

# Contract Negotiations for Senior Trainees

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## The Challenge

A senior trainee has just been offered a job, and the employer's attorney has prepared a contract for the soon-to-be graduate to sign. This is often the start of a time-sensitive, tedious, and stressful experience as trainees are typically negotiating against experienced, well-resourced representatives of potential employers.<sup>1</sup>

## What Is Known

Unlike training examinations, there is often no correct answer in contract negotiations, but there may be better answers specific to each situation. Your goal is to maximize your satisfaction with the outcome. It may seem like the employer has all the power and expertise, including human resources professionals and legal counsel; however, if you understand the typical elements of a contract and utilize available resources for contract review, you can mitigate the employer's advantages. Contract negotiations with your future employer should be cooperative (ie, honest with an eye toward a future working relationship), and this can be done by using a strategic approach to offers, counteroffers, and decisions. Yet few training programs offer formal programs on negotiation practices, and residents may believe that asserting oneself is unprofessional.<sup>1,2</sup>

## How You Can Start TODAY

1. *Learn basic contract language.* Use the American Medical Association<sup>3</sup> and specialty societies' resources to become familiar with contract language and standard contract elements. These elements include start date and term, salary (base, incentive compensation), benefits (vacation, personal insurance options, continuing medical education funds, licensure expenses), description of role and duties (call burden, practice locations, clinical and administrative responsibilities), liability insurance (concurrent and after leaving employment), signing bonus, relocation expenses, restrictive covenants, dispute resolution, and termination provisions.
2. *Identify your negotiables.* Set aside dedicated, distraction-free time to create a contract preparation table (see TABLE for a sample)<sup>4</sup>:
  - Column 1, Prioritized Element Examples: List, in prioritized order, the most important elements for reaching your short-term and long-term

## Rip Out Action Items

Senior trainees should:

1. Familiarize themselves with standard contract language and terms.
2. Prepare for cooperative contract negotiations by outlining priorities and best alternatives for themselves and their prospective employers.
3. Obtain expert consultation for their own protection and benefit.

professional and personal goals. Consider the common contract elements.

- Column 2, Reservation Price: Specify the bottom line offer below which you would not accept the offer.
  - Column 3, Target: Specify the contract you most want.
  - Column 4, BATNA: List the best alternative to a negotiated agreement; for example, do you have another offer? What is your power or advantage in the negotiation? Check salary benchmarks, regional and experience-based salary comparisons from the Medical Group Management Association or the Association of American Medical Colleges.
  - Column 5, Best Guess of Employer A Position and No. Priority: Consider each of your prioritized elements from the prospective employer's perspective, and consider the employer's likely priority (1 = highest).
3. *Find expert consultation.* Signing a contract is a binding obligation, and contract offers are often time sensitive, adding more pressure to your decision-making. Anticipate needing an employment lawyer (one who represents employees) in your future employer's state. To identify this individual, check the websites of state bar associations,<sup>5</sup> medical associations, or medical society chapters, or obtain recommendations from program graduates. The cost of expert consultation is generally offset with improved contract outcomes and satisfaction (cost varies by location; typical hourly rates range from \$250 to \$700, with review and consultation for 2 to 4 hours). More complex partnership contracts may require extensive legal review.

## What You Can Do LONG TERM

1. *Put first things first.* When negotiating, address your most important priorities first to gain concessions.

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TABLE  
Sample Trainee Contract Preparation<sup>a</sup>

Prioritized Element Examples	Reservation Price	Target	BATNA	Best Guess of Employer A Position and No. Priority
1. Start date	Immediately upon graduation in July	Mid-August	Employer B's start date is flexible	1. Short-staffed!
2. Years until voting rights or partnership	More than 4 years for both	3 years	National benchmark: 3 years	4. Group partnership historically at 5 years
3. Starting salary	MGMA 20th percentile	MGMA 50th percentile	Employer B's MGMA 20th percentile	3. MGMA 60th percentile
4. Compensation plan % incentive based	> 20%	< 10%	Employer B = 10%	2. 40% new-graduate hires

Abbreviations: BATNA, best alternative to the negotiated agreement; MGMA, Medical Group Management Association.

<sup>a</sup> Anticipating offer from private employer A (partnership-tracked position) while in receipt of another offer from employer B.

Give room to negotiate: make an opening offer above the target. Concede your low-priority items to the employer in return for their concessions on your high-priority items.

2. *Take your time—one more time.* At a maximum, attempt to obtain concessions twice. Going beyond that risks an adversarial tone that may compromise further negotiations and future relationships. Delay decisions until you have spoken with key stakeholders (ie, family, friends, and counsel).
3. *Hire a local employment lawyer.* A local attorney may provide insights into an employer's negotiating tactics, address state regulatory variability, and discuss how restrictive covenants are interpreted by local courts. Lawyers can have significant effects on job mobility as they may advise or negotiate these contract elements (eg, restrictive period, geographic scope, prohibited services, notice periods in termination clauses). Beware of termination “for cause” language that gives an employer discretion.
4. *Get it in writing.* Ensure that all agreed-upon terms are contained in the agreement you sign. Verbal assurances that “it will work out” are not enforceable in court.
5. *Avoid common traps.* The employer or employer's representatives may not act as you would. Major concessions may be hidden in “Let's split the difference” or “You're going to have to do better than that” statements or an opening offer that anchors the negotiation far from your target.

### Resources

1. Babitsky S, Mangraviti JJ. *The Successful Physician Negotiator*. Falmouth, MA: SEAK Inc; 1998.
2. Salib S, Valencia V, Moreno A. And now, please sign on the dotted line: teaching residents about professional life after residency. *South Med J*. 2018;111(5):256–260. doi:10.14423/SMJ.0000000000000804.
3. American Medical Association. Understanding employment contracts. <https://www.ama-assn.org/residents-students/career-planning-resource/understanding-employment-contracts>. Accessed October 2, 2019.
4. Thompson, LL. *The Mind and Heart of the Negotiator*. 6th ed. Essex, UK: Pearson Education Ltd; 2015.
5. National Employment Lawyers Association. Find-a-lawyer. <http://exchange.nela.org/memberdirectory/findalawyer>. Accessed October 2, 2019.



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