Basics of Contract Negotiations

Negotiating a contract can potentially be an anxiety provoking task, but it also can result in major rewards. My own approach to negotiating contracts for physicians is to be assertive yet willing to compromise to achieve the most effective results. The keys to successful negotiations are perseverance and creative thinking. Practically, every written contract can be improved with the addition or enhancement of any of the provisions therein. At the end of the negotiation process, all parties involved should feel like they reached a solution in their favor.

The following are some specific tips for the initial stages of negotiating contracts:

1. Before you interview for a job, always explore the marketplace to determine the salary range in your field. Network with as many people in your field of expertise (e.g colleagues, friends, old professors, attendings, and acquaintances); cold call other professionals working in the area you want to work; and browse the internet.

2. Be patient with your employer and do not be too eager to inform them what you are worth. Your patience may just pay off. If you do not receive your desired offer, do not become agitated. Rather, realize that negotiating contracts is a process. If you accept your employer's offer too early, you may be undermining the whole negotiations process resulting in diminishing returns. The end result will be a contract that is less favorable to your interests.

3. When you are offered an interview, research the organization by reviewing their websites to determine whether the organization is amenable to negotiations. If you learn that their offers are firm and inflexible, then you have to craft changes to the contract to improve other benefits -- money given to achieve CME credits, paid vacation time, sick leave, transportation allowances, relocation expenses, stock options, partnership requirements, or malpractice insurance.

4. When reviewing a contract, please be advised that all parties' expectations must be explicit. Nothing should be left to the imagination. All the benefits and penalties should be outlined.

5. It is understandable that you want to keep things amicable with your employer. However, do not forgo significant benefits because you are concerned that you will offend your employer by your requests. Employers hope that you will be nervous and weak. Be friendly, but remember what is important to you and realize that this is the time for you to address all of your concerns.

6. When reviewing contracts, always know what you want achieved at the end of the negotiating process and know that, if you do not get what you want, you always have the option to walk away. Keep your goals clear and do not become a victim of indecisiveness.

7. It is crucial that you understand some important laws of the state you choose to work in to determine the validity of some key terms of your contract. For instance, some states do not enforce restrictive covenants. Many times contracts include terms that are not legally binding but included for effect. Employers are hoping you will not perform your due diligence and will sign it.

8. It is important that you understand the types of medical malpractice insurances in the marketplace and realize what your employer is providing. There are essentially two types: Claims-made policy and Occurrence-based policy. Claims-made policy is coverage that will respond to incidents arising on or after the policy start date and which are reported during the term of the policy. Occurrence-based policy is coverage that will respond to incidents arising from the coverage period regardless of when those claims are reported. Under the latter policy, no tail coverage is needed because incidents that occurred during the policy period are covered no matter how much later they are reported. Occurrence coverage tends to be very expensive because the insurer is pre-paying for the tail costs whether the tail gets used or not. These days insurance companies have made hybrid policies, so you must understand what the employers are providing and what you will ultimately be responsible for in terms of pay outs.

9. There are various ways in which employers deal with the payment of tail coverage. The first option available is that the cost of such tail coverage can be placed onto one party or the other. Some physicians and physician groups are simply splitting the cost of tail evenly (or by some other percentage) with the physician-employee. Obviously, an even split would result in equal risk sharing on the part of the employer and employee for the payment of the tail. Other employers link the payment of tail coverage to the manner in which employment was terminated. Employers may phase in the payment of the tail, such as the employer pays one-third of the tail if employment ends in the first year, two-thirds of the tail if employment ends in the second year and all of the tail if it ends in the third year or later.

10. Physicians must be aware that their employment agreements do not in any way violate tax-exemption laws, anti-kickback statutes, Stark Law, and other such regulations. The main objective of the anti-kickback statutes, criminal statutes, is the acceptance of anything of value in exchange for referrals which are paid for, in whole or in part, by any federal health care program. Similarly, Stark Law, a civil statute, prohibits referrals for certain designated health services by healthcare providers to entities in which they have a financial interest, unless certain exceptions are met. Thus, it is very important to review the referral structure in your contract to make sure that you will not be in violation of these statutes. These statutes do provide some protections and allow for certain types of relationships. The key is to be compliant with the safe harbors.

11. The employment contract is a powerful document that can often be approached creatively to benefit you before, during, and after your actual duration of employment. Physicians should take it seriously, even though initially the process may seem intimidating and even overwhelming when faced with some formal legal and financial language. It is very important for you to fully understand everything that is in your contract prior to signing.

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