

PHYSICIAN CONTRACTS

THE GOOD THE BAD & THE UGLY

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- ▶ **Independent Contractor vs Employee**
 - ▶ **Contract Overview**
 - ▶ **Key Contract Clauses**

Common Pitfalls and Tips for Success

OUR AGENDA TODAY

Main reference: Strauss and Mayer's Emergency Department Management



**YOU GET A CONTRACT, YOU GET A
CONTRACT,**

INDEPENDENT CONTRACT VS EMPLOYEE

- ✓ **Everyone gets a contract!**
- ✓ **Differences**
- ✓ **Will not cover K1**
 - ✓ **Partnership**
 - ✓ **Governed by operating agreement**

@zapnhi_memes

YOU GET A CONTRACT! EVERYONE GETS A CONTRACT

IC VS EE: IRS

“People such as doctors, dentists, veterinarians, lawyers...who are in an independent trade or profession in which they offer their service to the general public are generally independent contractors.”

Reference: www.irs.gov

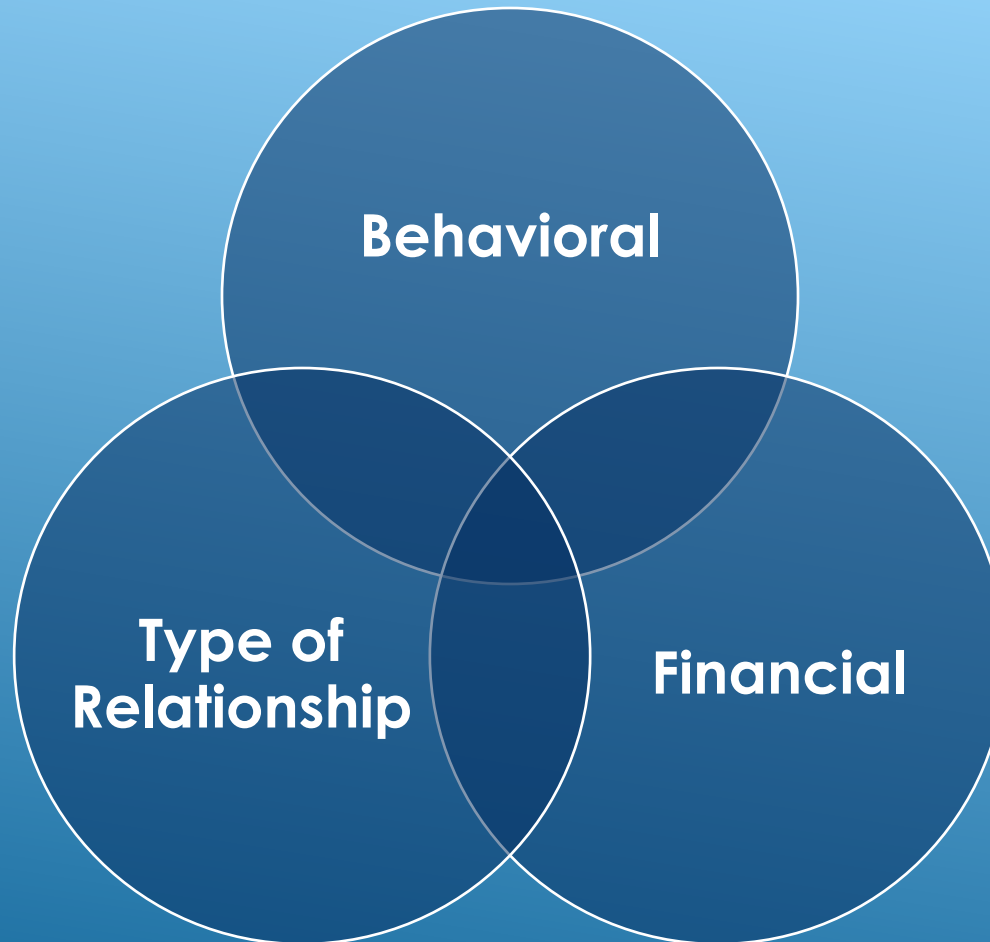
IC VS EE: IRS

“An individual is an **independent contractor** if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.”

“An **employee** is defined as one that performs services that can be controlled by an employer (what will be done and how it will be done.)”

Reference: www.irs.gov

IC VS EE: IRS COMMON LAW RULES



Reference: www.irs.gov

IC VS EE: TAXES & BENEFITS

	Employer/EE (W2)	IC (1099)
Income Tax	Employer withholds each pay period	IC calculates and pays quarterly
Employment Tax	Employer contributes 50% and withholds 50%	IC pays 100%, but 50% is tax deductible
Benefit plan	Employer provides: may be more robust and less \$; less choice	IC provides: can design and tailor
Retirement	401k, 403b, pension	Designs own, many options (SEP IRA, i401k, etc.)
Business deductions	No	Yes

Reference: Strauss and Mayer

	Employee	IC
Pd hrs worked	1692	1692
Vacation	144	0
CME	36	0
Hourly rate*	\$130	\$160
Salary*	\$243,360	\$270,720
FICA*	\$8,540	0
Malpractice	\$20,000	\$20,000
Benefits		
Health	\$6000	0
Disability	\$1500	0
Life	\$500	0
Workman's comp*	\$500	0
Dues	\$1000	0
CME	\$2000	0
Pension (3% salary)	\$7300	0
Total Value*	\$290,720	\$290,720

Reference:
Strauss and Mayer

IC VS EE: WHAT DO I NEED TO KNOW???

- ✓ Practice uniformity
- ✓ Positions employed:
 - ✓ Medical Director and other leaders
 - ✓ Physician Assistants and Nurse Practitioners

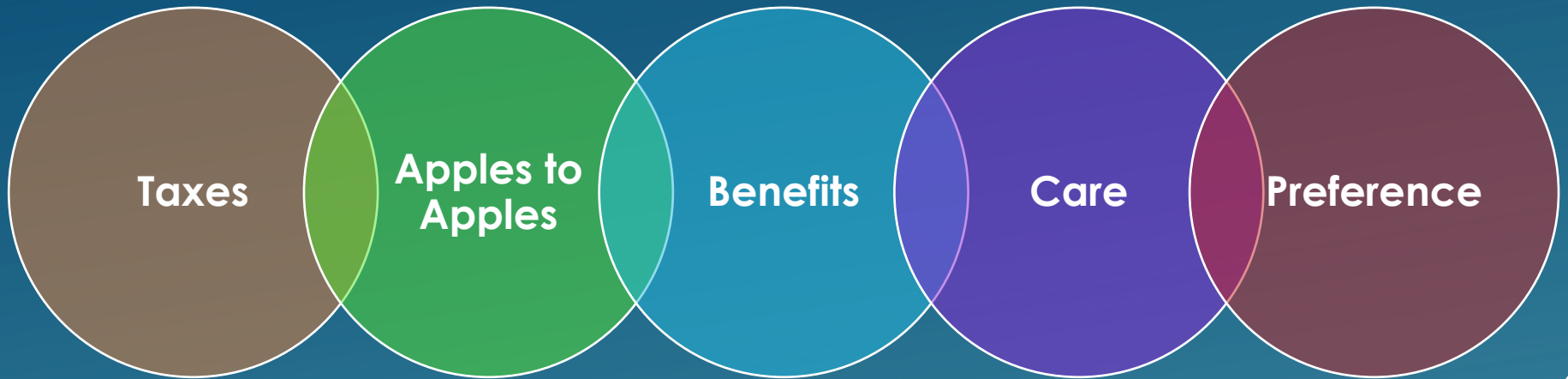
IC VS EE: ADVANTAGES

✓ IC advantages

- ✓ Simple structure for small practices
- ✓ Once set up, many prefer
- ✓ Retirement options

✓ EE advantages

- ✓ Easy set up
- ✓ Health insurance



IC VS EE: MANAGEMENT ISSUES

CONTRACT OVERVIEW



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

CONTRACT OVERVIEW



- ▶ Employment Agreement
- ▶ Group provides
 - ▶ Templated
- ▶ Deal Breakers
- ▶ Negotiate

CONTRACT OVERVIEW

KEY CONTRACT CLAUSES



- ▶ **BC/BE with BC within 5 years in emergency medicine**
- ▶ **Unlimited medical license in the state of...**
- ▶ **DEA**
- ▶ **Member of medical staff in good standing**

KEY CLAUSES: REQUIREMENTS

KEY CLAUSES: PHYSICIAN DUTIES AND RESPONSIBILITIES

- ▶ **Clinical duties: minimum and/or maximum number of clinical hours**
- ▶ **Other clinical: writing admit orders, on-call schedule, teaching**
- ▶ **Personal obligations: medical staff member, medical record completion, payer/billing credentialing, Medicare and Medicaid participation**

KEY CLAUSES: PHYSICIAN DUTIES AND RESPONSIBILITIES

- ▶ Compliance with federal and state laws: EMTALA, HIPPA
- ▶ Bylaws, policies and procedures of medical staff, hospital and group
 - ▶ Drug and alcohol policy
- ▶ Administrative duties
 - ▶ Committees, EMS, complaint management, research requirements, etc.
 - ▶ Often separate agreement

KEY CLAUSES: HOSPITAL AND GROUP DUTIES AND RESPONSIBILITIES

- ▶ Hospital duties: provide personnel, equipment, supplies, maintenance, fixtures, utilities etc.
- ▶ Group duties: financial and billing management, hospital arrangement, malpractice coverage, scheduling, etc.

KEY CLAUSES – COMPENSATION & BENEFITS



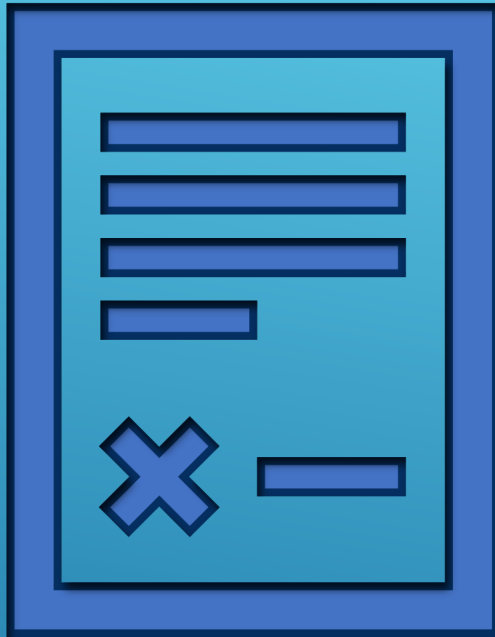
Usually separate
appendix



Example: hourly rate,
RVU bonus, profit
sharing, sign on bonus



Liability coverage



- ▶ Typically one year
- ▶ Automatic renewal/Evergreen
- ▶ Renegotiation/Termination
 - ▶ Typically 60-180 days prior to contract end

KEY CLAUSES: TERM



**KEY CLAUSES:
TERMINATION OF THE AGREEMENT**




- ▶ For “Reasonable” Cause
- ▶ 30-day cure period
- ▶ Reasons defined in agreement
- ▶ Typical physician reasons: impairment, loss of license, professional misconduct, disability, quality.
- ▶ Typical hospital/group reasons: breach of contract, nonpayment of monies

TERMINATION – FOR CAUSE

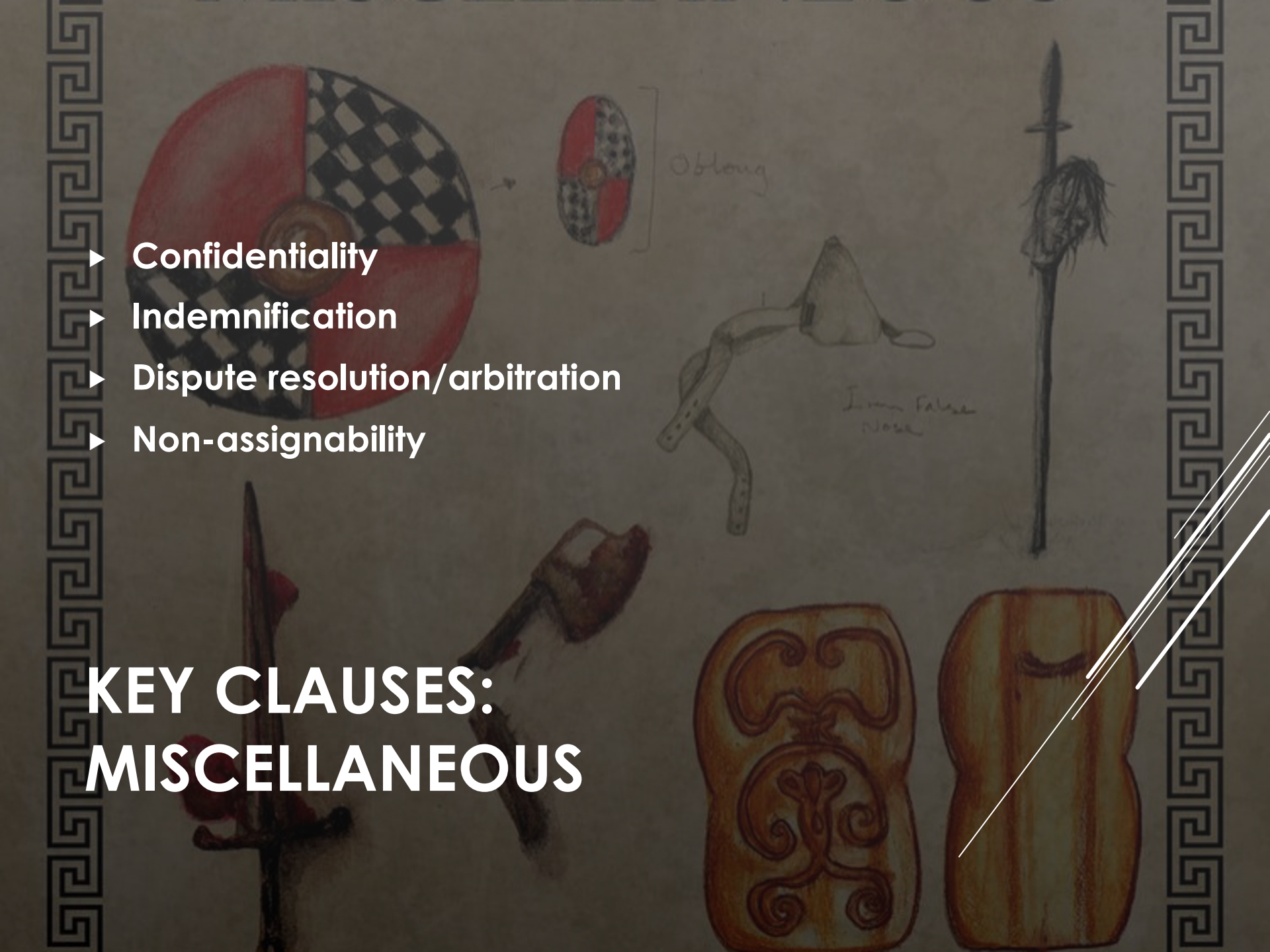


- ▶ Usually reciprocal
- ▶ Typically 90-180 days
- ▶ Sweep clause
- ▶ Due process, fair hearing
- ▶ Often mirrors hospital contract language

TERMINATION – WITHOUT CAUSE

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- ▶ Tortious Interference
 - ▶ Non compete
 - ▶ Protects the business
 - ▶ Limited by time and geography
 - ▶ Noninterference
 - ▶ Non solicitation
 - ▶ Outside practice

KEY CLAUSES: RESTRICTIVE COVENANTS

- 
- ▶ Confidentiality
 - ▶ Indemnification
 - ▶ Dispute resolution/arbitration
 - ▶ Non-assignability

KEY CLAUSES: MISCELLANEOUS

AGGENDA

- ▶ Independent Contractor vs Employee
- ▶ Contract Overview
- ▶ Key Contract Clauses

KEY TAKE AWAYS

