Chapter 3
Contract Negotiations: Pitfalls and Traps When Reviewing Your Contract

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Introduction

The most important thing to recognize is that signing a contract is a process of negotiation. You have interviewed, and the practice or hospital wishing to hire you makes a contract offer. Now the fun begins. A contract can elucidate a lot about the job, the expectations, and the dark secrets the potential employer may not want you to know. It should also lay out the conditions of employment in years to come and how one becomes a partner. Even if you expect that this is only an initial contract and new one will be offered after the first years of practice, it is vitally important to get the initial contract right.

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Basics

Much of contractual text is about money, and most people focus on guaranteed salary and potential income. The well-advised negotiator understands that the amount of money is less important than other issues. If you are not happy and successful in your practice, you are not likely to stay. If you and your family are not happy living in this new location, it does not matter how much you are paid. Finally, if you feel you have been treated unfairly, even if this is subjective and you are paid well, you will not stay. A clear understanding of expectations, both those stated explicitly in your contract and those not clearly stated, contributes more to this sense of fairness than anything else might. The most important factor in negotiating a satisfying contract is preserving the sense that you are valued as a person and a surgeon, and decreasing surprises to come.

Non-compete clauses are inserted to prevent a physician from being supported by a private practice or hospital for the first several years, only to leave for independent practice or a place in a competing group. The employer has invested money in you as a new employee and wants protection for this investment. If you are going to a small town with a single hospital or single private practice, this clause is largely unimportant, as if you do not like the situation you are more likely to leave town. If you intend to stay in the area, these clauses increase in importance. Non-compete clauses usually specify a geographic area (i.e., a 20 mile circle from the primary office) and a time limit (such as 1–2 years). The feasibility of enforcing these varies by state. Often there is buyout clause (1 year salary, their investment) or ways of negotiating out of this. If the hospital thinks a provider will continue to bring business to them, they may allow an employee leaving with proper stipulations.

There are several methods for moving from employee to partner in a private surgery practice. Some practices require a buy-in after a certain period of being an employee (usually 1–2 years). Other groups may require you to work for a certain

period of time (maybe 4–5 years) until you are made a partner. Much of this depends upon your salary guarantee. If you are paid near market average for a general surgeon at the outset, the corporation that is employing you will lose money on you in the first several years. The expectation is that after an appropriate learning curve and ramping up of your practice, the income you bring in will offset this loss. This would suggest that in years 3–5 you are paid less than you are actually earning to offset the loss from the first few years. All of these methods are fair in the long run under the right circumstances.

"Buy-in" refers to when a new partner is required to put forth a certain sum of money to purchase shares in the corporation that is the practice. Typically a "buy-in" is for an equal share in the practice, i.e., for a group with four partners the buy-in would convey one quarter of all assets. Note this includes only hard assets such as building cost, computers, and equipment. Many practices separate the building ownership from the rest of these assets and the practice rents the space, even if several partners own the building. Often the hard assets are less than $100,000 in a small practice, so the buy-in is not that onerous. Those who are buying into a practice should make sure the buy-in (or stock in the corporation) is recoverable if you leave the practice, and understand how these assets may be recovered.

Signing Bonuses and Other Ways to Sweeten the Deal

Several other incentives can be added to a contract to sweeten the deal. These often depend on the difficulty of recruiting to the position and the expected income you can generate for the practice. The first of these is a signing bonus that can be paid well prior to starting the job. If you have family expenses and little savings upon graduation, a signing bonus can help a lot. Moving expenses are often negotiated into a contract deal as well. Medical school loan forgiveness

is available in some rural areas and especially in critical access hospitals. These can be substantial and worth losing money on other salary if your loan debt is sizeable. Money for continuing education, disability insurance, and health insurance are all part of the contract in many cases, especially when working for a hospital or large multispecialty group. Each of these is a separate but related part of the negotiation. The employer may be willing to give you a larger signing bonus but decrease the salary guarantee, effectively front loading your yearly salary. You may not get everything you ask for, but you cannot know until you ask. Finally, retirement plans and contributions to a 401K (private practice and for-profit corporations) or 403B (not for profit corporations) are important, and these need to be considered when evaluating the employment offer. In a private practice group, you typically finance your own 401K, essentially trading take-home pay for investment as pretax income in your retirement plan. Within a larger corporation, part of retirement usually comes out of your salary, as above, and is matched by the corporation.

Models of Reimbursement

You need to understand the concept of risk and reward in terms of salary and bonus calculation. The more money you are guaranteed, the lower the ceiling for your top earning, and vice versa in a properly written contract. Some groups split earnings equally amongst the partners. The benefits of this model include decreasing competition among members of a group, but it only works if the same work ethic is shared amongst all the partners. The opposite extreme is a pure production model, or "eat what you kill," where each partner's earnings are directly garnered from his or her collections. This means any low pay or no pay patients, which are often those patients seen by the junior partner, produce significantly less reimbursement for time and effort expended. There are also a variety of very good hybrid models, consisting

of a base salary plus some percentage (often 25–50%) derived from production. The measure that is used for determining production is important. Production measured on collections rather than billings tends to favor the established partners. Well-insured patients often seem to make it to the senior partner, while the uninsured are seen by the new partner. Many larger groups or hospital-owned practices base production on relative value units (RVUs) that are available across specialties and offer a measure of production that is not based on collections. In an RVU-based system, payer mix does not affect physician productivity numbers.

Payment for anyone in a surgical practice is based on the following concept: you bill a certain amount and collect a percentage (typically 30–50%) of that. Overhead costs (rent, employee salaries and benefits, and liability insurance) are subtracted from collections. The amount remaining is available to pay the physicians. In the older purely production model, physicians essentially worked for the first 3–4 months to pay the overhead for the year, then everything made beyond that was take-home pay. This meant a partner with 25% more collections might make twice the salary as each partner contributes an equal amount to overhead. Although this system seems to reward the more industrious, it actually tends to preserve the status quo. It also tends to produce competition between partners. As overhead began to creep up, and simultaneously collections decreased, the number of months worked to cover overhead stretched from 3–4 months to sometimes 6–9 months. However in the RVU model, the first and last RVU earn the same amount for the physician, with the larger corporation taking both the risk of falling short of the overhead and the benefit of surplus collections. RVU systems can be based purely on production, but are often hybrid systems where a base salary is given and any RVUs generated beyond a certain level are compensated on a dollar amount per RVU.

You are unlikely to change the model of reimbursement during your negotiation, but it is important to understand the various models and how they could affect you. The number of partners in your group, the number of surgeons in town, and

the overall growth of medical care (or lack thereof) will affect *your* production, as a new surgeon, more than that of any established partners or practices.

Initial Contract Versus Long-Term Agreement

Some contracts are written to cover only the first few years of employment. If they do, you absolutely need to see a copy of permanent contract or partnership agreement. Also the initial contract needs to specify the pathway and expectations that lead to partnership. The expectations on a year by year basis need to be spelled out and a goal of the negotiation is to determine if these are realistic. Many contracts have a hefty guarantee for the first year but expect the new surgeon to be able to fully support themselves by the second or third year. As with many of the other parameters discussed, the more risk you assume financially, the more the financial upside should be in terms of possible bonus beyond base salary. If the position is as an employed surgeon, as is typical with a hospital or large healthcare employer, the contract may not change after the first year as you are not progressing towards partnership. These contracts will still have methods by which your salary grows over the years and you need to understand these methods.

Malpractice Insurance

Most contracts include the type of malpractice insurance offered and how it is paid. Malpractice insurance may be part of your overhead in a private practice group and is paid in pretax dollars as a business expense. As an employee of a hospital/health system, malpractice insurance is simply part of employment and may not be a line item expense. It is more important to know if the policy is a claims-made policy or occurrence-based policy. An occurrence-based policy is clearly preferable. An occurrence policy protects you from any covered incident that *occurs* during the policy period,

regardless of when the claim is filed. Claims-made policies provide coverage for claims only when BOTH the alleged incident AND the resulting claim happen during the period the policy is in force. Claims-made policies provide coverage so long as the insured continues to pay premiums for the initial policy and any subsequent renewals. If you move your practice or retire with a claims-made policy, you are required to purchase "Tail Coverage" from the insurance company that covers any events that occurred during the insured period but were filed as claims after the policy ended. The longer you are in practice, the higher the cost of the tail coverage, and it is often several times the annual premium and can be greater than a year's salary. Occurrence policies are increasingly difficult to find, but the larger healthcare entities often self-insure and can offer these occurrence policies. One exception to tail coverage occurs when a practice decides to switch malpractice carriers. In this case, the new carrier usually covers any claims made under the new insured period for incidents that occurred during prior coverage, in addition to claims from incidents that occur during the new period. This makes switching insurance carriers based on competitive rates realistic.

Getting Out of a Contract

A significant percentage of new surgeons will spend only 2–3 years at their initial job, indicating a lack of fit or failed expectations. This works both ways as you may not have your contract renewed or you may not be offered partnership. The initial contract should spell out the period of time within which this decision is made. Many surgeons will also move for career advancement or new opportunities. Most contracts allow surgeons to walk away from their contract without penalty if they are leaving the area. However, you may be required to stay a nominal length of time (2–3 years) or pay back the signing bonus or salary guarantee. Salary guarantees are becoming the norm for at least the first year of practice,

and most employers wish to protect this investment. It is important to know what amount of production (as measured by collections or RVUs) allows you to cover your salary. It is likely you will not cover the guaranteed salary in your first year of practice, so it is necessary to know what your obligations are in terms of paying this back if you choose to leave the practice. It is also important to know what occurs if you exceed production expectations. Leaving a contract but staying in the area is a more tricky proposition and the wording of the original non-compete clause becomes important. A surgeon in private practice who operates at a hospital brings about a half million dollars to that hospital annually in ancillary charges, radiology, operating room charges, and inpatient reimbursement. If you have chosen to leave the employment of the hospital, you may be able to negotiate your way out of the contract if you continue to operate and admit at that hospital. The hospital will continue to benefit even if you do not directly work for them. Alternately you or your new employer can buy out your contract from the previous employer, thus allowing you to remain in the same city. These all depend upon local needs, employment structure, and your willingness to compromise.

Considerations

A few points to consider if you are new surgery residency or fellowship graduate: you will not be nearly as efficient or fast in the operating room. You will need to learn a new system of clinic, hospital, and support staff and adapt them to your own needs. Typically you will be sent fewer and less healthy patients initially. If you have been in practice for a number of years, this change is less noticeable. Specialist bringing new talents to an area often becomes busier faster than generalists. That all being said, it likely will take you 3–5 years at least to get to a level of efficiency that allows you to earn that amount upon which most measures of average salary are based. Employers know this, and account for it when calculating salaries and bonuses. They also realize that everyone's work

ethic and desire to produce varies a great deal. Understand that fair contracts are fair for both sides. Many surgeons would not want the contracts that come with the highest salary as that requires the highest production which can affect time with family and availability for teaching. It can also engender the feeling that your only purpose is production rather than why you got into medicine in the first place.

When reading an offer, consider if it is a modification of a contract a 1000 physicians have signed, or if it is one of the first the prospective employer has written. In the latter case, there is likely much more latitude for change. In the former, you probably have limited room for negotiation but the main negotiation point will be base salary. The negotiation often demonstrates the trustworthiness of your future employers and the factors important to them.

Finally, be aware that median incomes for surgeons vary widely based on a number of factors. One key driver of median salary is geographic area, but surgical specialty, population of the area, and healthcare needs can also have a great effect. More information on physician salaries can be found from a variety of sources including MedScape, and some research in this area can be very beneficial when evaluating offers.

As mentioned previously, many contracts include productivity measures based on RVUs as this gives a standard measure of production that is not influenced by payor mix, unlike either billings or collections. Compensation correlates directly with RVUs as indicated in Table 3.1. Compare the number of RVUs produced by surgeons earning in the 25th percentile to those earning in the 75th percentile. As expected, increased RVU productivity has a direct effect on compensation. Also remember this data presents total compensation including base salary, bonuses, and the value of all benefits for surgeons at a given percentile. It has been reported by the Medical Group Management Association (MGMA), an organization that collects data for larger organizations to see what competitors across the country are paying. The quoted numbers are for private practice, and a separate set of data is available

Table 3.1 General surgery RVU and average compensation by percentile[a]

	25th Percentile	Median	75th Percentile	90th Percentile
RVUs	4951	6750	8709	11,017
Compensation	$321,262	$395,456	$504,323	$645,687

[a]MGMA Data, 2015 report based on 2014 data. ©2015 MGMA. All rights reserved. Data Extracted from MGMA Datadrive

for academic practice. Although it illustrates the relationship between RVU production and compensation, there is no indication in this data of the amount of compensation derived from other sources. A section leader at a major institution may only be producing the median number of RVUs but is also paid for his administrative time so that his total salary is much higher than his production numbers would indicate. This may explain why data from MGMA shows much higher compensation than what is reported in the Medscape survey. Also, an institution may pay significantly more to certain subspecialists in order to keep a service available. As such MGMA data gives only a rough approximation of what is actually being paid. Understand that larger institutions have this data and use it to guide their salary structure. They also may demand other forms of work such as administrative or teaching time in addition to clinical production to justify these salaries.

Red Flags to Avoid

There are several red flags that should make you think twice before agreeing to a contract. One example is a partner's family member acting as office manager. Another example is if partners within the group are already distrustful of one another. In this situation you, as the new employee, are placed in the awkward position of negotiating between the established partners. Avoid any practice offer where there is

not a clear need for another surgeon in town or in the group; a desire to increase the call pool is never a good reason to hire another surgeon unless there is also plenty of business to go around during the day. Finally, think carefully before being hired by a solo practitioner as his or her initial partner. If this is just prior to retirement, get a projected retirement date set in writing. For this arrangement to be succesful, a practice that was supporting one surgeon would have to increase its production by 75–100% at least in the short term. It is much easier to become the fifth surgeon in a group of four where the marginal increase is only 15–20%. A group or surgeon that is planning to hire a new partner should, in the short term, be willing to see their own production fall. If they have not realized this or are unwilling to give up some of their income for the benefit of having a new partner, they are not being realistic.

Let's conclude with some examples.

Example 1

You would be the fifth member of a private practice that recently saw retirement of their senior partner. The present four members are working to the point of exhaustion. They are in a mid-sized town with six other general surgeons in the area. The hospital is doing well and the area is growing in population. You are offered a generous first year salary but with bonus only if you exceed 9000 RVUs. In that case your bonus would consist of 25% of excess collections. Your salary is to hold steady for 5 years and then you become a partner.

Consider, is this contract fair or not fair? How busy do you expect to be?

Example 2

You would be joining a three surgeon group in a small town that has recently lost their junior partner. They are the only surgeon group in town. They offer you a low entry salary but

with bonus if you exceed collections needed to pay your own overhead and salary. Overhead is split percentage wise by collections, i.e. the partner with highest collections pays the highest proportion of the overhead. The bonus is a direct dollar for dollar amount after coverage of your guaranteed salary and overhead.

Is this contract fair or not fair? Again, how busy do you expect to be?

Example 3

You would be joining a group of ten surgeons practicing as part of a large, multispecialty group owned by a hospital. You are offered a base salary which is near the average for the region. The contract states you are expected to generate 7000 RVUs the first year and will be paid extra for every RVU beyond the 7000 threshold. There is potential for a bonus that is dependent upon multiple factors that change from year to year based on the hospital's goals. Each year your base salary can be changed based on your production from the year before but will never decrease by more than 5% per year. Your base salary will mirror the RVU target so that as base salary goes up, the RVU target goes up. You inquire about the language of the contract and are told this is same contract offered to every physician employed by the hospital regardless of specialty with the only differences being base salary and the amount of expected administration time.

Fair or not fair? How busy will you be?

Example 4

You would be the first partner of a 50-year-old surgeon whose practice has been very successful and who has been pushed by the local hospital to recruit a partner to this smaller market. The five other surgeons in town are all in private practice. The hospital believes the volume is growing. They have capacity for growth and feel this will continue. You are offered a 1 year guarantee of $300,000 by the hospital.

You will split the overhead with your partner. Any collections of yours beyond overhead will go towards your salary with the hospital kicking in to make up any difference. Second year you are on pure production model and the hospital is no longer guaranteeing your salary.

Fair or not? How busy?

Example 1: Discussion

This group expects you to be busy out of the gate, and if you are not it will be your own fault. A 9000 RVU goal for the first year out of training is a mark you are unlikely to achieve. The group has offered you what they estimate you will average over 5 years. They should be willing to show you their average RVU production and one would expect them to be in the range of 10000 per year. If you fall far short of collecting what they are paying you for the first 2 years they may not renew your contract. The minimal bonus is a signal that they are taking a risk by paying a high salary guarantee. Overall, this offer indicates that they want a long-term partner and this is a good position.

Example 2: Discussion

This is a fair offer, but do not expect the group to help you to become busy right away as it is not in their best interest. Be skeptical as to why the junior partner left. He may have never been able to compete with the two older, more established surgeons. This is a contract that can be good if you are willing to stay a significant amount of time and establish yourself, so this needs to be a location in which you and your family can happily live long term. The economic health and growth of the area will be important factors in deciding to take this offer. It is very reasonable to ask to speak to the prior partner who has left, and one would expect the remaining senior partners to introduce you to him or her. This stipulation allows you to gauge your prospective partners' honesty and transparency.

Example 3: Discussion

This contract is fair. You have significant downside protection and the ability to increase your earnings. Your chief negotiating point would be the starting base salary. It is difficult to tell from the information provided how busy you may be, the relative number of surgeons (increasing or decreasing), any new talents you bring to the area, and the nature of your practice. A practice which is mostly electively scheduled operations takes longer to build than one in which you are scheduled to staff an inpatient service for a week at a time. The RVU estimate is realistic for the first year, and the contract has built in plans for re-evaluation on a yearly basis. This offer from a larger, multispecialty group likely has multiple non-salary benefits as well, so total compensation needs to be big part of the decision.

Example 4: Discussion

This is very risky contract after the first year. Increasing a single person practice to a two person partnership will require nearly doubling the production of the practice, which seems unlikely to happen. Secondly, the established surgeon has no incentive to help his new partner increase his or her business. It is impossible to tell how busy you will be. This contract needs a clearer statement of long-term plans and better contribution by the senior partner or hospital. This is a contract that may mean you are looking for a new job in two years, or it may work out well. You and your family's willingness to move if this does not work out is an important point to consider prior to accepting this offer.

Conclusion

When evaluating an employment contract there are many factors to contemplate. Every applicant must weigh his or her priorities when considering an employment offer. For example, some may wish to maximize earning potential early with

the plan to move to another position after a few years. Others may be looking for a long-term fit with a larger portion of reimbursement contributed by retirement and other benefits. There is no correct answer for which factor matters most as it varies for each individual. Do be sure to be honest with yourself and your potential employers about what you are hoping to achieve through the negotiation. The input of your family can be invaluable, as they will be sharing this journey with you. Finally, though you are now armed with a basic knowledge of contractual jargon and the underlying meanings, it is always beneficial to have a trusted mentor review a contract prior to acceptance. With a firm understanding of what to expect and an idea of what your priorities are, plus a little guidance along the way, you are sure to find a satisfying contract that will fulfill your personal and professional goals.