused" after reading its terms. In addition, you want to make sure that the opportunity lasts for more than "A Day In The Life" of your professional career.

### The initial term

Your employment contract should have a clearly defined initial term. Some contracts I have reviewed for my physician clients have included language such as: "Employee/physician is employed from the effective date of the contract first written above for as long as this contract is in effect." This language is circuitous. You could conceivably be employed according to the terms of that contract "Forever" with no salary or benefit increases.

## LEGAL MATTERS: NAME THAT TERM

*Continued from previous page*

While a contract could be attractive enough that you do not mind being the “Forever Man” [or Woman] of a practice, having a defined initial term allows you (and your employer) to evaluate periodically your respective thoughts about the employment situation and make changes to the arrangement in a predetermined and timely manner.

### **Contract renewals**

In addition to a defined initial term, your employment contract should establish a renewal term or terms. If the contract includes only a defined initial term and has no express renewal provisions except verbal assurances from your employer that everything will be worked out at the “appropriate time,” this is the equivalent of “Promises In The Dark.” While you should have every reason to trust your prospective employer, “Time After Time” I hear stories from physicians who tell me that their employer did not abide by an oral promise to extend or renew the employment contract after the term was complete. In many jurisdictions, an oral promise is unenforceable.

Even if you are not sure you want to stay with that practice or in that community beyond the initial term, it is always preferable that you retain the option. For instance, a client who has completed her residency a year or two ahead of her spouse may be fairly certain that she will not remain in that particular community once the spouse completes training. For that reason, the physician may be content to take a short-term opportunity until the couple have both finished training and can move to their desired community. However, “Changes” happen, and I always caution a client that circumstances and preferences evolve. You’d rather be in the position of saying “Oops!.. I Did It Again” and have the option to renew your em-

ployment contract than be forced to start your and your spouse’s job searches simultaneously because you cannot remain in your current position beyond the fixed term of the contract.

Renewal terms in contracts need to be explicit. For instance, does the contract automatically renew in the form of a so-called “evergreen” provision, or does one of the parties need to provide notice (in writing or verbally) that it wishes to renew the contract? If notice to renew is required, what is the timing of the notice? You will prefer to be in the position of knowing that “Time Is On My [Your] Side” so that you can adequately determine if renewing the contract for an additional term is in your best interest.

You should know whether you and your employer have to provide the same notice to renew a contract. I have seen some contracts that propose that the physician-employee provide three months notice if they wish to renew the contract for an additional term, while the employer need only provide fifteen days notice if they do not wish to renew the contract. This scenario is not only “Not Fair,” it also places you in a significantly weaker bargaining position when you are searching for that next job on short notice.

There is one last item to consider regarding renewal terms. Be aware (and wary) if your employer has the sole option of renewing your contract for an additional term. This can be the equivalent of your employer saying “The Times They Are A-changing” and giving you no more long-term assurances than the initial contract term.

### **Terminating the contract**

I wish I could say the first job you take after completing training will be your last. However, there are very few profes-

sionals, including physicians, who spend their entire careers with one employer.

Knowing the reasons your employer can terminate your contract and the ways you can terminate your contract are as important as having well defined initial and renewal terms.

There are two primary reasons a contract can be terminated: for cause and without cause.

#### **• WITHOUT-CAUSE TERMINATION**

“Without-cause” termination provisions permit the employment relationship to end when one party simply provides notice that it would like to terminate it just “Because.” There are two factors that should be considered: Who can terminate the contract without cause, and how much notice is required.

I have reviewed physician employment contracts that provide: “Employer may terminate this contract at any time for any reason.” I always counsel a client that if this language remains in the executed copy of the contract, you could come back from lunch on a “Tuesday Afternoon” and be told you are no longer welcome at the practice. While you may believe “There’s No Way” your employer would take this draconian action, there is nothing in the contract to prevent this from happening. I recommend to my clients that they ask their prospective employer to modify this provision. If an employer refuses to accommodate the request and suggests retaining the provision to keep all options available, I encourage my clients to ask a lot of tough questions of the prospective employer to ensure this is the right practice opportunity.

Conversely, you also need to be aware if your employer retains the option to terminate you without cause but you do not have the same prerogative. I recently

## LEGAL MATTERS: NAME THAT TERM

*Continued from previous page*

faced this situation with a client. Both parties could terminate the agreement without cause sixty days prior to the onset of any renewal term. The employer could also terminate upon sixty days notice without cause at any time during the life of the contract, but was not willing to give the employee the same courtesy. Understanding the rationale for an employer's initial bargaining position may help you negotiate more effectively.

The timing of the without-cause provision is important. Anywhere from thirty to sixty days notice is probably appropriate for either party to terminate a contract without cause.

### • FOR-CAUSE TERMINATION

Most everyone is familiar with "for-cause" termination provisions. One party has done something objectionable to the other party and the non-breaching party believes that there "Ain't No Stoppin' Us Now" from terminating the contract.

These provisions, however, should clearly delineate the circumstances in which either party can end the relationship. While the list of for-cause provisions does not have to include "Fifty Ways To Leave Your Lover" [or employer], there also should be no ambiguity on the part of the physician-employee since most for-cause termination provisions are effective immediately. Typical for-cause termination provisions from an employer's perspective include a physician's loss of license, loss of ability to write prescriptions, loss of hospital privileges, or a conviction for any crime.

Many contracts do not initially give the physician-employee the right to terminate the contract for cause. I always urge my physician clients to, at the very least, seek the ability to terminate their agreement for cause if the employer breaches any of its obligations in the

contract.

Since for-cause termination provisions are often immediate upon the occurrence of any of the prohibited acts, I often encourage my clients to seek a cure period which permits both parties to be "Ready To Take A Chance Again" if the breaching party remedies the for-cause provision within a certain defined period of time.

### "The End of the Innocence"

As you can see, there are plenty of examples from the world of music to underscore the importance of the term and termination provisions in a physician's contract. While your employer may want to minimize the ways in which you can leave the position because he "Can't Stand Losing You," it is imperative that you look out for your own interests.

While it may be tempting to shrug off negotiations with your employer before you sign the contract and say to yourself "I Will Survive" no matter what the outcome, it's always easier and better to leave a practice on a high note than to end off-key. ■

*Bruce D. Armon, Esq. practices health-care law in the Business Department of Saul Ewing LLP. He doesn't do karaoke performances, but can assist with physician contract issues. [barmon@saul.com](mailto:barmon@saul.com)*