

Compensation, contracts, and covenants:

A surgeon's guide to successful job negotiation

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Despite having completed a lengthy and thorough training, most surgeons find the prospect and process of finding a job very daunting. After years of being guided in our paths from undergraduate school through postgraduate education by college directories and even *U.S. News & World Report*, we are left to fend for ourselves in the unfamiliar world outside the confines of the hospital. It is a world composed of small and large, public and private enterprises involved in the exchange of money for goods and services. The sooner the realization is made that medical practice is one of these entities, the more successful one will be in the pursuit of a good job opportunity. The lack of attention focused toward business skills and medical practice management in most residency curricula puts the graduating surgeon at a clear disadvantage. It is only empathy from the colleagues we join that brings on a fair treatment throughout this process. Nevertheless, it behooves us to be diligent and knowledgeable in the basic tenets required to negotiate a good job opportunity. In this article, we will review the processes of interview, negotiation, and compensation and components of contracts and covenants against competition as key elements to develop savvy negotiation skills.

Interviewing

Finding an opportunity that is in line with your goals and needs is frequently the hardest part of the job search. The first interaction with a potential employer is often over the telephone. This initial step may provide an opportunity, mostly for the potential employee, to decide whether the position is worth pursuing. It is important to remember that you are selling your services as well as yourself.

The ability to create and expand on opportunities is central to any organization and, therefore, it is critical to emphasize the unique attributes you will bring to the practice, including special skills you have developed as part of your training.

General interviewing tenets, including the following, are fairly simple:

- Speak the truth, but do not speak ill of anyone
- Do not gossip
- Be prepared with questions to ask
- Dress well and be punctual
- Use a firm handshake
- Smile, smile, and smile
- Do not offer to pick up the check
- Do not accept any offer on the spot
- Discuss a timeline for the next step (one month is standard allowance for making a decision once an offer is tendered)
 - In general, do not negotiate terms of the contract during the interview (this should be done once the contract is received)

Compensation

The employment environment for surgeons is highly competitive; it is a buyer's market. Salary, benefits, and bonuses are key components of successful recruitment strategies. Specifics regarding these issues will give you a global idea of your compensation package. Often, an excellent benefits package may make a job more lucrative than if one looked at the salary alone. Also, knowing what you are not getting will help in negotiations for other needs. Keep a checklist. It is essential to know what is the competitive salary in the field as well as in the geographic area. This information can be candidly obtained from colleagues, former residents, and even online salary surveys. A guar-

anteed annual salary should be a component of your compensation. A schedule of payments needs to be defined (that is, whether it will be weekly, biweekly, or monthly), and if a multiyear contract is agreed upon, then annual pay increases should be clear.

Since many organizations use incentive-based (bonus) compensation for their surgeons, productivity should be defined (that is, based on billing or collections). Most surgeons will not be included on all insurance plans for months after they start, so a surgeon must consider how production in these months will be measured. There is also an increasing trend to use quality measures as part of incentive-based payments. Nevertheless, such payments are typically not more than 2 percent to 3 percent of cash compensation if used. Whatever the method for calculating the bonus, you should understand well the various components of the actual formula.

Signing bonuses have traditionally been used to provide capital for weathering the transition from one job to the next. Often during this period, no salary is drawn, but money is needed for everything from down payment on a home to purchasing new clothes. The bonus helps a person financially survive this period. It is sometimes given as a reward for signing with the employer early and thereby allowing for the company to avoid further inquiries and expenses in filling the available position.

Benefits

Health benefits will not be as comprehensive or as economical as you had in training. If there is a lag when you are in between jobs, some employers will cover the gap in medical coverage. Inquiries should be made regarding vision, dental, and disability benefits and the contract should clearly state whether your family is also covered. Vacation time should be specified as “paid time off.” Sick days, maternity leave, paternity leave, and continuing medical education benefits should also be delineated. Moving expenses, life insurance, and disability insurance are not always a given. If there is requirement for travel between hospitals, ask about the compensation for automobile wear and tear as well as gas expenses. Retirement plan contributions, such as a 401(k), are often begun one year after employment. Though professional liability insurance coverage is typically not an issue,

“tail” insurance coverage is less commonly offered and should be negotiated. Liability tail coverage protects against claims that are brought against a physician after termination of a claims-made malpractice policy. A claims-made policy protects the policyholder from claims for acts that occur and are reported to the insurer only while the policy is in force. Practice agreements should state that the employer will pay for or contribute to the cost of tail coverage. This agreement is important because your next employer may not deem you eligible for “prior acts” (“nose”) coverage.

Contracts

There are not many opportunities in surgical training to garner the skills of negotiations. Regardless, there should be no stigma tied to negotiating for employment. The fear of negotiating is a very difficult, but important, issue to overcome. Contracts are not written in stone; there is no such thing as a “standard” contract. There is no reason to feel guilty if your needs are different from last year’s hire.

The first step after receiving the contract should be to review it yourself. Often, you will be surprised at how many notations and corrections must be made. The agreement should be reviewed by a lawyer experienced in contract law in the state where the new job is located. The length of the contract should be stated, but be aware of automatic renewals, which, in general, are a bad idea; renewals should be discussed and perhaps contract terms renegotiated. Paths to partnership, as well as academic advancement (such as assistant professor to associate professor) need to be defined; otherwise, there will be no written agreement regarding the specific goals you are working toward and how to get there.

Employment status as an independent contractor, employee, or shareholder can affect your tax and legal liability, so you should know your status. The organization will not withhold payroll taxes (including Social Security, Medicare, or benefits) for independent contractors. Though the employer saves a lot of paperwork and capital, this means you will have to pay estimated income taxes to the Internal Revenue Service every three months, as well as purchase your own health and disability insurance. Independent contractors only earn

income when they are working and do not receive compensation for vacation, sick, and personal days. The advantage is that independent contractors have more control of work hours, time off, and insurance choices. As an independent contractor, you also can profit from many more tax deductions for business-related expenses. Organizations are not your employers per se, but your clients, and as such, they are not entitled to direct you in your work. Under U.S. law, as staff you are either an independent contractor or an employee. Less often, one can be employed as a shareholder. As a physician shareholder, you have both a financial ownership position and a voice (via vote) in the organization in addition to your salary. This status may provide another revenue stream.

Work hours and call expectations must be stipulated in the contract. These specifications are a very popular inclusion in many current physician agreements, especially when employers are large institutions.

Finally, both parties should be able to get out of the contract. Provisions for termination are of two basic types: with cause and without cause. The provisions for termination with cause are usually clearly defined in the contract. Termination without cause should allow ample time for each party to secure employment (generally three months). The termination clause should not conflict with the noncompete clause.

Covenants to not compete

“Restrictive covenant” is a general term that refers to the agreements that prevent competition against the employer. The hiring practice’s main goal is to shield and protect their patient base and referral sources. Therefore, such limitations prevent any significant diversion of patients from the employer’s practice as well as interfering in the employer’s relationships with other employees. In general, the American Medical Association (AMA) and patients dislike restrictive covenants because they hamper trade and prevent patients from following up with their physician of choice. Ideally, the noncompete restrictions should make it inconvenient but not impossible for patients to continue to see their departing doctor.

*Available at http://www.ama-assn.org/ama/upload/mm/46/model_physician_aug.pdf.

Too often, the negotiating surgeon does not present enough concern about the noncompete restrictions because of good faith and expectation of a long-term practice. Nevertheless, it is very important to define what these restrictions are. Typically, noncompete restrictions are composed of three main factors: scope of activity (practicing your specialty or just some specific procedures), range of activity (prohibiting practice within a certain radius from a location), and period of restrictions (length of time). Typical radius of restrictions in urban areas spans up to one mile, whereas in rural areas it can reach 25 miles. Often, the more specialized the field, the greater the area restricted; an internist in a given area will have less of a geographical restriction compared with a hand surgeon in the same area. As a rule of thumb, most practices use a mileage radius that covers 80 percent of their patient base.

Employers will often have new hires acknowledge the “fairness” of the restrictions in addition to recognizing that they had the opportunity to seek specific counsel to such covenants. Though unfair noncompete covenants are typically not enforceable, they require litigation, time, and substantial expense. It is, therefore, much better to negotiate upfront and agree on acceptable restrictions. Attorneys play a major role in researching what has been found to be “reasonable” and “unreasonable” in the specific jurisdiction in question. It is important to keep in mind that the law varies significantly from region to region, to the point where restriction covenants are illegal in some states altogether (Delaware and Colorado). In Massachusetts, on the other hand, noncompete agreements are usually not enforceable to certain professions, namely physicians, nurses, lawyers, broadcasters, and social workers. You should check with your lawyer regarding the specifics of the state you are planning to work in. The AMA’s Annotated Model Physician Employment Agreement* is another good reference.

The following recommendations should be taken to heart when negotiating a noncompete clause:

- Scope of activity should not include teaching, working for certain insurance companies, or working in a noncompeting company.
- Range of activity should not prevent you from actively relocating your family if you wanted to stay in the area. Get a map, draw out the covered

area, and highlight other institutions that would be germane.


- Period of restrictions is generally one to two years but can be up to five years.

Though most noncompete restrictions take effect simply by terminating the contract, sometimes the employer's interest in preserving its investment in the physician employee (for example, recruiting costs, moving expenses, opportunity costs) could be accomplished by limiting the trigger to when the physician initiates termination of the contract. If the employer decides to terminate the physician's employment, it is assumed that there is dissatisfaction with the doctor and thus the departing physician should not be constrained in future employment opportunities. Restrictive covenants can benefit physicians as well: If a physician is employed by a group where all of the physicians' contracts contain covenants, none of the physicians can compete directly with the group upon leaving.

Lastly, it is vital to include a buyout provision in the agreement. Some states require such provisions by law, which enable the departing physician to compensate the organization in exchange for a release from the noncompete agreement. This buyout should be set at a reasonable price (often one year's salary). Lastly, arbitration provisions, to avoid the costs, time, and stress of recourse in the courts, are an increasingly popular option. Both parties should agree on the method of selecting the arbitrator as well as other procedural issues. Often an arbitrator is agreed upon ahead of time.

Conclusion

Surgical education is demanding in many ways and spans a broad scope. Unfortunately, understanding of the job market, negotiating a contract, and starting your own practice are not part of the standard curricula. Most finishing residents find the job search process very challenging and frustrating. Even worse, some end up trapped in a malignant practice, which a properly negotiated contract could have prevented. It is essential to remember that you are well trained and would bring outstanding professional and personal skills to a prospective practice. The group (or individual) with whom you are negotiating will be your close partners. They will be your colleagues and you need to maintain that perspective when resolving

all of the issues mentioned. Always remember, if it is not written, it is not agreed to, and if you don't ask, you don't get. Good luck! 

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