

Navigating Contract Negotiation

BY DAVID EICHENBAUM, MD



In the first of a two-part series on finding the ideal job, we offered the advice of David Eichenbaum, MD, on finding the best opportunities and gliding through the interview process. For the second installment, Dr. Eichenbaum takes us through the next steps of contract negotiation, understanding partnership tracks, and, finally, clinching the deal. All of the answers cannot be found here, but we hope this article can serve as guidance and a reminder that you are not alone in this process.



— Omesh P. Gupta, MD, MBA; and Anita G. Prasad, MD

So you aced your interview and have been offered a contract. Think it's all downhill from here? Not exactly. The next step—contract negotiation—is a delicate process. It is the terms of the contract that are most important to thoroughly understand, and with them you should be comfortable, before agreeing to a position. Just as you would never just slide into a home lease with that “special someone” after having some nice dinners and seeing a few movies, you should never simply sign the contract without full critique, regardless of how promising it appears at the outset.

PRIORITIZE WHAT IS IMPORTANT

Before you even receive your first contract offer, it is imperative that you take time to list and prioritize what is most important to you. Are you most concerned with benefits for you and your family or your first few years' salary? Or is vacation time or a restrictive covenant most important? What about the track to partnership? Are you even sure what is important to you? Now is the time to find out.

Make a list of what matters to you professionally—the important points at the top, and the smaller issues at the bottom—and try to stick to it as best you can. The first two or three bullets should be points you will not concede: simply, compromises you are not willing to make.

GETTING THE CONTRACT

Here is how it will go after your interview with a group: you will send your thank you notes, attend the rest of your interviews, and you will eventually receive a contract, usually via email. It may take some time to have the contract “in hand.” It is critical to remember that,

although you need a job by the end of your fellowship, your sense of urgency may not be shared by even the most desirable and best-run practices with whom you interview. Don't despair. If they know you are interested—and they like you—you will get a contract. Try not to badger the administrator with too many phone calls. Even after a really great date, it is not attractive to call your suitor more than once or twice. Eventually, the one you desire will wonder why you do not have better things to do than call to talk about “taking our relationship to the next level.” Try to be patient, and use the time you have to attend a healthy number of interviews.

POINTS TO REMEMBER IN NEGOTIATIONS

So how do you handle that first conversation after receiving the contract? The first negotiations will most likely be over the phone, most likely with a practice partner or administrator. Here, I offer some tips to help you navigate your way through the basics of contract negotiation.

- Be professional and be direct.
- Be as physically comfortable as possible (your home is most likely the best setting) and have plenty of time available to chat.
- Have a well-prepared list of specific items that you would like to change in the contract handy throughout the conversation.
- Have a clear division between what you absolutely need to be satisfied with the offer and what you can live without.
- Talk about the big issues first. In my experience, managing partners or practice administrators are “big-picture” thinkers, so save the smaller negotiation points for later in the process, which may last for several weeks.

- Remember, anything not contractual, including call schedules, satellite office services, and general hospital ER calls, are all fair game for your position if they are not discussed.

- Your potential employer will not give in to all the requests that you make. Otherwise, it would not be a negotiation but rather one party filling a series of demands of another—not a good foundation for a successful relationship.

- In a negotiation the only power any party has is the ability to walk away. If you are not willing to walk away, you may as well just sign the initial contract and try to preserve the flawless chemistry you created during your interview (which I do not recommend).

- Terms that are amended during contract negotiation are not legally binding until a revised contract is drawn. Make sure you thoroughly review the new draft to ensure all of the negotiated compromises are included.

Strategies for negotiation vary widely, and there are numerous professional texts and guidelines for successful negotiation. A classic text is Fisher and Ury's "Getting to Yes," which is summarized and can be accessed at: <http://www.colorado.edu/conflict/peace/example/fish7513.htm>.¹

PARTNERSHIP NEGOTIATIONS

You should know upfront if you are negotiating for a partnership position vs an open-ended employment position. It is my recommendation that, if you have even a reasonable intention of staying with a group, you should emphasize the importance of structuring the partnership buy-in.

It is rare that the path of a partnership track will be included in the lettering of a contract. Partnership itself is legally a separate issue from employment, and there will be a separate partnership contract to review and negotiate as the term of employment comes to an end. It is not uncommon to have the basic parameters and pathway of the partnership recorded in a "letter of intent" signed by both the employee and the group. This document is nonbinding but provides some concrete structure to which one may refer at the beginning of the partnership buy-in period. As a new associate on a partnership track, you should know how the practice is going to decide the amount you will owe them to become an owner, how you are going to pay, and how the partners in the practice are compensated.

Depending on your employer, the terms of partnership may or may not be very negotiable. For example, the terms of joining a solo practitioner will likely involve more haggling to determine the buy-in cost than would the terms of buying into a spoke-and-hub-model retina practice as the seventh partner. Remember to be wary of practices that have had many partners come and go—

and realize that it is fair to talk with their ex-partners. The turnover may be due to an unfavorable nonnegotiable partnership track or income structure.

OTHER CONSIDERATIONS IN PARTNERSHIP

To become a partner, you almost always need to pay for a percentage of a group's assets with posttax dollars, so it is important to know how the practice will value its assets. The most common technique is to use an accountant. The employer usually retains an accountant to value the practice. Ideally, the employee would negotiate the ability to also have his or her own accountant value the practice, but such a concession seems uncommon.

The most amorphous component of buy-in is the good will you will owe the practice to become partner. Despite what you may hear, good will is far from dead, and it is often calculated as a percentage of your earnings over a predetermined number of years after you make the initial buy-in. Good will money is paying for the work the senior partners have done to establish the practice as a preeminent retina outfit. Personally, I cannot state that good will is completely worthless or anachronistic, and it is difficult to assess the actual value of good will. The best way to find out if you are being asked to pay too much is to compare your partnership track costs within your own and your peers' offers.

The second important concept to understand before embarking on a partnership track is how the full partners have their salaries structured. Basic categories of reimbursement include practices in which the partners pool all collections and divide the net profits, practices in which partners "eat what they kill" (ie, net collections are retained by the physician who generates them), and practices that blend the two reimbursement methods (a certain percentage of a partner's salary is based on production and a second percentage is a division of pooled income). Salary structure becomes more complicated for a retina specialist in a multispecialty group (especially for the first retina specialist to join a multispecialty group), as the retina specialist will almost invariably collect more than the other general or subspecialty ophthalmologists. It is especially important for graduates entering partnership tracks with multispecialty groups to understand how that group will structure their partnership salaries and overhead expenses and to be comfortable with the proposed model.

While there is no definitive advice I can give regarding which practice model is "best," there are advantages and disadvantages to every structure and practice type. The winning arrangement is one that is a good fit for the individual doctors in the group and that ensures solidarity and stability. The best tip I can give is to look for a group that embodies a "good marriage"—one with partners who seem to be happy with their salaries and each other, and one without a history

of sloppy breakups. In ideal situations, a practice offering a partnership track will also offer a review of its financial statements, which, with the help of an accountant or a lawyer, can help you understand the financial rewards of partnership.

SHOULD YOU ENLIST PROFESSIONAL HELP?

For the highest level of objectivity in contract negotiation, it is best to retain a specialized health care lawyer to review any contract you are considering. A good portion of every employment contract is written in legal jargon, and most lawyers will take the time to go through it line-by-line. It is important to remember, however, that no matter how good your lawyer is, he or she cannot determine whether you are getting a fair deal.

If you need additional help deciding whether or not a contract is a fair deal, you can retain a practice-consulting firm to help you. From a relationship standpoint, these are like "friends for hire." Most retina specialists will not seek professional consulting for their first employment contract, but it is good to know that such services are available. Through a reasonable amount of interviewing and discussion with colleagues, most applicants actually have plenty of internal information.

THE JOURNEY TO SUCCESSFUL NEGOTIATION

When you talk with any ophthalmologist who has

been through the job search, whether it was many years ago or just last year, you will hear a tale of personal growth and maturation. You will hear how naïve they were upon graduating fellowship and you will wonder how they now have "all the answers." There is no mystery — it is simply that our senior colleagues have the career experience that we lack at graduation.

There is no secret to starting a first job; it is a journey embarked upon by dozens of green retina specialists every year. Contract negotiation is the time in the job search for the rubber to meet the road in your employment relationship. You will have a different, more mature, and mutually respectful relationship with your employer after a successful negotiation. ■

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1. Fisher R, Ury W. *Getting to Yes: Negotiating Agreement Without Giving In*. New York: Penguin Books; 1983.

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