



**BUSINESS**

## How to put together a nurse practitioner contract

Contract Language. By **STEVEN M. HARRIS**, amednews contributor. June 16, 2008.

### CONTRACT LANGUAGE

A column examining the ins and outs of contract issues



**Harris**

#### SEE ARCHIVES

When a nurse practitioner is hired, the terms of the relationship should be clearly defined in an agreement and should not be based merely on a handshake.

Memorializing the terms of the agreement legally protects both the medical practice and the nurse practitioner if a dispute arises.

- See **related content**

When a client asks me to draft an agreement for a nurse practitioner, I explain that there are two options. The nurse practitioner can either be an employee of the practice or an independent contractor.

In general, with an employer-employee relationship, the employer has more control over the employee's duties. However, as an independent contractor, the nurse practitioner has greater control in performing the expected duties. Both options have additional pros and cons, but most frequently, the nurse practitioner is hired as an employee.

Sometimes a physician wishes to hire the nurse practitioner as an independent contractor because that means the practice would not have to pay any share of payroll taxes or benefits or pay for liability insurance. But the Internal Revenue Service in some cases has ruled that an independent contractor is really an employee because of the way the employment relationship is set up.

So if the nurse practitioner is hired as an independent contractor, it is advisable to include a provision similar to the following to clarify that the nurse practitioner is retained as an independent contractor and not as an employee:

"Independent Contractor Relationship. Company agrees to retain Contractor as an independent contractor to provide the services described in this Agreement and Contractor agrees to accept such retention on the terms set

forth in this Agreement. Company and Contractor acknowledge and agree that this Agreement is not intended to create an employer-employee relationship, a partnership or joint venture, or any other entity or relationship between Company and Contractor (other than the relationship between a medical practice and an independent contractor). Contractor shall not be considered as having employee status or as being entitled to participate in any plans, arrangements, or distributions by Company pertaining to or in connection with any vacation, sick pay, insurance, pension, stock, profit sharing, or other benefits for Company's employees."

## **Compensation**

Financial compensation is one of the most negotiated terms of an employment agreement and will undoubtedly be an area of great discussion between the parties.

Before the practice hires the nurse practitioner, the practice should calculate the estimated amount of income the nurse practitioner is expected to bring to the practice and the associated cost of employment.

In my experience, private practices generally aim to net a profit of between 15% and 20% from the nurse practitioner's services. When determining the nurse practitioner's compensation, it is important to focus on three main elements: cost (the nurse practitioner's compensation), the practice's overhead attributable to the nurse practitioner (rent, utilities, payment to support staff, supplies, etc.), and liability insurance.

In addition, it is advantageous to outline when the nurse practitioner's evaluation will be conducted and who will contribute to the evaluation process. The following is sample language that you may consider including in the employment agreement:

"Employee shall receive a salary in the amount of X thousand dollars (\$XX,000.00) per annum. Company will review employee's performance and determine any corresponding adjustment to employee's salary after approximately six (6) months of employment and thereafter on an annual basis commencing on or about the first anniversary of the commencement date. Company shall pay the salary, as adjusted, biweekly, pursuant to company's payroll policy and subject to all applicable federal, state and local taxes and deductions."

A primary concern for most, if not all, medical practices is losing its patient base to a competitor. When a nurse practitioner leaves your medical practice, there is a risk that some of your patients will follow him or her to the next place of employment. However, this risk can be minimized by including a restrictive covenant in the nurse practitioner's agreement.

This clause prohibits a nurse practitioner from practicing within a specified geographic area for a stated period of time. Restrictive covenants are legally enforceable as long as they are reasonable in time and geographic scope. For example, a clause I included in a recent nurse practitioner employment agreement was a restriction of not providing medical services within five miles for up to two years after leaving the practice.

The restrictive covenant also includes language that would prevent an exiting nurse practitioner from trying to induce, entice or solicit patients to follow to the new practice, or otherwise interfere with the business of the former practice.

## **Termination**

Although the termination clause is frequently addressed toward the end of the contract, it is one of the most important aspects of the employment agreement for both parties. Generally, this clause contains a provision addressing termination "without cause" and a separate provision with a list of conditions that are bases for termination "with cause."

---

Without cause generally requires some sort of warning. For example, I might include 30 days' prior written notice.

With cause must be spelled out in the contract, because it can allow immediate (but still written) termination for certain acts, such as any criminal or fraudulent act toward the practice, or a felony plea or conviction for specific crimes, failure to stay licensed or certified, or other major event.

Firing for mere poor performance would be allowed, but it still is advisable to give some sort of written warning -- say, five days.

If your medical practice is considering hiring a nurse practitioner, make sure you understand the terms of the relationship and the corresponding agreement prior to signing.

---

**Harris**, a partner at McDonald Hopkins in Chicago, concentrates on health care law and has counseled physicians, physician networks and health care groups nationally. The author and publisher are not rendering professional advice and assume no liability in connection with its use. He can be reached at 312-280-0111, or by email ([sharris@mcdonaldhopkins.com](mailto:sharris@mcdonaldhopkins.com)).

[Back to top](#)

---

Copyright 2008 American Medical Association. All rights reserved.

**RELATED CONTENT**

» Collaborative agreement details allied workers' duties Column Dec. 11, 2006