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Five Rules New Doctors Need to Know for Negotiating a Successful Employment Agreement

by Robert A. Wade, Esq.

Anyone can land a job. A good employment agreement, however, is the result of good negotiation. Follow these five rules, and you markedly increase the chances of getting more than just a job.

1. **Articulate Your Goals** Every negotiation has a “point”—an end goal in mind for each party involved. In any negotiation you have to be able to articulate (at least to yourself) what you want. What constitutes a good result? If you don't know that much, you can never know if you were “successful”. That said, it isn't enough just to have a goal. The goal must be measurable, reasonable and obtainable. In an employment context, “measurable” is pretty easy—did you get the salary you were looking for? Did you get the terms of the buy-in spelled out?

Coming up with a “reasonable” goal may be more difficult. That requires homework—learning what market conditions are. What are other employers paying? Are restrictive covenants enforceable in your state?

2. **Prepare for the Negotiation** Know your strengths and weaknesses. Be brutally honest in your own assessment of your skills. The stronger you are—the bolder you can be. Of course, that feeling of strength must be based on a set of perceptions that matches up pretty closely to what the other party thinks. If not, you educate them or no deal.

You also need to know what kind of negotiator you are. Are you, by default, a “nice” guy? Or are you usually the “tough cop”? Knowing your defaults and how easy or difficult it is to switch gears when necessary will help you make the moves when you need to. It's also good

to know what your emotional triggers are. Does someone yelling make you feel like you've got to close up shop and shut down? If so, be aware. Learn when you might be able to "tough" things out. Does a "cold shoulder" scare you? If you are denied something you want—do you get mad? Know these things, and you'll be better able do the calculus required to actually get the deal done.

Do the same analysis for your negotiating partner. Are you dealing with an 800 pound gorilla—or just one of many chimps trying to get the lowest hanging fruit off the branches? Is the employer in Los Angeles where droves of resident want to live, or are they in Upstate New York where recruiting is difficult? Is one of the partners getting ready to retire? What do they bring to the table in terms of what you want? Do they respond well to tough guy tactics, or will they get angry and break off negotiations? What are their goals? Their needs? Are they likely to be swayed by arguments appealing to intellect, or emotional appeals? Will an appeal for "fairness" or equity move them?

How, though, do you get this knowledge.....one word....."Ask." Ask people who have dealt with the other party before. Do research. And, after you've done that, ask the other party, and then ***listen***.

Do research. Find out what average starting salaries, bonus arrangements, and fringe benefits are for your market. What is your market? Find out by using resources such as the Health Care Group's *Starting Salary Survey*, MGMA's Physician Compensation Survey or any one of a number of tools available through the Academy and the YO Committee, e.g., Career Choices.

Find out what you already agree to. Narrowing down the number of points for negotiation will almost always result in a successful outcome, however you define success.

3. Know What Kind of Negotiation this is—Win/Lose, Win/Win and What your partner thinks this

In all but the simplest of transactions, every "negotiation" is really a series of related transactions and negotiations. At some point, the negotiation will likely have a cooperative feel to it, and the next moment, it will be pure horse-trading. The key to success is knowing when to trade horses and when to "problem solve". That said, though, some folks aren't that sophisticated or that good at negotiating. If you can't cooperate because someone is of a purely competitive mind set and will not change—you will to have to adapt.

For most employment deals to be successful, though, you'll have to bring it around at the end of the day to "win-win", because no-one in a long term relationship can afford to feel like a

“loser”. That said, you should not be afraid to maximize your leverage. Just remember to leave enough on the table so the other party can feel like they’ve “won” also.

4. **Know Your “Bottom Line”** Failure to know your bottom line before you begin negotiating can lead to taking a bad deal or fruitless negotiations. Once you know which items are a must, you also know which items you can trade off to get what you really need. In order to know your “bottom line” however, you’ve got to know what the options are—*including the options available if no deal is done*. If you know what the best alternative is—you know where your bottom line is in any negotiation. Your bottom line is \$1.00 or other unit of value better than the alternative.

Before you step away from the bargaining table, however, make sure you’ve done your best to “think around disagreement.” Often, disagreement can be resolved by reframing the “either this or that” as merely one set of choices among many alternatives. It becomes a matter of problem solving. Problems are solved in a variety of fashions. Sometimes, the answer is to “package” issues. Trade seemingly unrelated items. Sometimes it’s a matter of being inventive. “If the guaranteed salary is too low, look at increasing the incentive bonus.

Once you know your bottom line, you need to understand the psychology of bargaining. Even in an employment context, where there will likely be only one or two rounds of negotiations/discussions, you need to be prepared to make bigger concessions early and which lead to smaller concessions. That kind of movement “signals” to the other party when they are getting close to a deal. Do otherwise and expect to lose credibility—and leverage.

5. **Use Advisors Wisely—and Get it Done**

Knowledge and preparation are key—but you can’t know everything. Get help—from lawyers, accountants and other advisors. But don’t hide behind them. Use them sparingly—and not as obstacles to getting a deal closed. Employment agreements should not take too long. Too much back and forth often signals a less than optimal long term relationship. This isn’t a labor negotiation where the parties will see each other in five years when a new contract comes up for negotiation. Don’t drag things out or let your advisors do that for you. *Do* work with them to gain knowledge, develop your bottom line and strategy--and to help seal the deal. And, be ready to pull the laboring oar in the discussions. You can’t have your lawyer in your back pocket all the time so, in many cases, it’s wise to do some face to face negotiation on

your own—which makes for good practice as you will have to negotiate with your employers and future partners on a daily basis for a long time to come—if you have followed my advice.