Physician contracting: Do’s and don’ts in interviews, negotiations

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Staff News Writer
What are some effective negotiation tactics? Do you have to negotiate the contract yourself?

In an episode of the “AMA Making the Rounds” podcast, AMA Senior Attorney Wes Cleveland describes what to look for in compensation and benefit packages. Cleveland has been a practicing attorney for more than two decades and, prior to joining the AMA, worked for the Texas attorney general and the Texas Medical Association, and in private practice representing physicians. This episode is the sixth and final installment in our series on navigating contract negotiations from start to finish.

Below is a lightly edited full transcript of his presentation. You can also listen to the full episode on Apple Podcasts or Spotify, and learn more with the AMA about understanding physician employment contracts.

**Wes Cleveland**: Here are some do’s and don'ts in the whole interview process. These are kind of common sense, but think about your situation. You've been working as a resident. Your life's been very regimented. You really haven't had any time to think about these things. So, I think it's important just to kind of get your head around the interviewing process and, like I said, the AMA also has more information about this they can share with you.

One thing to note initially is that potential employers can differ widely in how much they are willing to negotiate. A large employer, for example, might not be as amendable to negotiation as a smaller organization. But even if you are talking with a large employer, that doesn't mean you shouldn’t try.

One of the common negotiation strategies that I think you should be aware of and take advantage of is to ask for more things than you really want. Let's say there's three things that you really care about. Maybe some flexible time. Maybe you care about call. Maybe you care about funding for CME, something like that. You want to go to a particular conference. Whatever those three things are.

You know, once you enter into negotiations, you're going to be required to give something up. That's part of the negotiation process. So, what people who are experts in negotiation suggest is, come up
with six or seven things you'd like to have. You really care about those three, but say that you also care about four or five more, but not as much. When you enter in the negotiation process with a potential employer, you can give those other things away in good faith as part of the negotiation process, and then hopefully settle on maybe the two or three things that are really important to you.

The next thing that I want to mention to you really is kind of the culmination of what we'd been talking about before. Research your employer. Go on the internet. Find out what you can about them in the newspapers. You can go on hospital compare websites. You can go onto Physician Compare. Look up some of the colleagues with whom you might be working. You can get on that AMA workforce mapper and you can get an idea of some of the health status and characteristics of the patients in the particular geographic market that you might be working in. Come in there, research the competition.

Look, they're going to really be impressed if you've done your homework, because that will tell them that you take the job seriously, you want to work there, and that you're a very serious person and thorough person, that you understand the organization, and that you're going to be a really good business partner with that organization.

Because remember, too, though you are in a good bargaining position because the country needs more physicians, it may also be the case that you're not the only candidate for the job. If you come in there with a wealth of information about the employer and about the community that it's serving, that might be enough to tip the balance in your favor if you're equally matched in terms of you and the other resident who's interested in working for that employer.

Now, this is one mistake I made long ago—in negotiations, don't make the first offer. Whoever makes the first offer is oftentimes at a disadvantage. So, experts in negotiation frequently suggest that, to the extent you can, don't be the one who makes the first offer. To the extent you can, have the employer make the first offer. And I would also say this: Remember, there is a physician shortage. So, typically, don't accept the first offer made to you. If they're really interested in you, they, being the employer, will be willing to make a good offer to you. Again, a kind of a universally recognized negotiation strategy is not to make the first offer, and not to accept the first offer.

And again, if you're working with an expert who has expertise in physician compensation, and also access to some of the national surveys, that expert—the attorney would be a good candidate—will help you determine what would be a good counter and a fair compensation amount for your services in that area.

Now, I used to get asked this question too, and this was when I was in private practice. I'd review contracts, and then the resident would say to me, “Will you negotiate this for me? Because I'm uncomfortable negotiating it, because I don't want the employer to get mad at me, or I don't want the employer to think that I'm being difficult.”
Look, the employer negotiates things all the time with a whole bunch of different kinds of people. With vendors, with its other officers, with other physicians. It expects you to negotiate. Always be reasonable. Don't be difficult, but push for what you want. Always be ready. By not being difficult, I mean not being obstinate for any particular reason. Be reasonable when you ask for things. Have a reason for why you're asking for what you want. If you do that, that's going to make you look professional, and it's going to ultimately help you in negotiations, to the extent the employer is going to be willing to negotiate a particular issue you're thinking about.

Be flexible, because you're not going to get everything you want. And that doesn't mean that you "lost." There may be some things that the employer just may not negotiate as a matter of policy. But be flexible. Do your homework.

Don't lie. Don't bluff about other offers when you don't have them at hand. If you get sniffed out on something like that, it's going be really humiliating, and it's going to make you look bad and might lead the employer to say, "You haven't been entirely honest with us, and we really don't like to bring a person who hasn't been entirely honest with us onboard." There can be a temptation sometimes to do that, but generally, I think, experts in negotiations don't recommend that you do that.

One thing I do get asked about frequently is, what if there's something that's really important to me and I'm not able to get it the first time around? Can I revisit it? And the answer is, look, you can negotiate anything. But you might not be able to negotiate it right up front. …

Let's say there's something that's really important to you. Maybe you're interested in a little bit more flexible time. Maybe you want to engage in some substantial research projects, and initially the employer says, "No, we have this standard procedure, and we don't want to depart from it." There's nothing wrong with asking the employer, "Look, I understand that. But you know what? This is very important to me. I would like to revisit this. Can we have some good faith discussions and negotiations about a particular issue six months down the road, a year down the road, something like that?" You can always negotiate that.

And if you're one of their star performers, believe me, the employer will be interested in making sure that you're happy with your arrangement. So, there can always be an opportunity there. I touched on this a little bit before, but don't be shy about negotiating. I know, when you come out of residency, you have to understand, this is the world that these people live in. Whether it be a hospital, or especially a larger physician practice, they expect this. You just want to conduct yourself professionally and reasonably, but they expect that.

If some employer gets offended because you want to negotiate, I would question whether that employer is someone you ultimately want to work for or not. And look, if you yourself don't want to engage in negotiations because you're concerned maybe it'll start things up on the wrong foot, you can always ask the lawyer to do it. And you can have the lawyer be the "heavy" and do some
negotiations if you don't want to play that role.

It will cost additional money beyond evaluating the contract itself, if that's the only thing you wanted the attorney to do. It will cost you a little bit more money. But that would be money that could be well spent, and you wouldn't get involved in the sort of conflict if you're concerned about putting off the potential employer or starting off on the wrong foot or something. I just know I've gotten a number of questions on that in the past.

That concludes our presentation today. And so, on a number of occasions, I've given you references to some of the materials we have on the AMA website, which you can access if you're an AMA member. A couple of these really good web resources are the hospital model employment agreement [PDF] and the group practice physician employment agreement [PDF]. Access those. They are extremely detailed. They're going to cover the issues I have discussed in greater detail and also additional points of interest that you may want to take a look at.

Those are resources. We also have AMA principles of employment. We also have a chapter on physician employments agreements in an ACO how-to manual that you can access. And if you have any trouble accessing any of these resources, you can just email me. And then we also have a JAMA Career Center that you can visit if you want. And with that, I wish you well.

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