

ADVENTURES IN MEDICINE

Career & Life Planning

Survival Guide



***Contract
Negotiation***

Discovery Resource

ST-08



**Your Employment and
Negotiation Guide:**

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**Your Employment and Negotiation
Guide:**

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In This Stage: Contract Negotiation

Is riding an elephant in your contract?

An important task for any expeditionary team is to negotiate a deal with a benefactor. Benefactors set the goals and guarantee funding to make sure the team has what they need, (like elephants, airplanes, Sherpas or pack burros). With a good benefactor, like a good employer, everyone gets paid.

While you won't have a benefactor or necessarily need to ride an elephant to work, you will negotiate a contract with your employer.

How do you negotiate a contract? Can you mess up getting that perfect job in your negotiation?

YES, many have and with great **REGRET**.

In this stage we'll discuss negotiating your contract, the terms and compensation structures.

Don't make a dumb mistake.

Get help. Get smart. Get ready to negotiate.

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GUIDE POINTS

Negotiation Etiquette

- Move on to the contract negotiation stage only if you are prepared and confident to accept the position!
- Do not burn bridges by indicating to the employer that you will accept the job offer when in reality you are unsure. This hurts you, the employer and other candidates vying for a potential position with the employer.
- The time to negotiate the essential business terms of the offer letter is when you receive the offer letter, not after the formal contract is sent to you to be finalized.
- The verbal acceptance or offer letter acceptance is pending a successful review of the contract agreement.
- Keep in mind that you should not try to negotiate all the material terms of employment during the contract review stage.
- Remember that the manner and timing of accepting an opportunity is as important as whether to accept it at all.

Getting Started on the Right Path

Residents who are pursuing their first job are typically unfamiliar with the contract negotiation process, and they are also unlikely to know who to trust, especially when each hospital and group has its own persuasive "**SPIN**." As a result, you can become defensive, stressed and frustrated with the process. In extreme cases, there is a temptation to overstep your bounds, leading to a rescission of your "**DREAM OFFER**" and causing you to walk away with nothing.

Certainly, there is an opportunity to negotiate an employment agreement offered by a potential employer; however, it's important to have an appropriate perspective of the content and purpose of the agreement provisions so that the negotiation can be done in an **AMICABLE** and **EFFICIENT** manner. Employment contracts are legally binding documents that reflect work arrangements, including rights, compensation, benefits, process for termination, and post-employment obligations. Once signed, contracts require **MUTUAL AGREEMENT** to change, so they should be understood and revised, if needed, before signing.

Negotiating to Win: A Two-Way Street

One of the most **EXCITING** and perhaps **NERVE-WRACKING** times in a physician's life is being offered your first position and negotiating your first employment contract. Rightfully so, you deserve to enjoy being pursued as you've trained most of your adult

life to become a physician. However, the excitement can turn into stress, which can lead to poor decisions. Gaining perspective on employment agreements and the risk-benefit provisions they contain for each of the parties can go far to keep the first offer and employment agreement negotiation a very positive experience.

Graduates entering the market may be pursued by several hospitals or physician practices because of the shortage of physicians. It is not uncommon for a resident to have many opportunities to choose from. Residents talk among themselves and it's easy for them to be influenced by all of the comments that **APPEAR** to place them in the driver's seat of employment negotiations.

Take a look at four residents and what really happened in each scenario.

RESIDENT	ONE SIDE OF THE STORY	THE OTHER SIDE
A	Received \$50,000	Documented in contract as a loan forgiven over five years with payback provision for early termination.
B	Negotiated non-compete clause out of agreement	Traded income guarantee. Working in a less desirable area.
C	Her attorney rewrote the hospital's entire agreement.	Hospital rescinded offer.
D	Received four offers.	Four potential employers expressed interest. Only one extended an offer, which was way less than what the physician had hoped for.

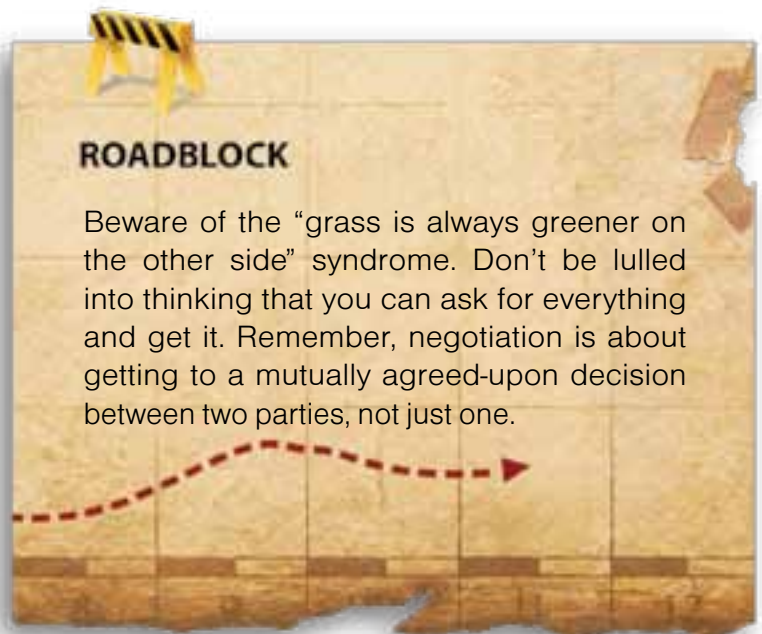
Remember, there are two sides to every story.

OFFER LETTER

An offer letter lists the material terms (such as compensation, insurance, paid time off, etc.) of the employment relationship. While acceptance of an offer letter can serve as a binding contract, when a formal contract is anticipated, the offer letter typically states that it is non-binding and subject to the execution of a formal contract.

WHEN A CONTRACT IS DRAFTED

A draft contract is typically provided when the



candidate is ready to accept a position. At that point, the terms of the offer have been verbally accepted and the parties are ready to execute an agreement in writing. An offer letter may first outline the material terms that have been verbally accepted. Then, a formal contract is drawn up and becomes effective upon execution by the parties.

MOVING FORWARD WITH A CONTRACT

The employer will generate the proposed contract. An employer will generally not move to the contract stage unless you have indicated a willingness to accept the offer. From the employer's perspective, when a candidate agrees to move to the contract stage, the position may be considered filled, causing the employer to stop interviewing. The goal of some candidates is to collect a number of agreements before deciding which one to take. While this approach may be rewarding to the ego, collecting contracts may provide a **FALSE** sense of security and control over a negotiation. If the employer finds out later that you have accepted another position, a bridge is almost certainly burned for any future opportunities. In addition, undecided candidates have less bargaining power than candidates who are fully prepared to accept an opportunity. The former may lose the chance to obtain key accommodations during the negotiation phase since they cannot create a sense of urgency for the employer to accept their terms.

Seeking Legal Counsel

Whether or not to seek legal counsel for the contract-negotiation process is an individual choice. Most people presented with an employment contract seek legal counsel, while some may feel comfortable talking through the clarifications and negotiations on their own. Each person must weigh the cost versus the benefit and then determine what is right for them.

An attorney helps interpret and translate the language of the agreement. More specifically, an attorney helps the physician address needs and interests in the contract, understand risks and responsibilities, identify key points for negotiation, and determine how to advance such negotiations. Generally, the attorney does not negotiate the agreement. Instead, you or your physician recruiter are responsible for this activity.

Being **CLEAR** and **PRECISE** with an attorney regarding your needs and expectations is the best way to avoid inefficiency or misunderstandings. For example, identify clearly whether the attorney, after reviewing the contract, will make recommended changes to the contract or merely provide comments for consideration. Sometimes an agreement is sent to the attorney with no instructions, and the attorney proceeds to mark it up or substantially rewrite it. As a result, the cost might be higher than anticipated and valuable time can be wasted.

In addition, many organizations have standard contracts that only permit changes to names and financial terms of the contract. In such cases, an attorney should not attempt to rewrite the agreement but should educate the physician as to its content and prepare the physician for the discussions that will occur before the contract is signed.

When communicating expectations to an attorney, consider saying something like the following:

“Please briefly review this agreement and contact me to discuss your initial comments and how best to proceed. I would certainly like to know about things that may stand out as unusual or may need further clarification or explanation.”

SELECTING AN ATTORNEY: TIME IS MONEY

The amount of time an attorney spends on a matter depends on such things as the length of the contract and whether the attorney is reviewing and commenting or rewriting the agreement. Before you commit to an attorney, you might ask them to estimate the time involved to complete the work requested.

There are three primary criteria for selecting an attorney:

1. Expertise

At a minimum, the attorney should be a specialist in employment law. Experience should also include dealing with physician employment contracts.

2. Hourly Rates

Legal fees can range from \$200 to \$600 an hour or even higher. It is far better to have effective representation from an attorney experienced in employment and healthcare law for four hours at \$500 per hour than less-effective representation from a less-experienced attorney for 12 hours at \$250 per hour.

3. Accessibility

The attorney should be available to meet with you and respond to your questions promptly.

When you send an agreement to your attorney, it's helpful to provide the following information, if available.

- Whether the agreement is the same essential document other individuals in the same department have signed.

GUIDE POINTS

Working with an Attorney

- Select and meet with an attorney prior to your first interview so that you can hit the ground running when you receive your first offer letter or proposed contract.
- Manage the attorney relationship up-front with reasonable guidelines and expectations for services.
- Gather all of your questions and concerns and address them all at one time, rather than initiating numerous separate dialogues. By doing so, you will hold down fees and ensure a meaningful discussion of all related issues in one or two discussions.

TRAILBLAZERS

"I found my dream job. I was excited, and so was my family. My wife placed a bid on a home that overlooked a lake. The community had a hockey field house, perfect for my six- and eight-year-old boys. I called my parents and told them I was finally starting my life. Then, the bottom fell out.

I got cocky and started negotiating terms that my colleagues had done with other hospitals. Inexperienced, I took the sign-on bonus my buddy negotiated, the starting salary of another one of my friends, the loan repayment with another, and tried to negotiate the non-compete (I thought of that one on my own).

What happened in the end was no counter offer was given. I was shocked and disappointed. My ideal employer called and shared with me, "We decided to go in a different direction." I immediately backtracked but the decision was already made. I had gotten caught up in the moment and I lost my way. I accepted a position with my third-choice employer after the second offer went to another candidate when I was negotiating the first."

- Whether the employer has advised you that the agreement is not negotiable.
- A deadline for the agreement review, comment and/or rewriting assignment. In general, agreements should be reviewed and signed within seven to ten days of being tendered. This means that the agreement should be reviewed with the attorney within a couple of days of receipt in case there are questions, clarifications or other concerns.

Negotiating a Contract

Effective communication is extremely important during the negotiation process because it is very difficult to go back and renegotiate terms once they have been agreed upon. In the event terms are not agreeable, you need to decide if you are **WILLING TO WALK** from the opportunity. It is important to be realistic in identifying deal-breaker points. Being willing to walk away is ultimately the best leverage available to a physician, but it is very difficult to wield and should be asserted very carefully. If compensation is most important and location is secondary, you should decline unacceptable offers in preferred markets and consider looking in secondary markets where there is much more flexibility in compensation.

WHAT'S NEGOTIABLE VERSUS WHAT'S NOT

In some agreements, none of the terms are negotiable, and in other agreements, some of the terms may be negotiable, including salary, signing bonus and start date. Other terms that may be negotiable are paid time off, relocation package and type of compensation structure.

As with so many matters, the market usually dictates whether terms of the agreement are negotiable. The more limited the supply of physicians in relation to the demand in a position, the more flexibility there is in negotiation.

Additionally, the geographic market may also play a significant role in whether there is room for negotiation. Opportunities in the Midwest tend to be more negotiable than opportunities in the Northeast, and rural markets tend to be more negotiable than metro markets in order to attract solid candidates. Mainly, negotiations depend on supply and demand — the higher the demand, the more likely that the opportunity is negotiable.

Learn from the employer which items are negotiable and which ones are not. Once you learn this information, select the items that you choose to negotiate very carefully. It's important not to appear over zealous or selfish. Both parties need to walk away from the negotiating table feeling like a **WINNER**, not a loser, disappointed in the results.

TIMEFRAME FOR NEGOTIATIONS

After you provide the terms that you would accept, the employer should be able to provide you with an answer quickly. If the employer comes back with a counter offer, you may have one more opportunity to go back and work out the details. The negotiations should not take longer than a few days if the negotiations are positioned the right way.

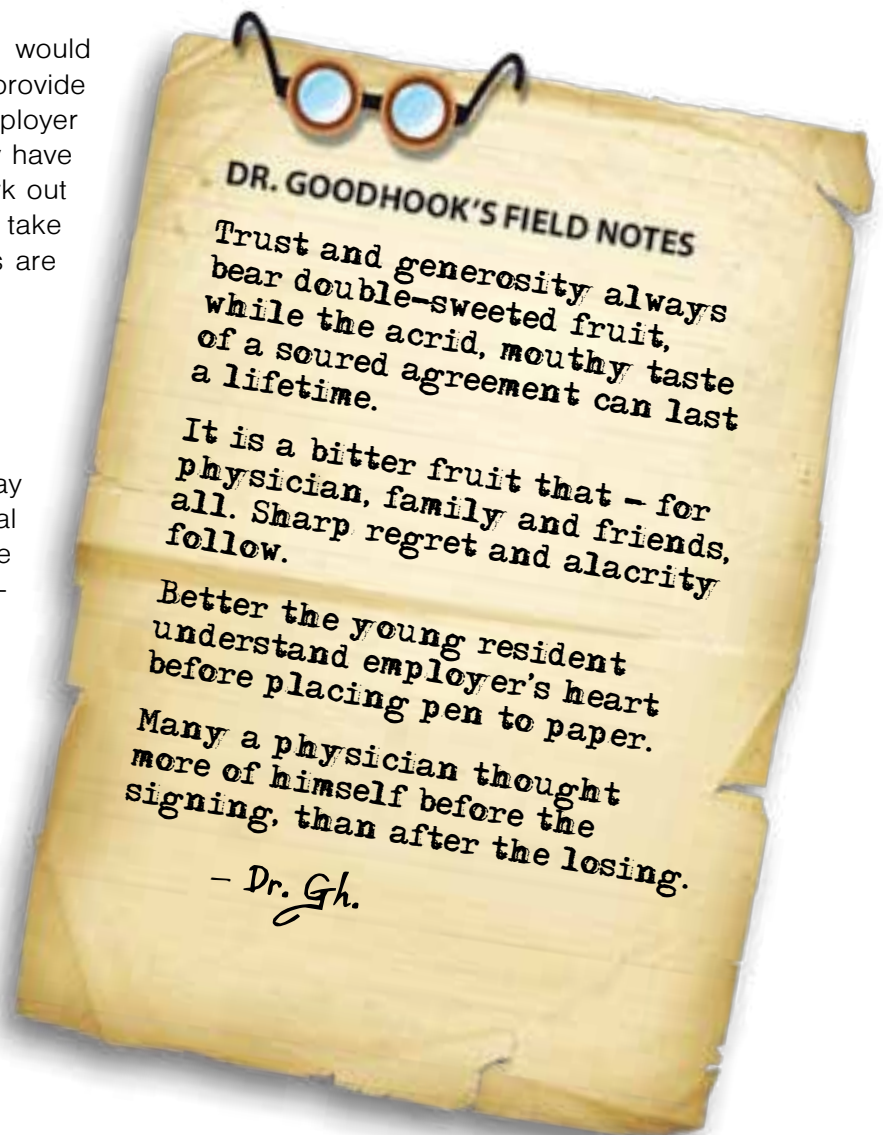
EMPLOYER NEGOTIATOR

Depending on the organization, you may negotiate with the CEO (generally in rural communities and small- to medium-size organizations), CFO, director, manager, in-house recruiter, or the recruiting firm that represents the employer.

END OF NEGOTIATIONS

If the terms are reasonable, you should hear back soon, and the employer should be able to advise you whether or not they can meet those terms.

If the terms are not reasonable, or if you are asking for something that is not customary, like negotiating a non-compete clause out of the agreement,





GUIDE POINTS

Feeling inadequate, uncomfortable and/or nervous about the negotiation process? Recruiting firms can be very helpful in negotiating agreements; however, you are ultimately the one responsible for determining the ideal position for your life and career priorities. Below are some tips:

KNOW YOUR MARKET

- Is your specialty or area of experience in demand?
- Is your region in demand?
- Is your community in demand?
- What are similar opportunities in similar communities paying? (Make sure to compare apples with apples.)

KNOW WHEN YOU'RE READY

- Under what circumstances would you accept the opportunity? (If you cannot answer this question, you're not ready to negotiate!)
- If you proceed with negotiation, make sure you are prepared to accept the opportunity if the organization agrees to your terms.

KNOW YOUR LIMITS

- Are the terms you're trying to negotiate reasonable, or are your demands likely to be viewed as tactless overreacting?

KNOW YOUR POSITIONING

Below is an example of physician responding to an offer letter that she received.

"I have trained for more than 12 years and am ready to start my medical career. The interview process has been both exciting and overwhelming. During the past six months, I have interviewed at five different organizations and this is by far the opportunity that feels right and where I can make a strong contribution to your hospital and community. My husband and daughter are very excited about the possibility of us moving forward. The last thing that I want is to come across as money hungry or self-serving. I want to make sure that you know that I'm looking at this opportunity long-term and the bottom-line is working toward the productivity bonus where I will be justifying my higher compensation by greater contribution to the organization. Although I have offers that are higher, this is the place that my family and I want to be and I'm trying to get comfortable with the terms so we can move forward. After finishing up residency and having debt of \$200,000, along with buying our first home, and the unknown of how long it's going to take to get up and running, I am looking for "X amount" and "X benefits." I am prepared to execute an agreement with you within five days of receiving a mutually acceptable agreement."

there are times when the employer will not respond back. This is because those non-customary terms lead them to conclude there is not a match.

As long as you are forthright, present yourself well and communicate effectively, there is no reason that there should be any concerns. Know what you want, but evaluate the situation from the employer's perspective as well. If you make it too hard for the employer to work with you, you may **JEOPARDIZE** a good deal.

Understanding Employment Contracts

It's a good idea to familiarize yourself with common terminology found in an employment contract. Knowledge of employment contracts enables you to:

- Become familiar with the different sections of a contract
- Interact with a potential employer as well as an attorney with more knowledge
- Focus on matters most important to you
- Minimize the time to review and sign a contract
- Be more self-assured and confident (not arrogant) when interacting with a potential employer and your attorney
- Be more professional and business-savvy

Both parties benefit from solidifying employment contracts because they are able to clearly set forth material rights and obligations, thereby managing risk of the matters addressed.

ROADBLOCK

Comparing Offers

Your career is a big part of your life and you should feel good about going into a new opportunity.

It may be difficult to avoid comparing your offers with the offers your colleagues are getting; however, remember that each region is very different, as is each market within each region.

There are different opportunities, so when a colleague is getting one offer, it may or may not be comparable to yours, and your colleagues' goals may be very different than yours.

Remember not to take anything personally. Most of the negotiations have to do with organizational standards and objectives and the market and are less about your individual needs.

If you're reasonable, the market and the contract negotiation process should take care of you.

CONTRACT TERMS

The following is a list of common contract terms and their meanings. Please note that these definitions are for informational purposes only and are not intended to be legal advice. Consult an attorney if you have questions about your particular situation.

TERM	DEFINITION
Term	The specified beginning and ending dates of the contract along with any provisions describing the renewal or extension of the contract term.
Employment	The hiring of a person for a salary, fee or other payment to perform work for an employer.
Responsibilities	Duties and performance expectations, qualifications, licensing requirements, certifications and staffing privileges.
Compensation	Payment for work performed by salary, fees or otherwise.
Benefits	All perquisites provided or made available to employees by employers, including paid time off, group health and dental insurance, life insurance, sick leave, disability insurance and retirement plans.
Expenses	Defines the business-related expenses that will be paid on behalf of the physician such as licensing fees, CMEs, medical journal, association dues and the like.
Facilities	Addresses basic practice needs such as office space, examination rooms, equipment and support staff.
Loyalty	Generally prohibits the physician from providing similar services to another employer without the current employer's consent.
Supervision	Provides the structure for supervision and evaluation by someone familiar with the employee's role and responsibilities.
Compliance	Requires the physician to adhere to the employer's policies and procedures as well as all applicable licenses, laws, rules and regulations.
Acceptance of Patients	Specifies protocols for accepting patients.
Vacation and Meetings	Defines the amount of time, usually expressed in terms of days or weeks for which the physician will be given leave from job duties for vacation or to attend CME programs, with or without pay.
Disability	Describes the circumstances in which an employee not able to perform job duties due to illness or injury may continue to receive compensation (or a percentage of compensation) for some pre-determined period of time.

TERM	DEFINITION
Termination	Discusses specific circumstances under which employment may be terminated either with or without cause, with cause being carefully and clearly defined.
Records and Files	Defines who patient records belong to and the continuing access a physician will have to the records, including post-employment access and/or duty to turn over files and records.
Internal Revenue Code References	Refers to specific sections of tax laws that may be relevant to either the employer or physician, particularly with respect to compensation and benefit issues.
Non-Compete Covenants	A restrictive agreement whereby the physician agrees to refrain from practicing within a specified geographic area or at certain hospitals for a specified period of time after the physician's employment ends.
Non-Solicitation Covenants	A restrictive agreement whereby the physician agrees to refrain from soliciting patients and/or employees of the employer for a specified period of time after the physician's employment ends.
Confidentiality Covenants	A restrictive agreement whereby the physician agrees to refrain from divulging or using the employer's proprietary and confidential information after the physician's employment ends.
Track to Partnership (if applicable)	Defines the conditions that must be met in order for the physician to be eligible for an ownership position with the employer.
Buy-In (if applicable)	Specifies the fixed dollar amount or formula used to determine the cost of purchasing an ownership interest in the medical practice.
Productivity Formula	Defines the formula used to divide income among practice owners, typically based on RVUs or relative collections.
Indemnity and Malpractice Insurance	Employers may provide insurance or agree to defend a physician named as a defendant in a lawsuit. It is important to know who is paying the premiums and what the coverage limits are. Additionally, continuing coverage after employment has ended (tail coverage) should be addressed in this section.
Applicable Law; Venue	Determines by agreement of the parties the particular state law that will apply in the event that a dispute arises involving the terms of the contract. In addition, this section of the contract may define the location where a lawsuit involving the contract will be heard.
Modifications	Generally provides that the written contract contains the entire agreement between the parties and further provides that the contract can only be modified in writing and signed by both parties.
Severability and Judicial Construction	This provision allows a judge to make a determination as to the meaning and intention of a provision in the event of a legal dispute over its meaning. It further allows any contract provision that is deemed to be illegal to be removed from the contract without the entire contract becoming null and void.



8

COMPLETED

Stage 8 Action Checklist

Make sure you have completed these tasks by the end of this stage:

- Decide if you will hire an attorney to assist you in the negotiation process.
- Familiarize yourself with common terminology found in employment contracts.
- Consider each of the terms of your employment offer and determine if they are acceptable or not.

"Don't wait. The time will never be just right."

— Napoleon Hill



PASSPORT