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# NEGOTIATING YOUR CONTRACT

WITH LORI-ANN RICKARD, J.D.

*“Let us never negotiate out of fear.  
But let us never fear to negotiate.”  
-John F. Kennedy*



Physician contracts contain a variety of terms, some standard, some not. It is essential that you fully understand what you are agreeing to before signing your contract, as these terms can have a lasting impact on your career.

Many of our clients tend to focus solely on:

- Compensation,
- Location, and
- Start date.

While those items are important, it is essential to be aware of the other terms that may adversely impact your compensation and day-to-day duties.

Many times, contracts contain ‘boilerplate’ language that the healthcare entity will tell you is “standard” in all of their contracts. However, this “boilerplate” language often carries many legal consequences and hidden pitfalls.

You have spent a lot of time and money obtaining your degree, graduating from medical school, selecting a residency/fellowship and now choosing a place to work. None of these steps were taken without a great deal of thought, study and consideration. **Why would you handle your contract any differently?**

**When negotiating your contract, here are the top five things to remember:**

## 1. Get it in Writing

Everything you want and have agreed to should be written in your contract. If the hospital or healthcare entity is willing to agree to something over a handshake,

they should be willing to put it in the contract.

Do not expect to be able to enforce anything that is not in the contract. Even if leadership ‘guarantees’ you something, know that healthcare entities change leadership quickly and without notice. Legally, it is only enforceable if it is in writing.

Make sure that all details are accurately spelled out. If the entity you are negotiating with is not willing to put something in writing, then it is likely they are not willing to abide by those terms, no matter what they have told you.

For example, if you think you are joining an academic institution, make sure that you have protected time built into the contract for research. Know what space and supplies you will have to work with as well. All of this should be written down. Often, leadership will ask you to “trust” that you will have what you need. You need to ask yourself why they are unwilling to put these important details in writing?

Negotiations are a great time to get to know the healthcare entity and its leadership. When making an offer, healthcare entities can seem friendly and willing to meet your needs. However, when negotiations begin, sometimes their tone may change. It is good to know who you are really dealing with before you sign on the dotted line.

You also need to know that at any point, the healthcare entity can enforce what is in the contract so you need to understand all the contract language. Do not agree to anything in writing that you are not comfortable with agreeing to or abiding by in the future.

Know your contract inside and out before you sign it. Every line and every clause matters.

## 2. Have an Attorney Review

Your services are what you have to sell. You and your services are how you will make a living and support your family. Once you have signed the contract, your negotiating power is gone or greatly diminished.

Let your attorney protect you and your services. An experienced healthcare contract attorney will help you obtain the best results possible.

Attorneys also protect your personal relationships with the healthcare entity or its leadership. Instead of negotiating with your boss directly, it is always helpful to have an attorney negotiate the contract. Negotiations can get heated and sometimes unpleasant. Everyone expects the attorney to push for everything in the contract. Let the attorney be the “bad guy”. This way, if you do end up working there, your relationship is not

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ruined by a tough negotiation.

An attorney will also be able to explain all of the boilerplate language and potential legal consequences that may be problematic if you agree to the contract.

At Rickard & Associates, we help break down physician contracts in understandable terms and work to ensure that everything is fully negotiated.

We have seen many healthcare entities put short deadlines on physicians, hoping that they will sign contracts or Letters of Intent without attorney review.

**We can guarantee that the healthcare entity had an attorney draft the contract, so it is essential that you take the time to have an attorney review the contract.**

Don't let a healthcare entity pressure you into signing or agreeing to anything, without first speaking to a qualified attorney.

Attorneys can also help to point out any language that may become problematic. We often see physicians agreeing to contracts without attorney review because of favorable compensation. Unfortunately, the physician often misses the language that allows the healthcare entity to alter compensation in the future, based on the hospital discretion, productivity, or subjective hospital reviews.

At that point, it may be too late for the physician to do anything, as their contract may contain non-compete clauses, liquidated damages, repayment obligations, or other provisions that bind the physician to the healthcare entity.

We have also seen physicians agree to automatic renewals and get locked into contracts, missing their ability to renegotiate at the end of the contract term.

Knowing the contents of the contract and its potential pitfalls is incredibly valuable in planning your future.

Adequate representation protects you, your interests and your future. It also helps the healthcare entity take your concerns seriously and protects your relationships.

### 3. Don't Sign a Letter of Intent Without the Contract

Many healthcare entities offer enticing letters of intent with salary and benefit terms, but they fail to include a lot of the details that are in the final contract. Healthcare entities want to know you are committed to them before offering you a chance to negotiate the contract terms. This undermines your negotiating power.

At Rickard & Associates, we always get a copy of the full contract and any other required agreements prior to our clients signing a letter of intent. Signing a letter of intent

lowers your leverage and only benefits the healthcare entity.

The healthcare entity will often tell you that the Letter of Intent is "non-binding" and therefore, it is ok to sign. The non-binding nature of the Letter of Intent makes it even clearer that you should not sign it. Why sign a document that does not matter? Ask for a contract and negotiate from it.

Once we receive the contract, the letter of intent often becomes unnecessary.

It is critical that you receive a complete contract with all of the terms spelled out before signing anything. The letter of intent might set out large signing and productivity bonuses, but may fail to mention repayment terms should you leave early or not hit certain productivity targets. It also may not include important terms regarding obligations, disputes, non-compete clauses, termination provisions, and more.

Knowing what is in the contract is essential prior to signing anything from the healthcare entity.

### 4. You Can Increase your Bargaining Power

Know that you have the ability to increase your bargaining power, until you give that power away.

As long as a healthcare entity believes you are negotiating with other entities and have other offers, you have significantly more leverage and more ability to successfully negotiate your contract.

However, we have seen many physicians give up their leverage by taking the following actions:

- Signing a Letter of Intent,
- Buying a house before signing a final contract,
- Speaking directly to the healthcare entity without including your attorney,
- Letting the healthcare entity know it is your first/only choice,
- Telling the healthcare entity you are committed to going there, but need to negotiate a few terms first,
- Speaking with peers at the institution, not realizing conversations will be relayed to those negotiating your contract.

This list is not exhaustive and we encourage you to talk to Rickard & Associates before you start your negotiations.

We have seen many physicians become their own worst enemies when negotiating their contracts.

Make sure to work through your attorney, as they know what to convey to the healthcare entity and will protect your interests.

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Once the healthcare entity knows they can speak to you directly and exclude your lawyer, they will often circumvent your lawyer's efforts and try to undermine the lawyer's negotiations.

## 5. Hasty Decisions Can Cost You Money

You have worked hard to get where you are in your career and now is not the time to rush.

Receiving an offer is exciting and we understand that many of our clients are eager to appease their future employer. Many physicians have waited a long time to start earning a substantial salary. They want to buy a house or they often have debt and other obligations they need to start paying off. However, agreeing to negotiate without an attorney, signing unfavorable agreements, making oral agreements can all hurt your offer and career.

Whether you are just out of fellowship or many years into a career, signing an unfavorable contract can have lasting implications on not only your career, but on your life in general.

For example, agreeing to a **non-compete clause** may require you to uproot and leave your home in the event of a layoff, disagreement, or when seeking career advancement.

Remember, something as simple as starting at a salary that is \$30,000 less than what you could have negotiated will likely not just impact you during the term of that contract. It will impact your salary for the rest of your career as each time you negotiate your compensation the healthcare entity will likely base your compensation on what it was previously. Losing \$30,000 every year of your career is a lot of money lost.

We help our clients decide what matters most to them and include contract language to meet their needs. Now is the time to be thoughtful and patient about what should be and should not be in your contract.

If there are certain protections you want built into your contract, tell your attorney. Your attorney can craft creative and mutually agreeable language to make sure that your interests are represented.

Obviously, during negotiations, both sides have to agree on the terms. All of these discussions allow you to gain valuable knowledge about the people you will be working with at your job.

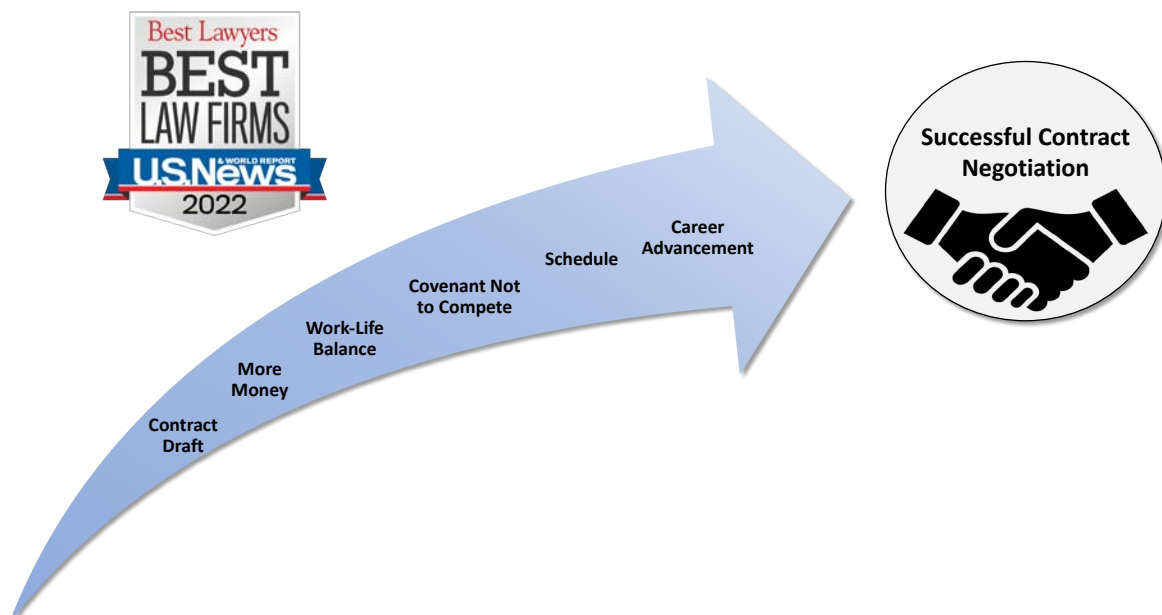
Many of our clients have found that the entity they began negotiating with was ultimately not the right fit. Sometimes this is because of personalities at the healthcare entity, the policies of the entity, or the unwillingness to negotiate with the physician during negotiations.

We help our clients find healthcare entities that they are compatible with and benefit their family and their career.

We look forward to meeting with you for a **FREE** consultation to discuss your healthcare contract.

Sincerely,

Lori-Ann Rickard, J.D.



# SHOULD YOU AGREE TO A NON-COMPETE?

WITH LAUREN GILPIN, J.D.



**N**on-compete provisions are common in many healthcare contracts, however, that does not mean they should not be scrutinized, negotiated, and in many cases, removed entirely. In fact, non-compete provisions are often deal breakers for physicians that understand the lasting and potentially devastating impact they can have on their careers.

Non-compete provisions prevent the physician from working for a certain amount of time, in a certain geographical area following his or her employment. They vary greatly in reasonableness, duration, geographical scope, and terms.

Non-compete provisions can be incredibly broad and unreasonable, or relatively easy to deal with.

For example, a physician may be prevented from working within 25 miles of the healthcare entity for a year following employment. Obviously, this is problematic if most, if not all, healthcare entities are within that 25 mile area which is often the case in a dense urban setting.

Non-compete provisions can also be incredibly broad. Sometimes, the non-compete area is from any of the physician's practice locations or any entity owned by the hospital or healthcare entity. This can potentially prevent the physician from working state-wide and beyond.

Some physician contracts allow the hospital or healthcare entity to add practice sites at any time. Keep in mind that this could widen the scope of the non-compete.

Many non-competes start after termination or separation for any reason, while others are limited to a physician quitting before the end date of the contract. Some also contain other prohibitions or binding terms, such as non-solicitation provisions or non-disparagement provisions.

At Rickard & Associates, we almost never recommend agreeing to a non-compete provision. Of course, there are exceptions to every rule, but non-competes never benefit the physician. Also, the healthcare entity is unwilling to pay the physician for the length of time of the non-compete. They essentially are asking you to give up a year (or more) of employment in a specific location, with no compensation.

## What should you think about before agreeing to a non-compete?

- How long do you intend to practice in the geographical area?
- Can you easily get a job somewhere else?
- Are you willing to relocate for a certain amount of time? Is your family able to relocate with you?
- How far will you have to relocate to avoid the non-compete?
- Are the terms of the non-compete based on one location? Or multiple (such as a health system, or multiple facilities)?
- Are there any contract provisions relating to private practice?
- What do the enforcement provisions entail? Monetary penalties? Injunctive relief?

While there are many more factors to consider, know that a non-compete will impact your future. It may also impact your bargaining power with other institutions in the future and may require you to relocate or go into private practice.

Also, non-competes are difficult and costly to litigate, so it is unwise to believe that the non-compete will not be enforced.

**Contact Rickard & Associates today to fully understand your non-compete provision and your options.** We can help you negotiate the non-compete clause and help you understand the true potential consequences of agreeing to a non-compete clause.

*Lauren Gilpin*

# IS IT ALL ABOUT THE MONEY?

WITH LORI-ANN RICKARD, J.D.

**W**hile all terms in a contract need to be reviewed and understood, we know that many of our clients focus on their compensation.

Physician contracts vary greatly in compensation amounts, methods, guarantees, and structures. The nuances can be very costly, if not fully understood.

For example, productivity and work relative value units (wRVUs) are unique to physician contracts and should not be taken lightly.

When productivity is included in a contract, it usually allows for compensation based solely on productivity or changes in base compensation relative to productivity.

Many of our clients, especially our newer physicians, want guaranteed compensation until they truly understand their wRVUs. Remember, wRVUs are logged and controlled by the employer. If the employer's system is not set up correctly, it may impact the physician's compensation. Productivity provisions can be incredibly complicated and should not be negotiated without an experienced healthcare attorney.

We help our clients understand what their actual compensation is and whether any of the compensation is at risk should certain conditions not be met.

Consider other potential financial provisions, such as:

- Call compensation,
- Signing bonuses and repayment terms,
- Relocation reimbursement and terms,
- Student loan repayments,
- Bonuses, etc.

It is essential that you review all financial provisions carefully to determine if your contract has:

- Potential repayment obligations,
- Ability to withhold amounts from your paycheck,
- Ability to unilaterally modify compensation, etc.

**We help our clients navigate the complicated compensation structures so that they understand the potential financial consequences.** Often, through negotiations, we are able to get increases in compensation and more favorable terms such as guaranteed years of compensation and more reasonable repayment terms.

Contact us today to help negotiate your compensation.

*Lori-Ann Rickard*



## Speaking Engagements

Rickard & Associates would be happy to speak to your organization regarding physician contracting, HIPAA, compliance training, fraud and abuse, etc.

Lori-Ann Rickard is a nationally known public speaker and regularly speaks at hospitals, healthcare systems, and physician organizations.

Ms. Rickard was formerly a partner at one of the largest law firms in Michigan. She also was corporate counsel for the largest Catholic health system in the country. In 2000, Ms. Rickard formed Rickard & Associates which has served the needs of healthcare providers throughout the United States. She has published several books on healthcare matters. She is an active member of the American Health Lawyers Association, State Bar of Michigan and Florida, and the American Academy of Professional Coders. She is a

Certified Professional Coder (CPC) and understands the unique needs of healthcare providers.

To invite Rickard & Associates to speak to your organization, call us today at (586) 498-0600.



# The Rickard & Associates Family

Lori-Ann Rickard



Watching freighters with her Dad is a favorite memory for Lori-Ann



Lori-Ann golfing with her sons-in-law



Lori-Ann at her daughter Cassie's wedding

Ron Rickard



Grandpa Ron at Disney



Sibling week in Northern Michigan



Ron with his grandkids

Lauren Gilpin



Lauren and kids at Christmas



At the park



Lauren's kids

Simina Olmeda

Simina's son Nicholas's graduation



With friends in Florida



Kristen's children and husband



Kristen Kirkwood

Kristen and her husband, Keith





At **Rickard & Associates**, our team of seasoned, trial-tested attorneys approaches each matter with a personal commitment to client service and advocacy.

Established in 2000, Rickard & Associates is focused on providing practical, intelligent advice, while solving your specific business or personal issues and adding real value to you or your organization.

We understand that one-size-fits-all is not the right approach when it comes to your legal needs. Each matter receives a thorough analysis to determine the appropriate course of action to accomplish your specific objective. Our team of dedicated attorneys and legal assistants combine hands-on business experience with cutting-edge legal knowledge to offer sensible and definitive solutions with a bottom-line focus.

To ensure that our clients have the right tool for the right job, our in-house team sits at the center of a wide network of legal specialists, experts and industry professionals throughout the Midwest and the United States who can be contacted to assist on a matter. This structure allows us to combine the personal attention and definitive advice that you would expect in the best small firms, with a depth of knowledge and specialty services that rivals large law firms.

We pride ourselves on combining our knowledge and experience with innovative and creative strategies to reach successful outcomes for our clients.

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