

# HOSPITAL CONTRACTS

## THE GOOD THE BAD & THE UGLY

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ADVANCING EMERGENCY CARE 

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Dr. Parker is Chief Coding Officer for HCFS of TeamHealth and President of Team Parker, a coding, compliance and revenue cycle consulting group. Dr. Parker is not an attorney. All opinions are Dr. Parker's.



## Your immediate action includes:

1. Throw it away in the trash in front of the CEO. That'll show the hospital.
2. Ignore it. She can't really mean it. You just had a great meeting last week...
3. Wish the CEO a good weekend and tell her you look forward to correcting her concerns. Then immediately call your group's managing partner and legal counsel to notify them and get them the letter.
4. Immediately email all your partners and APPs and let them know you all have lost your jobs.

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# AGENDA

- ▶ Hospital Contract Overview
- ▶ Term and Termination
- ▶ Performance Standards
- ▶ Financial Obligations
- ▶ Medical Staff Privileges
- ▶ Other Legal Issues

## OUR AGENDA TODAY

Main reference: Strauss and Mayer's Emergency Department Management



- ▶ **Codifying written agreement**
- ▶ **What happens - good and bad**
- ▶ **Invest in the relationship**
- ▶ **Exclusivity**
- ▶ **Legal council required**

# CONTRACT OVERVIEW

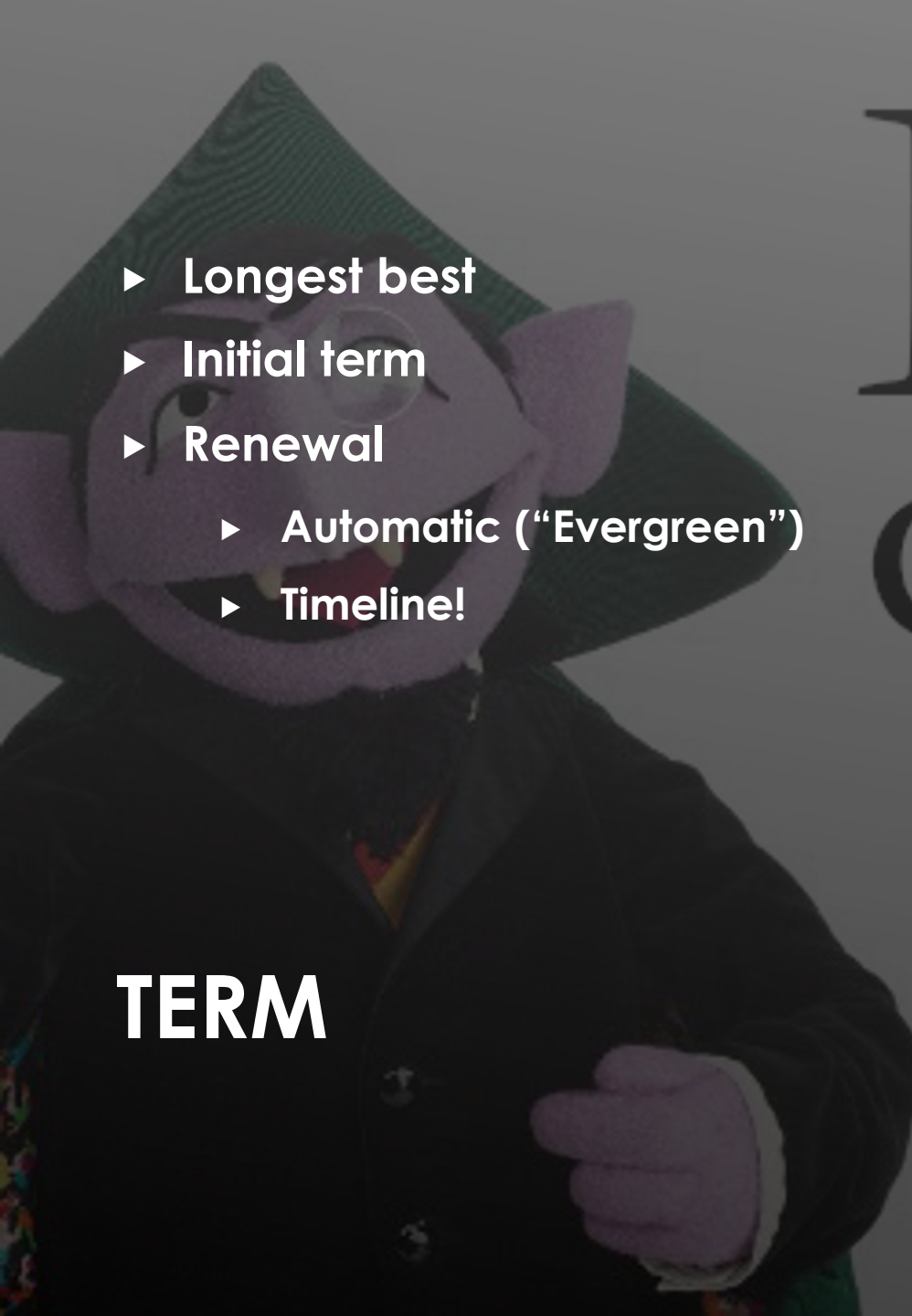


- ▶ **Emergency Services Agreement**
- ▶ **Hospital lead**
  - ▶ **Templated**
  - ▶ **Parallel**
  - ▶ **Happy Hospital best**
- ▶ **Deal Breakers**

# CONTRACT OVERVIEW



# TERM AND TERMINATION

- 
- ▶ Longest best
  - ▶ Initial term
  - ▶ Renewal
    - ▶ Automatic (“Evergreen”)
    - ▶ Timeline!

# Let's count



**TERM**

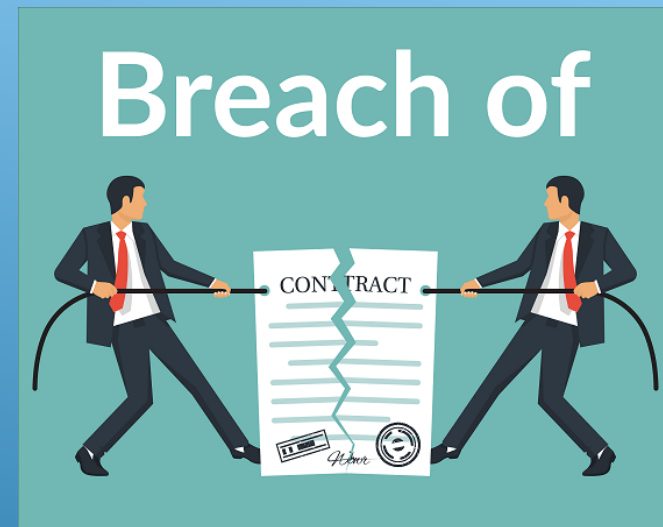
**For  
Cause**

**Without  
Cause**

**TERMINATION**

# TERMINATION – FOR CAUSE

- ✓ Breach
- ✓ Written notice with reason
- ✓ Short from immediate to 90 days
- ✓ Ideally 30-day cure period
- ✓ Reasons defined in agreement
- ✓ Typical reasons: financial insolvency, material violation of law, not fulfilling agreed duties



- ▶ No cause
- ▶ Typically 90-180 days
- ▶ May use to renegotiate terms

# TERMINATION – WITHOUT CAUSE



# WHAT IS YOUR CONTRACT LENGTH?

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**The Without Cause Clause;  
90-180 days**

# PERFORMANCE STANDARDS







Your group's contract is coming up for renewal. At your monthly CMO meeting, he states he would like to start thinking about mutual goals for the group to meet. The kicker: he'd like to attach a portion of your stipend to meet those goals.

- 
- ▶ **Staffing**
  - ▶ **Qualifications e.g. ABEM, AOBEM**
    - ▶ **Medical staff bylaws**
    - ▶ **Avoid merit badges**
  - ▶ **Leadership**
    - ▶ **Hourly tracking (CMS)**

# PHYSICIAN GROUP RESPONSIBILITIES

- 
- ▶ Regulator compliance (e.g. EMTALA, HIPPA, TJC, CMS CoP, state hospital licensure)
  - ▶ Admission or transition orders
  - ▶ In house response and duties
    - ▶ Med-mal usually covers
    - ▶ ED comes first
  - ▶ “Use reasonable efforts” so not breach

## PHYSICIAN GROUP RESPONSIBILITIES

- 
- ▶ **Other possibilities**
    - ▶ Quality participation
    - ▶ Goals and markers to achieve (throughput, LWOT percentage, patient experience, hospital value-based purchasing goals)
    - ▶ Medical staff participation
    - ▶ EMS and outreach
    - ▶ In service education services
  - ▶ **Key: can fulfill**

# PHYSICIAN GROUP RESPONSIBILITIES

- ▶ **Hospital must provide resources**
- ▶ **Examples:**
  - ▶ Staffing or nurses, tech, unit secretaries, supplies and medical equipment
  - ▶ Office space for medical director and AA/chart coordinator, with telephone and internet connection
  - ▶ Timely chart access for billing
  - ▶ Physician on call room/office
  - ▶ Medical staff on call list

# HOSPITAL RESPONSIBILITIES



Your group's contract is coming up for renewal. At your monthly CMO meeting, he states he would like to start thinking about mutual goals for the group to meet. The kicker: he'd like to attach a portion of your stipend to meet those goals.

The CMO has a few suggestions he throws out:

- ✓ Patient experience scores for the ED 95<sup>th</sup> percentile (currently at 85<sup>th</sup>)
- ✓ LOS average less than 90 minutes for discharged patients (currently 210 minutes)
- ✓ LWOT rate less than 1% (currently at 6%)
- ✓ 100% on all Value Based Purchasing measures

# BREAK OUT!

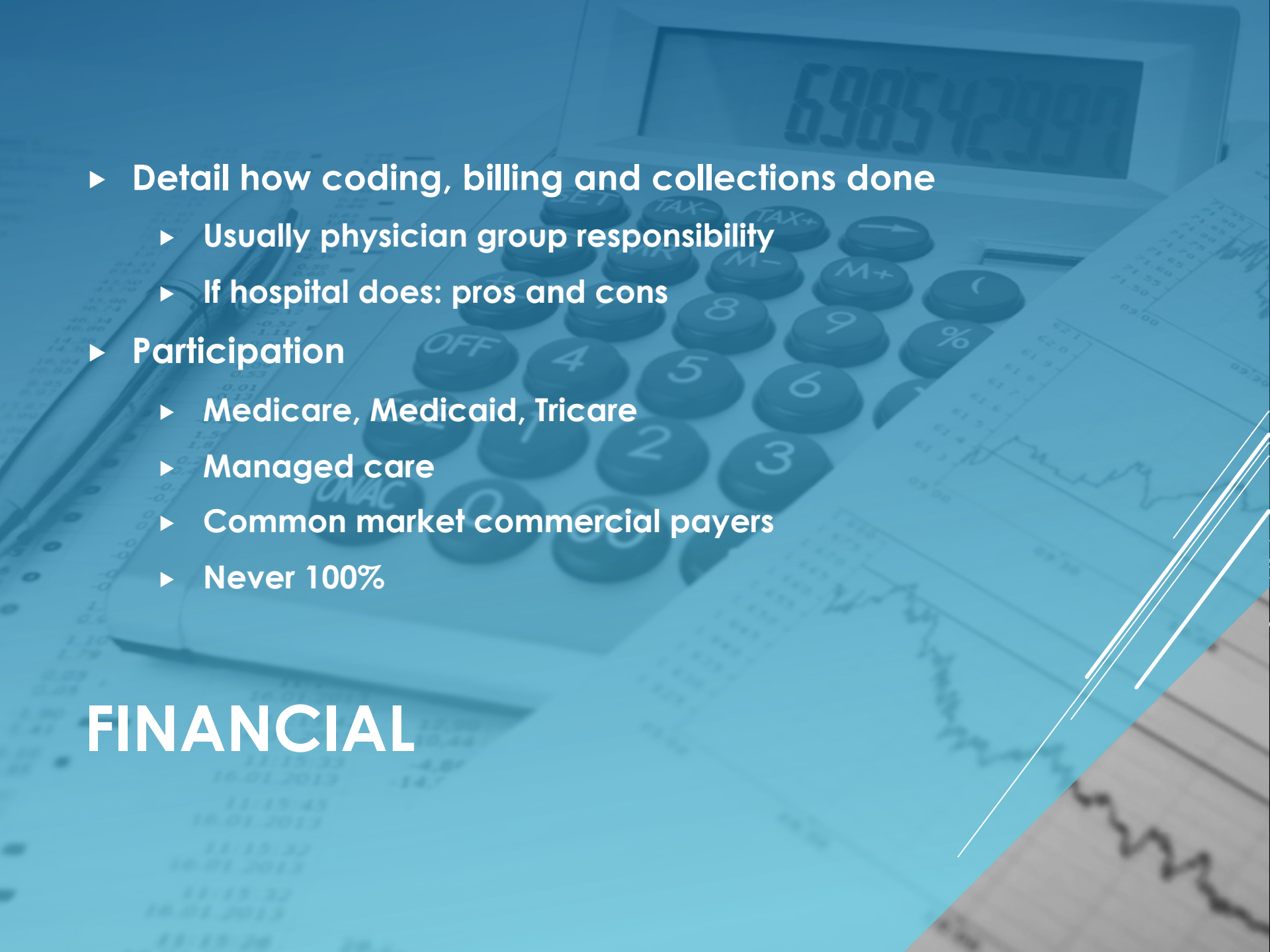
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# FINANCIAL OBLIGATIONS

- 
- ▶ Detail how coding, billing and collections done
    - ▶ Usually physician group responsibility
    - ▶ If hospital does: pros and cons
  - ▶ Participation
    - ▶ Medicare, Medicaid, Tricare
    - ▶ Managed care
    - ▶ Common market commercial payers
    - ▶ Never 100%

# FINANCIAL

- ▶ If no stipend, brief section
- ▶ If stipend, detailed. Examples of required stipends:
  - ▶ Medical director with heavy duties
  - ▶ Participation in all managed care
  - ▶ Free care for multiple categories of patients (e.g. employees and families, community physicians and families)
  - ▶ Staffing requirements
- ▶ May have portion of stipend tied to goals
- ▶ Careful attorney review

**FINANCIAL**

# MEDICAL STAFF PRIVILEGES

- ▶ **Clean Sweep clause**
  - ▶ If group terminates, all privileges terminate (exclusivity)
  - ▶ Hospital may pre negotiate individual physicians
  - ▶ May be a buy out clause

# MEDICAL STAFF

- ▶ **Individual provider**
  - ▶ **Mutual hiring and separation**
  - ▶ **Hospital request clauses**
    - ▶ **Due process, fair hearing**
  - ▶ **Many groups advocate for an internal due process clause in partnership with hospital**
    - ▶ **Avoids reactionary response**

# MEDICAL STAFF

# OTHER LEGAL CONSIDERATIONS





- ▶ Independent contractors
  - ▶ Some liability protection
- ▶ Indemnification
- ▶ Liability insurance
- ▶ Arbitration

## OTHER CLAUSES

# AGGENDA

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**KEY TAKE AWAYS**

