

RLI Kickstart Your Career Workshop

## **Draconian Clauses in My Contract: What Do They Mean? Can I Do Anything About Them?**

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# Disclosure of Commercial Interest

Regrettably, I have nothing to disclose

# Disclaimer

This presentation is not intended to provide legal advice. I am not an attorney, but rather a radiologist whose intent is to provide an explanation of why your radiology employment agreement contains the clauses that it does and what it will mean for you.

## Acknowledgement

Muroff JA, Muroff LR. Contracts in radiology practices: contract types and key provisions. J Am Coll Radiol 1 (7): 459-466, 2004.

Muroff JA, Muroff LR. Contracts in radiology practices: breaches and remedies. J Am Coll Radiol 1 (8): 553-558, 2004.

# Contracts: Two Types

- 1) Verbal (as strange as it may seem, radiologists still enter into verbal agreements - often unintended)
- 2) Written (the preferred way to memorialize any agreement between a radiologist and his group)

# Integration Clause

“All prior or contemporaneous written or oral statements, negotiations, representations, arrangements, and/or agreements regarding radiologist’s employment with group are merged into and superseded by the agreement. Both parties acknowledge that there are no oral or other written understandings, arrangements, and/or agreements between the parties regarding radiologist’s employment with group.”

## The Group Is the 800 lb. Gorilla, Not You

Contracts between radiology groups and their members are not “agreements” between two equal entities. The protections are in place for the benefit of the group, not the individual.



# The Onerous (Draconian) Clauses

To protect the practice, certain “onerous” clauses are “necessary”

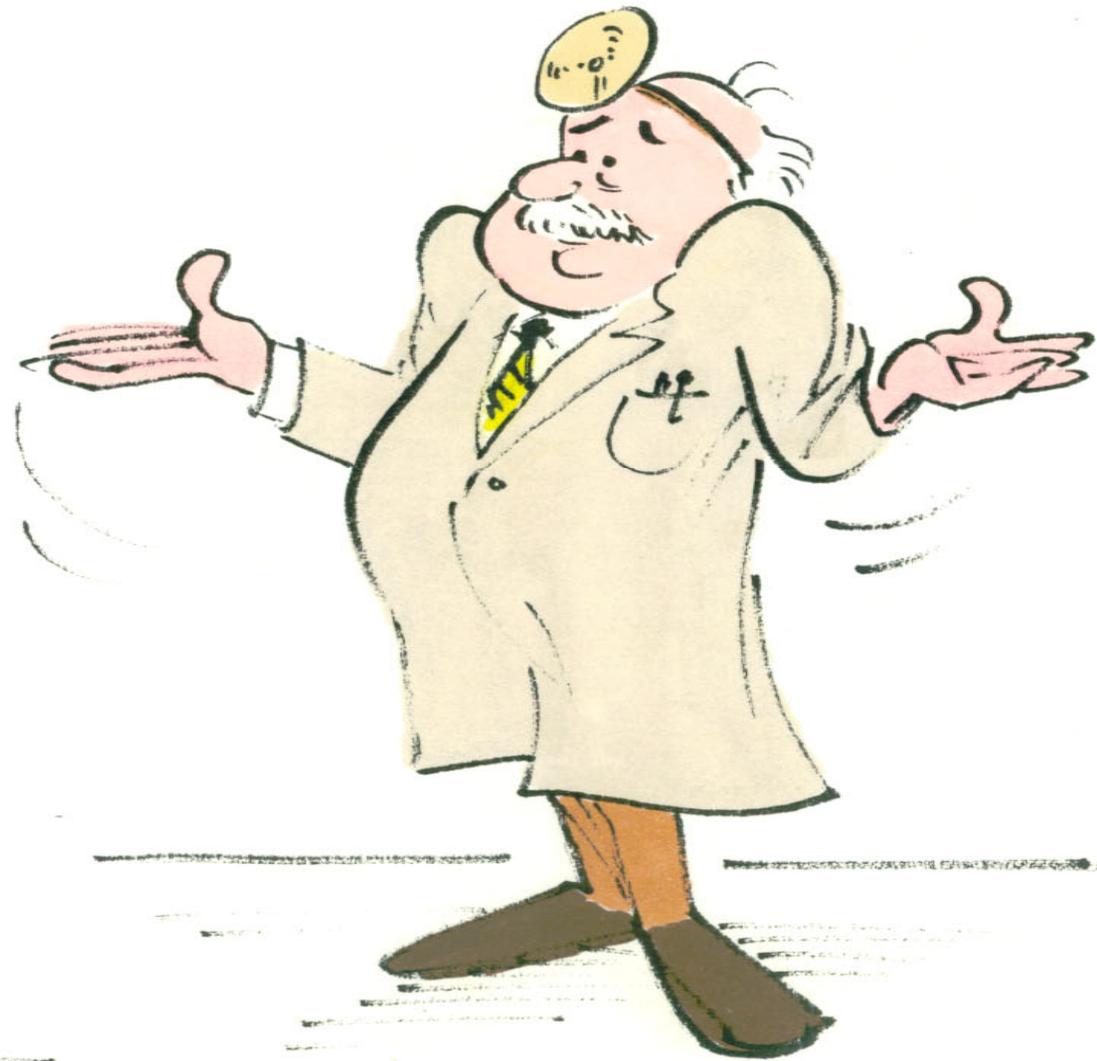
Perceived “onerous” contract clauses are more palatable if all group members sign, not just new hires.  
**Make sure that this is so.**

# Five Important Protective (Draconian) Contract Clauses

1. Termination without cause
2. Non-compete
3. Automatic resignation from all group's hospitals at end of employment
4. Full-time medical employment with group
5. Protection against sale/repossession of stock to/by an "outside entity"

# Termination Without Cause

1. For all group members – partners and non-partners
2. 66 2/3% vote of shareholders – affected; partner has no vote
3. Short termination time – 30-90 days; pay off individual and immediately end employment



# Non-Compete

1. Cannot work in any facility under contract with group at time of termination or in proximity to facility for a specified length of time
2. Time (2 years general; 5 years group facilities) and Geography (miles or counties)
3. Remember to include teleradiology in your non-compete provision

# Most Important Reason for Non-Compete

- The most important reason for a non-compete is not to keep a radiologist from competing with the practice (although that is one reason for having a non-compete clause).
- **The most important reason is to prevent the hospital from cherry-picking the group.**

# Automatic Resignation From All Group's Hospitals at End of Employment

1. For partners and non-partners alike
2. For retirement or termination
3. Pre-signed Power of Attorney for CEO of group to do this if individual doesn't perform

# Full Time Medical Employment with Group

1. All patients of radiologist are patients of the group. Group retains all rights to bill for services and owns any records and other material relating to patients.

# Full Time Medical Employment with Group

2. Radiologist is in the full-time practice of medicine as an employee of the group. All income earned – i.e. lectures, medical-legal, royalties, etc. – belongs to group (can exempt stock, real estate, etc.).

\*Sometimes there are variations to this provision; sometimes it is eliminated. The point is that it should be discussed before it is an issue.

# Protection Against Sale/ Repossession of Stock

1. Shares are worth far more than redemption value, because buy-ins and buy-outs are usually kept artificially low.
2. Upon termination or death, the stock should not be able to be sold to any entity or person other than the group.
3. If a partner declares bankruptcy or gets divorced, the stock must be protected from creditors or significant others.

# The Need for a Sixth Contract Clause!

A practice member must reimburse the group for any expenses incurred by the group on behalf of, or as a result of, the actions or practices of the member.

\*This does not include malpractice costs.

# Practice Policies

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## 1. Leave

- family
- medical
- sabbaticals

## 2. Impairment

- substance abuse
- psychological
- eroded skill sets

# Practice Policies

## 3. Behavioral Issues

- rudeness
- absence/habitual tardiness
- acting contrary to interests of group

## 4. Sexual harassment/creation of a hostile work environment

# Practice Policies

5. Nepotism/fraternization
6. Partial retirement/altered workload
7. Productivity and/or practice-building expectations
8. Disability

Because any action will set a precedent, policies (guidelines) should be in place before they are needed. Otherwise, the consequence for breach will either be too punitive or too permissive.

# Consequences for Breach

# The “Or/Else” Factor

1. There must be a meaningful consequence if a policy is not adhered to by a practice member.
2. The consequence may vary from one policy to another, but cannot vary from one individual member to another.

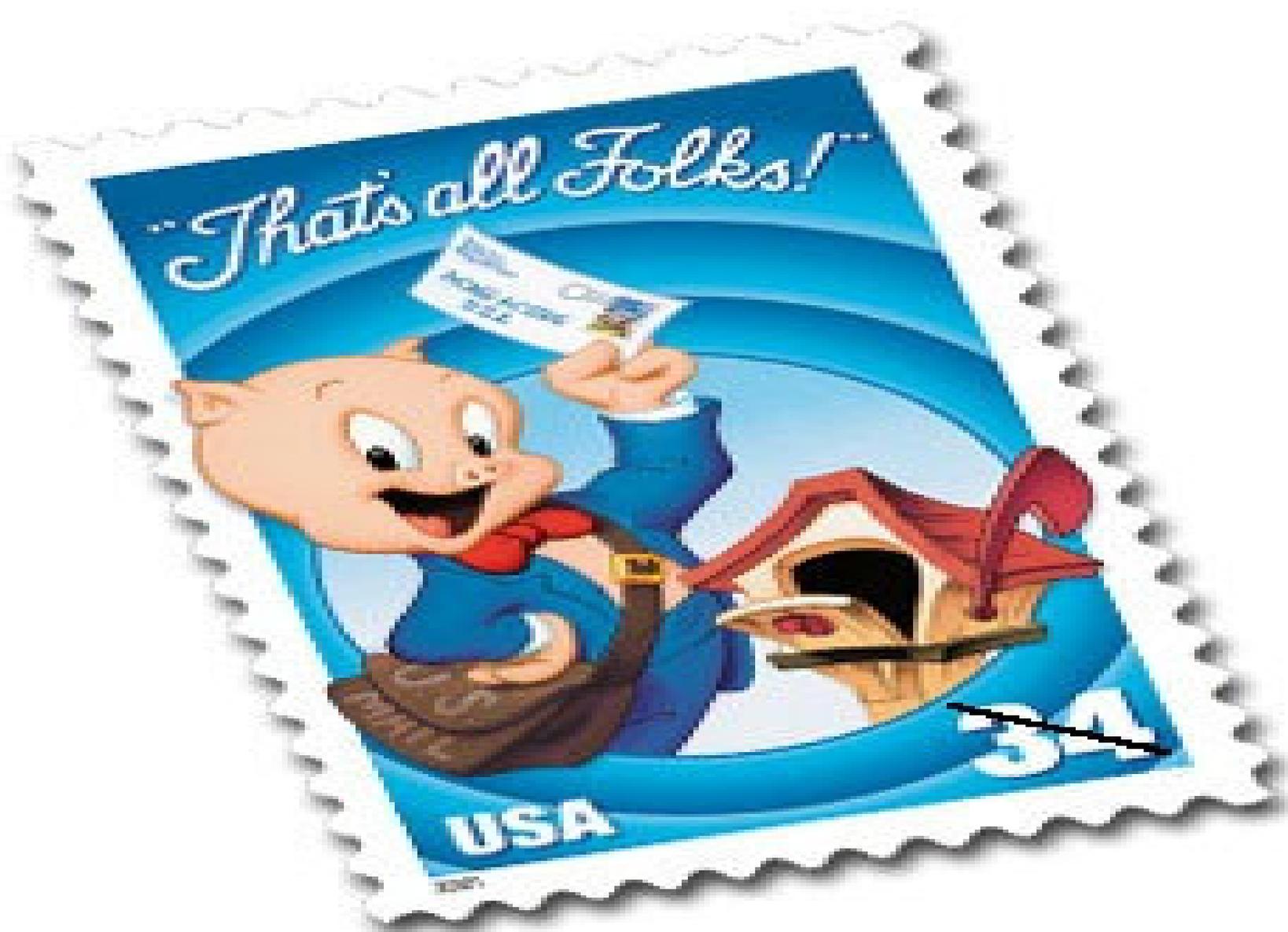
# What Might be Considered “Meaningful”?

1. Significant monetary fines
2. Extra call (night and/or weekend)
3. Less vacation
4. Termination

For some policy infractions the consequences of infractions may be measured and graded; for other policy infractions there might be a zero tolerance response. The key is that all members are treated the same.

# Take Home Points

1. Your contract will contain several Draconian clauses
2. You will not be able to change the contract because **everyone else has signed a similar contract**
3. Make sure that this is so
4. Most practices will not have prospectively implemented policies (or consequences for their breach) in place- although they should



*That's all Folks!*

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