



# Why professional judgment needs to be in your employment contract

APR 18, 2024

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Historically, the majority of physicians in the U.S. were self-employed or employed by other physicians. But with the recent trend toward hospital employment, physicians have sometimes been put in uncomfortable positions as advocates for their patients.

“It comes down to money,” said Elizabeth A. Snelson, president of Legal Counsel for the Medical Staff PLLC, which specializes in working with medical staffs, medical societies and medical staff professionals.

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Snelson is the author of the *AMA Physicians' Guide to Hospital Employment Contracts* (PDF), free for AMA members, which provides expert guidance to physicians contemplating, entering into or working under employment contracts with hospitals or related entities.

“In the hospital setting, almost always the person who hires the doctor is an administrator—not a doctor,” she said. “Administrators are wonderful—they keep the doors open. But they shouldn’t be allowed to tell doctors how to treat patients.”



One way physicians going to work for hospitals can preserve their unfettered right to exercise their personal and professional judgment is to include a provision stipulating it in their employment contracts.

## How we got here

“For a long time, hospitals could not employ physicians. It was against the law,” Snelson said. “This goes way back to the idea of the company doctor, where a doctor worked for, say, a factory. Now, a doctor is supposed to do everything he can for the patient, but his loyalties often went to the guy who hired him— the boss.”

This often involved revealing health information about patients, such as being pregnant or having a disability, that could diminish their value as employees.

“Instead of being there to meet employees’ health needs, doctors were being asked to help weed out less desirable workers,” she said.

Only a handful of states—including California, Ohio and Texas—still have robust regulations prohibiting the ownership of medical practices by nonphysicians, known as the corporate practice of medicine.

“Even if it's completely lawful now for a hospital to employ a doctor to take care of patients in the hospital for a salary, the concern remains: The hospital may want the doctor to provide care in a way that's best for the hospital, rather than what's best for the patient,” Snelson said.

Learn more with the AMA about understanding physician employment contracts.

## One sentence can solve things

“In most states an employee owes a legal duty of loyalty to their employer. When the employee is a physician, however, the duty to patients is paramount,” the *AMA Physicians’ Guide to Hospital Employment Contracts* notes. “That may seem self-evident, but nonetheless, the employment agreement should protect the physician’s ethical duty to their patients and right to advocate on their behalf.”

The guide includes a sample provision for the physician’s unfettered right to exercise personal and professional judgment:



The employee shall retain the unfettered right to advocate for patients and to exercise their personal and professional judgment in providing treatment and health care services to patients in their care.

“The silent part is that you, the physician, have the authority to do what's best for the patient, even if that's not what's best for the hospital,” Snelson said. “Getting it into the contract shouldn't be controversial. If the hospital says, ‘We're not putting that in the contract,’ that's a red flag. Think twice, think eight times, before signing it.”

Snelson is equally adamant that no physician should negotiate a hospital employment contract without the help of a qualified lawyer.

“It's not rocket science, but employment law is tricky,” she said. “Don't go to just any employment lawyer; go to one who knows specifically about physician employment by hospitals.”

The AMA has assembled a variety of resources to help physicians flourish in the employment setting. That includes developing the *Annotated Model Physician-Group Practice Employment Agreement* (PDF) and featuring experts' perspective on collective bargaining for physicians.

At the 2023 AMA Annual Meeting, the House of Delegates adopted policy backing efforts to ban many physician noncompete provisions.