



# **PRACTICE MANAGEMENT PROCEEDINGS**

**June 5-7, 2022**

# **2022 ANNUAL CONFERENCE**

**College of Veterinary Medicine  
Kansas State University**



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# PRACTICE MANAGEMENT PROCEEDINGS

June 5-7, 2022

## Resolving Conflict in the Workplace

Sonja Lutter, Ph.D., CFP®, LMFT



## Resolving Conflict

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### Description

Learn the connection between conflict resolution and practice management. Effective leaders possess good conflict resolution strategies that build desirable firm culture that attracts clients.

### Five Conflict Options

1. Ignore
2. Win-Lose
3. Lose-Win
4. Lose-Lose
5. Win-Win

### Conflict Resolution Process

1. Develop understanding
  - Timing matters: Surprise conflict = Escalating conflict
  - Listen with your eyes
  - Stay focused: If you find yourself going around in circles, stop
2. Identify problem
  1. **Restate**  
*I heard you say that you are upset/frustrated/confused about XYZ, is that correct?*
  2. **Avoid defensiveness**  
*I feel [frustrated] when [the plan shifts] because it means [my opinion wasn't heard or valued].*
  3. **Ask**  
*Is there more?*
  4. **Listen**
3. Analyze what hasn't worked in the past

1. **Ask Questions:**

Can you tell me more about how long XYZ has bothered you?

Is there something we have tried that has been counterproductive to XYZ?

4. Compromise on new plan

- State needs
- State what you are willing to offer/contribute to the solution
- Don't expect immediate answers
- Embrace periods where everyone is off the clock together
- Take the office outdoors
- Encourage team to recognize and promote each other
- Ask questions
- Provide stability
- Live by core values
- Engage in community events
- Be well yourself
- Show EMPATHY

**"Empathy is like a universal solvent. Any problem immersed in empathy becomes soluble."**

**– Simon Baron-Cohen,  
British clinical psychologist, University of Cambridge**

5. Clearly articulate each person's role in the new plan

- Keep it focused on what you can control
- Provide support to others
- Self-reflect

6. Try it out

- Set time to come back and revisit the stated problem (i.e., it's not a fix it and forget it type of situation)
- Know when to call it quits (i.e., costs > benefits)

7. Re-evaluate

- The most efficient conflict resolution is conflict prevention.
  - Reduce the noise
  - Think first
  - Ask questions
  - Listen with eyes

*It's important to differentiate everyday from seismic conflict. Seismic conflict has a compounding effect.*

### **Five Things to Avoid When Conflict is Apparent**

- Criticism
  - Criticism is people-focused; negative/what not to do; wandering/vague
  - Critiques are object-focused; positive/what to enhance; direct/specific
  - *"That's not the way I would have done that." → "I wonder if we could think about alternative perspectives."*
- Long explanations / preaching
  - *"I've done this a thousand times before...The first time...You haven't had the same experiences; I know this works..." → "It's possible your idea will work. I also wonder if we could think about alternative perspectives."*
- Defensiveness
  - *"But I did tell you that would happen." or "I already told you that." → "I hear what you are saying. How do we move forward?"*
- Ignoring/stonewalling
  - *Avoid running into the person. → "I'm not happy right now, but I would like some space before we discuss the situation."*
- Disguising orders as advice
  - *"You really should try to contact the client a week before the meeting instead of the day before if you're trying to get new information." → "It is our standard policy to contact the client one week before the meetings to request information."*



# **PRACTICE MANAGEMENT PROCEEDINGS**

**June 5-7, 2022**

## **Personal Financial Assessment**

Sonja Lutter, Ph.D., CFP®, LMFT





Personal Financial Assessment  
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## Description

Review ideal financial ratios that build personal financial security and wealth. Trends in financial planning will be discussed.

Ratio	Calculation	Goal
Emergency Savings	Cash/Needs	3-6 months
Active Savings	Savings/Pre-Tax Income	10-15%
Basic Housing	PITI/Pre-Tax Income	< 28%
Extending Housing	PITI + Other Debt Payments/Pre-Tax Income	< 36%
Solvency	Net Worth/Assets	100% as you near retirement

## Trends

- Crypto
- Recession
- Housing
- Inflation



# **PRACTICE MANAGEMENT PROCEEDINGS**

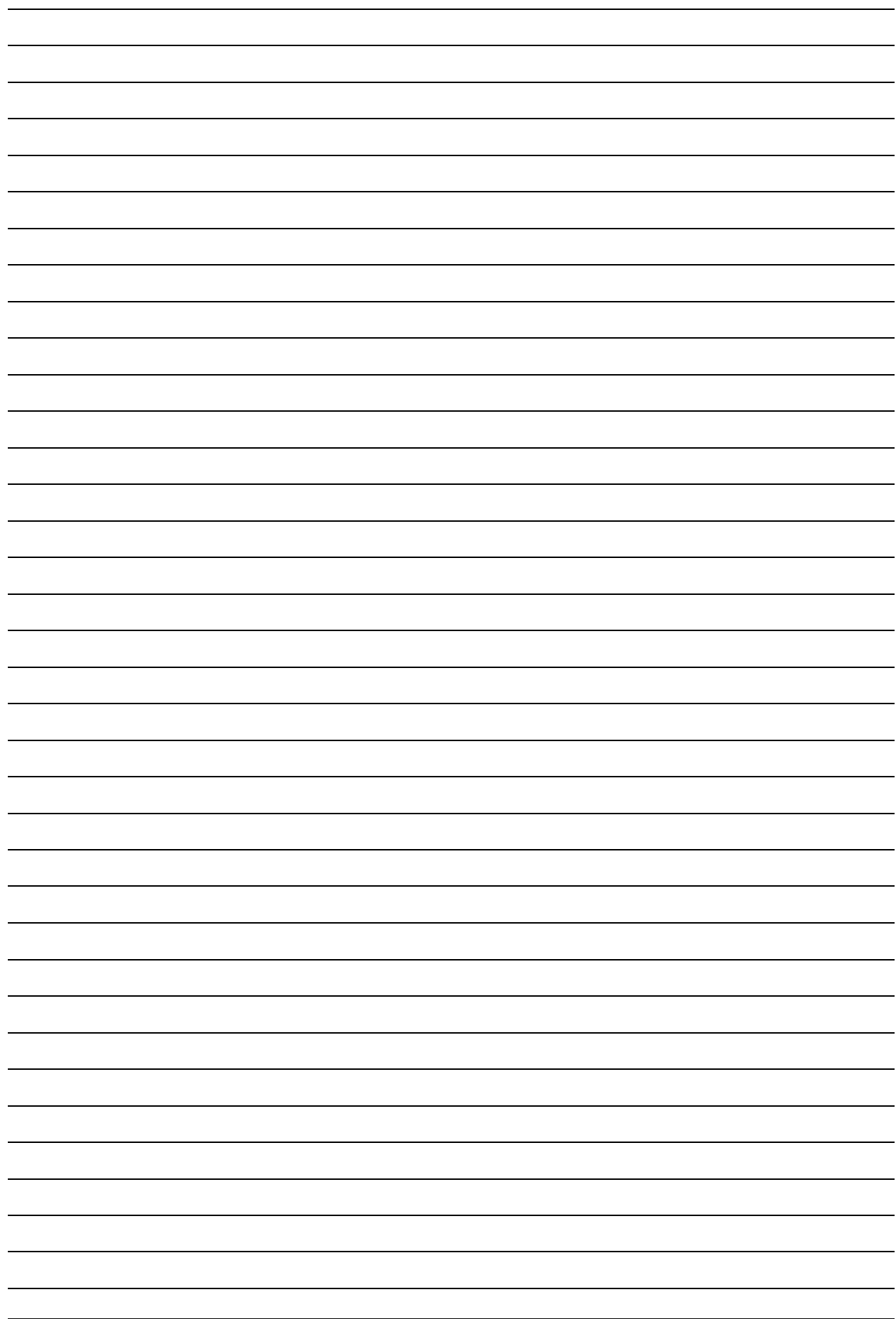
**June 5-7, 2022**

## **On the Horizon Issues for Veterinary Medicine; Let's Discuss Today**

Lance Roasa, DVM, J.D.



# Notes





# **PRACTICE MANAGEMENT PROCEEDINGS**

**June 5-7, 2022**

## **Common Contract Disputes; Navigating Legal Waters**

Lance Roasa, DVM, J.D.



# Contract Law for Veterinarians

Kansas State University

2022 Annual Conference

Lance M. Roasa, DVM, MS, JD

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## Why Contract Law? -- Welcome to Contract Law!

This short course is designed to give you the tools needed to understand and negotiate effectively for your first year of employment out of veterinary school.

The contracts that you see are direct screen shots from some of the hundreds of veterinary employment contracts that my law office has seen over the years.

The concepts are derived from Wharton Business School's Executive Negotiation Workshop and have been modified to fit the veterinary profession.

The materials, stored for your review, undergo constant upgrades, and will be ready and waiting when you begin the process of seeking and negotiating for employment.

Our goal is to improve the *relationships* and *work environments* of veterinarians while maximizing their *personal incomes*.

If this sounds interesting - then this is the course for you!

Please ask questions and let us know what you think at [info@drip.vet](mailto:info@drip.vet).

Thanks!

You may be asking yourself, "Why is this important?"

Fair question! Here's why you should invest time and energy into understanding contract law.

**Your employment contract memorializes the agreement that you and your employer reach as you join the practice. This is the formation of a relationship**

**that is worth hundreds of thousands of dollars and potentially years of your life. This relationship will define your career and practice of medicine.**

*I regularly see absolute all-star students that have promising careers go to work for a mediocre practice and never recover personally or professionally. I see mediocre students go to work for all-star practices and have wonderful careers and personal lives as a result. You don't want to find "a" job, you want to find "the" job. "The" job will support you professionally, and financially with good mentors and good pay. "The" practice has great technicians and veterinarians that will help you grow and develop. "The" practice has an understanding and supportive mentor that will either make or break your career.*

Lastly, the contract is the only protection that you have if the relationship sours.

And yes, learning medicine and surgery and passing the NAVLE is important, but this is the essence of your veterinary career and now is the time!

***I'm not going into general practice, I'm going into \_\_\_\_\_(internship, residency, research, PhD, government, military). How does this apply to me?***

Whether going straight into practice or continuing your education and training this information still applies to YOU! If you are considering a residency or PhD, then just put this course in your bookmarks and come back to it in two to three years! At that point, it will be even more important because the stakes have become higher. The salary, benefits and time off are all greater when compared to your colleagues in general practice. The likelihood of being sued over a covenant is higher. Your student loan payment will likely be higher and your need to have an understanding of student loan, benefits and taxation law is increased. So, don't blow this off because it doesn't impact you as soon as your classmates. In the long run you will have the greatest need.

***I'm not interested in the money. Why does this apply to me?***

Please don't think for a second that this is only about the money. This is about a relationship that contains mentorship, growth and development. This is about protecting your work

schedule, giving you time off, family leave and personal wellness. This is about you defining the work-life balance that you need. Moreover, this is about you finding a practice that matches your quality of medicine, culture and theory of veterinary medicine.

Sure money is important, but a practice that includes all "soft" aspects is often also a practice that can support you financially as well. Practices that have great people, awesome cultures and excellent clienteles are usually financially successful. It's up to you to find what you need!

***I worked for a practice before and I want to go back there. How can I possibly negotiate or ask for more?***

I understand your dilemma and pain. I was in the same exact spot, where a small-town Texas practice mentored me into veterinary school. They offered me much less than the market average for first-year starting veterinarians. They tried to pressure me into coming back to my hometown. I could have made it work, but at the time, I didn't know how to discuss the relationship, not just my needs versus their needs.

The pull of the hometown practice is incredibly common in veterinary medicine. There is nothing wrong with going back to your hometown practice! I know many veterinarians that are very successful and live very content lives.

You are in a great position to continue developing the relationship. It's important that you show your growth and maturity from veterinary school. You have an advantage because you are known qualities to the practice. By exploring the possibilities, and shared interests, you can create a WIN:WIN which will greatly benefit you. You know the team, clientele and community and that will help you in both the short and long term.

However, you must use this relationship to your advantage and not let it take advantage of you. You have to understand the market for employment, understand your worth to the practice and become an advocate for you and your family.

In summary, if you can:



- 1) display your emotional intelligence and growth to the practice,
- 2) know your worth to the practice, and
- 3) create a WIN:WIN relationship,

then you will be rewarded with a great job and career.

If the practice doesn't want or refuses to realize your contributions, then it's not the place you want to work!

## **What Is a Contract?**

Definition: A contract is a legally enforceable agreement.

OK, so what does that mean? Let's break it down word for word.

“Legally” The legal system of courts, judges, attorneys to represent parties (people or companies, not large gatherings) and law enforcement.

“Enforceable” if the contract elements are met (more to come here) and there are no defenses to the contract (hold tight) then the agreement will be legally upheld by a court. To say it another way, if a judge is presented with an agreement, would the agreement meet the requirements to uphold it and order enforcement or would the contract be null and void?

“Agreement” means that at least two people (or companies) have reached an arrangement for a trade. Work for money, money for products. The point is that not all agreements are enforceable (or legal)!

A legally enforceable agreement is one wherein two private parties can enter into a confidential agreement. Later, if one party doesn't perform up to their end of the bargain, the other party can ask a court to enforce the agreement. If enforced, that party can expect the full weight of our legal system to force the other party to either act or pay damages.

Let's stop and think about this concept for a minute, because sometimes we take our legal system for granted. If you enter a contract and you don't or can't perform your end of the bargain, then you could be forced to perform or pay by the legal system. Let's contrast that to many other societies around the world. If a private party doesn't fulfil their obligations in a contract, nothing happens, because the legal system is either non-existent or so corrupt that it cannot be relied on. This fact changes the way that businesses and people operate and

enter into contracts, because there is basically no legal enforcement. Don't take for granted that our legal system will enforce contracts! It's not perfect, but it's better than most others.

That being said, what happens when an agreement hits a judge's desk? How do they decide if an agreement is enforceable? This is the subject for many hours of law school! The judge looks for four "elements" to the agreement when deciding if it is indeed a contract and thus enforceable.

1. Offer
2. Consideration
3. Meeting of the Minds
4. Acceptance

You may think, why is this important? Excellent and valid question!

In practice, every client interaction that you have and every patient that you see has a basis in contract law. You will be creating a contract with every client for every patient you see. You'll want to understand the basic concepts of forming a contract, so you will be a better practitioner. As we walk through contract law we will focus on three scenarios, a simple consumer transaction, your employment contract, and a simple contract surrounding a veterinary case.

1. Offer. An offer is simply that. Someone creates a proposition to contract.
  - a. Let's say someone is selling a used car. Let's call it a 1997 Honda Civic (my car in vet school). Let's say it's listed on Craigslist and you call the seller. He says, "I'll take the first \$500 in cash that someone brings over." Legally, this is his offer to sale. Nothing fancy, no magic words, just an everyday scenario.
  - b. Ok, put it into context of an employment contract. You are doing a working interview at a practice, when the owner says, "I'd love for you to join us, I can pay \$90,000." Do you see the offer for employment? This meets the offer element!
  - c. On to the veterinarian-client contract. You have just diagnosed periodontal disease in a 12 year old dachshund (surprise!). You recommend a dental procedure. The owner asks, "How much does that cost?" You state, "It's going to be around \$400." Boom! You have just **offered** to perform a dental procedure (and enter a contract) for \$400.
  - d. These seem to be very simple everyday interactions, because they are! Contract law is built around our lives, not the other way around.
2. Consideration. This one is tricky. "Consideration" is a "legal term of art." A term of art is a phrase or word that has one meaning in everyday language and another meaning in the context of the law. Consideration in everyday life means "a careful

thought.” Not in the law! Consideration in the legal context means “something of detriment in exchange for the undertaking of another.” Let’s unpack that. Someone is giving something up, in exchange for a benefit from the other party and it’s opposite for the other party. Detriment for Benefit.

a. The car example.

- i. The detriment to the seller of the car; he has to give up his car. The benefit, he gets \$500 cash.
- ii. The detriment to you, the buyer. You have to part ways with five \$100 bills. The benefit, you get to drive away in a sweet 1997 Honda Civic. Hopefully the A/C works!

b. The employment contract example.

- i. The detriment to the practice owner; she has to pay you \$90,000. Her benefit; she receives your services all year long.
- ii. The detriment to you; you have to show up to work and perform services all year long (bummer). Your benefit; you are paid \$90,000 (awesome!)

c. The veterinary-client example.

- i. The benefit to the client; her dachshund will have clean teeth. Her detriment; her bank account is now \$400 less.
- ii. The benefit to you, your practice now has 400 more dollars! The detriment to you; you or a technician spends the afternoon cleaning dachshund teeth.

d. Hopefully consideration isn’t too scary, because it’s a very important concept. Many contracts fail for “lack of consideration.”

e. Let’s take it to the next level. What happens if the client promises to pay? We all know in real life that when someone promises to pay, that you have about a 20% chance of actually getting paid! In the eyes of the law, however, the promise to pay is just as good as real money. This concept confuses a lot of veterinarians. Here’s how it usually goes. Let’s say that a case has a bad outcome. Let’s say our dachshund dies under anesthesia (super sad, but we’ve got to talk legal here). The client will sue under the legal theory of “Breach of Contract.” She contracted with you to perform a dental procedure, and part of that is a legal assumption that the procedure will be performed to the “standard of care.” She also assumed that her dachshund would be alive at the end of the procedure. As an aside, most clients don’t pay after they learn their pet has died. After being served with a lawsuit, the veterinarian will call a lawyer, and they will commonly say, “How am I getting sued for breach of contract, I didn’t even get paid?” She didn’t keep up her end of the bargain either. Well, the answer lies in contract law! Again, in the eyes of the law a promise to pay is just as good as the actual payment. The contract formed

when the owner dropped the dachshund off in the morning and promised to pay in the afternoon.

- f. At the next level, what about a promise for a promise? Yes, valid contract.
  - g. Think about “promissory notes.” These are enforceable contracts where one party promises to pay another, usually a bank.
3. Meeting of the minds. Another “term of art” legally meaning that both parties intended on entering a contract, and are in agreement to the general terms of the contract.
- a. The Craigslist example. Let’s say you go to pick up the car and there are two 1997 Honda Civics in the seller’s driveway. Which one is the one you are buying? We need more specifics. The minds haven’t met!
  - b. The employment agreement. You’re working for \$90,000 per year. What about the details? Vacation days, hours worked, job duties, notice for termination? Interestingly, here the court will use the employee handbook and “gap-fillers” to find the meeting of the minds for an enforceable contract.
  - c. What about the client? There are several key points that have to be discussed, the price and what services are to be provided. Here’s where veterinarians get tripped up. Real Life Practice pointer! Let’s say that you find significant pathology in the dachshund’s mouth (surprise!) and several teeth need to be extracted. You extract the teeth and perform beautiful gingival flaps. The owner comes to pick up her pet. The receptionist tells her what happened and that \$700 is due today. Some of you have seen this situation play out. A normally mild person explodes at the front desk. “Wait, what?! It was \$400 when I dropped off. I don’t have another \$300. I’m not paying anything extra!” Can you sue her for the extra \$300? Legally, you have a contract for \$400, that’s where the minds met! You don’t have a contract for \$700 because she didn’t know there was going to be an additional amount owed. How are we going to prevent this? By calling the owner and updating her to the new findings, offering the new price, and having a “meeting of the minds”
4. Acceptance. This one is easy, the contract is simply accepted, the tricky part is that it can be accepted a number of ways. A signature is a classic way to accept a written contract, a verbal “Yes” or “Sure Thing” can suffice for an oral contract. A nod or handing over the money can even be used as action to accept a contract.
- a. Let’s illustrate the car example first. You either shake hands, say “let’s do it,” hand over the money, and Boom! You have created a contract for the purchase of a car.

- b. The employment contract example. When you sign a contract, shake hands, say “sounds good” or simply start to work, then you have accepted a contract for employment.
  - c. Now to the client example. The client can either sign the estimate, say “go for it” or just leave the pet, which all creates acceptance and a valid contract. This is where you as a veterinarian need a basic understanding of contract law. You should be looking for this acceptance. Sometimes it’s hard to see in an emergency or ambulatory setting. You need to record this acceptance in the medical record, which provides the evidence of a valid contract! You also need to record your informing of the risks to the client, and their subsequent acceptance of those risks. Yes a signed consent form is the gold standard, but many times in real-life practice, there isn’t time for a lawyer to draft a consent form and contract on the spot!
- 5. Oral contracts. Notice that none of the elements are required to be “in writing.” You may assume that a contract is always a bundle of legal sized papers that have to be signed. Not so! Oral contracts are just as valid for these scenarios. About 40% of today’s veterinary graduates will go to work without a written “contract.” Many of you will work in practices without written estimates or consent forms.
  - a. You may wonder, how is there proof of these contracts’ existence? Exactly! Have you ever watched Judge Judy? This is what a court starts to look like when enforcing those contracts. It’s a “he said,” “she said” situation. It’s a trail of witnesses that either collaborate or dispel the others. It’s very confusing and unpredictable. You want a clear, concise understanding of the agreement. You want to have an employment contract to easily introduce into evidence and bypass all of those witnesses.
  - b. Secondly, do you want to go to court with your (now former) employer anyway? No, of course not! Disputes often happen because people’s memories of the agreement differ. Memories fade and usually to their benefit! You want a clear, concise agreement to point to and remind the practice of their agreement. With a well written contract, agreements are cleaner, people are happier and litigation is avoided. (Only the lawyers lose!)

## **Breach of Contract**

We’ve discussed how to get into a contract, but what happens when a contract is broken? What happens when someone can’t or won’t perform? When a contract is broken, it’s called “breach of contract.” When a breach occurs, there are two possible remedies, 1) a court forces the breaching party to perform (very rare) or 2) the court forces the breaching party to pay money. That money is called “damages” The amount of damages is usually the hotly contested item at court. Usually, the breaching party has to put the non-breaching party into

the same financial place that they would have been in if the contract was completed fully. I know this is highly conceptual, so let's look at a real life example.

Here's an actual veterinary case involving a breach of contract claim.

A five year old German Shepherd presented for routine OHE. The surgery was uneventful. By the way, a deep chested, slightly obese, pluripara female is not a fun surgery! The invoice to the owner was \$345.

About 8 months after the OHE, the dog jumped over the backyard fence, and was hit by a van. The dog was rushed to a local ER, was stabilized, and then transferred to the university teaching hospital. One femur was plated, multiple pelvic fractures were repaired and a total hip replacement was performed. Later, a laparoscopic abdominal exploratory surgery was performed and several tissue samples were sent to histopathology. The histopathology report confirmed that the tissue was an ovarian remnant.

The owners sued the veterinarian that performed the original OHE under the theory of breach of contract and negligence (malpractice). What were the damages?

Now, everyone can agree that leaving part of an ovary is below the standard of care. The veterinarian was contracted to remove two ovaries and the uterus, and they removed 1 ½ ovaries and the uterus. The damages paid included the cost to put the non-breaching party as close to their financial position, as if the contract was completely fulfilled.

The total damages included:

Local ER Visit: \$1,600

Femur repair: \$3,200

Pelvic repair: \$3,500

Total Hip replacement: \$5,500

Laprosopic Exploratory: \$800

Histopathology: \$300

Carpet cleaning: \$125

Total =Just over \$15,000!

You may think, how is this fair, that an OHE that costs \$345 ends up yielding \$15,000 in damages? I don't make up the law, I just teach it! This is contract law, to put the other party where it would have been if the contract was fulfilled!

Lastly, carpet cleaning? That's why the dog was in the backyard in the first place, because she was estrous and spotted on the carpet in the house!

The damages described above are "economic damages" meaning that the owner could show actual verifiable money loss, through receipts and invoices. This is in contrast to

“non-economic” damages, like pain and suffering, and emotional distress. In most states, non-economic damages are not allowed in cases involving property. And in all states animals are considered property. I know that this patient and the owners suffered greatly during this ordeal, and I know that pets are much closer to us than a table or a car, but again, I don’t make the law, I just tell you how it is!

There is one very important component to damages that involves employment contracts in veterinary medicine. More and more contracts involve “liquidated damages.” Liquidated damages are a forecast of damages, written into the contract, before the contract even starts. They stipulate the damages, just in case one party breaches the contract. To remember this, think of a liquid asset. It’s easy to tell the exact value of a liquid asset, such as cash, a bank account or stocks on the stock market. You can sell the asset immediately and get an exact amount of cash. You know exactly what the liquid asset is worth at all times.

In contrast, an illiquid asset would be a house or property. You kind of know what it’s worth, but not down to the penny. To sell it, you have to put it on the market, maybe hire a broker, and maybe wait 3-4 months to get your money. And even then you don’t know exactly how much your asset is worth.

Back to liquidated damages, the parties know exactly, at the time of entering the contract, what the damages are going to be upon entering into it. This is contrasted to normal damages, which have to be proven in court, through evidence, receipts and calculations. This proof costs time and money and court! If the parties put liquidated damages into the contract they are skipping a step at court to save time and money.

If you see “liquidated damages” in your employment contract you need to pump the brakes and ask why! They never benefit the employee and can be extremely detrimental if you breach the contract. Some contracts include liquidated damages as an intimidation tactic should the contract go to court. Moral of the story, **DON’T SIGN A CONTRACT WITH LIQUIDATED DAMAGES UNLESS YOU COMPLETELY UNDERSTAND THE CONSEQUENCES.**

## **Offer Letter, Terms of Agreement**

We’ve covered the elements that it takes to form a contract. As a refresher, a contract can be formed on the back of a napkin, with a handshake or with a nod.

Here’s another **RED FLAG** alert for graduating veterinarians! You will very likely receive a job offer in the form of a “Offer Letter” or “Terms of the Agreement.” The practice will ask you to sign this if you are planning on working for them.

Proposal

1/7/2018

\*\*

is really pleased to offer the following compensation package. We feel that you have the right mix of personality, work ethic and veterinary knowledge to be a great addition to our team. In addition to the following proposal we would also include a \$2000 signing bonus.

Base Pay

\$74,000.00

*- 76,000 Everything but 1st time OTC & Rx Diet*  
\*\*Plus 20% production (less base pay) paid quarterly

CE

\$1,000 plus up to 3 days paid

Licenses

\$550 (approx.) → DEA, Pharmacy, AVMA Dues, LVMA dues

PTO (10 days) -

Simple IRA match

\$2,220.00 (3% if exercised)

50 % Health

\$2,400 (Approx. if exercised)

Paid LTD

\$200

*Scrubs / Fancy*  
**Total Compensation**

**\$82,370 plus production and STD policy**

Notes: A Non-compete contract with a 5-mile radius will be required upon signing a employment contract.

"Your other family doctor"



Does this form a contract?

If you were paying attention, YES, it certainly does. If you can form an employment contract with a handshake you can definitely do it with a one page document.

Remember, nothing in contract law requires a document with the words **CONTRACT** in 24 point font across the top of the document. Practices are getting better at subtly getting you to sign, without alerting you to the fact that you are entering into a contract.

This is a red flag alert, because every year 4VMs fall into this trap. They sign the offer letter, expecting to negotiate the “real” contract at a later date. There are several problems with this 1) by signing, they put all their eggs in one basket and destroy their negotiation leverage (more on this later) and 2) many times the “real contract” never comes and they work under the Offer Letter for months or years to come.

Note that a real employment contract will take 7-8 pages to cover everything.

What’s wrong with a one page document like the one above?

There is no way that the practice can fully cover everything that needs to be written on one page. By default the Offer Letter is going to be vague and incomplete.

You’ll want a contract that fully spells out important details such as, how you get paid, number of vacation days, amount of CE allowance, and how to terminate employment. It’s perfectly fine to sign an offer letter, once you have finished negotiation and you have seen the “real” contract. This is a process and you may have to ask questions that are uncomfortable, but it is much better than being caught in a trap!

## **Term and Termination**

### **Termination**

Termination is the legal word for ending an employment relationship. Termination alone does not imply a “firing,” it just means the end of the contract or employment.

There are three primary ways to end employment and two of them correspond with the type of employment 1) “at will” and 2) “employment for term.” It is ironic that most attorneys first

focus on getting their client out of the contract, before it is even formed. This speaks to the importance of the termination provision.

### **At-will**

At-will employment simply means that either party can terminate the employment for any reason at any time. This may mean for economic reasons (can't afford to pay the employee), work reasons (the employee wasn't quite performing) or any non-discriminatory reason (the employer didn't like it when the employee's belt didn't match their shoes). At-will employment will often be written in the contract as "either party can terminate this agreement with 30 days written notice to the other party."

In veterinary medicine, at will employment is generally preferred. This allows employers to lay off or terminate employees if they need to, and it allows employees to leave a position if they want.

10. Termination. Your employment is at-will, is not for any definite period of time, and may be terminated at any time by either party. You should provide sixty (60) days advance written notice when you intend to resign employment for any reason.

### **Employment For Term**

This is in contrast to "employment for term" and "permanent employment" where the parties are promising to stay in the employment relationship for the term of the agreement or for life. These types of employment give rise to wrongful termination lawsuits and large damages if successful. If an employer promises employment for one year and then lets the employee go without cause at the six month mark, they must pay damages for the remainder of the term. On the contrary, if an employee promises to work for a one year term, then leaves without good reason six months into the term, they must pay damages for a replacement for the remainder of the term. The inability to foresee the future and fear of a wrongful termination lawsuit result in most employment contracts in veterinary medicine

being at will employment. However, unknowing and unwilling veterinarians may mistakenly enter into term employment without knowing the possible consequences.

Many states are “at-will employment states,” meaning that if the parties didn’t agree on a type of employment, the state government or courts have set the default to “at-will” termination, any reason at any time.

The parties are always free to contract around the state’s default provision. Meaning that, if the at-will provision is missing from an employment contract, then for term employment could be created.

### **Notice Period Employment for Term**

Many employment contracts will have a term of the agreement, but will also contain a “notice period,” which gives the other party some warning before the employment ceases. This allows the employee to search for another job or the employer to find another employee. It’s common in veterinary medicine for the notice that the employee has to give the employer to be longer than the employer’s notice to the employee.

### **Employment for Term**

Employment for term means that an employment relationship has a beginning date and an ending date. In veterinary medicine, a one year term is common. Most employment contracts will have a term, but will also have a “at-will” provision that allows the parties out of the contract before the term is completed. However, if the “at-will” provision is deleted, then the parties are essentially promising an employment relationship for the entire term, which opens them to wrongful termination lawsuits.

**1. TERM.** The initial term of this agreement will begin on March \_\_, 2019 and will continue until March 31, 2020, subject to the terms and conditions contained in this agreement. **Each year thereafter, this agreement will automatically be extended for an additional one-year term,** unless either party gives notice of termination to the other under Section 10 of this agreement, in which case this agreement shall continue until the expiration of the applicable notice period, if any. Upon termination of this agreement under Section 10, all provisions of this agreement shall terminate, except for the post-employment provisions, which will survive according to their terms.

## Termination for Cause

The termination for cause provision is found in almost every employment contract. In a basic sense, this provision allows the employer to terminate employment for bad behavior by the employee. This usually is defined as theft, lying, fraud, harassment and other severe offenses and can result in immediate termination, without notice. However, in some veterinary contracts, behavior that could trigger a “for cause termination” include negligence or malpractice, which could be seen as overly broad. Occasionally veterinary contracts include a “for cause” termination provision for the employee, which usually includes very severe offenses by the employer that would allow a termination of the contract.

**10. TERMINATION.** Either party may terminate this agreement during the first 90 days after the date of this agreement, with or without cause, and without any further obligation to the other party (other than for compensation for services rendered before the date of such termination), by providing at least 10 business days’ advance written notice to the other party.

The Hospital may discharge you immediately for cause, for any of the following reasons:

- \* Dishonesty, incompetence, intoxication or impairment by because of drug dependence, insubordination, or malpractice
- \* The suspension, revocation, or cancellation of your right to practice veterinary medicine
- \* Any action by you involving the violation of any criminal statute constituting a felony
- \* Gross misconduct in the performance of your duties at the Hospital
- \* Any false statement or material misrepresentation by you in this agreement or in any employment application that you provided to the Hospital
- \* Any failure or refusal by you to faithfully and diligently perform the usual customary duties of employment or adhere to the provisions of this agreement
- \* Any intentional act or omission to act by you that has a material adverse effect on the Hospital.

In addition, either party may terminate this agreement upon 60 days’ advance written notice to the other party with or without cause.

## Compensation for Veterinarians

How will I get paid?

If this isn't a burning question on your mind, it should be!

If you have been longing to understand how veterinarians get paid -- this is your day!

Let's start with the concept of **total compensation**. Everything that the practice transfers to you as part of your employment equals your total compensation.

There are two main components of total compensation: your **W-2 Wages** and your **Non-Wage Compensation**.

Here's the equation for the algebra lovers out there:

$$\text{W-2 Wages} + \text{Non-Wage Compensation} = \text{Total Compensation}$$

I want you to think in terms of total compensation when evaluating an offer, but understand the different components and how they are calculated.

### **W-2 Wages**

A W-2 is the reporting form that the employer submits to the employee and to the IRS every year in January. W-2 Wages are the starting point for calculating your income taxes and are the biggest component of your compensation.

Salary, production, bonuses, commissions, and some (taxable) benefits are included in W-2 wages.

Let's look specifically at W-2 compensation:

W-2 compensation packages for all veterinarians (general practitioners, boarded specialists, government, academia, mixed animal, production animal, and all others) break down into three categories:

Straight Salary

Straight Production

Base/Production Hybrid

Let's look at all of these components in detail.

**Straight Salary** is a guaranteed amount of money, usually paid in 26 equal pay periods over the course of the year (every other week). Approximately 50 percent of the starting positions in small animal, mixed animal, equine and production animal medicine are straight salary. Almost all government positions are straight salary.

**Straight production** means that the veterinarian is paid a percentage of what they produce. Straight production is common in some equine racetrack settings. Few small animal practices (3 to 5 percent) pay on straight production. Some seemingly hybrid systems are really straight production because the practice is forwarding the associate production in a monthly payment, then subtracting that from actual production bonuses earned.

**Base/Production Hybrid** compensation packages are a combination of the two listed above. Usually there is a base salary and a production bonus, which takes effect once a production threshold is met. Hybrid packages are very common and continue to grow in popularity. Language in the employment contract will often read, "The practice will pay the Veterinarian the greater of **\$80,000 or 20 percent of the Veterinarian's gross production.**" For this reason they are called "base *or* production" compensation packages. The associate either gets the base *or* the production, but not both (this would be base *and* production).

Using the example language above, in real numbers, the associate will receive a regular salary of \$3,076.92 every two weeks (\$80,000 annually/26 pay periods).

Then, usually on a monthly basis, the associate's production is calculated. If the production amount exceeds the production threshold, then a third "production bonus" check is written. If the associate's production doesn't meet the threshold, then the compensation for that month stays at the base salary amount.

How is the production threshold calculated?

The base salary is divided by the production percentage.

In our example:

$$\$80,000/0.20 = \$400,000.$$

If our associate produces more than \$400,000 per year she is said to be "on production" and essentially takes home 20 percent of everything produced over \$400,000.

If the production is calculated on a monthly basis, we take the annual production threshold and divide by 12. In this case, \$400,000 divided by 12 is \$33,333.33. Again, if an associate's monthly production is greater than this threshold, then a production check is written.

For example, let's say the associate generates \$40,000 in production in one month. What would the production check be?

$$\$40,000 - \$33,333 = \$6,667$$

$$\$6,667 \times 20\% = \mathbf{\$1,333.40}$$

What would the associate's total W-2 wages be?

$$\$6,666.66 \text{ (regular salary)} + \$1,333.40 \text{ (production bonus)} = \mathbf{\$8,000}.$$

This is also 20 percent of \$40,000!

Why the detail?

It is absolutely essential that you understand how you are paid! It behooves you to double-check the math of the practice owner or manager, to make sure that you get what you earn!

There is much debate in the profession as to which compensation model is best. Individual practices certainly have their favorites.

Let's discuss the advantages and disadvantages of all of the three models, so you can fully evaluate offers of employment. We have to look at it from both the perspective of the practice and the associate.

### **Straight Salary**

Advantages to the practice:

- Easy to calculate and less administrative time.

- Associates may produce more than they are paid (this is commonly the case).

Doesn't encourage price gouging or case hoarding among the associates (these bad behaviors rarely occur.)

Disadvantages to the practice:

Doesn't incentivize associates to produce more or see additional cases.

If an associate underproduces, they will be overpaid.

Have to set a high salary in a competitive job market to induce applicants.

Advantages to the associate:

Easier to budget.

Don't have to worry about earning production in every case you see.

Guaranteed salary if practice is slow or underperforming.

Don't have to worry about other associates' case hoarding.

Disadvantages to the associate

If overproducing, may be underpaid (this is common).

More difficult to negotiate for a high salary without known ability to produce.

### **Straight Production**

Advantages to the practice:

Will never overpay an associate.

Labor expenses adjust with seasonal fluctuations in revenue.

Associates are very incentivized to produce more revenue.

Disadvantages to the practice:

Can lead to price gouging or case hoarding.

Can lead to worried or anxious associates.

Can be difficult to hire, because of the uncertainty to the associate.



Could require more administrative time to calculate for production forwarding and negative accruals.

Advantages to the associate:

Won't be underpaid.

Usually the production percentage is a little higher, as a trade off for uncertainty.

Disadvantages to the associate

Very difficult to budget.

Could be at work for no pay if no patients or clients.

No compensation for non-productive work time, such as team meetings, office work, etc.

Great uncertainty for total compensation and evaluation of an offer.

### **Base/Production Hybrid (Base or Production)**

Advantages to the practice:

Incentivizes associates to reach and exceed the production threshold.

Relatively easy to calculate.

Becoming the industry norm.

Easier to negotiate, especially with associates that want to make more and produce more.

Less need to renegotiate with associates annually, because their wages should increase.

Disadvantages to the practice:

Can lead to price gouging or case hoarding.

If associates severely underproduce, they could be overpaid.

Advantages to the associate:

Ability to budget at base salary.

Won't be underpaid.

Guaranteed salary if practice is slow or underperforming.

Gives a "safety net" but also allows for unlimited salary.

Disadvantages to the associate

Need to watch and calculate production.

Other associates could case hoard.

As you can see, there is no perfect compensation system. However, in my opinion, Base/Production Hybrids are the best option for new graduates, mainly because you get the safety net, but will not be underpaid!

### **Production percentage: how much is normal?**

A commonly negotiated aspect of the compensation package is the production percentage.

Here are some of the industry norms:

Small Animal: 18-23%

Equine: 25-40 %

Production/Food Animal: 30-45%

Mixed Animal: 18-35%

These numbers depend on the cash flow of the practice. More expenses lead to lower production percentages.

For example, ambulatory mixed animal, equine and food animal practices have lower expenses in paraprofessional labor, and building costs, and can pay more percentage to the veterinarian. So the more ambulatory component of a practice, the higher the production percentage.

Also, the more consulting a production animal associate performs, the greater the production percentage.

### **What is the percentage taken from?**

Revenue from production is usually defined as the fees that the practice actually collects from services the associate actually performs and products that the associate helps sell.

It's becoming more common for certain low markup items to be excluded from the production of the associate. For example, if the practice marks-up a parasiticide by 10 percent, then they can't pay the associate 20 percent on each transaction. They would lose 10 percent every time the product was sold. The contract will often exclude from production low markup products such as heartworm and flea/tick prevention, shampoos, and over the counter products.

Be careful of packages that have a high production percentage but exclude nearly all products!

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4. Compensation and Benefits.

(a) Compensation. With respect to each calendar month during the Term of this Agreement, the Company shall pay Employee monthly compensation for such calendar month equal to the greater of: (i) Ten Thousand and 00/100 Dollars (\$10,000.00) (One hundred twenty Thousand and 00/100 Dollars (\$120,000.00) annually) paid in bi-weekly installments; or (ii) Employee's Production Based Compensation (as defined below) with respect to such calendar month, whichever is higher. For purposes of this Agreement, Employee's "Production Based Compensation" shall, with respect to any calendar month during the term of this Agreement, equal the sum of: (x) Twenty-Two Percent (22%) of Employee's sales during such calendar month for professional services and prescription medication (other than heartworm/flea prevention medication; and (y) Five Percent (5%) of Employee's sales of heartworm/flea prevention medication, but in no event shall any production-based compensation be paid with respect to sales of food, retail products, boarding, grooming, or pet cremation. The Company and Employee further acknowledge and agree that all amounts used in calculating Production-Based Compensation shall be determined by the Company's primary accountant and that such determination shall be binding upon the Company and Employee absent manifest error.

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(b) Payment of Production Based Compensation. With respect to each calendar month during the Term of this Agreement, the Company shall pay Employee's production based compensation for such calendar month within fifteen (15) days of the end of such calendar month or otherwise in accordance with the Company's then-current payroll practices.

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**Compensation.** For services rendered pursuant to this Agreement, Employee shall be paid a base salary of Four Thousand Fifty-Seven Dollars and 69/100 (\$4,057.69) on a bi-weekly basis, which is the equivalent of One Hundred Five Thousand Five Hundred Dollars (\$105,500) annually, subject to applicable federal, state, and local withholding.

**Quarterly Production Bonus.** In addition to the base salary, the Employee shall be paid a quarterly production bonus equivalent to between ten and nineteen percent (10-19%) of gross revenues generated in the immediately preceding quarter for services performed by the Employee and direct sales by the Employee (less refunds and excluding food sales, cremation fees, over-the-counter products, non-directed prescriptions, and other items generally excluded by the Employer) less the base salary paid to the Employee for the preceding quarter. The exact production bonus percentages for calculation purposes shall be determined at the sole discretion of the Employer. The Employer has the right to modify, amend or terminate the production bonus upon thirty (30) days' written notice to the Employee. To be eligible for the quarterly production bonus in any calendar quarter, the Employee must be employed by the Employer as of the last day of that quarter.

Incentive bonus:

During each 3 month period (quarter) of employment, the Dr. Production will be evaluated. The production bonus will be based as 20% of gross production minus Boarding, Grooming or pet food will not be included in the calculation, prescription pet foods will have an 8.0% calculation applied. If the total of the 20% production exceeds the quarterly pay (\$25,000), the difference will be awarded in the form of a bonus to the Dr. The bonus will appear on a regular pay check within 30 days of the end of the quarter. All Federal, State and Local taxes will be withheld from the bonus amount and the 3% IRA match will not apply to the bonus amount. If the production does not at least meet the quarterly pay, no deduction will result from the Dr pay. **The Associate will have no negative accrual.**

Example: Quarterly prod. = \$140,000

20 % multiplier = 28,000

Quarterly pay = 25,000

Bonus to Dr = \$3,000

The Associate will be required to share after hours emergency calls. (not necessarily equally with Dr. Gailor, but as equal as possible with other associate(s). Should emergency service be given after hours, the associate shall receive as additional compensation of the Standard Emergency Fee of \$70.00 and 50 % of the services, treatments and prescription medications (not over the counter products), charged for the emergency visit ~~should a surgical procedure be completed during that emergency.~~ The associate will be compensated at a rate of \$0.XX per mile of travel for emergencies. The Associate will not necessarily be on call on his/her day off. While the on call duty is primarily telephone consultation, emergency visits are necessary in some cases. The Associate will be required to see those animals on an emergency basis or may, should the situation necessitate, refer the patient to a local veterinary emergency hospital. The Associate is required to be accompanied by the on call technician when returning to the hospital after hours to meet an emergency case. During weekends, the veterinary on call will treat the hospitalized animals at the hospital as well as monitor all other housed animals. This will require at least one hospital visit daily in addition to the normal schedule on both Saturday and Sunday, and any holiday involved. The Associate will be eligible for weekend on-call duty only on a weekend the associate is already scheduled to work a Saturday shift. Associates are not required to come in after 11pm. The schedule for emergency duty and on call duty shall be posted by Dr. Gailor. Should additional personnel be needed or called in for an emergency, the attending Dr. MUST charge a technician fee to the client in order to compensate the assistant. The Dr. shall insure that the assistant clock in for length of the emergency.

**6. COMPENSATION.** In consideration for your services, the Hospital shall pay you \$300.00 per day worked and 23% of any associate veterinarian revenue generated for the Hospital exceeding \$1500 in the same day.

"Medical Service Revenue" is revenue derived from services performed by you or ordered by you as the doctor in charge of a case and performed by support staff members at the Hospital. All discounts granted for any such services will directly reduce Medical Service Revenue. Medical Service Revenue does not include services performed by another doctor. Medical Service Revenue means fees actually collected by the Hospital for veterinary services generated by you including all office calls, examination fees, laboratory fees, radiographs, anesthesia, surgery, hospitalization, treatments, immunizations, dental extractions and prophylactic procedures, consultation fees, medicated baths, medical care for animals being boarded, pheromones, training devices, such as Gentle Leader, shampoos, therapeutic diets, nutritional products and prescription drugs dispensed in connection with veterinary services provided. As used above, "Medical Service Revenue: does not include the following:

1. Over the counter products such as collars, tags, and other non-medical products.
2. Radiology telemedicine fees collected
3. Biohazard fees
4. Maintenance dog foods not ordered by you for a medical purpose.
3. Outside diagnostic services, such as MRI/ CT scans and ultrasounds
4. Grooming, boarding (other than hospitalization), doggie day care, and training

Your base salary will be paid in installments every two weeks. Your Medical Service Revenue will be calculated for a 4-week period and any additional compensation that may be due will be paid on the next pay period. If your Medical Service Revenue percentage is insufficient to cover any month's base, the negative number resulting from such calculation will be carried over to futures months and such deficit(s) must be made up in subsequent months before you become eligible to receive additional production-based compensation. All compensation is subject to customary federal and state payroll taxes. Upon termination of this agreement, you will only be entitled to any compensation payments under this Section 6 that might be due to you for the period immediately preceding the completion of service.



**EFFECTIVE – June 17<sup>th</sup>, 2019:**

For all duties to be performed by Associate in any capacity hereunder, Associate shall receive a base salary of \$3,333.34 per payroll period (\$80,000/year) to be paid on a twice monthly payroll schedule (the 1<sup>st</sup> of the month through the 15<sup>th</sup> of the month is paid on the 20<sup>th</sup>, the 16<sup>th</sup> of the month through the end of the month is paid on the 5<sup>th</sup> of the following month).

**PROSAL Option:**

Associate production will be calculated on a monthly basis starting August 1<sup>st</sup>, 2019 for the prior month, July 1<sup>st</sup>, 2019 through July 31<sup>st</sup>, 2019, at a rate of 18%. If the associate's production calculation exceeds that of her base salary of \$6,666.67 consistently for four (4) months, the associate will be offered the option of Prosal commission.

**PROSAL Election:**

If the Associate has met the above standard the Associate will also be given a level of compensation paid by [REDACTED] in the amount of 18% of revenue produced by the associate minus the associate's base salary of \$6,666.67 per month, as computed by the employee report in Infinity and reviewed by the management and owners of [REDACTED]. Production amounts will be calculated at the close of each month and this amount will be paid to the associate doctor on the second paycheck of the following month. If the associate's production amount is less than \$6,666.67/month the associate will receive no additional pay for that month.

Items eligible for production bonuses will be calculated on services directly provided by the associate and will include examinations, diagnostics, vaccines, laboratory services, surgery, anesthesia, imaging, hospitalization, treatments, dentistry, euthanasia, original prescriptions, and original sale of prescription diets. Automatic refills, food repurchases, nonprescription OTC items, nonmedical grooming services, boarding, employee services, cremation, and services or products provided or sold by another employee at Advanced Animal Care will be exempt from this commission. Any items not established in production protocol, or new services and products introduced within the hospital during this contract will be under management's discretion as to whether or not it will be eligible for the associate to claim

production on or not. The associate agrees that the hospital has made no other representations with respect to compensation for services rendered, except as expressly signified within this section.

No additional compensation will be paid after hours. Any services provided by the associate during non business hours will be eligible for production, including emergency surgery fees and emergency exam fees, unless listed in the exemptions stated above.

The first paycheck issued with a base salary of \$6,666.76 (\$80,000 per year) will be distributed on the date of July 5<sup>th</sup>, 2019. Any production bonus that the associate doctor has earned will be distributed on the last payroll of the following month.

Our patient's health and wellbeing will be the associate's top priority. Under no circumstance is a patient to wait on treatment or services so that the associate may receive credit for said services. Any questions regarding production based pay, staff issues, training issues, or complaints and suggestions should be addressed to management.



## COMPENSATION:

Employer will pay Employee the following:

- A. Base pay. A modified ~~ProSal~~ System with an annual base pay of \$70,720 . This will be paid as a daily rate of \$340 per full day\* worked and adjusted by hour for partial days if employee has used up their PTO. Paydays are set for the 5<sup>th</sup> and 20<sup>th</sup> of each calendar month.

\* full day constitutes a minimum of 9 hours worked. Day rate will be adjusted if the employee's shift scheduled is altered to five 8-hour days or any other alteration to create a 40 hour work week. Employee working less than 9 hours will be subject to day rate adjustments if PTO is not available to cover the reduced hours.



\*\*Employee may be given opportunities for additional work days that would be paid in addition to this as the day rate thereby increasing the employees base pay.

- B. Production bonus. If employee's gross production, which is defined below, exceeds \$88,400 per quarter then employee will be provided a bonus. The bonus is 20% of gross production over and above \$88,400 each quarter.

Employee's gross production is defined as: Employee's monthly collected fees for medical, surgical, dental and laboratory services including examinations, consultations, injections, vaccinations, radiological and anesthetic procedures, bandages, casts, splints, dentals, euthanasia, fluid therapy, medical services, hospitalizations, injections less all discounts. Employee's gross production will not include any food items; prescription items, cremation fees, over-the-counter (non-prescription) items; ancillary services such as boarding or grooming; non-directed, non-supervised services performed by support personnel (i.e. Technician vaccination appointments).

- C. Negative Accrual Our office DOES NOT operate with a negative accrual clause. If the employee fails to make enough the meet their base their bonus checks in preceding or following months with not be altered to adjust for the deficit.

5. COMPENSATION. In consideration for her services, the Hospital shall pay [REDACTED] \$31.25 per hour, paid in installments every two weeks. Employee will have an opportunity to graduate to a base salary with a commission at a date that will be negotiated between the Employee and the Employer at the applicable time.

3. **COMPENSATION:** During the term of this agreement, Employee shall receive a base salary of EIGHTY-FIVE THOUSAND DOLLARS (\$85,000) per annum. In addition, Employee shall be eligible for production based compensation as per the  standard twenty percent (20%) scale used in calculating all doctor production. Employee is eligible for Employers group health insurance plan up to \$450 per month and professional liability insurance during the term of this agreement.  The Employer will provide payment of dues to professional organizations of Employee's choice including AVMA and Chicago VMA or Illinois VMA. The Employee will not disclose confidential information on salary or terms of this employment contract during or after the term of this employment for a period of one year.

1. **Compensation.** As compensation for services rendered for [REDACTED] during Employee's employment, Employee will receive an annual base rate of \$90,000, which will be paid in twenty-six (26) equal biweekly installments so long as the Employee remains an active employee working full-time. In addition, Employee will be eligible to earn 20% of the Employee's production each quarter pursuant to Paragraph 2 below.

2. **Production Compensation:** In addition to the annual base, Employee will be eligible for production compensation equal to the amount by which a percentage of the Net Revenues generated by Employee's efforts, as set forth below, exceeds Employee's base during each quarter. Net Revenues are defined as gross revenue less all discounts (including marketing, courtesy, and employee discounts) and monies not collected within ninety (90) days of the date of service. Employee's production compensation will be calculated and paid on a quarterly basis based on:

(a) 20% of the Net Revenue generated from office calls and examinations, consultations, injections, vaccinations, radiological and anesthetic procedures, bandages, casts, splints, dentals, euthanasia, fluid therapy, medical services, hospitalization, in-hospital medications and injections, medicated baths supervised by Employee, laboratory tests, surgery, prescription drugs (including prescription heartworm preventative, and combination products such as ComboGuard but excluding AcuGuard and other prescription flea, and flea & tick preventatives), prescription refills (excluding AcuGuard and other prescription flea, and flea & tick preventatives), and ultrasound and other special procedures performed or provided by Employee or by veterinary technicians, veterinary assistants or other specialized personnel under the direct supervision of Employee while rendering veterinary care for PC's patients. In addition, Employee will also receive five percent (5%) of the Net Revenues for ultrasound services provided by an outside third party. Employee will also receive five percent (5%) of the Net Revenues generated from vitamins, shampoos, insecticides (including over the counter flea prevention and prescription AcuGuard and other prescription flea, and flea & tick preventatives), dental products and prescription pet foods purchased by clients in association with a paid professional examination. In addition, Employee shall also receive 2.5% of the Net Revenue for pet supplies and products and 10% of the Net Revenue for prescription drugs (including prescription heartworm preventative, and combination products such as ComboGuard, but excluding AcuGuard and other prescription flea, and flea and tick preventatives) and prescription refills (excluding AcuGuard and other prescription flea, and flea and tick preventatives) for purchases initiated in the Hospital and delivered to the pet owner. Excluded from Net Revenues are retail food sales, all over-the-counter sales, service fees (such as biohazard), equipment fees (defined below), AIS interpretations, boarding, grooming, baths, after death care, burial, and cremation, and pet supplies, products and prescriptions for purchases initiated outside of the hospital and delivered to the pet owner. Any treatment or service not specifically mentioned above is excluded from the definition of Net Revenue and will not be included in production compensation. Equipment fees are fees imposed by [REDACTED] to off-set the cost of purchasing certain, expensive pieces of equipment and the corresponding services agreements. The amount of the equipment fee is determined by [REDACTED] and Employee will be informed of said fee, if applicable.

(b) Within thirty (30) days of the conclusion of each quarter of employment [REDACTED] will calculate and pay the percentage of the Net Revenues generated by Employee's efforts that quarter, as set forth

above. The amount of Employee's base paid for that quarter will be subtracted from this calculation and Employee will receive any surplus, less standard payroll deductions. In the event the percentage of the Net Revenues generated by Employee's efforts is insufficient to cover any quarter's base, the Employee shall not be entitled to receive any production compensation for that quarter. This same procedure shall be followed each quarter. No negative accrual shall carry over from quarter to quarter.

## 2. COMPENSATION AND BENEFITS.

2.1 Definition. As Employee's entire compensation for all services rendered to Employer during the Term of this Agreement, Employee shall receive a gross check of Three Thousand Seven Dollars and Sixty-Nine (\$3,007.69) every two weeks while employed by Employer ("Salary"). In the event that Employee's monthly gross billings for all veterinary services rendered by Employee (but excluding all food, boarding and grooming, over the counter medications or any other retail sales items as tracked by Employer's billing system) ("Monthly Employee Gross Billings") multiplied by a factor of twenty-percent (20%) ("Factor") exceed the Salary earned (on a monthly basis) (the "Monthly Production Calculation"), Employee will be paid, as additional compensation, the difference between the amount by which the Monthly Production Calculation exceeds Salary earned (on a monthly basis) (the "Monthly Production Incentive"). Copies of the three (3) spreadsheet pages which will be utilized for the calculations of the Monthly Production Incentive are attached hereto as Exhibit "A" and incorporated herein by this reference (the "MPI Spreadsheet"). The Monthly Production Incentive is a payment which is made, if at all, one (1) month after the completion of the previous calendar month of employment by Employee on the date of the first payroll of that month. Employee must be employed on the date that such payment is due to Employee to be eligible to receive payment of a Monthly Production Incentive. Two illustrative hypothetical examples regarding the implementation of this calculation appear below by way of example (and not by way of limitation):

...

2.1.1 Example - Employee Eligible for Monthly Production Incentive. Assume for sake of example only that the Monthly Employee Gross Billings ("Mo. E/ee Gross Billings") for an employee known as "Example Employee" for the prior quarter was \$40,000.00 and that "Example Employee" earned a salary during that same period was \$7,000. The Monthly Production Calculation ("Mo. Prod. Calculation") to determine if a payment is due to "Example Employee" for a Monthly Production Incentive ("Mo. Prod. Incentive") is set forth below:

Mo. Prod. Calculation	=	Mo. E/ee Gross Billings <b>multiplied by</b> Factor
Mo. Prod. Calculation	=	\$40,000.00 <b>multiplied by</b> 20%
Mo. Prod. Calculation	=	\$8,000.00
Mo. Prod. Incentive	=	Mo. Prod. Calculation <b>Less</b> Monthly Salary
Mo. Prod. Incentive	=	\$8,000.00 <b>Less</b> (\$7,000.00)
Mo. Prod. Incentive	=	\$1,000.00

Thus, "Example Employee" **is eligible** for a Monthly Production Incentive of One Thousand Dollars (\$1,000.00) under the above fact pattern provided that "Example Employee" is employed by Employer on the date that such payment is to be made.

2.1.2 Example - Employee NOT Eligible For Monthly Production Incentive. Assume for sake of example only that the Monthly Employee Gross Billings ("Mo. E/ee Gross Billings") for an employee known as "Example Employee" for the prior quarter were \$34,000.00 and that "Example Employee" earned a salary during that same period was \$7,000. The Monthly Production Calculation ("Mo. Prod. Calculation") to determine if a payment is due to "Example Employee" for a Monthly Production Incentive ("Mo. Prod. Incentive") is set forth below:

Mo. Prod. Calculation	=	Mo. E/ee Gross Billings <b>multiplied by</b> Factor
Mo. Prod. Calculation	=	\$34,000.00 <b>multiplied by</b> 20%
Mo. Prod. Calculation	=	\$6,800.00
Mo. Prod. Incentive	=	Mo. Prod. Calculation <b>Less</b> Monthly Salary
Mo. Prod. Incentive	=	\$6,800.00 <b>Less</b> (\$7,000.00)
Mo. Prod. Incentive	=	-\$200.00

Thus, "Example Employee" **is not eligible** for a Monthly Production Incentive under the above fact pattern.



## V. Variable Pay

Associate doctor variable pay will be calculated and paid on a quarterly basis (see the [Payment Schedule](#) for details). Variable pay will be measured from the first day in the fiscal quarter (or for new hires and transfers, from the date of hire or effective date of transfer). Each associate doctor will be eligible for 19% of gross production over eligible earnings in the same measurement period.

Gross production includes:

- All services the doctor provides (excluding services that are charged back)
- All products the doctor prescribes (at the time of service)

Gross production does not include any over-the-counter (OTC) sales. Production from any Extra Day will not be included in the variable pay calculation.

**Example of quarterly variable pay calculation for a 3 period fiscal quarter for a doctor with a base salary of \$85,000:**

Gross Production	Earned During Quarter
Actual Gross Production for the Quarter – OWP pets	\$ 105,000.00
Actual Gross Production for the Quarter – Non-OWP pets	\$ 20,000.00
<b>Actual Gross Production Subtotal</b>	<b>\$ 125,000.00</b>
Actual Copied Coaching Gross Production	\$ 0.00
Copied Coaching Gross Production Adjustments	\$ 0.00
Copied Coaching Gross Production Total	\$ 0.00
Total Gross Production Adjustments	\$ 0.00
<b>Doctor's Total Gross Production Subtotal</b>	<b>\$ 125,000.00</b>
<i>Extra Day Production Adjustments</i>	<i>\$ (4,100.00)</i>
<b>Total Eligible Gross Production</b>	<b>\$ 120,900.00</b>
<b>19% of Eligible Gross Production</b>	<b>\$ 22,971.00</b>
<b>Earnings Categories</b>	
Base Earnings Paid ( <i>excludes PTO &amp; Holidays, MED, Jury Duty, Bereavement and Service Award Days</i> )	\$ 19,615.00
Extra Day Pay During the Quarter	\$ 1,300.00
<b>Earnings Subtotal</b>	<b>\$ 20,915.00</b>
<i>Extra Day Pay Adjustments</i>	<i>\$ (1,300.00)</i>
<b>Eligible Earnings Subtotal</b>	<b>\$ 19,615.00</b>
Base Earnings Adjustments	\$ 0.00
<b>Quarterly Base Earnings</b>	<b>\$ 19,615.00</b>
<b>Variable Pay Calculation</b>	
Variable Pay Earned at 19% of Gross Production	\$ 22,971.00
Less Eligible Earnings Already Paid (Threshold)	\$ 19,615.00
<i>Difference in Gross Production for Quarter</i>	<i>\$ 3,356.00</i>
Variable Pay Adjustments	\$ 0.00
<b>Quarterly Gross Production Variable Pay Due</b>	<b>\$ 3,356.00</b>
<b>Total Earned for the Quarter (includes base earnings/variable pay/extra day pay)</b>	<b>\$ 24,271.00</b>

## TERMS OF COMPENSATION

4. For all the services to be rendered by the Employee in any capacity under this Agreement, the Clinic agrees to pay the Employee a guaranteed base salary of **\$ 6250.00 per month**, payable semi-monthly.
5. The Employee will also receive in compensation 20% of Net Production, as defined in Appendix A, to be rectified quarterly.
  - (a) When 20% of Employee Net Production exceeds the base salary outlined in Paragraph 4, the Employee will then receive in compensation 20% of that Net Production over and above the base salary.
  - (b) The percentage Net Production compensation, as defined in Appendix A, will be based on one month's salary (**\$6250.00**) and will be rectified quarterly.

**Non-wage benefits** are the other component of total compensation.

These are non-taxable if done correctly.

The higher the guaranteed benefits, the lower the production percentage. We will fully cover benefits and taxation in just a few days!

## **Paid Time Off**

### **Paid Time Off**

Vacation time, sick leave, leave for continuing education, and paid maternity/paternity leave are all defined as Paid Time Off (PTO). PTO is characterized by time that an employee receives compensation without working. PTO is generally accrued by the employee based on the amount guaranteed in the contract. Some PTO provisions are found in the employee handbook as well. PTO is also subject to laws and regulations at the state and federal level.

Think of PTO as the “genus” and the different types of paid leave as the “species!”

- **Paid Time Off:** Beginning after the first 90 days of your employment, you will accrue 15 days of paid time off ("PTO") per contract year and may use such PTO in accordance with the Hospital's PTO policies. Any regularly scheduled workdays that you take off for vacation, sick leave or CE will be charged as PTO days used, unless such days are taken off during your first 90 days of employment or there is an insufficient number of accrued PTO days then available, in either case such days are be treated as unpaid days off. Beginning 90 days after the initial term of this contract, you will receive 2 weeks of paid parental leave.

## **Paid Vacation**

Most contracts specify a number of hours, days or weeks that you don't come to work and still get paid! Most practices calculate a "bank" of vacation time that you deduct against when you take time off.

However, calculating weeks vs. days vs. hours can lead to differences in the way that the bank is deducted. If you receive 2 weeks PTO, but plan to only take a day or two at a time, make sure your time is calculated correctly. Along those same lines, if the vacation is calculated in days, it can lead to confusion. For example, if you normally work from 8-12 on Thursday and Saturday and decide to take a 4 day weekend from Thursday-Sunday, does that count as 2 days PTO, or 1, since you were only off for 8 hours total? When there is ambiguity, it just means that you need more clarification.

Also, there is variation in the way that vacation "rolls over" from year to year. Some states and practices will allow you to carry the unused balance forward to the next year, some cap the amount rolled over (usually 40 hours) and some have a "use it or lose it" policy, where all vacation balances start at '0' every year. Understanding the "roll over" policy can change the way to plan for and take your vacation!

Other factors to consider with vacation time:

- 1) When can it be taken? Some practices limit vacation to certain times of the year, when the practice is not as busy.



- 2) How much notice must be given? Some practices require a request of over 2 months before vacation time can be granted. This can be frustrating if you are a spontaneous person!
- 3) Can the vacation be denied? Some contracts state that vacation time must be “approved” by a practice manager or partner. This is to limit the number of doctors gone at any given time, but also means your special trip at the exact time may not be permitted.
- 4) Is your vacation bank immediately credited, does it accrue over the year or is there a “waiting period”? These can drastically change your ability to take vacation time early in your contract year. For example, if your best friend is getting married overseas in July and you start your job in June, will you have enough paid vacation to go?
- 5) Does vacation time have a “cash value” if your employment is terminated? Some practices and states require that you are paid for any remaining time in your account upon separation. Think of it as a bank account that is yours, not the employer’s. This is highly dependent on the practice and state law.

What is normal? Most practices offer 2 weeks, 10 days or 80 hours of vacation to recent graduates. Vacation time is highly negotiable and some veterinarians will request more to see family, travel or other personal interests.

### **Vacation**

Vacation for the associate must be at such time as to provide minimal stress to the practice. Written request filled out on vacation request form must be approved 4 weeks prior to requested period. Fifteen (15) days of vacation will be allowed for the term of the agreement. The associate and owners cannot be on vacation at the same time. Base salary is paid for time on vacation.

### **Sick Leave**

This type of PTO provides paid time off if you or a family member is ill. This type of leave can usually be taken immediately, without request or notice, like vacation time sometimes has.

Over 50% of contracts stipulate sick leave, and commonly 3-4 days are given to veterinarians.

If you have a medical condition that requires that you miss more days, you should consider negotiating for more days. Also, if you have children or a dependent adult and don't have care when they become sick, you may need more sick days.

Some practices lump paid sick leave in with vacation days and other PTO.

Sick leave rarely rolls over from year to year and is very rarely paid out upon termination of employment.

1. **Three (3) days per year of paid sick leave.** If employee exceeds three (3) days of sick leave, then any additional days will need to be confirmed by a physician.

### **Continuing Education (CE) Leave**

All 50 states require CE, and most states require that some portion of the CE is taken in person. This means that you need to travel to an event and either miss work or use weekend time to attend. More and more practices are including paid CE leave in contracts, which allows the associate to receive their CE while being paid. Approximately 40% of contracts contain a paid CE time provision and most of those include 3-4 days of Paid Leave.

This is usually an easily negotiated point and most practices will include additional paid CE leave if the employee asks during contract negotiations.

Paid CE leave rarely rolls over from year-to-year and rarely has cash value upon termination. It is common for Paid CE leave to require a request and be granted or denied by a practice manager or owner.

10. Contributions of up to \$1,500.00 per year for continuing educational seminars. Documentation of expenses associated with such events (i.e. registration, travel expenses, lodging, etc.) will be required for compensation. Food and beverages are not included. Employee will also be entitled to an additional four (4) days per year of paid continuing education to attend such conferences. After the completion of all conferences, a presentation by the employee will be made to [REDACTED] staff.

## **Parental Leave**

Parental Leave is the type of leave that covers pregnancy, the birth or adoption of a child and a certain amount of time after, either for the mother, (maternity leave) or the father, (paternity leave.) Parental leave is becoming more common in veterinary contracts, but is still rare overall. It is a negotiable interest that many practices will build into the contract if asked.

When included in the contract, most commonly, 2-3 weeks is written into the contract. Most practices will require that other PTO is used also for parental leave.

Is there a law that requires paid parental leave? Short answer, no. Don't rely on the law to provide paid parental leave if this is an interest of yours. The federal Family Medical Leave Act (FMLA) provides 12 weeks of unpaid leave to employees of businesses with greater than 50 employees. Essentially this law provides employees with their same job back, after they return from maternity leave.

A note on parental leave. The law doesn't provide many protections for employees of small employers. Technically and legally a very small employer (less than 15 employees) can terminate an employee during pregnancy. Just because it's legal doesn't mean that it's

smart or a good business move. Most practices are very willing to work with employees around family planning. Why? Because veterinarians are typically family oriented people and the workforce dictates that they remain flexible. Also, generally speaking veterinarians with families tend to be stable. Lastly, an employer that is generous with parental leave tends to be rewarded with a loyal and stable workforce. If parental leave is an interest of yours, then find an employer that shares the same interests, and negotiate for the leave that you need. Please don't assume that all veterinary employers are inflexible or not-understanding, and most importantly, not all practices are equal. You have to find the one employer that matches your needs!

**Parental Leave** applies to a mother or father upon the birth or adoption of a child, provided the leave does not begin more than 6 weeks after the birth or adoption. The length of parental leave allowed is up to 8 weeks for an uncomplicated delivery or adoption, or up to 12 weeks with medically or legally documented complication(s). Documentation of need for the 12-week leave must be presented as soon as the need for extended leave is known and anticipated. Whether Parental Leave is granted is within the sole discretion of [REDACTED].

## Benefits

The average first-year associate will spend about \$15,000 a year on payroll and income taxes!

This will likely be one of your largest expenses and it is very important that you understand where your money goes.

Lawyers and corporations spend inordinate amounts of time on tax strategy which significantly increases their bottom line. Doesn't it make sense that you spend a small amount of time on saving some tax money? With simple planning and some knowledge of benefits law, you can save \$4,000 to \$5,000 on taxes your first year working.

## Non-Wage Compensation

Compensation to an employee that is excluded from income by a federal law or IRS regulation is referred to as “Non-wage Compensation,” “employee benefits” “fringe benefits” or “perks.” These may be part of a “Cafeteria Plan” provided by the employer where the employee can choose the benefits they want and need from a variety of options, without receiving others that they wouldn’t use. Please note that all benefits in a cafeteria plan are not excluded from income. To be excluded, there has to be specific authorization from Congress or the IRS. Other benefits are simple payroll deductions, subtracted from the employee’s net pay, before they receive a check or automatic deposit. These taxable benefits are paid for with after-tax dollars, whereas non-wage benefits are not subject to taxation at all.

W-2 Wages are subject to two major categories of taxes:

**Income Tax (federal and some states):**

- Paid for by the employee
- Withheld by the employer subject to a projected amount based on the dependents and filing (single or married) status of the employee
- The amount paid by the employee is reconciled when individual income tax is due on April 15 of every year. The employee either receives a refund for overpayment or submits additional payment based on the income calculated on their IRS 1040 form.
- Additional deductions, including some benefits paid for by the employee could be accounted for on the 1040.

**Payroll taxes:**

- Half is paid by the employee, half is paid by the employer.
- Social Security Tax (FICA)
- Medicare Tax (FICA)
- Unemployment Tax (FUTA)
- All W-2 wages are subject to FICA and FUTA taxes

Below is a list of possible non-wage benefits that are specifically authorized to be excluded from taxation:

### **1. Health Insurance**

This could be a health insurance plan that is sponsored by the employer or an individual plan that is purchased by the employee and reimbursed by the employer.

### **2. Health Savings Account (HSA)**

If the employee has a high-deductible health insurance plan then the employer or employee is allowed to contribute to an HSA. The 2020 limits for a single employee is \$3,550 and \$7,100 for a married employee.

To qualify as a high-deductible plan, the employee's health insurance must have a annual deductible of at least \$1,350 for a single person and \$2,700 for a family

The funds in the account can be used for "Qualified" medical expenses including the deductible of the health insurance plan.

The funds in the account are allowed to bear interest and roll over from year to year until the employee uses them.

A health savings account can be set up at a financial institution by the employee who will then be given a checkbook or a debit card to access the funds when purchasing qualified medical products or services.

### **3. Dental Insurance**

### **4. Vision Insurance**

### **5. Life Insurance**

The employer may pay for life insurance up to a \$50,000 benefit to the employee's estate or beneficiaries. Plans with benefits over this amount will have the premium payments included in taxable income

### **6. Disability Insurance**

### **7. Long Term Care Insurance**

### **8. Investment Retirement Plans**

- SIMPLE Plan - Employer sponsored plan (less than 100 employees)
- SEP (Simplified Employee Pension)

- 401(k) Employer sponsored plan

## 9. Flexible Spending Accounts

These can be used for specific items such as dependent care and for specific dental and health expenses. Funds in an FSA do not roll over from year to year (use it or lose it).

7. **BENEFITS.** You will be entitled to the following benefits during your employment with the Hospital:

- **Health Savings Account:** The Hospital shall contribute \$250 per month towards a Health Saving Account that you choosing. Such amounts shall be paid on the first pay date of each month.
- **Retirement Plan:** The Hospital shall contribute matching funds (up to 3% of your salary) to a retirement plan that you establish. Such amounts shall be paid on the first pay date of each month and will be adjusted during the final pay period of the year to reflect your production compensation, if applicable.
- **Disability and Life Insurance** The Hospital shall reimburse you or pay directly for disability and life insurance during the term of this agreement. The maximal death benefit shall be \$50,000 or the maximal allowed by Internal Revenue Code or IRS regulation.
- **Cellular Phone:** The Hospital will either pay directly for or reimburse you for a cellular phone at the Hospital's expense with text and internet access for activities related to practice work (Emergency paging, directions, mapping, communication with the practice, etc).

The following are "ordinary and necessary business expenses" that are common to the veterinary profession. Meaning that if the employer pays for these items, incidental to an associate's employment, they could be excluded from taxable income. Many of these items are personal in nature but are necessary to practicing veterinary medicine and thus a veterinary practice.

1. Professional Liability Insurance with License Defense Coverage
2. State Veterinary License(s)
3. DEA Licensing
4. Continuing Education Expenses
5. VIN
6. Books



7. Costs of registration, travel, hotel, meals, etc. while away from home for CE
  - a. IRS guidance makes CE and travel outside of North America questionable to deduct
  - b. The travel has to meet the "Primary Purpose" test, meaning that the education is the primary purpose of the trip. If other short diversions occur that are secondary, that is acceptable.
8. Vehicle Expenses
9. IRS Mileage (at the rate for the current tax year)
  - a. Mileage occurred during commuting from home to work is not accepted
10. Association Dues
  - a. National Dues - AVMA, AAHA
  - b. State and Local VMAs
  - c. Specialty Associations - AAEP, AABP, LGVMA, AVMLA, SVME, etc.

\* **Professional Dues & Memberships**

*DEA Certificate:* The Hospital will contribute directly to or reimburse you for the payment of your DEA Controlled Substance Certificate.

*AVMA Dues:* The Hospital will reimburse you for your AVMA dues.

CE and other benefits must be used during the contract term and cannot be accrued from year to year. Any unused benefits (other than PTO) will be forfeited at the end of the contract term. If you have not fully used your benefits (other than PTO) prior to notice of termination of your employment being delivered pursuant to this agreement, then no compensation shall be due for any unused benefits.

*Licensure fees* The Hospital will pay directly to you or reimburse you for the cost of the State of Nebraska Veterinary License

*USDA Accreditation* The Hospital will pay directly or reimburse you for the costs of obtaining USDA Accreditation in the State of Nebraska

*Professional Liability Insurance* The Hospital will pay directly or reimburse you for malpractice coverage and license defense rider if applicable for your services at the Hospital during the term of this Agreement.

*Veterinary Information Network (VIN)* The Hospital will pay directly or reimburse you for membership in VIN during the term of this Agreement.



11. Cell phone and data

- a. The employee must be expected to use their phone for business purposes, such as emergencies or contact with the office
- b. The IRS will not work to separate business from personal cell phone expenses

12. Home Internet expense

- a. The employee must be expected to perform job duties at home, such as research, education, communicating with the practice or clients, writing medical records (VPN or cloud based practice management software)

13. Computers and software used in employment

14. Scrubs and laboratory coats (not worn outside of work)

15. Pet or animal care (fees charged to employee must be reduced to cost of products and 20% discount of regular price of services to clients)

16. Housing On-Site, if required by employment for a legitimate business purpose

17. Equipment or supplies needed in practice

- **Internet Service:** The Hospital will either pay directly for or reimburse you for home internet service to be used in furtherance of the hospital's business.
- **Trial Veterinary Care for your Pets:** In an effort for you to attempt novel procedures, try new products and become knowledgeable of the customer offerings by the hospital, the Hospital will provide \$2,000 in yearly veterinary care to your pets. This may include wellness care (blood work, COHATs, vaccinations), products, drugs, pet health insurance, or any items sold or under consideration for offering by the Hospital.
- **Paid Time Off:** Beginning after the first 90 days of your employment, you will accrue 14 days of paid time off ("PTO") per contract year and may use such PTO in accordance with the Hospital's PTO policies. Any regularly scheduled workdays that you take off for vacation, sick leave or CE will be charged as PTO days used, unless such days are taken off during your first 90 days of employment or there is an insufficient number of accrued PTO days then available, in either of which case such days shall be treated as unpaid days off.
- **Continuing Education Assistance:** The Hospital will pay or reimburse you for the registration fees and other necessary expenses up to \$1,500 per contract year for you to attend CE programs of your choosing in accordance with the Hospital's reimbursement policies and provided those expenses have been approved in advance.
- **Vehicle expenses** The Hospital shall reimburse you for your personal vehicle expenses incurred in furtherance of business activities of the Hospital based on applicable IRS mileage rates.

It is essential that any contract is well drafted and addresses these items, if there are reimbursement funds from the employer to employee, outside of the W-2 system.

**Said another way, these are items that nearly every associate needs to practice veterinary medicine. If paid for by the employer, pursuant to a employment contract, they are not included in the taxable W-2 income of the employee. If the employee pays for these items, they are doing so with "after-tax" dollars, meaning that payroll taxes and income tax have already been withheld from the funds.**

Previously, the employee possibly could have to deduct some of these items as part of the "unreimbursed employee expenses" miscellaneous deduction on the 1040. However, this required that the employee itemize their deductions and the deduction is only allowable on expenses above and beyond 2 percent of the total income. The Tax Cuts and Jobs Act of 2018 eliminated the Miscellaneous Itemized Deductions and thus Unreimbursed Employee

Expenses. So now, the only way for the employee to capture these deductions is to negotiate during the contracting process to have the employer pay for them directly or be reimbursed.

## **Restrictive Covenants**

Why are the Restrictive covenants important? Is this worth my time?

These are fair questions! Many associates ignore these provisions in their contracts at their own peril!

I think of the restrictive covenants as the "break up provisions." As in, they only come out if employment is terminated and the practice and associate are "breaking up! Once that break up is occurring, these provisions become extremely important and are scrutinized heavily. At that point in time, they can mean hundreds of thousands of dollars and years of your life. It's also much easier to negotiate breakup provisions at the entry into the relationship, instead of as the breakup is occurring.

We hear from at least one veterinarian weekly, that needs help either enforcing or getting out of their restrictive covenants. In 2016, I researched and wrote a paper on the topic of restrictive covenants in veterinary medicine and found over 300 reported court cases in the last 20 years. Reported means that they were actually litigated and were appealed. In reality, it's likely that there are thousands of cases that stop at the trial court level and thousands more that are settled before court. It's likely in the tens of thousands where litigation is threatened and the associate just moves away or finds a nearby job that doesn't violate the covenants.

If you are one of those associates that is sued, or threatened to be sued, the restrictive covenants are IMPORTANT!

What are "Restrictive Covenants?" First let's break down the name. "Restrictive" means that you are being limited not to do something. "Covenant" is a fancy legal word for promise. So combining the two, you are promising not to do something! Sometimes lawyers will refer to

the restrictive covenants as “post employment” provisions. Meaning that you are promising not to do something, after your relationship with the employer ends! This is an important concept, the employer can control what you do, after you are employed by them. Think of breaking up with a boyfriend or girlfriend and afterwards they have the right to control who you date moving forward. Seems unfair, right!? Courts really struggle with these, because of a similar argument. As with any argument, there are two sides.

Let's look at it from the employer's side. The employer will invest large amounts of time and money training the associate, introducing them to clients and members of the community, marketing their services and making sure they are productive. The associate will have access to pricing models, strategic plans and other confidential information. If the associate leaves, and takes those client relationships, and information to a practice across the street, this is very unfair to the practice. This could cost them hundreds of thousands of dollars. If this were allowed to happen, then it would incentivize the employer to not train and allow access to confidential information and basically stifle the business.

On the employee's side, we have someone who is a trained professional. This person likely has a family to feed, bills to pay and a right to earn a living. Should the employer be allowed to restrict their ability to earn a living in their community?

This is where courts struggle with restrictive covenants. They have to balance the employer's interest to protect their business with the employee's interest to earn a living and practice their profession. This balance is impacted by a patchwork of state laws, state supreme court rulings, and local court rulings. This adds massive confusion to determining whether a restrictive covenant is enforceable or not. Anyone that makes blanket statements that restrictive covenants are enforceable or not enforceable doesn't fully understand the underlying law. It really takes an attorney that is versed in the local laws to make a prediction as to the enforceability of the restrictive covenant at hand and then it's usually still a prediction. The only way to really know is to go to court, which is not fun or inexpensive!

Let's break this all down.

We all took biology! Reverting back to my taxonomy training, I think of "Restrictive Covenants" as the genus and the specific promises as the species. The non-competition, non-solicitation and confidentiality agreements are the specific promises that are usually made in the restrictive covenants section of the contract.

Many times in veterinary medicine the words "covenant to not compete", "non competition" and "restrictive covenant" are used interchangeably and that becomes confusing. However, if you understand the nomenclature behind the phrases, it's much easier to keep straight.

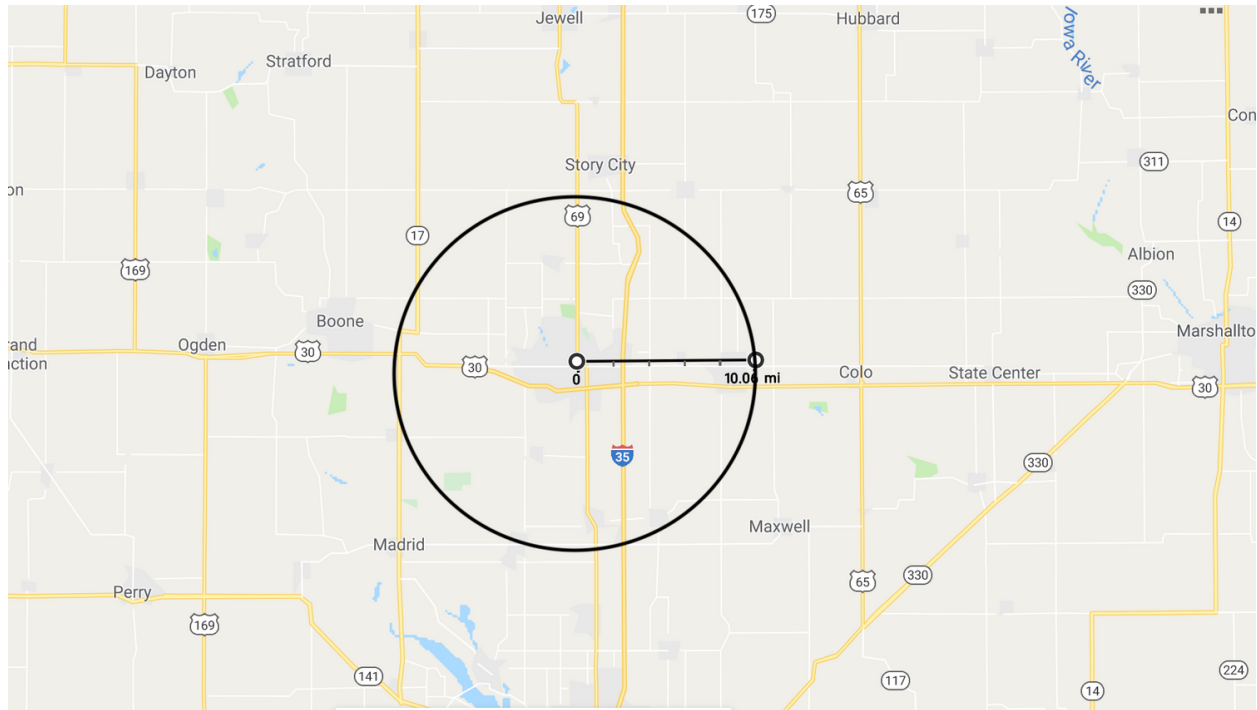
In summary, "non-competition agreement" and "covenant to not compete" mean the same thing, which is discussed fully below. Restrictive covenant usually means all the promises, to not compete, to not solicit, and to maintain confidentiality.

Let's examine why this can cost hundreds of thousands of dollars and years of your life.

Imagine that Amy takes a job as a mixed animal associate veterinarian in Ames, Iowa and as part of her contract, she signs a covenant to not compete for 10 miles and two years following her employment. Everything is going smoothly at the practice for several years post graduation. She starts to settle down, gets married and starts a family. Her spouse has a great job, and they buy a house. Her kids are in a great school and things are awesome. Seems like a pretty typical scenario, right?

Then, for some reason, Amy's employment relationship starts to degrade. To the point that Amy must start looking for a new job.

Due to her non-competition agreement she can't work for or see mixed animal patients within a 10-mile radius of the practice in Ames.



Non-compete 10-mile radius around Ames, Iowa

What are her options?

1. Look for a job in a nearby town and commute every day. This may mean a 45 minute commute multiple times per day and at night if the practice sees their own emergencies.
2. Look for a different job in the veterinary profession. Could she work for the USDA, a university or some other non-competitive employer?
3. Sell her house, take her kids out of school and have her spouse find a new job.
4. Leave the veterinary profession. Could she stay at home, or switch professions?

If none of these options seem particularly viable, then you realize the crux and importance of the Restrictive Covenants.

Amy's scenario plays out in practices and towns all over the country. Associates in similar positions find themselves in a no-win situation, because they didn't understand the

restrictive covenants when they signed. The uprooting of the family, selling the house and moving can set a family back for years.

That's why we have to pay attention to these before we sign the contract!

## **Non-Compete**

A non-compete provision is also referred to as a non-competition clause, a covenant not to compete or a restrictive covenant. All of these terms are relatively interchangeable and refer to an agreement where the employee agrees not to work within a specified distance of the practice, for a certain time, after termination of employment. The important concept is that the employer and employee will no longer be in a relationship, yet the employee is bound by contractual terms. These are called post-contractual or post-employment restrictions.

Generally how the employment or contract is terminated is irrelevant. This means that if the employee is laid off, fired, quits or the contract simply ends they are not to practice veterinary medicine inside the distance component of the non-compete for the duration of the time component of the non-compete.

Before we get into the details of non-competes, let's examine why they exist. When service providers (veterinarians) hire an associate, they often provide training and give them access to confidential information such as a client list, price list and other trade secrets. If an employee gathered this information and forms relationships with clients and other employees, only to take this confidential information to another competitive practice or start their own, this would be highly detrimental and unfair to the original employer. Employers would be very protective of information and could be unwilling to hire and train employees for fear of unfair competition. Therefore courts have recognized the need to protect employers from unfair competition, allowing them to contract with employees in order to restrict post employment activities.

On the other hand, employees have the need to practice their profession, support themselves and family after employment doesn't work out with an employer. In veterinary medicine, non-compete provisions are particularly difficult on employees because of the

rural nature of many practices, the scarcity of practices and the need for emergency services (which mean frequent commutes for the associate). An associate veterinarian that enters into a non-compete, then leaves employment may find further employment in another town. This could mean selling a house or breaking a lease, moving children to another school, forcing a spouse to find another job. Alternatively, the associate would be forced to commute long distances, sometimes several times per day at odd hours of the night to see emergencies. Also, during the negotiation period, the employer has the upper hand, meaning that the employee may not have many options in signing the agreement that binds them after employment. Secondly, when enforcing the agreement the employer, by default, still has a business to derive income from (and pay an attorney), and the employee, by default, is unemployed (and cannot pay an attorney).

For these reasons, courts don't like to enforce non-competes unless they are absolutely necessary to protect an employer's business and interests. There are centuries of case law that define when a non-compete is acceptable and when it is overly broad and unfairly detrimental to an employee. The courts often view themselves as "weighing" or balancing the interests of the employee versus those of the employer. The victorious party in a lawsuit depends on a myriad of factors, all with different weight given by the court. In the end, the decision is very subjective and this has led to confusing and contradictory case law that is highly jurisdiction-dependent.

It is important to recognize that every state's laws, both case and statutory law, differ regarding non-competes. The facts and circumstances of every single case are different and for these reasons, no generic or broad statements can be made about the enforcement of non-competes in veterinary medicine.

### **Specific Terms**

**Radius** -- The radius is almost always defined as the air-mile radius (also referred to as "as the crow flies") measured from the physical location of the practice. If the practice is a completely ambulatory practice, this is generally the mailing address of the practice or where the ambulatory vehicle parks at night. The size of the radius depends on the size of



the practice, the type of practice, the distance that clients travel to the practice, the amount and proximity of competitive practices and population density. In mixed animal practices it is becoming more common for a non-compete to have two radii, a smaller radius for small animal practice and a larger radius for large animal or ambulatory practice.

**Duration of Restrictions** -- The length of the post-employment restrictions is commonly set by state statute or prior case law. When examining the duration, a court will look to the length of the relationships and number of visits by clients on average. Generally, the durations range from 12 to 24 months.

**Type of Practice** -- Most non-compete provisions will limit “the practice of veterinary medicine,” even though the employer only practices small or large animal medicine. The scope of veterinary practice is broad and an associate could in theory go to another type of practice and not engage in competitive activity with the former employer. Therefore, it is advisable to limit the type of practice that needs protection from unfair competition. Courts in five states -- Alabama California, Oklahoma, North Dakota, and Montana -- will not enforce non-competes entered into by veterinary associates. This means that the agreements are not enforceable if the employer seeks to enforce the contract.

#### **Non-Competition Covenant.**

(1) You agree that, during your employment by the Hospital and for **two years after the termination of your employment** (regardless of the reason for such termination), you will not directly or indirectly, as owner, partner, employee, independent contractor, principal, officer, agent, or in any other capacity whatsoever, engage in, become financially interested in, be employed by, render consulting services to, or have any connection with any business engaged **in providing veterinary care in within a 5 air-mile radius from the Hospital.**

#### **Non-Solicitation**

A non-solicitation provision is an agreement where the employee promises not to “solicit” employees and clients of the employer after termination of the contract. Non-solicitation agreements are enforceable in all 50 states. Generally non-solicitation agreements have a time duration, but do not have a geographical limitation.

The term solicitation is often defined in these provisions of the contract, but generally it means direct or individual contact with someone, inducing a disruption of the business relationship. In the real world, this means that the employee can't call, mail, directly market to, email or text a client of the employer to offer services, or perform services for a client of the former employer. Non-solicitation agreements did not receive much attention when advertising was done via mail and phone books, however in the age of social media and targeted marketing they are receiving increased attention by lawyers and courts.

Cases are starting to examine whether status updates in Facebook or LinkedIn constitute "direct communication."

Also, notably, non-solicitation agreements often prohibit the enticing of an employee of a former employer from discontinuing employment with that employer. This prohibits veterinary associates from leaving a practice and taking staff members with them when moving to another practice or starting a practice of their own.

**Non-solicitation Covenant.**

(2) You agree that during your employment by the Hospital, you will not directly or indirectly, on your behalf or behalf of any third party, render or offer to render veterinary care to any person or business who is a client or potential client of the Hospital. You further agree that, for **two years after the termination** of your employment (regardless of the reason for such termination), you will not directly or indirectly, on your behalf or behalf of any third party, render or **offer to render veterinary care** to any person or business who was a client of the Hospital during the 12 months immediately preceding your termination and you contacted in the course of your employment (each such person or business referred to as a "Client")

**Confidentiality**

The confidentiality provision is becoming more and more popular in veterinary employment contracts. This provision often contains a promise by the associate to maintain confidentiality and not to use or disclose patient records, client lists, pricing policies, business plans and other information that could be used to compete with the practice. Also, this provision will usually require return of any confidential information at the termination of your employment.

These provisions are becoming more popular since most data is electronic. In the past, it would be rare for an associate to print out a client list and walk out, effectively stealing the list. Now if a court case ensues, client lists and other sensitive data could be found on the associates hard drive or in their email program, making it easier to prove that a violation of the confidentiality agreement occurred.

These provisions are also more readily upheld in courts of all states, ensuring a backstop for the hospital if unfair competition occurs.

They are rarely negotiable upon entry to the employment agreement, since asking to have them removed would telegraph that you plan to take confidential information.

Thus, the best plan is to work within the confidentiality agreement. During your employment, separate personal and work emails, even if that means getting a new email account. If you do practice work from home or a personal computer, use separate folders that can be returned or deleted if your employment is terminated.

## **8. CONFIDENTIAL INFORMATION.**

**A. Confidential Information and Goodwill.** You acknowledge and understand that the Hospital has unique methods of conducting the Hospital's business and other secret and confidential information regarding such business ("Confidential Information"). Confidential Information includes, patient records, client lists, pricing policies, marketing arrangements (including special promotions information), business plans and strategies, internal management and operating procedures, instructional or training materials containing any of the aforementioned information, and any other trade secret information. You also recognize and agree that the Confidential Information, the relationship with the Hospital's clients, its client lists, and other goodwill, which you will develop and maintain, are valuable, special, and unique assets of the Hospital, and remain the exclusive property of the Hospital.

**B. Confidential Information and Intellectual Property Remain Assets of the Hospital.** All Confidential Information, software, and other materials provided to you during your employment or acquired by you while performing your duties under this agreement, along with all materials developed by the Hospital or by you for use in the Hospital's business, and all intellectual property provided to you by the Hospital, will remain the exclusive property of the Hospital, and you agree to use your best efforts to prevent any publication or disclosure of such items. You agree that, upon termination of your employment with the Hospital, you will deliver to the Hospital all Confidential Information and other property belonging to the Hospital within your possession, custody, or control.

You agree that the terms of this agreement are confidential and that you will not disclose such terms to any party except for (i) your advisors, provided that any such advisor is informed of this confidentiality covenant and agrees to comply with it, and (ii) any other party, if such disclosure is required by a court of competent jurisdiction or other legal authority under applicable law.

**C. Nondisclosure of Confidential Information.** You agree that, in return for the Confidential Information and goodwill provided to you under this agreement, you will not, during or after the term of this agreement, disclose or use for personal benefit or the benefit of third parties, any Confidential Information without the prior written consent of the Hospital.

## **Non-Interference Agreement**

A non-interference agreement is akin to a non-solicitation agreement, but usually applies to employees, vendors and organizations that the practice has contracted with. The non-interference agreement prohibits the former employee from interrupting or interfering with the contract. An example would be enticing another employee of the practice to come work for you after you leave. Some refer to this as an "anti-raiding" provision.

## B. Non-Interference Covenant.

(1) The Doctor agrees that during the Doctor's employment by the Company the Doctor will not: (a) solicit, entice or induce any employee of the Company to refrain from rendering services to the Company or become employed by or enter into contractual relations with any person or business engaged in providing veterinary care to pets or small animals; or (b) interfere with, disrupt or attempt to disrupt the relationship, contractual or otherwise, between the Company and any client, supplier, lessor, lessee or employee of the Company.

(2) The Doctor agrees that for a period of two years following the termination of the Doctor's employment (regardless of the reason for such termination), the Doctor will not: (a) solicit, entice or induce any employee of the Company who was employed by the Company during the twelve months immediately preceding the Doctor's termination to refrain from rendering services to the Company or become employed by or enter into contractual relations with any person or business engaged in providing veterinary care to pets or small animals; or (b) interfere with, disrupt or attempt to disrupt the relationship, contractual or otherwise, between the Company and any person or business who was a client, supplier, lessor, lessee or employee of the Company during the twelve months immediately preceding the Doctor's termination.

## Employee Inventions

Contractual provisions that address employee inventions were formerly non-existent in veterinary medicine. With the influx of large group practices (and their lawyers) Employee invention agreements are becoming increasingly popular. Most veterinarians have no intention of inventing something new in their job. However, some entrepreneurial veterinarians do have plans to invent and create new products and services and they hotly contest an employee invention provision.

What is an employee invention provision? This is a contract that grants ownership to the employer for any invention that the employee creates while employed by the employer.

What is covered? Usually any product, software, process, or intellectual property that can be patented. These provisions are usually very broad, and don't distinguish between things invented at work or during time off! These provisions are very common in large corporations and for jobs where employees are hired to create things. In veterinary practice, it is rare that an employee is hired to create and invent! These are very negotiable if the associate points out that it's not really applicable. If you have any inclination to create or invent something, you MUST negotiate this provision before signing the contract!



**1. INTELLECTUAL PROPERTY RIGHTS:** The Employee recognizes and agrees that all copyrights, original works of authorship, formulas, algorithms, processes, techniques, concepts, designs, developments, technology, ideas, patentable and unpatentable inventions and discoveries, patents, trade and service marks, logos, trade dress, trade secrets, improvements and licenses that the Employee may solely or jointly make, develop, reduce to practice or author during the Employee's employment with the Practice: (A) that relate to the business or the present or demonstrated or reasonably anticipated future research or development of the Practice; (B) that result from or are suggested by any work that the Employee may do for the Practice; or (C) that are otherwise made through the use of the Practice's time, equipment, supplies, facilities, material or Confidential Information (as defined in the Agreement) (collectively, "Inventions"), are the sole and exclusive property of the Practice and will be considered "works made for hire" pursuant to the United States Copyright Act (17 U.S.C. Section 101). The Employee hereby assigns to the Practice (or its designee) all of the Employee's right, title and interest in and to the Inventions without additional compensation. To the extent the Employee has any "moral rights" in the Inventions which are not assignable by law, the Employee hereby waives any such moral rights relating to the Inventions, including any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use or subsequent modifications. If the Employee has any Inventions relevant to the Employee's work performed for the Practice which were made, conceived, or first reduced to practice by the Employee (alone or with others) prior to becoming an employee of the Practice, in order to remove such Inventions from this assignment provision, the Employee must identify any and all such Inventions in the space below. If no such Inventions are identified below, the Employee represents that there are no such previous Inventions.

Notwithstanding the foregoing, the rights in any invention the Employee developed entirely on her own time without using the Practice's equipment, supplies, facility or trade secret information that do not (i) relate to Practice's anticipated research and development or (ii) result from assigned work by the Practice and performed by the Employee. Further, the parties agree that Employee is not "Hired-to-Invent."

## Intellectual Property

These provisions are similar to employee invention provisions, but encompass all intellectual property, not just patentable inventions. Intellectual property could cover articles you publish or write, blogs, podcasts, book chapters, presentations, and other professional work! For most general practitioners this is not a huge issue, but for specialists that continue to research and publish papers, present CE and teach, these provisions can be very problematic.

**C. Confidential Information and Intellectual Property Remain Assets of the Company.** All Confidential Information, software, and other materials provided to the Doctor during the Doctor's employment or acquired by the Doctor in the course of performing the Doctor's duties under this Agreement, along with all materials developed by the Company or by the Doctor for use in the Company's business, as well as any and all intellectual property developed by the Company or by the Doctor, will at all times remain the exclusive property of the Company, and the Doctor agrees to use the Doctor's best efforts to prevent any publication or disclosure of such items. The Doctor agrees that, upon termination of the Doctor's employment with the Company, the Doctor will deliver to the Company all Confidential Information and other property belonging to the Company within the Doctor's possession, custody, or control.

## Other Important Provisions

### Work Duties

The type of work should be defined in the contract. This is generally written as "The hospital agrees to provide employment as a small animal veterinarian." There may be reference to a job description or more detail, such as "Board certified Equine Internist." This allows a baseline of skills, roles and responsibilities for reference if the employee is not performing as expected. On the other hand, without a limitation in the type of duties to be performed, the employer could demand broad responsibilities, including duties generally performed by assistants or technicians.

**2. EMPLOYMENT DUTIES.** The Hospital agrees to employ you as a Medical Director and associate veterinarian for the term and compensation provided for in this agreement. In return you agree to perform such duties as may be determined and assigned by the shareholders, consistent with your role described in this agreement. You agree to devote your services and utmost knowledge and best skill to the care of animals entrusted to the care of the Hospital. Your duties will include, leadership, management, and oversight responsibilities of the Hospital.

### Exclusivity

Many veterinary associate employment contracts contain an exclusivity provision. This essentially limits the employee from working at other practices, or serving other clientele. The theory behind this provision is to limit competitive activity by the employee and ensure

that the associate is rested and prepared for their work at the practice. However, as written, many exclusivity provisions limit non-competitive work such as, volunteering, emergency shifts, sale barn work and services provided to friends and family.

These are generally worded as “The associate agrees to dedicate all of their professional efforts to the Hospital and shall not engage in the rendering of services outside this employment agreement with the express written consent of the Employer.”

**Duties.** The Employee shall be employed as a large and small animal veterinarian. Employee shall devote Employee’s entire time, attention, and energies to the business of the Employer during working hours, and shall not during the term of this agreement be engaged in any other veterinary business activity in competition with Employer without the prior oral or written approval of the Employer.

## **Automatic Extension**

An automatic extension provision, allows the contract to renew without any action of either employee. These will prevent contracts from expiring if the practice is busy and are forgetful. However automatic extensions will sometimes preclude an associate from negotiating for a pay raise because there is no incentive for the employer to revisit the terms of the contract, if the associate is underpaid.

1. TERM. The initial term of this agreement will begin on March \_\_, 2019 and will continue until March 31, 2020, subject to the terms and conditions contained in this agreement. Each year thereafter, this agreement will automatically be extended for an additional one-year term, unless either party gives notice of termination to the other under Section 10 of this agreement, in which case this agreement shall continue until the expiration of the applicable notice period, if any. Upon termination of this agreement under Section 10, all provisions of this agreement shall terminate, except for the post-employment provisions, which will survive according to their terms.

## **Arbitration**

An arbitration provision forces the parties to bring their grievances to a neutral arbitrator instead of going directly to court. Many times the final decision in the arbitration process is binding on the parties, but the costs and the time associated with arbitration are reduced relative to court and a lawsuit.



However, many important rights are granted to individuals in a lawsuit and arbitration can bypass those rights.

**14. ARBITRATION.** If any dispute, controversy or claim arises between us that we cannot resolve (other than any claim arising under Section 8 or 9 above), then we agree that either party may submit the matter to a binding arbitration in accordance with the rules of the American Arbitration Association under the laws of the State of Texas. Arbitration shall be held in the City of Austin, or a location mutually agreed upon by the parties. The prevailing party in such arbitration shall be awarded, in addition to costs, reasonable attorneys' fees as fixed by the arbitrator(s). Full rights of discovery, including the right to depose parties, shall be allowed in the course of such arbitration. The decision of the arbitrator will be final and non-appealable and may be enforced according to the laws of the State of Texas.

### **Waiver of Jury Trial**

It is common for employment contracts prepared for or written by the employer to contain a waiver of jury trial in the case of a dispute. When the parties are preparing for court, they can choose if the case is to be heard (decided) by a judge or a jury. A jury trial is overseen by a judge but the jury ultimately decides the fate of the case.

Jury trials are more expensive and more time consuming. Also, it is generally thought that juries are more sympathetic to the employee. This means that they are more often compelled to decide on emotions for the employee. For these reasons, the employer will often desire (and include in the contract before employment begins) a bench (judge decided) trial, where the judge is more impartial to the background of the parties.

You have a Constitutional Right to a jury trial. (6th amendment for those of you that aced high school government class.) This provision means that you are waiving a constitutional right, so don't take it lightly!

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(b) Any dispute between Doctor and Employer arising out of or related to this Agreement shall be submitted to a court of competent jurisdiction in McLennan County, Texas. By this Agreement, Doctor waives the right to a trial by jury and agrees to submit any such dispute to the court for resolution.

### **Assignment**

An assignment provision allows one or both of the parties to pass the responsibilities and benefits of the contract to another entity (individual or business) who steps into the place of the party. This almost always allows the practice owner to pass the contracts of the associates onto a purchaser of the practice. Assignment provisions become very important during the sale of the practice when a purchaser and their bank want to be sure that the non-compete and non-solicitation provisions are enforceable.

The employee is commonly restricted from assigning the contract, meaning that they can't transfer their responsibilities under the contract.

**15. ASSIGNMENT; AMENDMENT.** This agreement may not be transferred or assigned by you. The Hospital may transfer or assign this agreement, including the covenants in Sections 8 and 9 above, to any party that succeeds to the business of the Hospital. No amendment or supplement shall be valid unless in writing and signed by the parties forming this agreement.

### **Entire Agreement and Modification.**

The contract will commonly contain wording to the effect of "This contains the entire agreement between the parties and cannot be modified without written agreement" This means that other agreements, such as oral promises, or writing that took place before the agreement are null and void. The parties should determine that everything that is part of the relationship at the time of signing. Secondly, if a party purports to orally modify the contract, it will not be enforceable.

**16. ENTIRE AGREEMENT AND BINDING EFFECT.** This agreement contains the entire agreement of the parties with respect to your employment with the Hospital, and, except as otherwise provided within this document, it is binding upon you and the Hospital and our respective legal representatives, heirs, distributees, successors and assigns. This agreement supersedes and preempts any prior or contemporaneous understandings, agreements or representations between the parties, written or oral, which may have been related to this subject matter. If this agreement has not been

### **Other Interests**

Lastly, it is common to have an employee negotiate for provisions in the employment contract to the effect of "The associate veterinarian will practice medicine to their reasonable judgement without unreasonable interference by the employer" This statement

allows associates to not perform services that they don't agree with, morally or ethically, such as convenience euthanasia, ear cropping, or declawing of cats.

**3. WORK SCHEDULE.** You will work for the Hospital in a full-time capacity. For all cases in your care you agree that you will have treated all animals, performed all necessary work, completed all medical records, recorded all charges for services and made all telephone calls to clients before leaving for the day, unless other appropriate arrangements have been made. The Hospital Director or Hospital Manager, will provide your weekly work schedule, but generally consists of five days per week. You will be expected to periodically be on-call to cover emergencies for boarding or previously hospitalized patients.

# Notes

