

## Promises, shmomises! Can I see it in writing?

Residents will benefit by successfully negotiating employee agreements

By Ron Lebow, Esq. and Lawrence B. Keller, CLU, ChFC, CFP®

The prospect of negotiating an employment agreement often seems a daunting process, but, in reality, it is really just a conversation between you and your prospective employer. The purpose is to make the agreement fair for you (because their attorney drafted it for them) and to put in writing what the parties' mutual expectations are for a successful working relationship.

Most clients walk away from the transaction with a much better sense of what is in store for them. Sometimes, however, the requests yield answers that completely change their impression of the practice they were considering. In the end, the hope is that the document will gather dust and disintegrate in a drawer, but if the relationship ends or if promises made during the interview process do not come to fruition, the written agreement becomes very relevant.

The parties' rights and expectations should be clear before signing on the dotted line. While many physicians decide not to negotiate their first employment agreement, it is very rare that any of them make the same mistake for their second position. The employment agreement has real life consequences that may surprise you. Realize that you do have leverage! The practice is not hiring you as a favor. All hiring decisions are driven by selfish reasons — most often of which is money. The practice likes you, so they want you. That means they should address any reasonable concerns you might have regarding the agreement. The following sections detail a few considerations for negotiating an employment agreement:

### Get it in writing!

You were told at the interview that you would receive a pay increase after a year, you would be eligible for partnership after three years, and you could count on spending half of your time learning how to use a laser. The attorney who drafted the agreement (or the friend or website the practice or physician that is trying to hire you obtained it from) does not always know what you were told. The simplest way to negotiate an agreement is to ask them to put it in writing.

The boilerplate document should reflect the reasons why you want to work there in the first place. If they will not write it down, that is of great concern. They should give you the assurance you need that the promises made will be lived up to. The worst scenario is when the person making the promise is no longer around when it is supposed to be fulfilled. If it is not in writing, it never happened.

### Show me the money

In private practice, dermatologists typically earn 40 – 50 percent of their gross collections the first year of employment. For starters, always ask for more. The offer will not be withdrawn, the worst they can do is say “no,” or they may just come back with a compromise that still provides you with more money. If the answer is no (or even if it is yes), then ask for a guaranteed increase in your compensation each year until partnership (typically with a max-out at 50 percent). It is not an exact science, so ask for 47.5 percent in year two if you are starting at 45 percent after they refuse a jump to 50 percent. The question then becomes: 50 percent of what?

First you must ask, what services do you anticipate (or at least hope) you will be engaged in, and how much of the time? Mr. Lebow had a client with a clinical dermatology background who was joining a lucrative cosmetic practice. She did not want to be pigeonholed into handling all of the insurance reimbursed biopsies, so she asked the employer to provide “equitable distribution of cases based on both type of service and payer source, with priority scheduling of patients originated by or requesting” the client.

Eager to earn potentially lucrative or high volume private pay revenue, she learned instead that the employer kept certain private pay cases for himself and wanted to bolster his cosmetic practice with her insurance rev-



enue. She wound up turning down the offer.

Also, make sure deductions are clearly delineated — you may be entitled to a percentage of your net collections (as opposed to gross collections). Cosmetic procedure disposables are often charged against your collections, but they may charge a portion of the lab technician or laser equipment lease to you as well. If you are paid a percentage as a bonus only, the same considerations still apply and you also want to try to earn that bonus as early, and as often, as possible. Many practices pay a bonus after 12 months, so you should ask to earn it monthly or quarterly instead.

In any case, you should be entitled by contract to review the billing and collection records in order to verify your compensation

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entitlement, including (and especially) after termination. Mistakes can be made. Finally, get an “advance” (i.e., a loan) against your salary for the first few months if you do not expect actual collections to start flowing in right away.

### **Disability insurance benefits: A bird in the hand**

Generally, it is important that you secure your disability insurance policy prior to the completion of your residency or fellowship. This strategy may enable you to have a larger number of companies from which to purchase coverage as well as allow you to take advantage of discounts through your teaching hospital that may not be available to you once you enter private practice.

Currently, there are as many as six carriers, depending upon your state of residence, that make “Own-Occupation” disability insurance available to dermatologists. These include Berkshire (Guardian), MetLife, Union Central (First Ameritas Life Insurance Corp. of New York in New York), Principal, Standard Insurance Company (not available in New York), and MassMutual.

One of the main reasons to purchase your coverage prior to the completion of training is that special limits exist for residents, fellows, and physicians new to practice (typically those within the last six months of training or in the first one or two years of practice). However, once you begin your new job, most companies no longer make these limits available and will take any employer provided long-term disability (LTD) insurance benefits into consideration when determining the amount of individual coverage available. As a result, depending upon your starting salary and benefits provided, you might find yourself eligible to purchase less individual coverage as an attending than what you could have purchased under the special limits available to beginning professionals.

Policies can also cost more and be less liberal in certain states like California, Florida, and Nevada. For this reason, generally, you should purchase the policy in your current state of residence if you are going to be moving to any of the previously mentioned states.

### **Don't let the door hit you on the way out**

When you give notice, the employer may feel betrayed and uncomfortable having you around. When they give you notice, your replacement is already lined up. Besides, depriving you of continued access to their office ensures that you will not be able to slip patients your cell phone number or download patient lists for a mailing. This is why provisions indicating that either party may give notice of termination or resignation “without cause” (meaning that no reason is necessary) are not really notice provisions — they are severance provisions. If you are walked to the door immediately upon the giving of notice and the contract mandated a minimum patient schedule and thirty days of advance notice, then you are entitled to thirty days of lost pay, or what you would have earned had you remained. The longer the notice the better, at least to the point that you can personally live with. If they decide to keep you around, though, and your compensation or bonus depends on your continued productivity, then the contract should promise you a consistent work schedule after notice has been given by either party.

More importantly, employers who lose an employee are not pleased to write them a check after they depart. Expenses will be incurred for recruiting and credentialing a new employee and for legal services in preparing a new employment agreement. The problem arises when your base salary and/or your bonus is tied to collections for services rendered. It may take three months for the money to arrive in the mail. Most contracts will not credit you with outstanding accounts receivable for work you performed. Surprise! You will have worked the last three months for free as you merely lived off of collections from the prior months. Do not leave this money on the table!

### **Covenant not to compete**

A restrictive covenant prohibits you from working in a certain com-



petitive area of the practice for a specified period of time in the event that the relationship ends. You may have been told that these are not enforceable. This is not true in most states, so long as the covenant is based in reason. Even if you think the covenant is so egregious that a court would never enforce it, do you really want to take that chance and spend years of litigation (and money) arguing over enforceability and damages? Many courts will simply reduce the covenant to make it “reasonable,” rather than throwing it out entirely. You need to get back to work right away so make sure the covenant provisions are fair so you can live with them if you have to. If you cannot live with them, then you should consider walking away.

As a threshold matter, try to build in a “honeymoon” period so that either party can decide the relationship is not a fit within the initial few months and move on with their lives without having to worry about any covenant. If you have been there for a short period of time, you do not pose much of a threat. Also, make sure that the covenant only applies to a reasonable area surrounding the office(s) in which you primarily work. The employer may have one office when you start but could end up acquiring or opening others or merging with a major provider with multiple locations.

Finally, if you work at several locations, you might want to carve them out into respective employment agreements so that you can take the other job full-time after one fizzles. Ultimately, negotiating a covenant is a case-by-case matter, and there are fact-specific considerations when you try to finesse the provision to be fair to both you and the employer.



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## Apply now to make a difference in Botswana

The American Academy of Dermatology provides funding for 12 U.S. and Canadian senior dermatology residents to participate in a four-week to six-week elective in Gaborone, Botswana, where participants rotate between the Princess Marina Hospital, in conjunction with the Botswana-UPenn Partnership, and the Baylor International Pediatric AIDS Initiative (BIPAI). Residents take part in dermatologic HIV care for both children and adults, and visit outreach sites in Francistown and Southern Botswana, where people are in great need of medical care.

The grant allows residents an opportunity to learn about the care of tropical and HIV-related dermatologic conditions, as well as how to practice routine dermatology with finite resources. Residents are expected to prepare lectures and presentations, develop a database of photos, submit teledermatology consults, and present reports of their activities to the Academy and their home programs.

Incoming second- and third-year



*Pristine Lee, M.D., a 2009 recipient of the Academy's Dermatology Resident International Grant, reported on her experiences in Botswana for the Spring 2010 issue of Directions in Residency.*

residents (for the academic year of 2013-2014) are encouraged to apply.

- The submission deadline for rotations to be completed between January and June 2013 is April 27, 2012.
- The submission deadline for rota-

tions to be completed between July and December 2013 is Sept. 28, 2012.

For more information, go to [www.aad.org/education-and-quality-care/awards-grants-and-scholarships/resident-international-grant](http://www.aad.org/education-and-quality-care/awards-grants-and-scholarships/resident-international-grant). 

## Boards' Fodder Bonus: Find-A-Word

*The compositae family (sesquiterpene lactone allergy)*

by Mari Paz Castanedo, MD, and Sharon E. Jacob, MD

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 GERBERA  
 GOLDENROD

LETTUCE  
 MARIGOLD  
 RAGWEED  
 SAFFLOWER  
 SNEEZEWEED  
 SUNFLOWER  
 YARROW  
 ZINNA

**NEGOTIATING** from p. 3

### Can I really ask them to put that in?

Your potential employer does not know you from a hole in the wall, so can you request that the agreement indicate when partnership will happen if you are still around and touch on what that means? Yes, you can — your future income potential may depend on it and their retirement buyout will as well.

In the end every person, practice, and contract is different. Focus on your priorities and subscribe to the number one rule of negotiation: If you don't ask for it, you will not get it — no one can read your mind. At the end of the process, however, go with your gut as to whether it's the right fit for you. The negotiation process and responses of the potential employer just happen to make it that much easier for your gut *The opinions of the authors are not necessary those of the AAD.* 