

# **Contract Negotiations: A Primer for Surgeons**

*Financial Lectureship Series  
Resident and Associate Society – American College of Surgeons (RAS-ACS)  
Education Committee*

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## ***“Like it or not, you’re a negotiator”***

- *Getting to Yes – Roger Fisher and William Ury* -

Often without realizing it, we enter in negotiations daily. With the rapid changes in technology and the flattening of the hierarchy, negotiation practices have changed dramatically. The Education Committee of the Resident and Associate Society of the American College of Surgeons (RAS-ACS) recognized the need to train residents and junior faculty in fundamental basics of financial independence from which came the financial lectureship series. One key component is contract negotiation.

In the “contract negotiation” segment of the financial lecture series, we hope to arm you with knowledge - the basics of negotiation, the vocabulary of contracts, and the components of a surgical contract - to allow you to become savvy in your own personal contract negotiations.

Reading through this, remember the two most important things:

- (1) you are worth it and must advocate for yourself
  - (2) without negotiation there can be no change.
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### **I. THE BASICS OF NEGOTIATION**

Though the term “negotiation” has long carried a negative or contrarian connotation, this is not by necessity true. Indeed, with the aid of these points below and some of our references, you should be able to make negotiating a constructive endeavor and apply it broadly in your career and life. Many who struggle with negotiation are either too conceding and feel exploited or too strong willed and cause tension amongst their relationships. Fisher and Ury in “Getting to Yes” instead propose the concept of *principled negotiation* – negotiating for mutual benefits when they exist, and on the merit of the issue by a fair standard when there is conflict.

#### *1. You are negotiating a problem, not a person.*

Meaning: Focus your energies primarily on the problem at hand while remaining respectful to the people and emotions involved. Instead try to approach the problem from the same side as if you are both attacking it together to come up with a mutual gain. These problems when it comes to contracts could be salary, benefits, call requirements, etc.

Conflict during negotiation often arises from differences in perception. However, the relationship between parties is often the most important outcome in the long term. Approaching the issues from the same side of the table (attempting to find a situation that benefits both parties) rather than acting as adversaries will preserve the working relationship.

Things to Do:

- Speak to be understood, rather than to persuade or debate. Be honest about what you want and why rather than attempting solely to convince.

- Ex: If you want Saturdays protected due to childcare needs, rather than convincing the employer that weekend call is unacceptable, explain to them your primary interest of having Saturdays protected and your reasons why.
- Similarly, put yourself in the other party's shoes – this does not automatically mean that you must agree with them, but rather attempt to understand their position to guide your negotiation. Ask the employer why they require something or what is valuable to them in a new employee.
- Acknowledge areas of agreement – instead of ignoring areas of agreement as not relevant for negotiation, emphasize them to show support and mutual benefit. Furthermore, give credit to the other party where credit is due to garner engagement.
  - Ex: If you both agree on the benefit plans, acknowledge it to express understanding and support.
- Create a proactive setting – communicate in private and limit the size of the group as much as possible.
- Practice active listening – listen without thinking about your response.
- If negotiations turn negative, recognize and share the emotions. Emotions are often driven from five core concerns: autonomy, appreciation, affiliation, role, and status. Share your own emotions to make them explicit, allow the other party to do the same, and then refocus on the problem/interests over the emotion. An apology (even without accepting personal responsibility) can go a long way in diffusing emotions.

#### Things to Avoid:

- Do not threaten the employer's identity (unkind, unfair, biased, incompetent)
- Speak about yourself, not the other party. Use "I" statements, not "You." This will avoid defensive reactions.

#### 2. *Do not engage in position bargaining (a game of willpower), instead focus on true interests*

Meaning: Position bargaining refers to the idea of coming up with a position first, one that might not truly reflect your interests, and engaging in negotiation comprised of back-and-forth, little-by-little concessions. This wastes time, ruins relationships, and may not achieve good results. Rather be honest with your interests, do not undersell them, and focus on those rather than a bottom-line position.

#### Things to Do:

- Identify your true interests - before sitting for a negotiation, determine what is most important to you (research time, patient interaction, education, etc.). Lean on other stakeholders and decision makers in your life to assist you.
  - Ex: you might realize that what is most important to you at a new job is the dedicated research/education time, or limited call so that you can enjoy family life. Knowing those needs going in will help negotiations be problem/interest based.
- Develop a BATNA or "best alternative to negotiated agreement" – this is your fallback position or walk away point or alternative that will define the end of your negotiations.
  - Ex: Develop your bottom line of what you require after which you realize that negotiations will not improve.

- Make a list of deal-makers and deal-breakers.
- Do your research - in the same regard, try to understand the deal-makers and deal-breakers of the other party.
  - Ex: What are they looking for in a new employee? Surgical care expectations, call expectations, educational responsibility, etc.
- Be specific - impart the seriousness of your concerns without blame or disregarding the other party.
- Be flexible – use suggestions rather than positions.
- Speak to problems before outcomes - when negotiating, speak to the problem and reasons before your solution. If you state your intended outcome first, they might not listen further.
  - Ex: Do not come into a negotiation with the stance that you will not accept a salary below \$X. Rather focus on expressing your interests such as needing a salary that will cover supporting your children or loan repayment. When you approach the negotiation with interests/needs rather than a position, you may be able to come up with creative ways to satisfy both parties such as \$X in benefits instead.
- Always include the other party in the process of making outcomes
  - Ex: Set up negotiation meetings regarding problems/interests such as desiring a secondary degree and allow a joint process of determining the solutions.

#### Things to Avoid:

- Be flexible and use suggestions rather than positions.
- Do not assume that all members of the other party have the same interests.
- Do not get stuck in the past (actions, previous grievances, someone else's contract or salary), focus instead on the future outcome intended.

### *3. Seek multiple options for mutual gain, before deciding.*

Meaning: Do not fixate on one solution that works for you. Rather, be creative and come up with multiple options with the goal of seeking mutual gain. Then work together to decide on the best path. Often times this must be done on a separate day, separate time where there is no pressure and parties are meanwhile allowed to think of creative solutions rather than concede or fight.

#### Things to Do:

- Search for multiple answers with many possibilities, as creatively as possible before narrowing down a decision
- Search for mutual gains - in a negotiation, it is not win-lose. In fact, both parties can lose, just as both parties can win.
- Identify shared interests – they are often not apparent and can be strong opportunities and a way to make negotiation smoother.
- Create brainstorming sessions with your party, especially joint sessions – tips for brainstorming sessions include first defining your purpose, changing the environment to a more informal and new place, having a good facilitator, keeping criticism or judgement for later, arranging seating so that all face side-by-side rather than across from each other,

recording all ideas in full view, later whittling down to the better ideas and improving upon them. Usually set up a separate date/time to evaluate the brainstormed ideas.

- Invent ways of making their decision easy - put yourself in their shoes and look at it from their point of view. Then shape the decision as legitimate (fair, honorable, etc) and consistent with the other party's previous decisions or precedents.

Things to Avoid:

- Avoid premature judgment of ideas for solutions. This hinders imagination and seeking of further solutions. Rather, invent first and decide later.
- Do not think that "solving their problem is their problem." This leads to unilateral solutions that are not well received.
- Do not ignore differing interests - identify things that are low cost to you and high benefit to them that can help lead to mutual decisions.
  - Ex: Your interests might be have protected time for research while not worrying too much about taking one or two extra calls. Low cost to you is the extra calls but might be of high benefit to them, making them more favorable in protecting your research time.

#### *4. Negotiate terms using an objective standard.*

Meaning: This is most important when interests are conflicting. Insist that some objective standard (outside expert opinions, institutional standards, market price, law) serve as the ruler for the outcome.

Things to Do:

- Identify or develop alternative objective standards well in advance so you are prepared for your negotiation. Keep in mind that fair can mean many different things to different people.
  - Ex: use existing salary standards, call requirements from similarly institutions, expected dedicated research time for someone who has a grant.
- Neutral parties may be helpful – arbitrator, mediator, expert advice.

Things to Avoid:

- Avoid picking an objective standard that is fair only to you rather than universal.

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## **II. NEGOTIABLE COMPONENTS OF A PHYSICIAN CONTRACT**

The major negotiable sections of a physician contract include compensation, schedule, and contract duration. To note, however, is that you never know if something is negotiable until you ask.

Major:

1. Compensation – ensure this is comparable to similar jobs in the region. Assess how incentive salary is calculated and if you would apply.

- Base Salary versus incentive compensation
  - Impacts on salary – productivity, quality, cost
  - Benchmarks you will be measured against
2. Benefits
    - Health insurance for the employed physician (and possibly for family members)
    - License fees
    - Medical staff dues
    - Stipend for continuing medical education (CME)
    - Malpractice insurance
      - i. Better option: occurrence-based - covers incidents that happen during the coverage year, regardless of when a claim is filed.
      - ii. Claims-made coverage - covers claims filed during the coverage year. You will likely need additional "tail coverage" when your employment ends, for incidents that happen during employment but are litigated after your employment ends.
    - Retirement plan/401k/403b plans
    - Moving expense allowance (if you're taking a position in a different area)
    - Educational loan forgiveness
  3. Schedule/Clinical Duties – are often nonspecific in contracts which can lead to a lot of flexibility on the employer part and risk to you. Get the specifics always in writing.
    - Call requirements – make sure these are consistent with other similar jobs, ensure limitations to weekends and holidays in text
      - i. Ask regarding compensation for additional call
      - ii. Part-time call options if applicable
    - Coverage
    - Back-up
    - Work relative value units (wRVU) expectations
    - Protected time
  4. Administrative Duties
    - Promotion/Tenure requirements
    - Academic allotment/professional development funds
    - Dual degree programs/coverage
  5. Leave
    - Paid time off (PTO) – often three to four weeks and covers a combination of vacation, continuing medical education (CME) time, and sick time. Important to recognize how this might be affected if your compensation is based in part on productivity.
    - Sick – paid sick leave is less common
    - Family and Medical Leave (FML)
    - Maternity/Paternity
    - Vacation
    - Professional development/CME
  6. Termination Provisions

- Termination for cause – be sure to ask regarding opportunities to remediate the deficiencies or causes for termination prior to and written notice with a reasonable time period (ex: 5-30 days)
- Termination without cause – often included, a notice is required but then your term is limited to that notice period (ex: 30-90 days)
- Minimum term – contractual obligation both ways!
- Restrictive Covenants or Non-Compete – some states do not allow these to be enforced, but might otherwise allow non-solicitation provisions.
  - i. Limitations to duration – often 1-2 years
  - ii. Limitations to geographic radius – dependent on urban or rural setting
  - iii. Ask regarding limited circumstances in which the restrictive covenant can be applied.
  - iv. Ask regarding locations, providers, time-period, etc.

Other:

1. Tuition forgiveness
2. Signing bonus/forgivable note
3. Local market
4. Compensation structure
5. Upfront compensation prior to clinical practice
6. Creature comforts
  - a. Office space
  - b. Dual monitors
  - c. Home office

### III. PRACTICAL STEPS FOR PHYSICIAN CONTRACT NEGOTIATION

1. Read the contract thoroughly.
2. Make sure the contract is specific regarding expectations, schedules, compensation benefits, etc.
3. Be prepared in advance. Research the compensation of other similar jobs in the area.
4. The first interview is to understand the culture and your fit. The second interview is to gain details of interests and negotiate.
5. Prepare questions in advance. Don't be afraid to ask questions and ask the right questions
  - How is compensation structured?
  - Is there a non-compete? (duration/location/specific facilities/employers)
  - What are the expectations?
6. Mirror the communication style of the employer.
7. Have a justification for everything you are asking for.
8. Use an attorney/firm
  - Can read the fine print and make sure you have a fair offer
  - Can compare your offer to similar reasonable alternatives
  - Understand the trends in the local market
  - Can help you focus your negotiation on your particular interests
  - Might have inside knowledge on that exact employer from previous experience

9. If it is not in the contract (in writing), it does not exist
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#### IV. TAKE HOME POINTS OF NEGOTIATION

- Negotiation is expected!
  - Approach negotiation positively
  - Speak about yourself and your interests honestly and specifically
  - Do not cast blame
  - Do not use other people as examples
  - Try to prevent emotions/miscommunications as best as possible
  - Build a working relationship – get to know the other party informally to develop rapport
  - Have a lawyer review your contract
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#### V. RESOURCES

##### Negotiation Resources

1. Fisher R, Ury W, Patton B. Getting to Yes : Negotiating Agreement without Giving In. Edition 3. 1991. Boston :Houghton Mifflin. [https://www.amazon.com/Getting-Yes-Negotiating-Agreement-Without-ebook/dp/B0051SDM5Q/ref=sr\\_1\\_1?dchild=1&gclid=Cj0KCQjwtrSLBhCLARIsACh6RmhEwACRbT\\_HY29eosOCOPwRASue5OblvOs9nt-nggCyA8xj4dyXzFMaAivLEALw\\_wcB&hvadid=241631318136&hvdev=c&hvlocphy=9026906&hvnetw=g&hvqmt=e&hvrnd=16229302654285950146&hvtargid=kwd-58689666&hydadcr=21873\\_10169656&keywords=getting+to+yes&qid=1634586960&sr=8-1](https://www.amazon.com/Getting-Yes-Negotiating-Agreement-Without-ebook/dp/B0051SDM5Q/ref=sr_1_1?dchild=1&gclid=Cj0KCQjwtrSLBhCLARIsACh6RmhEwACRbT_HY29eosOCOPwRASue5OblvOs9nt-nggCyA8xj4dyXzFMaAivLEALw_wcB&hvadid=241631318136&hvdev=c&hvlocphy=9026906&hvnetw=g&hvqmt=e&hvrnd=16229302654285950146&hvtargid=kwd-58689666&hydadcr=21873_10169656&keywords=getting+to+yes&qid=1634586960&sr=8-1)
2. Ury, William. Getting Past No: Negotiating with Difficult People. New York: Bantam Books, 1991. Print. [https://www.amazon.com/Getting-Past-Negotiating-Difficult-Situations/dp/0553371312/ref=sr\\_1\\_2?dchild=1&keywords=Getting+Past+No%3A&qid=1634586977&sr=8-2](https://www.amazon.com/Getting-Past-Negotiating-Difficult-Situations/dp/0553371312/ref=sr_1_2?dchild=1&keywords=Getting+Past+No%3A&qid=1634586977&sr=8-2)
3. Stone, D., Patton, B., & Heen, S. (2000). Difficult conversations: How to discuss what matters most. New York, N.Y: Penguin Books. [https://www.amazon.com/Difficult-Conversations-Discuss-What-Matters/dp/0143118447/ref=sr\\_1\\_1?dchild=1&keywords=Difficult+conversations%3A+How+to+discuss+what+matters+most&qid=1634586992&sr=8-1](https://www.amazon.com/Difficult-Conversations-Discuss-What-Matters/dp/0143118447/ref=sr_1_1?dchild=1&keywords=Difficult+conversations%3A+How+to+discuss+what+matters+most&qid=1634586992&sr=8-1)
4. McCarthy W. The Role of Power and Principle in Getting to Yes. Negotiation Theory and Practice, Eds. J. William Breslin and Jeffery Z. Rubin. (Cambridge: The Program on Negotiation at Harvard Law School, 1991), 115-122. <https://www.amazon.com/Negotiation-Theory-Practice-William-Breslin/dp/1880711001>



1. Harvard Negotiation Project. Harvard Law School. Available from: [https://www.pon.harvard.edu/category/research\\_projects/harvard-negotiation-project/](https://www.pon.harvard.edu/category/research_projects/harvard-negotiation-project/)
2. Conflict, Feedback, and Negotiation for Leaders in Academic Health Centers. Harvard University. Available from: <https://online-learning.harvard.edu/course/conflict-feedback-and-negotiation-leaders-academic-health-centers?delta=0>
3. Fundamentals of Physician Leadership: Negotiation. American Association for Physician Leadersip. Available from: <https://shop.physicianleaders.org/products/fundamentals-of-physician-leadership-negotiation>

### Physician Contract Negotiation Resources

1. Physician contract negotiation: A comprehensive guide. CompHealth Blog: Career Resources. July 19, 2019. Available at: <https://comphealth.com/resources/physician-contract-negotiation/>
2. Contract Negotiation – Ten Tips From the Trenches. The White Coat Investor: Contracts, Practice management. August 3, 2016. Available from: <https://www.whitecoatinvestor.com/contract-negotiation-ten-tips-from-the-trenches/>
3. Physician contract negotiation: A comprehensive guide. CompHealth. July 19, 2019. Available from: <https://comphealth.com/resources/physician-contract-negotiation/>
4. Physician Employment Contract Guide. American College of Physicians. Available from: [https://www.acponline.org/system/files/documents/running\\_practice/practice\\_management/human\\_resources/employment\\_contracts.pdf](https://www.acponline.org/system/files/documents/running_practice/practice_management/human_resources/employment_contracts.pdf)
5. Employment contracting. American Academy of Family Physicians. Available from: <https://www.aafp.org/family-physician/practice-and-career/managing-your-career/contract-negotiations.html>
6. Tips for negotiating employment contract. American Medical Association: Available from: <https://www.ama-assn.org/residents-students/career-planning-resource/tips-negotiating-employment-contracts>
7. Colagiovanni J. Physician Employment Contracts: The Good, The Bad and The Ugly. The Student Doctor Network. July 13, 2015. Available at: <https://www.studentdoctor.net/2015/07/13/physician-employment-contracts-the-good-the-bad-and-the-ugly/>
8. Byington M. Negotiating Your First Contract as a Physician. The Student Doctor Network. November 29, 2016. Available at: <https://www.studentdoctor.net/2016/11/29/112916-negotiating-first-contract-physician/>

### Contract Lawyer Resources

1. Physician Contract Review & Negotiations. Contract Diagnostics Physician Contract Reviews. <https://contractdiagnostics.com/>
2. Finding a lawyer to review your contract. American Medical Association: Career Planning Resource: Available at: <https://www.ama-assn.org/residents-students/career-planning-resource/finding-lawyer-review-your-contract>

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