CONTRACTING TIPS FOR THE INDEPENDENT PHARMACIST

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Don't rely on an oral agreement. Reduce the agreement to writing with a written contract. Although oral agreements are often legally binding, they are difficult to prove and enforce in court. A written contract is less uncertain than an oral agreement because you have a document that clearly delineates each party's obligations and rights.

Do insist that the details are correct. Do include the date in the first paragraph so that the contract is easily referenced after execution, such as "the December 1, 2007 contract for consulting services." Do ensure that the parties are properly identified, names are spelled correctly and addresses are accurate. Be certain that the appropriate legal name of the party to the contract is named, so that it is obvious who is responsible for performing the obligations. For example, if your pharmacy is organized as a corporation or limited liability company, then identify it accordingly (including "Inc." or "L.L.C." and the d/b/a name), not by the name of the person signing the agreement on behalf of the pharmacy.

Do thoroughly read the contract. Do have your attorney review every contract before you sign it. At a minimum, have your attorney read those contracts that will have the most significant impact on your business. Your attorney can answer questions, assist you with understanding "boilerplate" (form) language and alert you to hidden dangers. Don't assume that use of a standard contract eliminates the need for your attorney's review. Do have your attorney assist you with contract negotiations. When tensions run high between the parties, your attorney can provide distance and objectivity. However, communicate with your attorney about your priorities regarding the contract in order to minimize legal expenses.

Do insist on amendments. After reading the contract, if you disagree with a key provision (particularly those regarding your obligations), present a proposed amendment and don't sign the contract until it is included. Remember that it is not enough that the other party agrees to your amendment via written correspondence or oral discussions; the contract must specifically include the amendment, as most contracts include an integration clause that states that the contract supersedes any prior written or informal agreements. The contract represents the final word.

Do eliminate ambiguity. Don't accept the other party's oral explanation of a perplexing term or provision. Don't assume that the other party defines the terms in the same manner that you do. If there is uncertainty, include definitions and additional language to ensure clarity. Do thoroughly articulate each party's obligations. In some instances, it is helpful to affix attachments or exhibits to the contract to demystify complex issues.

Do negotiate with the right individual. Don't squander valuable time and money negotiating the contract with an individual who does not have the requisite authority to extend the final decision on negotiations and execute the contract. The individual with the proper authority will have a vested interest in ensuring the contract is negotiated, executed and performed appropriately.

Do employ an ultimatum and stick to it. From the inception of a contractual negotiation, articulate those terms that you are unwilling to compromise about, and those that you have more flexibility to resolve. Be prepared to trade off on the less essential issues to win concessions on your priorities. Once you have voiced your positions, try not to deviate during discussions. Should you reach an impasse as to one of your steadfast points, extend an ultimatum. If the other party does not meet your ultimatum, be prepared to walk away or you will lose credibility.

Do scrutinize clauses that pertain to termination. The contract should define the circumstances by which the parties can terminate the contractual relationship. If one party does not perform according to the other's expectations as outlined in the contract, the other party should have the right to terminate without being held responsible for breaching the contract. Be certain to note the grounds, process and timeline for termination. Analyze the termination from both perspectives, considering what circumstances allow you to terminate, as well as the other party. In this same context, scrutinize the term. What is the time for performance? Is time of the essence? When does it expire? One year? Five years? Does the contract renew annually automatically or do you need to provide written notice? It is a complicated, expensive and stressful process to extricate a party from a contract when the other party is properly performing according to the terms. Don't bind yourself for an extended time period unless it is to your advantage.

Do request that mandatory arbitration clauses be eliminated. Arbitration is an alternative dispute resolution method that provides an alternative to litigation through the courts. Mandatory arbitration clauses require one party to agree to another's pre-dispute arbitration provision. They eliminate the right to go to court and settle disputes. You should request elimination of these clauses and allow yourself the freedom to resolve disputes through the courts. Also, request that Texas (or your state's) law govern any disputes.

Do retain a copy of the contract for your records. It is essential to maintain the original contract, amendments, supplements and other communication pertaining to the contract. Again, don't agree to a modification of the terms without memorializing it as a written and signed amendment to the original contract.

We hope you will take these tips into consideration when reviewing and executing contracts. Questions? Please contact Ms. Fields at amandacfields@gmail.com