

# Your contract has been terminated or was not renewed – now what?

Couples rarely think about divorce on their wedding day. When you signed your employment contract, termination of your employment may have been the furthest thing from your mind. But things change, and when you find out your employer is letting you go, you'll need to pull that contract out of the bottom drawer and review it carefully with your attorney to make sure your rights are protected and you don't inadvertently violate any prohibitions.

## Term, termination and renewal

Generally, employment contracts are effective for a defined time period, one to three years being the most common. Some contracts will automatically renew for additional terms unless either party gives written notice by a fixed number of days before the term expires – 90 days is typical. If you've received a notice of nonrenewal, check this term and count the days on the calendar. Also see if the time is counted from the date of the notice or the date of your receipt of the notice. If the employer has missed the deadline, your contract may have renewed for another term.

Alternatively, a contract may be written without automatic renewal provisions, which generally means the contract expires at the end of the term, unless the parties have agreed to extend it. That doesn't always mean your *employment* will terminate, and some employers retain physicians without contracts after such expiration. In that case, you may become what is known



**WILLIAM H.  
MARUCA,  
ESQ.**

as an "employee at will," which means either party may terminate at any time without cause or advance notice. If your contract does not automatically renew, and the expiration date is approaching, you may want to discuss renewal with your employer before time runs out.

All contracts will specify when either party may terminate the employment relationship, and usually list reasons that would permit an employer to terminate "for cause," such as material breach, loss or suspension of license, loss of staff privileges, conviction of a crime, etc. You may have certain "due process" rights if you are being terminated for cause. The employer may be required to give you written notice specifying the breach or other cause and to give you an opportunity to cure within a stated time period. Other contracts permit immediate termination for cause without notice, so the contractual language is critical.

Many contracts also permit either party to terminate upon a certain number of days' written notice without cause, either during a term or at the end of the term. This type of termination also may limit whether a restrictive covenant will apply, depending on contract language. "Without cause"

provisions do not permit an employer to terminate for prohibited reasons such as age, gender, race or disability discrimination or certain whistleblowing activities, but evidence of such improper intent would be needed to challenge such terminations.

The situation for teaching physicians may be a little more complicated, because they usually have an employment relationship with a practice plan entity under a written contract and a faculty appointment which may only be described in a letter. Faculty appointments may not be terminable as easily as practice plan employment, and the medical school bylaws may provide additional due process rights, so be sure to review them.

Once a termination or nonrenewal notice has been issued, an employer may prefer to pay the departing physician his or her salary for the notice period in lieu of requiring them to continue to work. Some contracts expressly address this approach, but even if the contract is silent, an employer is generally permitted to pay the physician not to work. The employer may have concerns that a terminated employee may disparage the employer to coworkers or patients or attempt to divert patients or employees to a competitor during the remaining time on the job.

If you are concerned that a termination would negatively impact future job prospects, you may want to propose a resignation in lieu of termination. It is not clear that a resignation would be

considered more favorably by future potential employers, but if you consider resigning, be aware that you will not qualify for unemployment compensation unless you can show the resignation was a “constructive termination” due to factors beyond your control such as a hostile work environment.

**Final compensation and benefits**

If your compensation includes a productivity bonus or similar formula, you will want to carefully review the data used to calculate these payments. Your bonus may be based on fees received after your final day of service, and you will want to make sure you get credit for all of your collections. Some

contracts even require you to forfeit bonus payments if you do not complete the term. If you were a shareholder in a private group, your employer generally will be required to repurchase your stock based on a formula set forth in the corporation’s agreements. Shareholders also may be entitled to severance pay or salary continuation upon termination.

If you get your health insurance coverage from your employer, you should find out when that coverage will end and whether you have the option to continue the coverage under COBRA. You also may be permitted to purchase life insurance policies that your employer maintains on your life, which may be to your benefit if you have any

health issues that could hinder replacing such policies.

If your employer sponsored a qualified retirement plan, you should find out when you will be entitled to a distribution and arrange for a rollover to an IRA or subsequent qualified plan to continue to defer taxation.

Your malpractice coverage should be a priority. If you have “occurrence-based” coverage through your employer, it will continue to cover you for any claims relating to care you provided during your employment, but if you had “claims-made” coverage, you will need an extended reporting endorsement, commonly called a tail policy. Your contract may spell out

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<p>Seth I. Corbin 412.394.5530 scorbin@foxrothschild.com</p>	<p>Edward J. Kabala 412.394.5599 ekabala@foxrothschild.com</p>	<p>William H. Maruca 412.394.5575 wmaruca@foxrothschild.com</p>	<p>William L. Stang 412.394.5522 wstang@foxrothschild.com</p>	<p>Michael G. Wiethorn 412.394.5537 mwiethorn@foxrothschild.com</p>
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BNY Mellon Center | 500 Grant Street, Suite 2500 | Pittsburgh, PA 15219 | 412.391.1334 | [www.foxrothschild.com](http://www.foxrothschild.com)

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whether you or your employer must pay for that coverage. Don't let this issue fall through the cracks, because failure to maintain tail coverage could expose your personal assets and jeopardize your license.

### Restrictive covenants, patient records and solicitation

Now that you've received your pink slip, how, when and where can you search for a new position? First, carefully review the restrictive covenant in your current contract. In some cases, the restrictions only apply if you are terminated for cause or if you resign without cause. There are some contracts, particularly with health systems, that apply a strict noncompete in the restricted territory if you quit or are terminated for cause, but a "soft covenant" that only prohibits employment or financial relationships with hospitals or health systems and allows you to return to private practice if you are terminated without cause. If you signed

your noncompete sometime after you started work with your current employer, or if it covers an excessive territory or time period, there may be ways to challenge it, but you should consult an experienced attorney first. You also may be able to negotiate a buyout of your noncompete, and maybe even have your new employer help pay it if they want to hire you badly enough.

Be careful about telling patients where you are going while you are still working for your current employer, unless your employer has agreed to allow this. Handing out new business cards during the notice period is likely to violate your contract's prohibition on patient solicitation. Don't print out or download a list of your patients without consulting your lawyer. That data belongs to your employer and may be considered a trade secret. The Pennsylvania Uniform Trade Secrets Act permits a business to seek injunctive relief, damages and attorneys' fees as a result of misappropriation of trade secrets by theft, espionage or other improper means. Instead, see if your

employer will agree to a joint letter to patients informing them of your departure, how to reach you and how to authorize transfer of their records.

A separation agreement setting forth all terms of the physician's departure may be beneficial to both parties to avoid future misunderstandings or disputes. Such agreements usually involve mutual releases, and you should confer with your attorneys before signing away any rights.

Losing a job is a tough blow for successful, accomplished professionals, but it may turn out to be the first step to a fresh start and better working environment. Transitioning your professional practice can be stressful, risky and complicated. The best way to protect yourself from liability and ensure a smooth process is to seek advice from experienced legal counsel.

*Mr. Maruca is a health care partner with the Pittsburgh office of the national law firm of Fox Rothschild LLP. He can be reached at wmaruca@foxrothschild.com or (412) 394-5575.*

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