



# Module 9: Principles Of Negotiation



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## Key Learning Points

- ▶ *Negotiation is a life skill*
- ▶ *Essential negotiation points of any position: Income, service obligations, financial obligations and potential benefits*
- ▶ *How research and personal assessment will help you to find and optimize the right practice opportunity*
- ▶ *The three steps of negotiation: preparation, bargaining and settlement*
- ▶ *The dynamics of successful negotiation: amicable rapport, trust and fairness*
- ▶ *Who is authorized to approve the terms you have negotiated?*
- ▶ *The importance of having your lawyer review any and all potential agreements*

## INTRODUCTION AND OVERVIEW

Although physicians are often timid about entering into any type of negotiation, each of us has observed, practised and exercised negotiation skills, particularly during medical school and residency. Whether you have negotiated with your program director for a desired elective or rotation, reasoned with fellow residents over call schedules, or compromised with your significant other about who should take out the garbage, you are not a stranger to negotiation skills and methods.

The need for negotiation is everywhere. Although most residents in their final years of training are particularly concerned about how well they can bargain for potential practice opportunities, the following discussion is applicable to all types of negotiation, both inside and outside medicine. Negotiation is a life skill and everyone improves with experience. Understanding some of the theory behind negotiation will help you gain confidence and skills for future bargaining encounters.

### **The Times They Are A-Changin'**

Singer-songwriter Bob Dylan's third studio album, "The Times They Are a-Changin'", released in 1964, predicted the tumultuous political and social environment of the 1960s. These same words may be suggestive, however, of the changing environment of medicine that physicians in Canada are facing today.

In recent years, physicians finishing residency and fellowship programs have seen a considerable change in the number and quality of practice opportunities in Canada. Previous concerns of a shortage of physicians in Canada prompted an increase in medical school enrolment, to 2,800 in 2011/12 from 1,577 in 1997/98 (CMAJ, October 18, 2011). Today, the consequent increase in the number of physicians completing training, combined with expanding scopes of practice in some specialties and issues surrounding resource planning, as well as certain other factors, have resulted in a growing risk of unemployment and under-employment for residents in an expanding numbers of specialties, including cardiac surgery, nephrology, neurosurgery, plastic surgery, public health and preventative medicine (community medicine), otolaryngology, radiation oncology and orthopedic surgery (CMAJ, October 4, 2011).

Complicating the growing supply of physicians in Canada are the fiscal implications of decreased funding for health care, as federal, provincial and territorial governments move to counter growing fiscal deficits. After talks between Ontario's doctors and the minority Liberal government stalled, on May 7, 2012, Ontario Health Minister Deb Matthews unilaterally imposed reductions to the provincial physician fee code. The website [canadianhealthcarenetwork.ca](http://canadianhealthcarenetwork.ca) reported that Matthews said the "... very highest-paid specialists where we've seen the windfall gains" will be targeted. Indeed, three days later, in the same publication, former provincial Minister of Health and Long-Term Care George Smitherman was quoted as saying "... the government [has] decided to make [Ontario physicians] the poster child for austerity". A number of provinces are closely following the actions in Ontario as they evaluate alternatives to control healthcare spending in their own jurisdictions.

Physicians graduating today will surely confront the consequences of the increasing supply of physicians, as well as the implications of the actions of governments to balance their budgets to counter unfavourable fiscal realities. When progressing through the steps of any negotiation, the prudent resident or fellow should consider these factors as they apply to members of their respective specialty, as well as to their own respective situation.

## CRITICAL NEGOTIATION POINTS

When approaching the end of training, residents and fellows confront at least two major challenges: successful completion of their respective RCPSC or CCFP qualifying examinations, and identifying the optimal practice opportunity. Before investigating practice alternatives, however, astute physicians should set aside preparation time to evaluate themselves, their lifestyle desires, career goals and objectives, as well as such aspects of their specialty as expected workload and remuneration. Questions commonly asked include:

- ▶ What potential income or billing level should I expect?
- ▶ What will my clinical and academic responsibilities be in the position?
- ▶ What will my financial obligations be to the practice, group or department?
- ▶ What benefits are available?
- ▶ What other requirements, duties or responsibilities will the position demand?

These questions are important, and finding answers should not be left until the interview stage. Take the time to research and prepare. You then will make a more objective and informed evaluation of prospective practice opportunities—and your reward will be personal and professional satisfaction with the practice opportunity you choose.

The essential negotiation points for any practice opportunity include income, service obligations, financial obligations and benefits, such as paid holidays, time for continuing medical education (CME) insurance, pension plans and moving expenses.

### Income And Remuneration

Income is a touchy subject for many people. However, physicians who attend an interview or enter into contract negotiations without knowing what level of income or gross billings they can expect from the opportunity risk shortchanging themselves, both financially and personally.

Potential gross billings and net income for your specialty are not necessarily secrets, and you may find this information from many sources. Colleagues who recently started practice are excellent sources of information regarding current income trends, and may have other tips based on their own experience in looking for positions. In addition, your program director, the head of your department and other staff physicians may be willing to share their insights regarding the financial prospects for your specialty. Staff physicians will not only be aware of the current remuneration rates, but may also know of useful contacts or potential opportunities in both academic and community medicine.

Provincial medical associations often provide their members with data about the average annual billings for each specialty. Some provincial medical associations have done detailed studies of remuneration of physicians in their jurisdictions. As these figures typically represent gross billings, you must factor in overhead costs when evaluating the before-tax net income of your field of medicine. In addition, many professional specialty associations provide data, by province, on the average income for their academic and community physician members.

When evaluating any opportunity, inquire about all of the potential income sources that may be available to you. In addition to gross billings and/or salary, many positions provide opportunities to earn additional business income, including remuneration for uninsured services. Although academic positions often provide stipends, such remuneration may be minimal, particularly for junior staff physicians.

This research will place you in a better position to determine whether potential offers are equal to, below or above existing market rates. When obstetricians in a particular area have gross billings of \$300,000 a year, for example, opportunities that promise \$150,000 per year should be looked upon with suspicion. Doing your homework provides an informed and objective perspective with which to evaluate offers and conduct subsequent negotiations.

### **Service Obligations**

All residents can recall a junior staff person who seemed to be doing more work and earning less income than more senior colleagues. Although many professionals may be willing to pay their dues to “climb the ladder”, astute residents will do their homework and determine what their responsibilities will be before accepting any offer. Those who plan ahead will avoid unpleasant surprises later.

There are numerous questions to ask about what one’s role will be in various situations. If the position is in a group, association or department, what will the new physician’s responsibilities be? What workload will be expected? What will the on-call responsibilities be? For university appointments, will there be expectations in terms of publications in peer-related journals?

If you are considering an academic position, what are the clinical and teaching responsibilities? Is research a requirement? Who is responsible for preparing and submitting the research funding applications? Is administration of the practice the responsibility of the physician, is it shared among other physicians, or is it provided by another group? Is there a specified term for the agreement or will it continue indefinitely? If the physician decides to leave at some time in the future, what will be the required notice of termination, and what penalties, if any, will be incurred?

Service obligations will vary, depending on the individual, the specialty and the opportunity. Ask questions! Research is the best way to gain an understanding of your potential position should you decide to accept a particular opportunity.

### **Financial Obligations**

In a sole proprietorship, financial obligations almost always rest entirely with the physician. Most newly graduated physicians, however, will become members of an association, partnership, group or department, and will share the costs of administration and operation of the practice with the other members of that organization. The financial terms and obligations are generally set out in an agreement or contract, such as an association or partnership agreement. Anyone who considers joining a group practice should review the agreement with a lawyer to determine if the allocation of costs and obligations is fair and equitable, and that their understanding of the opportunity is correctly reflected in the document.

If you are considering a group practice, ask about potential liabilities within the group. If the group owns the office building, is the mortgage liability shared? In addition, it is important to determine how the group makes decisions (e.g., simple majority, two-thirds vote or some other method) and whether such a method is acceptable to you. If you fail to assess the appropriateness of the decision-making process, you may find that you have unknowingly assumed a share of the liability for the purchase of an expensive piece of equipment—perhaps a purchase to which you had objected!

Never assume that someone else is paying all the bills, and don’t, through ignorance, put yourself in the position of assuming all the responsibility for the cost of operating a particular practice. Ask questions, do your research and become knowledgeable about the financial obligations of any practice. It is in your best interest to fully understand your potential commitment.

## Benefits

Many physicians who practise in a fee-for-service environment assume that no additional benefits are available for their position and that they must assume all costs related to the practice. Because of the shortage of family practitioners and other specialists, however, the situation may have changed in these respective jurisdictions. Some specialists working fee-for-service have negotiated a guaranteed minimum billing amount for each year of practice, reducing their risk in the event that their access to operating rooms or other resources is restricted. Some hospitals have offered salaries on top of fee-for-service billings in an effort to recruit and retain physicians. Many hospitals and communities also offer financial incentives, such as moving costs, signing bonuses or relocation allowances, to attract family practitioners and certain specialists.

Educate yourself about the market for your specialty, because knowledge is power. If benefits are available to others in your specialty, a prospective practice opportunity may wish to match the offer in order to recruit you. Benefits may include:

**Insurance.** Life, medical and dental insurance may be provided by the department, hospital, health region or province of your potential practice. Even if you are responsible for your Canadian Medical Protective Association (CMPA) dues, many provinces reimburse physicians for a portion of the CMPA dues, depending on location and specialty. Some employers may cover that portion of CMPA dues that has not been reimbursed by the province or territory.

**Holidays and time allowed for continuing medical education (CME).** While physicians who work in fee-for-service arrangements must arrange their own vacation time, the hospital may assist in finding locum coverage. It is essential that physicians who work in a group or departmental practice are guaranteed a certain amount of vacation (typically, at least four weeks per year) and time for CME (the market rate for CME time and funding is 10 working days and at least \$4,000-\$5,000 per year). Please be aware that certain provincial medical associations, such as the Ontario Medical Association, have programs that may provide financial relief for CME costs incurred by members.

**Professional association dues.** Although membership dues for the Canadian Medical Association, specialty societies and provincial medical organizations may be tax deductible as either a professional due or business expense, some hospitals or health boards may offer to pay such necessary costs of practice.

**Pension plans.** Most physicians are not members of registered pension plans (RPPs) and must rely on contributions to registered retirement savings plans (RRSPs) to ensure that they have adequate resources for retirement. A pension plan provided by an employer is generally a very welcome benefit, and the details should be reviewed by your accountant and/or lawyer. Most RPPs are generous, and the individual physician's contributions are often matched or exceeded by the hospital or health region.

**Car allowance and parking.** Parking may be provided by the group, department, hospital or other institution. In addition, when the physician must utilize his or her car for hospital purposes (e.g., administrative meetings), a tax-free allowance may be provided.

**Moving expenses.** This perk was almost unheard of just 10 years ago, but today, hospitals attempting to recruit family doctors and specialists are increasingly willing to cover moving costs to entice physicians to relocate. This benefit can amount to a considerable amount of money—particularly helpful for a new graduate who is struggling to build cash flow in the early days of practice.

## Key Message

When evaluating a practice opportunity, remember that you may be able to negotiate income, service obligations, financial obligations and benefits. Ask questions, do your research and be knowledgeable about the market value of the compensation, as well as the obligations of any position you consider.

**Start-up loans.** Specialists and family physicians are often surprised by the initial investment required to set up their offices. Ophthalmologists, for instance, must invest between \$150,000 and \$250,000 in specialized equipment before they begin to see patients. Hospitals and other organizations sometimes offer low- or no-interest loans to help a physician set up for practice. However enticing the preferential interest rates, the potential tax implications should be reviewed with your accountant.

## Other Requirements

There will be many additional pertinent questions that are crucial for an appropriate evaluation of any practice opportunity. What operating room time is available? Is a procedure room available and appropriately staffed? Is office space available? If the position provides support staff, will you be able to select and hire the people who will be working with you? If you will be performing research, who will provide the research staff and equipment? Will parental leave be available?

You should give considerable thought to any and all positions you are evaluating, and investigate the “what ifs” of every opportunity. Don’t make assumptions—ask questions instead.

More information is available in *Module 10. Evaluating Practice Opportunities: Family Medicine*; *Module 11. Locums: Negotiating A Mutually Beneficial Locum Contract*; and *Module 13. Evaluating Practice Opportunities: Specialists*.

## A RATIONAL APPROACH TO NEGOTIATION

In medicine, an educated and organized approach leads to optimal patient care. Similarly, an educated and organized approach to negotiation leads to optimal agreements, and subsequently, to personal and professional satisfaction.

Negotiating skills can assist you in both good times and bad. If you want a particular opportunity but feel your position is weak, negotiating skill can help you to avoid a power confrontation that may result in failure. If you feel that your position is very strong, negotiation skill can help you to expand an existing agreement and maximize your remuneration—both financial and non-monetary.

### Objectives: Integrative Versus Distributive

The objective of negotiation is to attain the best possible deal that will improve your existing position.

Traditional business school teaching states that the goal of a negotiator is twofold:

1. to increase the size of the pie (*integrative negotiation*); and
2. to maximize one’s share of the pie (*distributive negotiation*).

Although the value of *distributive negotiation* is self-evident, we often forget the value of *integrative negotiation*. Suppose, for example, that, because of your interests and training, you bring a unique skill to a medical group that may help the group to see and care for patients more efficiently and effectively. The total remuneration pie for the group—both monetary and non-monetary—will be increased, and all members—including yourself—may benefit from a larger pie. In addition, the value of your contribution may reap additional rewards, such as a more amicable, professional and successful professional relationship with your partners and colleagues.



## **Under-Confidence And Overconfidence**

As a consequence of long years of study, extended hours of work, exam pressures and often playing a subservient role, many residents undervalue their abilities and assets. A lack of confidence is a real disadvantage in negotiation, however; you may make unnecessary concessions without adequate return and may settle for a suboptimal agreement that, ultimately, will be costly—both personally and professionally.

There are many positive factors senior residents and fellows should keep in mind when considering job opportunities and offers. The demand for medical services is growing, and your role in the delivery of health care is important and, quite often, pivotal. Today's residents have more specialized skills than any generation of physicians before them, and residents already make a significant contribution to the health care of patients. Furthermore, physicians who have recently completed either FRCPC or CCFP qualifying examinations are considerably more up to date with the medical knowledge and skills for their respective specialty. This more accurate perspective of your abilities and skills and the demand for your services will serve you well in any bargaining situation.

Be wary of overconfidence on the other hand. Overconfident negotiators often think they know in advance how a negotiation *should* end. They consequently ignore useful information and refuse to consider alternatives or creative solutions. Although overconfidence may be infrequently exhibited by graduating residents and fellows, you may encounter it with your negotiating counterparts from a recruiting department, hospital or community. For example, a resident may be contacted by a hospital that provides little or no information about itself or its potential opportunity, yet expects the resident to quickly and unquestionably accept any offer. Such unfortunate situations may be the consequence of poor management or ignorance of the market, but may also result from the recruiter's overconfidence. Do not allow yourself to feel that you need to accept an offer that doesn't recognize your value!

## **NEGOTIATION STRATEGY**

An educated and organized approach to negotiation will help you to achieve optimal agreements that provide both professional and personal satisfaction. There are three important stages to any negotiation: preparation, bargaining and settlement.

### **1. Preparation**

Ensure that you have done your homework before evaluating—or even contacting—potential practice opportunities. Review your goals, desires and objectives, both personal and professional. Research the market for your specialty, including identifying potential opportunities, determining the gross billings or average rates of remuneration in your field, and investigating the monetary and non-monetary benefits that might be available. You should also learn about your negotiating partners and the specifics of the opportunities you are considering—such as the likely number of applicants for the position, the specific professional needs of the group or institution, and the positive and negative attributes of the respective practice.

#### ***Set Your Boundaries.***

Before initiating negotiations, you should set certain boundaries and frames of reference that will enable you to evaluate an opportunity. Appropriate research should give you enough knowledge to objectively position your own skills, training and abilities in relation to the “market rate” and the specifics of the opportunity.



### **Best Alternative To A Negotiated Agreement (BATNA)**

Your objective in any negotiation is to obtain the best possible deal that will actually improve your position. Knowing and assessing your alternatives protects you from making unwanted commitments. Your best alternative is your BATNA. Your BATNA is the Plan B that helps you to say no to existing negotiations if the possibility of reaching a satisfactory agreement becomes doubtful.

For example, a senior resident may be bargaining for Position 1. After assessing and evaluating other opportunities, the resident realizes there is at least one other opportunity available with similar benefits but slightly lower remuneration. If, during negotiations for Position 1, the other negotiator begins to demand unreasonable concessions, having knowledge of an alternative—or BATNA—will empower the resident to back out of the faltering negotiations.

Some physicians negotiate for their dream job without a BATNA, only to discover that their counterpart demands significant concessions as the deal comes to a close. Stressed because they appear to have no alternative, they feel pressured to concede and make the deal. These physicians often accept all concessions and sign a suboptimal deal because they feel they have no option. In fact, they've failed to establish a BATNA.

### **Reservation Price**

A *reservation price* is closely linked to your BATNA and represents the value below which you would accept an impasse rather than concede to the terms of an existing offer. With appropriate research and knowledge of the benefits and obligations of a particular position, you can easily have a reservation price in mind that ensures that you will not settle for less.

A reservation price may be monetary, such as a given level of remuneration, or non-monetary, such as a set number of operating room or procedure room days.

Expert negotiators confirm that it is always useful to establish one set of conditions that describes one's reservation price, then evaluate all offers against this set of conditions. Never make a deal below your reservation price without careful consideration.

As a resident earning a fixed income, you may think it would be irrational to choose impasse over *any* agreement that provides more compensation than you currently receive as a resident or fellow. If you are willing to walk away from marginal opportunities, however, you will keep yourself free to find and consider other options that may offer a better agreement.

### **Target Price**

A *target price* or *target set of conditions* describes your wish list or dream agreement. Setting a target price helps to shift the direction of negotiations away from obtaining just enough with an eye trained instead toward obtaining what you truly want.

During negotiations, you should focus on the target price rather than your BATNA or reservation price. This ensures that the potential benefits of any agreement can be maximized. Expert negotiators will remind you that "you cannot get something if you do not ask for it". Furthermore, you will not even think to request certain benefits if you are unaware of the components of your ideal agreement or target price. Planning and establishing your target price is essential.

Some bargaining partners may test your resolve by keeping their offers of remuneration and resources closer to your reservation price or BATNA rather than your target price. If your research demonstrates that you are in a strong negotiating position (e.g., few or no other candidates), it may serve you well to create doubt in your counterpart's mind about the point at which you would prefer impasse. A sense of doubt, raised in a diplomatic and professional manner, may shift negotiations back in your favour and the offer may more closely approach your target price.

### ***Information Is Essential.***

As you can see, being prepared is essential to attain successful negotiation. Having accurate information before, during and after negotiations is equally essential. Without good information, the bargaining parties may not stay open to mutually beneficial opportunities, may incorrectly assess the pros and cons of available opportunities, or may allow discussions to falter without good reason. Just as doing a surgical consult without seeing the patient or reviewing X-rays and the hospital charts will probably lead to suboptimal patient care, failing to obtain accurate information or relying on inaccurate data can doom a successful negotiation.

Continue doing your research as negotiations progress. Document your findings instead of relying on your memory (see below). Be flexible and open minded, and explore ideas or suggestions that may lead to preferred solutions for both you and your negotiating counterpart.

### ***Importance Of Documentation***

Documentation is important. Although verbal promises may be made during negotiations, the respective parties may not recall (deliberately or inadvertently) such commitments once the contract is completed. Documenting what is agreed upon during the talks will protect both parties. Remember the advice from *Module 5. Legal Issues For Physicians*: "If it isn't written in the contract, it did not happen."

Major terms and conditions should be documented within a binding contract. Before you sign any agreement, have your lawyer review the draft contract to ensure that your interpretation of your benefits and obligations is consistent with what is documented. Verbal agreement on less critical issues should be documented as well for possible future reference.

Many residents find that email correspondence is fast, efficient and effective, particularly in negotiations. Emails provide a chronological record of discussions between specific parties. You may wish to follow the example of one resident who, at the successful conclusion of negotiations, printed all pertinent emails and saved the hard copy in a confidential file.

Email can also be used to document and confirm verbal promises. Send an email to your negotiating counterpart, describing your interpretation of the conversation, and ask for confirmation of their intention. You can print and retain the reply for future reference, if necessary.

Although emails will generally not override a signed contract, documentation of such communication may be a useful reminder of past promises, should verbal commitments not be fulfilled after the contract is signed. The best advice is to make sure that what has been negotiated is reflected in the final agreement.

### **Key Message**

*Preparation is the most important step of any negotiation.*

## 2. Bargaining

Bargaining is dynamic and may take many different forms, depending on the parties and the particular circumstances. Bargaining is not restricted to the actual interaction between the parties, but also involves terminology, timing and tone of discussion, among many other factors. During negotiations, be aware of these dynamics in order to avoid pitfalls and to capitalize on opportunities.

### **Building Rapport**

Negotiators are people; so, during negotiations, it is prudent to be diplomatic, professional and courteous. Friendly interest in the position, organization and person you are negotiating with is a good way to establish the trust and rapport that will encourage cooperative, integrative problem-solving and mutually beneficial negotiations.

### **Fairness And Trust**

People tend to be very sensitive, often irrationally so, about the issue of fairness. Many negotiators will walk away from an economically rational agreement if they believe they have been unfairly treated.

#### **Case Example: An Unfair Offer**

*A senior resident was offered a position for which the remuneration and conditions were well below both the existing market and the individual's reservation price. He had such strong feelings about being treated unfairly that he became consumed by mistrust. The resident refused to respond to any further offers by the institution.*

Trust is necessary to create and maintain a perception of fairness between negotiating parties. It, in turn, is based on integrity, fairness and consideration of the other party's position. Trust will offset any suspicion of ulterior motives, traps or deceptions between parties.

Wise negotiators listen to their counterparts and respond to their perceptions and concerns of fairness. While some posturing to show yourself in the best light during negotiation is expected, you must not misrepresent your abilities or training, or mislead your counterpart in any way. When lies and misrepresentations are uncovered, trust evaporates and negotiations often collapse.

Remember that, if negotiations are successful, you may be working with your counterpart for a significant period of time. Even if they are unsuccessful, you may be dealing with the other party in a professional capacity, perhaps at meetings or projects of common interest. Establishing trust, respecting fairness and maintaining a professional demeanor can help your professional and personal career in the long run.

### **Control Emotions And Reactions**

Although overconfidence, anger, pride and over-competitiveness hinder negotiations, emotional reactions can have a constructive effect. A positive demeanor and willingness to explore opportunities and solutions will often impress your negotiating counterpart. Furthermore, a positive attitude, combined with an amicable and trusting relationship, can lead to mutually beneficial exchanges of information and, ultimately, optimal agreements.

On the other hand, uncontrolled emotion can be detrimental. Verbal or non-verbal expression of shock or surprise—the “flinch” or “wince”—raise doubt about whether you can come to agreement, and your negotiating counterpart may alter the bargaining position to counter your reaction.

**Case Example: Thanks, I'll Think About It.**

*A senior resident received an offer that provided for income well below her BATNA and reservation price. Instead of wincing at the offer and creating an uncomfortable encounter, the resident thanked her counterpart for the offer and said she would have to spend some time evaluating the proposal. After several weeks of no communication, the resident received a call from the potential suitor, who was now very willing to increase the offer.*

**Anchors And Escalation Of Commitment**

We often classify information for ease of comparison. An anchor is a base figure from which negotiators add or subtract when judging offers. Anchors guide our judgment of subsequent offers. Be aware, however, that anchors can be unrealistic, irrelevant or outdated.

**Case Example: This Anchor Won't Hold.**

*A senior resident was recruited to a community hospital where a solo practitioner of his specialty offered to split clinical duties evenly with the new graduate, but offered remuneration that represented approximately 60% of the market rate. After further research, the resident discovered that his suitor billed at least 200% of the average rate for the specialty in the previous year. Seeing an offer to divide work evenly but accept significantly less than half of the remuneration left the resident with a sense of mistrust toward his counterpart. Although an anchor for subsequent negotiations had been set, the anchor was unrealistic, and only served to antagonize the resident. Negotiations subsequently fell apart.*

*Escalation of commitment* is another dynamic of negotiations that we frequently see in our profession. The typical medical student has worked for and enjoys considerable success. The requirements and challenges of residency only further entrench our desire for more success and accomplishment. Some physicians view negotiation for a specific opportunity as another goal or accomplishment that must be achieved at all costs. The fear of failure and feelings of not being wanted drive many to sign suboptimal agreements without giving adequate consideration to personal satisfaction, professional aspirations and financial expectations.

Beware the emotional yearnings that escalation of commitment can provoke. Be patient. Be objective. Always try to “see the forest in spite of the trees”. Focus on satisfying the personal and professional goals that you established during the preparation stage of negotiations.

**Making The First Offer**

The first figures presented in a negotiation often become the baseline against which all subsequent negotiations are measured. Whether you should make the first offer depends partly on how experienced both you and your negotiating counterpart are; inexperienced negotiators are more likely to make mistakes.

If you decide to make the first offer, information will be your strongest asset. With appropriate research, you should be able to estimate the BATNA of your negotiating counterpart. Although your offer should be ambitious, it should be close enough to your counterpart's BATNA to ensure that he/she will be convinced that negotiation should reach a mutually agreeable conclusion.

Making the first offer, however, is fraught with potential pitfalls. If your demands exceed the potential offer of your counterpart, it may reflect unfavourably on you. Alternatively, if your initial demands are below what your counterpart was willing to offer, you may receive what you have asked for—and no more.

Many senior residents believe they should avoid making the first offer—partly because of their inexperience, and partly because of the possibility that the counterpart will err and misread their expectations. If you are offered terms and conditions that are better than you anticipated, you will be in a very favourable negotiating position. Alternatively, if the offered terms and conditions are very close to your reservation price, you will realize that significant negotiation may be necessary to approach your target price and BATNA, and reach agreement.

One of the most confounding interview questions a senior resident or fellow will face in an interview is: “*How much do you think you’re worth?*” or “*How much do you feel you should earn?*”. Answering with specific numbers may place you in an unfavourable light. Too high a number may make you appear greedy, while a low number may doom you to that remuneration level in any subsequent negotiation. One way to answer this question without inadvertently making the first offer is to say, “*I feel I am at least as qualified, if not better qualified, than most of my peers across the country, and I feel I should be rewarded accordingly*”.

#### **Impasse**

Negotiation often continues until neither party feels they can achieve a deal better than their BATNA, and there appears to be no bargaining room. Experienced negotiators know that creative and integrative problem-solving will be needed to realize more value for each party. If such efforts are unsuccessful, negotiations should cease. Stopping negotiation, however, is different than walking away and abandoning the opportunity.

When negotiations are stopped, an impasse has occurred. Although an impasse may be unavoidable in many circumstances, there are several strategies that can help to restart talks.

**Focus on interests rather than positions.** Positions tend to become matters of pride for negotiators. Try to re-examine the potential opportunity in terms of your and your counterpart’s interests rather than positions. Often, you will find integrative solutions that can satisfy the interests of both parties and allow the negotiations to continue.

**Make a small concession.** Sometimes negotiations need to be set free from entrenched positions. If you make a small concession and ask your negotiating partner to do the same, you may get the “ball rolling” so that negotiations can continue. Sometimes your counterpart will not match your concession, and it will not be prudent for you to retract your offer—however, the reward from making a small concession is often worth the risk.

**Take a break.** Sometimes all parties need a time-out from negotiations. This time may be spent consulting with peers or colleagues, refocusing on interests instead of positions, or letting emotions cool. The respite can help both parties to investigate and discover an integrative solution that can be brought back to the table.

**Bring in a third party.** Sometimes it is helpful to bring in a third party, perhaps a trusted colleague, staff physician or a significant other. A fresh perspective sometimes gets negotiations back on track.

## Key Message

*While there are many dynamics in bargaining, you should strive to negotiate fair-minded agreements to the mutual satisfaction of both parties. Always be professional and courteous, and never misrepresent your position.*

### **Negotiate For The Long Term.**

Whether negotiations are successful or not, you may be working with—or at least interacting with—your counterpart on a professional level, now or later in your career. It is wise to treat your counterpart with respect and courtesy, exhibiting behaviour that is worthy of trust. In other words, don't "burn your bridges".

If you negotiate too strong a position for yourself, the other party may feel the agreement is lopsided. A concession that makes the other party feel cheated may result in you winning the battle but losing the war. Be gracious when receiving concessions, and be sure that your counterpart understands that you value such concessions very highly. Always ensure that the other party is satisfied as well. You do not want to create any bitterness or negative attitudes that will last long after negotiations have concluded. Always treat your counterpart with courtesy, fairness and respect.

### **3. Settlement**

While negotiations sometimes inch toward conclusion, in other situations, a creative solution quickly emerges to expedite a settlement. Always negotiate to the end.

Because wording can be ambiguous, both parties should have a shared understanding of the meaning of every provision in an agreement before anything is signed. A clear, well-understood agreement paves the way for a profitable, amicable and long-term relationship.

Once both parties are sure that an agreement is in sight, tension should ease and posturing and strategizing should end. The agreement may need some minor adjustment or tweaking that can benefit both parties; nevertheless, approach any post-settlement adjustments with caution.

### **Whose Signature Counts?**

All negotiations come down to whose signature counts. A physician who intends to join an academic department or institution will need to negotiate with several groups before securing a position that offers security and satisfaction. Even then, several contracts may apply. Have your lawyer review and approve all applicable contracts concurrently before committing to an offer. It is wise to sign all contracts at the same time to ensure that there are no loose ends.

In community settings, it is prudent to ensure that the person you are negotiating with has authority to grant the terms and conditions of your contract. If, for example, you are negotiating for a surgical position with the department head but a separate committee grants operating room time, make sure that the appropriate authority has consented to your terms before signing any agreement.

Depending on the particular position and hospital, any of the following may have the authority to contract with you: the chief executive officer, vice president of medical affairs, vice president of human resources, chief of staff, or head of a department/division. Always determine who has the authority to approve the terms and conditions of your agreement.

### **Key Message**

*Always negotiate to the end. Then, before you sign any agreement, have your lawyer review the draft contract to make sure that all of the terms and conditions you have negotiated are properly documented.*

### **Importance Of Legal Advice**

We have noted in other modules that physicians are experts in medicine while lawyers are trained in legal affairs, including contract law. Yet, while few of us would purchase a home without having a lawyer review all documents, many physicians accept practice opportunities without ever reviewing the contract or even having a lawyer see the document.

Negotiating a contract for a practice opportunity has significant potential value in both monetary and non-monetary terms. Because the financial value of a contract often greatly exceeds the value of a home, it makes sense to have a lawyer ensure that all negotiated terms and conditions are properly documented in the contract. This will minimize potential problems and ensure that you are fully aware of your clinical, financial and other obligations. The earlier you involve your lawyer, the better. A legal advisor who is knowledgeable in the field can best advise you on negotiation points.

## **ACTION PLAN**

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- ▶ **Dedicate time to prepare for any negotiation.**
- ▶ **Research what the market offers in terms of remuneration, work environment, service obligations and benefits.**
- ▶ **Identify your personal and professional goals, desires and objectives.**
- ▶ **Set your target price, reservation price and BATNA in relation to your negotiation points.**
- ▶ **Negotiate for an agreement that will satisfy both parties.**
- ▶ **Negotiate for the long term by staying professional, courteous and fair-minded.**
- ▶ **Ensure that the appropriate authority has approved your terms and conditions.**
- ▶ **Have your lawyer review any agreement to make sure that all terms and conditions that you have negotiated are properly documented.**



## RESOURCES

### ▶ **Hotline: 1 800 361-9151**

- CMA members can get 60 minutes of free consultation with a practice management expert. Tell us what you need assistance with and, after analyzing your situation, one of our consultants will call you back within two days with suggested solutions. We field inquiries on a wide range of issues, including contracts, physician resources, purchasing or selling a practice, leases, human resources, office operations and technology.

### ▶ **Online Resources Online At [cma.ca](http://cma.ca)**

- Practice Management Education Contract Checklist
- Statistics on physician workforce and remuneration, including results from the CMA's Physician Resource Questionnaire and national data
- Practice Management Education modules:
  - Module 10. Evaluating Practice Opportunities: Family Medicine*
  - Module 11. Locums: Negotiating A Fair And Mutually Beneficial Locum Contract*
  - Module 13. Evaluating Practice Opportunities: Specialists*

### ▶ **MD Management**

- Your local MD Management office can help you to find lawyers, financial consultants and other professional advisors. To find the MD Management office nearest you, call 1 800 267-2332.

### ▶ **Provincial Medical Associations**

- Many provincial medical associations offer contract negotiation services, including reviews of contracts and advice for members or potential members who are relocating to that respective province or territory. Contact information for all provincial medical associations is available on [cma.ca](http://cma.ca).

### ▶ **Provincial House Organizations**

- Some provincial house organizations offer residents advice and assistance when identifying, evaluating and negotiating for a position. Contact information for all provincial house organizations is available on [cma.ca](http://cma.ca).

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