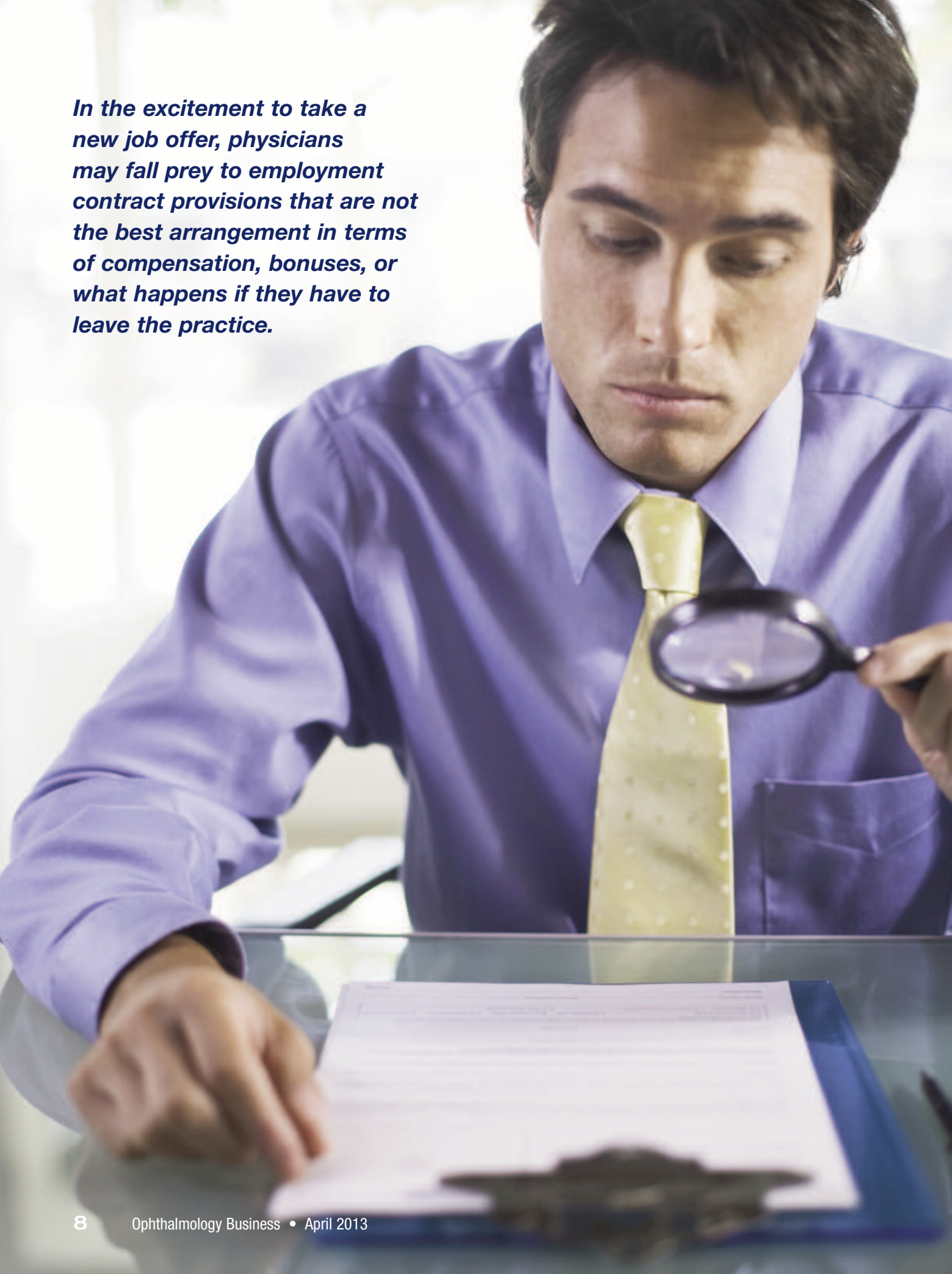


In the excitement to take a new job offer, physicians may fall prey to employment contract provisions that are not the best arrangement in terms of compensation, bonuses, or what happens if they have to leave the practice.



Checking the employment contract

by Vanessa Caceres Contributing Writer

Make sure your agreement is reasonable

Are you reviewing your employment contract close enough? In the excitement to take a new job offer, physicians may fall prey to employment contract provisions that are not the best arrangement in terms of compensation, bonuses, or what happens if they have to leave the practice.

Here are some common areas you'll want to review closely in an employment contract, according to several healthcare attorneys.

Compensation

Naturally, compensation is an area of the contract that physicians examine closely. However, "there are a lot of nuances to it," said attorney Andrew S. Bogen, Arnold & Porter LLP, New York. Physicians want fair compensation for the work that they will do, and the practice wants to incentivize the new employee to be productive, but at the same time does not want to overpay, Mr. Bogen said.

When reviewing the salary, physicians should make sure they compare the dollar amount to colleagues in similar geographical areas, said Daniel M. Bernick, vice president and principal attorney, The Health Care Group and Health Care Law Associates PC, Plymouth Meeting, Pa. For instance, an oph-

thalmologist in a rural area may have a high salary, but he also may be paid more because he works in an area where it's hard to recruit physicians, Mr. Bernick said. Ophthalmologists in popular urban areas may make less. Mr. Bogen pointed out that when comparing compensation, benefits and costs, such as whether the physician or practice will pay for professional liability insurance, should be factored in.

Ophthalmologists often receive a base salary with a bonus or incentive. One kind of bonus is tied to actual collections made—not just money that the practice is slated to receive. "You don't want to tie compensation to money you don't actually collect," Mr. Bogen said. A common formula spelled out in contracts related to this may be a percentage of collections received that are in excess of three times the physician's base salary. For example, if the base salary is \$200,000, the physician receives a bonus based on the collections that are greater than \$600,000.

Attorney Matthew Keiser, Arnold & Porter LLP, Washington, D.C., also sees bonuses tied to certain procedures performed. He finds this especially common at concierge practices.

The contract should make clear all specifics related to bonuses, such as what percentage the physician gets when collections of a certain amount are achieved, Mr. Bernick said.

Another common area to review under compensation is when the ophthalmologist will acquire equity in the practice, Mr. Bogen said. For a new physician coming to a practice, particularly someone who is new to medicine, "there's usually a romance period where they will get to know each other for one to three years," Mr. Bogen said. The employment contract may state that after that initial period, some sort of equity in the practice is possible.

Ophthalmologists reviewing their contract can ask if, after that initial trial period, an ownership interest in any ancillary businesses is possible, Mr. Bogen said. This could be something like an optical shop or a clinic.

Physicians can also request that their salary or bonus be increased sooner if the practice does particularly well financially, Mr. Keiser said.

Termination and restrictive covenants

Mr. Bernick sees contracts that state the physician can be terminated without cause by either party with 30- to 90-day notice. A newer physician will want to aim for 90-day notice so there is more leeway time to find another job, Mr. Bernick said.

When employment contracts specify termination with cause, healthcare attorneys can help review any related language to make sure it is not too ambiguous, Mr. Bernick said.

continued on page 10

If a physician is relocating for a job and plans to stay in the area, he should make sure the contract weighs in favor of him staying at the practice as long as possible, Mr. Bogen said.

A number of employment contracts include restrictive covenants or limitations on what a physician can do if he is no longer working at the practice, Mr. Keiser said. Some covenants, such as not revealing confidential information about the practice, are usually clear-cut, Mr. Bogen said. Other covenants, such as ones relating to competition, are harder to enforce. "Generally, courts don't like restrictive covenants and will look favorably at arguments against enforcing them," he said. This is because they can appear to be a restriction on competition, he added.

For example, a judge may rule in favor of a younger physician who worked at a practice for two or three years and decided to open a new practice in the same city as his former practice, Mr. Bogen said. On the other hand, a judge may not feel the same way about a seasoned physician who has sold his practice to another well-established practice and receives \$2 million in compensation for the transaction and the restrictive covenant.

If a contract has restrictive covenants regarding the ability to practice in a certain area upon leaving the practice, Mr. Keiser said it would benefit the physician to negotiate for severance pay.

Restrictive covenants in employment contracts often address non-solicitation, or an agreement to not solicit employees to work at a new practice and not solicit former patients to come to the new practice. It can be hard to enforce restrictions that have the effect of dictating whether patients can or cannot follow the physician to a new practice, Mr. Keiser said.

Restrictive covenants also commonly address limitations on where physicians can set up a new practice—for example, this covenant may state that they cannot participate in another practice within 5 to 10 miles of the existing practice for a two-year period.

"This may not be an issue if you don't like the area or plan to leave town, but what if your family is there?" Mr. Bernick said.

While this is a standard agreement, Mr. Keiser cautions ophthalmologists to make sure there is still room for the exiting physician to establish a practice within the same general area to avoid having to relocate.

Also, the actual mileage involved in this covenant can vary greatly depending on the geographical area—say a rural area where patients drive longer distances versus a city, Mr. Bernick said.

Other areas

Ophthalmologists are often involved in outside projects, Mr. Keiser said. This can be as diverse as inventing a new eye drop dispenser to consulting for a pharmaceutical company. Make sure your contract indicates that you are allowed to consult on these other projects in your personal time, he said.

Another area to negotiate for clearly in your contract is what it means to be on call. "When can you expect to be on call, how often are you on call versus other physicians in your practice, what does it mean to be on call, and how are you compensated when you are on call if you are compensated for it?" Mr. Keiser said.

Unless a practice provides "occurrence based malpractice insurance coverage," physicians nowadays will also want to make it clear who will pay for their tail coverage, which is the coverage for any malpractice claim brought against physicians even after they are no longer with a practice, Mr. Bernick said. Tail coverage may be for 3 to 5 years after leaving the practice, or it can be indefinite. Although Mr. Bernick prefers indefinite coverage, he also said the steep price for this can be tough for a newer physician to manage. This is why it's good to negotiate with the practice over who will pay for this. **OB**

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