

Chapter 11

When Things Don't Go as Planned



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As 2020 showed us, things do not always go as planned. It may be a change affecting the global landscape, or it may be a hiccup in your corner of the world. Sometimes there is an easy fix, and sometimes there is not.

During your transition out of residency, the biggest hiccup comes from not fully understanding the contract you signed. Before signing anything, read and understand every line. It may be a standard contract, but it can be helpful to have it reviewed by a lawyer. Contracts usually spell out course of action for the more common sticky situations, and most of the answers to the scenarios below will be found in the fine print of the signed contract. (Please note this is not intended to replace the advice of a lawyer.)

1. *You signed the contract, but you choose to not start that job:* Most groups want to have willing employees, and a simple direct conversation can often resolve the situation but not always; often it depends on why you want to void the contract. Breaking a contract to go to a neighboring group is different than breaking a contract for, say, family needs. For example, you signed a contract with group 1, but found a better job in the area group 2. You tell group 1 you are no longer joining but going with group 2. Group 1 sues you for breach of contract and invokes the noncompete clause in your contract (state dependent). This has happened.
2. *You signed the contract, and they no longer need you:* Most employment contracts have a “Force Majeure” clause. This releases the parties from contractual obligations and liabilities if unforeseen events make performance under the contract impossible. Parties are excused from performance as long as the unforeseen event is happening. But after the unforeseen event, the contract is valid again. The graduating class of 2020 had quite an unforeseen event. There were residents

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who had signed contracts but didn't start because of the impact COVID; elective surgeries in some areas came to a halt for months.

3. *You are dismissed:* No one goes onto a contract expecting to be terminated, but it happens. Most contracts have a 3–6 month probationary period; you are not guaranteed employment beyond that period. Once you are hired, you may have a renewable contract or heading toward partnership. A dismissal may take the form of a contract not being renewed, or it may take the form of a mid-contract termination. Understanding the procedures and protocols around dismissal is key. You could be doing everything right but still be dismissed from your contract. For example, a group was offering “too good to be true” compensation for working at a local hospital. Deep in the contract it stated, “Physician could be terminated at any time for any reason with 10 days notice.” In this particular case, the hospital’s prior group left, they needed coverage quickly, and this “too good to be true contract” was a band-aid until they could hire at a lower rate.

Other than the partners who have bought into a practice, most contracts have obvious renewal points that make for easy termination. For example, many appointments renew every 2 years; rather than firing someone outright, a group may simply choose not to renew a contract or to renew with unacceptable terms (e.g., salary reduction or increased work hours). Most contracts allow for a 90-day notice outside these natural breaks. Dismissal due to concerns surrounding job performance is a complicated legal morass potentially affecting future employment and licensing. Be sure to read and understand the circumstances for termination beyond the care you provide.

4. *Time to leave:* As with many relationships, there may be a time to move on. The cleanest way to move on is to leave at a natural breaking point in the contract (e.g., don't re-sign contract) with as much advanced notice as possible. If circumstances do not allow you to wait for a natural break, your original contract should detail steps to be taken for leaving early. An early departure may not be without significant consequences (e.g., buying your way out of the contract). Take care to review any noncompete clauses. Not all states honor noncompete clauses, and those that do usually enforce for only 1 year (cannot keep a person from working forever). But working through all that can be time consuming and financially draining.
5. *Your group gets bought out:* There is a growing trend for smaller private groups to be bought out by larger corporate groups. These buyouts frequently involve significant payouts to the partners (owners) and salary cuts for the rest. Part of the buyout negotiations may involve temporary contract guarantees, but frequently it means eventually wiping the contract slate clean.
6. *Need for an extended leave:* This is very group and contract dependent. You may or may not have a guaranteed job after an extended leave.
7. *A pandemic happens:* Depending on your specialty, you may be in higher demand, but for many the demand has decreased. Graduating residents have seen start dates delayed and contracts canceled as well as delays to access to board exams. Having an open direct conversation with your future employer is your best option.