

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



A woman in a red blazer is cheering with her arms raised in the air. The background is a blurred indoor setting.

YOU GET A CONTRACT, YOU GET A CONTRACT, 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

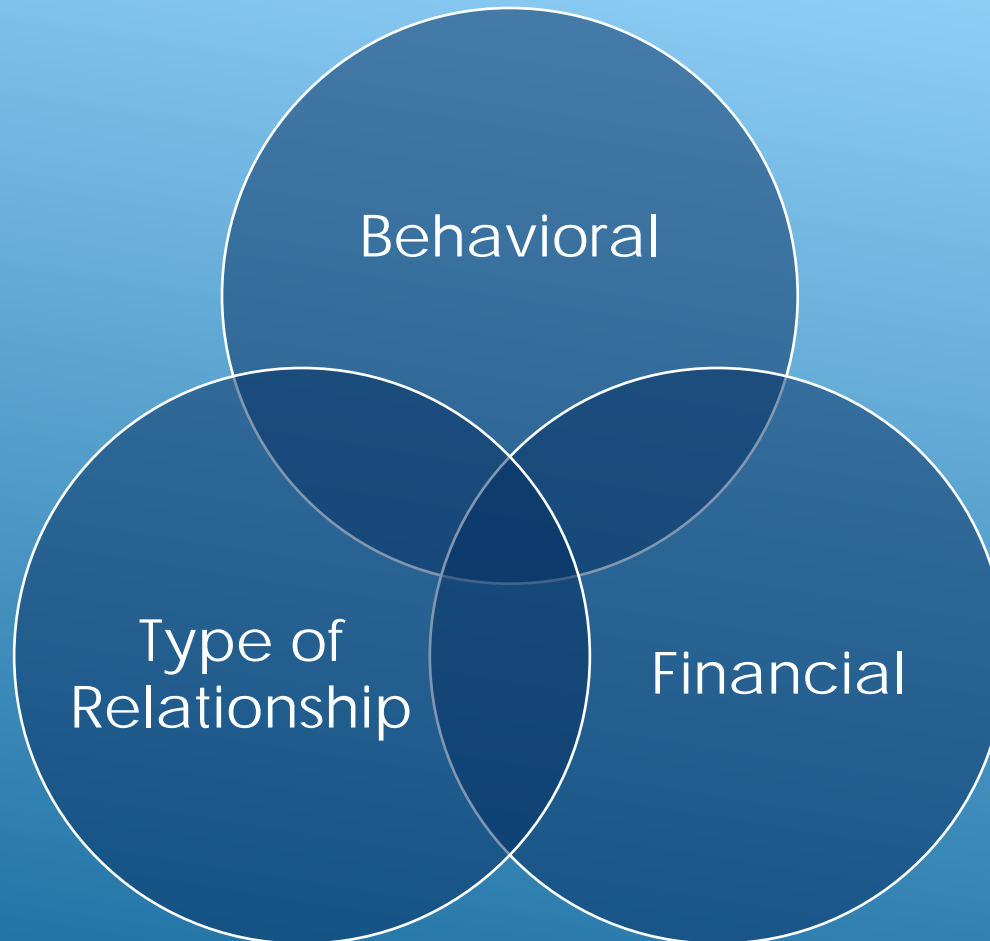
IC VS EE: IRS

“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 |

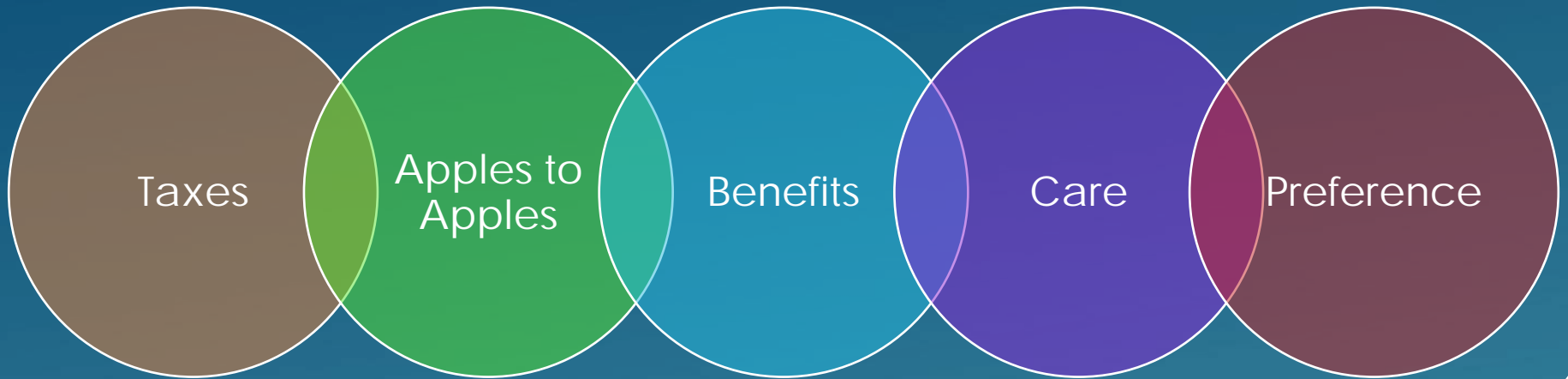
Reference:
Strauss and Mayer

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



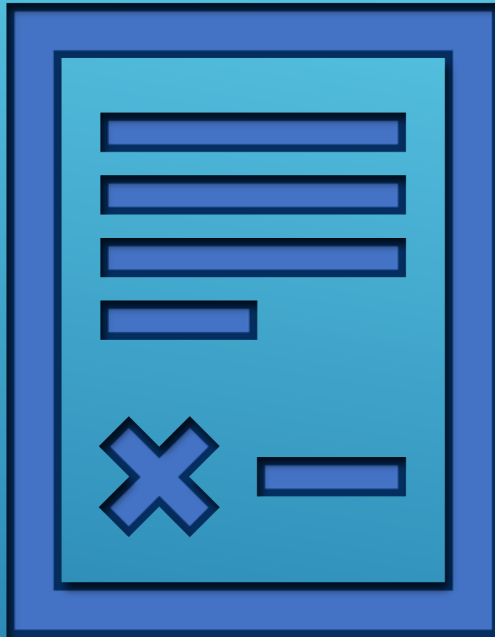
Usually separate
appendix



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

- 
- ▶ 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

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KEY TAKE AWAYS

