

Get a Sweet Deal

Terry Mills, MD, a Newton, Kansas family physician, had more on his mind than just a good salary or a reasonable buy-in when he negotiated his first employment package. Two years before terrorist attacks put this country on high alert, he was looking for a practice that gave more than lip service to his Army Reserve commitment.

So when Wichita Clinic, a 160-physician multi-specialty group showed an interest in his skills, Mills

snapped to attention. This practice had enough history with other public service requests that medical director Robert Kenagy, MD says simply, “We knew we would support him. We thought it was our duty to help out.”

Of course, nobody could have guessed that an item on Mills’ negotiating “needs” list would take on added meaning, given the September 11 attacks. But his experience illustrates that creating a “win-win” with a future employer often involves more than just staking out your salary and sticking to it. Any issue can make or break a deal.



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Before he would accept a position with Wichita Clinic, Terry Mills, MD (right) asked for a commitment to his Army Reserve duty from medical director Robert Kenagy, MD.

Learn how to negotiate like a pro. The keys to success are preparation, self-awareness, and professionalism.

Yet how do you finesse the right package? Naturally you and the partners will have your own agendas. While you want a package that reflects your unique contributions, they'll aim for one that keeps you in line with others. But by practicing a little strategic give-and-take, the "art" of every negotiation, you can bridge the gaps.

"When you have the sense that they're dealing with you fairly and honestly," says Mills, "the negotiations should be like coming to terms with friends."

That doesn't mean that you shouldn't bargain hard upfront to avoid misunderstandings later. In fact, you'll need to sharpen your business wits and pay attention to the rules of the negotiating road:

Know yourself. You'll improve your bargaining posture if you nail your price in the marketplace and value to the practice. Then, to round out your preparation, create a personal "wants" and "must-haves" list.

Use your interview wisely. You'll have a better chance of getting your financial needs met if you make sure that the practice's philosophy and style match yours. Then keep a cool head when the rhetoric finally turns to money.

Tie up all loose ends. You'll be a happier camper over the long haul if you cover all the bases now. Then focus on the

issues that could haunt you over time, such as restrictive covenants and termination agreements.

"A good salary means nothing if the contract doesn't benefit you as the relationship progresses and even ends," says Michael Jordan, JD, a partner in the Cleveland, Ohio law firm of Walter and Haverfield. "When the focus is only money, other issues fall by the wayside. Everybody regrets it down the road."

Know thyself and thy market

Mapping a solid strategy to any negotiation ensures that you reach your financial destination with items important to you. Yet you'll only get bargaining mileage from your discussions if you've designed an itinerary that scopes out your value. Even if training didn't turn you into a business whiz, there are ways to price your skills. With a little sleuthing through professional society workshops, magazine articles, and negotiation books, you can nail your value and set your goals.

The Physician Compensation and Production Survey, released each fall by the Medical Group Management Association (MGMA), for example, summarizes salary, incentive, and benefit patterns by specialty and geography. Since groups are likely to use MGMA and other national data in crafting their scales, you'd do well to know and cite figures the partners already trust.

When Chad Rubin, MD came to Surgical Associates of South Carolina in Columbia, armed with ballpark salary figures, it was clear that the doctors had also done their homework. They were very specific that he would be hired as a one-year salaried employee, with bonuses determined on

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his production. After that, the contract would be renegotiated as a two-year partnership track, during which he'd receive increasingly larger percentages of the pie.

But while Rubin was "tickled pink" with his offer, he'd probably up the ante today by using the same level of due diligence he sees in those doctors he now recruits as a partner. "There's no way you can negotiate if you don't know where you stand," Rubin says. "You've got to have knowledge of who you are and what you want and will accept or you re-

ally can't bargain effectively."

Indeed, while survey data may be a roadmap, a wish, wants, and must-haves list will make you the driver in negotiating. Be generous in setting down your personal and professional priorities and liberal in editing for those that make good sense.

Despite a subspecialty—urogynecology—that would give her a pick of positions, Val Vogt, MD zeroed in on a few items that had to be part of her final deal. For instance, her husband needed to work in a metropolitan area

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—Val Vogt, MD

**Urogynecologist with University of Tennessee Medical Group
Memphis, Tennessee**

and she wanted access to certain specialized equipment. While Vogt's homework helped her eliminate some groups, it really kicked in with the serious contenders, such as the University of Tennessee Medical Group. She would build on advice from colleagues who had switched jobs recently, several of whom were unhappy with their situations. "They were the most informative of all."

Also, because her fellowship was heavily clinical, Vogt knew exactly what services she was capable of providing in a private practice. Prepared with CVs of her interviewers and research on their program, she showed them how she could fill the gaps—that she was worth the salary she had in mind.

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NEGOTIATION NUTS AND BOLTS

☛ **NARROW YOUR NEGOTIATIONS** to the job that truly piques your interest.

You stand a better chance of getting what you want if you're prepared to say, "I know you're offering \$120,000 but if you give me \$130,000, I'm ready to sign the deal," rather than "Give me your best offer so I can go back to the other places on my list."

☛ **EVALUATE ONE PRACTICE AGAINST THE OTHER** by setting down your criteria on a spreadsheet and then checking off your priorities after each interview.

☛ **KEEP YOUR "MUST-HAVES" LIST TO THE POINT.** Closing the deal will be easier if you're not resolving eight or nine issues at one time.

☛ **DON'T OBSESS ABOUT NEGOTIATING A BASE** if your continuing income will be determined largely by production. A salary guarantee is really only a worst-case scenario. If conditions are ripe for achieving your goals (the practice is growing and the payer mix is viable) then you just need to get to work.

☛ **GET SPECIFIC WITH MALPRACTICE COVERAGE.** It's not enough for the contract to say that professional liability coverage will be provided. You need to know if it will be an "occurrence" policy, protecting you against

any suits filed after you're no longer employed, or a "claims-made" policy, insulating against only claims filed while you're with the group. Since you'll need supplemental or "tail" insurance with the latter, make sure you know who pays what if you should leave.

☛ **GET THE FACTS.** Talk to as many people who know the group as possible. A. Patrice Burgess, MD, believes now that a heart-to-heart with former colleagues might have changed her mind about joining her first private practice. "The first day I showed up at work I discovered that many of the staff were disgruntled. Had I spent a little more time with them, I probably would have sensed that before I made my decision."

☛ **GET YOUR AGREEMENT IN WRITING.** Leave nothing to memory or conversation if you want to avoid verbal misunderstandings later. Since administrators change over time, you want your agreement to survive any new regime.

☛ **EVERY CONTRACT CAN BE AMENDED** so don't be intimidated by a "standard" agreement.

☛ **READ YOUR CONTRACT CAREFULLY.** Don't sign anything until you understand everything. ■



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Professional chemistry

Like Vogt, you can build a bargaining strategy using the same intuition and insights. But the real road test will come when you drive home your most salient points and see if you fit. Fortunately, you don't need a PhD to understand that positive chemistry can't be forced or faked. It's either there or it's not.

"I call it the internal computer," says Richard Glehan of the Westchester, New York, recruiting and consulting firm HealthField Alliance. "While you're talking and observing, something inside tells you this feels good or that doesn't feel good. Even if you like everything about the situation, never overrule that gut feeling."

Rubin reluctantly let go of a dream job after residency after the partner admitted that he had been convicted of fraud. While stunned, the young surgeon recog-

nized the revelation would cast a cloud over his own budding career, not to mention leave him forever uneasy over the books. Painful, yes. But his experience illustrates the importance of finding professional soulmates. Once Mills met the Wichita Clinic's doctors, he sensed immediately that they not only were dealing fairly with him, but had their hearts "in the right place."

"They were treating patients first and running a viable business second," Mills says. "Those decisions came only after patient care had been delivered well. The physicians I spoke to, almost without exception, were very pleased with their choice."

Whatever the situation, you never start bargaining money or any particulars before you've been offered the job, says Julie Sherriff, the president of Sherriff and Associates, Inc., a Kansas City,

Kansas, recruiting firm. "It is an insult to the client," she says. Instead, be prepared to park your compensation questions and requests while the senior doctors deal first with clinical and professional issues.

Also, while you'll typically get a sample contract to examine back home, don't expect a magic formula as to which items will be open for discussion. The variety is as great as the medical groups and policies or people who drive them.

The caveat, of course, is that you may already be down to the bare essentials. If you're an hourly emergency physician, your contract will be much simpler than if you're a subspecialist reimbursed on a mix of guarantees and bonuses. If you're joining a not-for-profit institution as a salaried manager, you won't have to hassle with complex production formulas, incentives, or partnerships.

In any case, remember that no contract

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is set in stone. Every agreement can be rewritten with a stroke of a pen. Even large organizations will bargain certain issues if asked. At Seattle's Group Health Permanente, for instance, salary ranges and benefits are set by elected physicians who represent 1,000 providers. Yet, the scales are broad enough in each specialty to reward skills and experience.

Whatever the financial lay of the land, be prepared to absorb the particulars as partners unfold them. In clarifying the practice's compensation and production formulas, ask to see precisely how your salary will fluctuate under the group's plan. Statistical models, based on patient visits and other production markers, can illustrate just how hard you'll have to work, says Kenneth Hekman, the author of *Physician Compensation* (currently out of print, but due to be re-released by the Medical Group Management Association this fall). "The contract spells out the details of the compensation formula but modeling shows how it really works."

Since Mills wanted equity with other physicians, it "made perfect sense" when the practice issued a contract that wasn't fundamentally different than others. He would be an employee with a guaranteed income until becoming a partner on strict production in two years. He had little wiggle room on his starting salary and there would be no student loan payback. ("It's a kind of Pandora's Box," says Kenagy. "Physicians are coming out of residency with a lot of debt. And we just aren't able to take it on for them.")

But administrators showed him how he could earn more than enough to make up for the lost payback. They also produced data illustrating that the clinic was not only solid enough financially to employ another family physician now, but looked viable for a new partner later. "The figures," says Mills, "were pretty convincing."

Like Mills, you should be interested in the larger financial picture and how your compensation plays over time. For instance, beware of guaranteed salaries that may morph into production formulas only. They can be devastating if the practice tilts heavily toward Medicare, Medicaid, and managed care.

Likewise, ask about the long-term implications of dividing your time among other duties. Since bonuses in academia, for instance, are often tied to clinical production, you may be out extra money over time if teaching or research crowds out your patients. Check to see how the package has worked for others.

"You need to know how the salary is going to change over time," says Vogt. "Unfortunately, for many young physicians, anything above and beyond what they earned in residency looks good. But it's what you earn through the years that makes the significant difference."

Look to the future

If becoming a partner is part of your deal, examine any buy-in opportunity carefully since medicine is replete with partnerships promised and never fulfilled. Even under benign circumstances, administrators are often loath to guarantee a permanent piece of the action to a possible temporary hire.

"Lawyers for groups often advise against that because they don't want to see it guaranteed if things don't go well," says Cindy Reisz, JD, the chair of the health-care group of Bass, Berry and Sims, a Nashville law firm. "But physicians usually want a safety net. They want to know, 'If I choose this opportunity, am I shutting the door on something else that would have been better for me?'"

If you don't want to shut doors, never agree to a job until you get a written reference to your future. The partners should tell you when and by what standards

you'll be judged, as well as the price to seal the deal. Listen for the words "Oh, you don't have to worry about that. We'll get into it later" or "It's our policy not to put that in an initial employment agreement." Those are flags that your goals may be at odds with those of senior members. Look elsewhere.

At \$14,000 Rubin considered his buy-in "extremely reasonable." But the one non-negotiable initial sticking point was that the practice wanted the money outright rather than taking it out of bonuses or salary. While Rubin tried to bargain a different deal, he gave in to their demands because the price was right.

Since Mills and his then-fiancee, Dianna, had moved to Kansas specifically for her PhD internship, he was honest that his tenure might be short-lived. "I thought they needed to know where I was coming from." But he also suggested staying on might not be so farfetched if Dianna could find a position. She did and he signed on as a partner.

Parting company

As improbable as severing ties seems now, you'll wish later that you'd paid closer attention to exit contract clauses if you decide this isn't your cup of tea—or the partners decide it for you. While "for cause" generally means you're unable or unsuitable to hold up your end of the bargain, make sure the verbiage is specific. Catch-all phrases such as "for acts of moral turpitude" or "behavior jeopardizing the group" can be open to interpretation. Conversely, "losing your medical license" or "being convicted of a felony" gets to the point.

Be equally adamant about including a reasonable "without cause" clause to protect you should you leave of your own volition. Working for 120 days, for instance, after you've given them notice, could be pretty miserable.

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WHEN TO USE AN ATTORNEY

Hiring a lawyer to convert your contract negotiations into a win makes good business sense. Since you'll be bartering with administrators focused on the best interest of their organization, you'll need an advocate in your corner to protect yours.

But should this person lend a steadying voice in private or an assertive one in public? Most experts advise that you handle the negotiations and use the attorney for advising and evaluating the contract. Keep in mind, however, that a lawyer well versed in physician contracts not only can establish a framework for your negotiations, but can bring objectivity into the situation.

Of course, it's tempting to tap your brother-in-law or the real estate lawyer

to help you over any stumbling blocks. In some cases, that might work. But the best legal mind for this situation probably belongs to a health-care lawyer who's well versed in physician contracts as well as state and federal regulations over payments and paybacks to doctors.

In crafting its offer, the group may have the bigger burden to ensure that its financial incentives fall within federal anti-fraud and anti-kickback statutes. Still, you and your counsel also should have an awareness of the regulatory constraints guiding practices in offering incentives or covering loans.

Perhaps even more important is finding a lawyer with a solid grasp of medical business issues. When A. Patrice Burgess, MD, negotiated her

first private practice job in Arizona, she didn't spend enough time investigating her attorney's health-care background; he was better versed in general than physician contracts.

The lapse, she says two jobs later, cost her a \$6,000 medical malpractice "tail" because he didn't catch the fact that she'd be covered with a "claims-made" policy that didn't cover future events. The lawyer also didn't alert her that the practice could keep her accounts receivables after she left without applying them to her start-up loan, leaving her obligated for a \$29,000 bill.

Burgess used an attorney when negotiating her Boise job, and she also made sure on her own that her "tail" and other issues were covered. Her situation illustrates why you want

to bring a lawyer on early so you have help with coaching on the hot points of the contract.

It's good strategy to meet with an attorney before you visit the practice to scope out the legal landmines. Then, after you've worked out details, ask this person to mark up the contract but be careful about leaving the final negotiating to a third party. It can work with some groups if that's how administrators do business. But it can also be a turn-off. In any case, impress upon this attorney that you're looking for a fair and equitable deal.

Says Richard Glehan, a Westchester, New York recruiter, "You want your lawyer to be a consigliere, so to speak. . .to advise and modify, not torpedo and destroy." ■

Also, understand that sweat equity may not be enough to forgive any start-up or medical school loans. If you want the partners to excuse portions with each passing year, get it in writing. Otherwise, you'll be liable in the end for their largess in the beginning.

When A. Patrice Burgess, MD, joined a Phoenix, Arizona, practice after the US Air Force, she signed a hospital incentive agreement to cover her salary and overhead until she broke even. Accruing over time, the amount would be forgiven in full after four years and prorated for every year prior. Burgess took the doctor-owner of the practice at her word that in six months she wouldn't need the advance.

But while the young physician billed in excess of \$20,000 every 30 days, her collections (\$9,000 in the first month) never offset the \$14,000 she needed monthly to forego the guarantee. The problem was exacerbated by a heavy managed care environment in which payers took 60 days to pay.

"I left partly because I became uncom-

fortable with the trend," she says of her departure after five months. "I was working very hard and didn't see a time when I wouldn't need the advance."

Worse yet, Burgess didn't realize that any future collections on her present services wouldn't be credited to her loan. Instead, the practice would get the \$16,000 to \$18,000 in outstanding receivables, leaving her with \$29,000 in debt to carry to her present job as assistant administrative director of Family Practice Residency of Idaho.

Coming home to the Boise program Burgess knew she didn't have to worry about accounts receivable or buy-ins since she was accepting a salaried academic position. Instead, she was more concerned about getting her liability "tail" covered and securing a decent restrictive covenant, both of which she did.

The practice you're joining may be so interested in keeping its share of the market that it restricts your post-group activity from several miles to several counties

for a few months to a few years. Know how enforceable restrictive covenants are in your state. And be cautious if your multi-clinic group prohibits you from working near any of its facilities. While the organization has legitimate business interests to protect, barring you from a significant chunk of the state isn't reasonable.

Mills couldn't get wiggle room on a covenant that forces him to pay liquidated damages equal to three times his annual salary should he leave for a practice within a three-county area. He wanted language that forgave the amount or reduced it after so many years. But when the group wouldn't budge, he acquiesced. Since he and his soon-to-be wife had decided to move elsewhere if things didn't work out, "it wasn't worth spending any coin on." Now three years and a partnership later, Mills sees real value in restrictive covenants.

"From the doctor's vantage point, it feels like you're going to be legally handcuffed to the practice," he says. "But from the group's

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perspective, it's not like that at all. It's just trying to protect the core business."

Since you'll be entrusting your patients to these colleagues, you don't want to nickel and dime the discussions. Nitpicking over cell phone charges, for instance, can ring hollow with partners even when time off for your medical boards might resonate. Also, it's dangerous to initiate a bargaining war for your services. That doesn't mean, however, that you can't entertain offers simultaneously. You just need to be tactful in the way you finesse the situation.

Vogt's specialty put her in the enviable position of considering several offers before signing with her Memphis practice. When several practices came courting, she would say "I'm thinking about this program and they've offered me such-and-such. What do you think? I've never put myself against the wall."

In the end, Vogt parlayed her goals into a package that wasn't perfect but suited her needs. She had negotiating room on a base salary and signing bonus. Also by being willing to take general OB in addition to uro-gyn call, she was able to sweeten the pot.

"It's a two-way deal, so you've got to look for the compromise," says Vogt. "You never want to say, 'If you don't give me this, I'm leaving.' That's an indicator that if you're asked to do something different down the road, you'd be inflexible."

As you maneuver the curves of any negotiation, remember physicians who reach their destinations view the bigger picture, not just the trivial stuff. But above all, they don't prolong the process when the partners, practice, and package look good.

Mills halted his search once he saw all financial and other signs pointing to Wichita Clinic. After all, the partners had met many of his contract demands and were willing to work around the military.

So when Uncle Sam called up the 4204 US Army Hospital Unit in February for deployment to Germany, he didn't flinch about the three-month rotation. Federal law may have guaranteed his job when he returns in May, but it's the attitude and alternative financial arrangements by the group that made it easier to leave.

"Even if the doctors didn't do this kind of public service themselves, I needed to know that they understood the importance of my commitment. They were very supportive, especially when the threat of being activated became very real." ■

Christine Hinz writes in Wisconsin.

Resource Rx

Find out more about MGMA's *Physician Compensation and Production Survey* by contacting the association at 1-877-ASK-MGMA or visiting the Web at www.mgma.com/surveys. The complete compendium is \$240 for members and \$450 for non-members.

Most state medical societies and professional groups produce workshops, lectures, or publications geared to the negotiation and contract needs of physicians. The American Medical Association publishes *Contracts: What You Need to Know*, for its members. Order it by calling 1-800-262-3211, ext. 4978 or visiting www.ama-assn.org/ama/pub/category/2446.html.