

The Art of Renegotiation

Strategies for negotiating the best terms with your employer

By Bonnie Simpson Mason, MD, Kimberly T. Boike, Esq., and Ryan A. Haas, Esq.

WHEN WAS the last time you reviewed your existing employment agreement? Do you even know where a copy of it is? Too often we observe that physicians become comfortable with their current employment relationships and do not take the time to review whether the terms of their employment agreement, including particular compensation provisions, should be renegotiated. Frequently the market for physician services changes and long-standing employee-physicians are not receiving the benefit of those changes because they do not bring these issues to their employer. For these reasons, it is important for physicians to periodically assess their relationship with their employer and determine if there is a need to renegotiate aspects of the relationship.

Step 1: Start with the Current Contract

As a preliminary step, physicians need to read and understand what is in their current contract in order to effectively negotiate changes. If it has been years since the contract has been renegotiated, there may be provisions that are no longer applicable and others that need to be updated based on changes in the law.

With respect to compensation, physicians need to understand their existing compensation model. Is it a guaranteed salary or a model based on productivity? How are bonuses achieved? Are they guaranteed or subject to quality or productivity based measures? If the bonus is based on quality or productivity measures, have those measures been achievable?

While compensation tends to be the primary contract term physicians are concerned about, there are other key terms that should be reviewed, especially tail requirements, restrictive covenants, length of the agreement, commitment to partnership, and termination rights. After the review, the physician should assess which provisions should be renegotiated.

For example, in Illinois there have been recent changes in the case law regarding enforcement of restrictive covenants. In addition, there has been a significant amount of consolidation in the medical community, such that depending on the specific terms of the restrictive covenant, the scope of the restrictive covenant may expand to more locations than the physician initially anticipated at the time of signing.

Step 2: Gather Your Industry Resources

The most compelling information that physicians can provide to their employer in a renegotiation is objective evidence of the industry standards for the practice's location and specialty. There are a variety of resources available to help substantiate industry standards. Surveys published by the Medical Group Management Association (MGMA) or other industry groups are helpful in establishing fair market value for compensation in the specific area and specialty in which the physician practices.

In addition, talking with colleagues in the area about the terms of their employment agreements can provide insight into the industry standard for the non-compensation provisions. We recommend that physicians reach out to their trusted circle of advisors to review other aspects of their employment agreement that may need to be renegotiated. For example, an insurance broker can provide the physician with information on the current cost of a tail policy, and a physician's attorney will advise on the standards for restrictive covenants in the area.

Step 3: Obtain Your Employment Data

Knowledge is power in renegotiating an employment agreement. Accordingly, physicians should assess their value to their employer. They should ask the employer to provide the following information from the previous two years:

- All amounts paid to the physician as compensation (both variable and non-variable).
- A report of the physician's case logs, including both inpatient and outpatient procedures.
- Revenue generated by the practice attributable to the physician.
- Expenses of the practice attributable to the physician.

The financial information requested from the practice should include amounts billed for the physician's services, amounts collected from these services, overhead attributed to the physician and any other expenses, such as the physician's marketing expenses. This information provides a clear understanding of the physician's value to the employer, which can be used as leverage in renegotiation discussions. In addition to these items, physicians should determine what other inherent value they bring to their employer, such as patient satisfaction scores, diversity, leadership,

accomplishments, and other notable skill sets.

Step 4: Prioritize Your Key Objectives

Prior to commencing any renegotiation, the physician should engage in self-reflection and determine what the key issues are for moving forward and prioritizing these areas since there is likely to be give-and-take in negotiation. A key revision may be that the physician wants a long-term agreement with limited termination rights. This could include requesting a longer term, with “no without cause termination” rights and limited “for cause” termination rights. Another request may be that the physician would like to devote less time to administrative commitments for the employer or on-call duties.

Additionally, a physician may wish to seek additional time for leave, which could include leave for maternity, vacation or sick time. The key issues that a physician identifies are subjective and vary from physician to physician depending on their particular circumstance and desire. However, prioritizing key issues will permit physicians to focus the discussions in the negotiation on items that are truly important to them.

Step 5: Time the Negotiation Appropriately

The ideal time to attempt to renegotiate a contract depends on the existing term and termination in the physician’s currently operative employment agreement. If the existing agreement is subject to an automatic renewal provision, an ideal time to schedule a meeting with the employer to discuss new terms would be at least 90 days before the agreement renews. This will give the parties sufficient time to come to an agreement on new terms prior to the renewal, and if new agreeable terms cannot be reached, subject to the termination provisions of the agreement, the physician may have the ability to terminate the agreement prior to the renewal.

It is critical to review the terms of a physician’s specific agreement, since some agreements can require at least 120 days’ notice of termination in order to prevent the agreement from automatically renewing. Physicians should consult their trusted advisors to review the agreement and to confirm the interpretation of the term and termination provisions.

Step 6: Prepare for the First Meeting

Once a strategic timeframe for the negotiation is decided upon, taking into account the terms of the existing agreement, physicians should prepare a list of the key provisions that they would like to renegotiate, along with the reasons why these provisions are important to the physician and are fair requests, which largely should be based on

objective data gathered by the physician.

The physician should then schedule an in-person meeting with the key decision-makers of the employer to discuss the physician’s requests. The employer likely will not be able to agree to any terms in the meeting, but the request from the physician should be that the employer take the requests under consideration.

Step 7: Follow Up With Correspondence

The physician should write to the key decision-makers thanking them for their consideration of the physician’s requests once the meeting is over. This written correspondence should reiterate the items that were discussed in the meeting and set forth the reasons the physician is requesting modifications to the existing employment agreement. The written correspondence should also request that the key decision-makers respond to the requests by a specific date so that the process can continue to move forward smoothly and efficiently.

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Once the physician receives a response from the key decision-makers, either a new agreement will need to be prepared or an amendment added to the existing agreement, depending on whether the response is positive or not. We recommend that physicians review the proposed amendment or new agreement with their trusted advisors to confirm that any proposed changes accomplish the physicians’ intended goals.

There is no one-size-fits-all strategy for renegotiating an existing employment agreement. Successful renegotiation depends on the specific employer as well as the terms of the existing agreement. However, the steps we have outlined in this article are intended to provide physicians with a general set of guidelines and principles that can help the physician to be in the best position possible to renegotiate any of their existing terms in their employment agreement.

Bonnie Simpson Mason, MD, is an orthopedic surgeon-turned-physician-educator and CEO of BeyondtheExamRoom.com, a firm that educates physicians on the business of medicine. She can be reached at DrBSM@BeyondtheExamRoom.com. Kimberly T. Boike, Esq., practices healthcare law at Chuhak & Tecson, PC, and can be reached at kboike@chuhak.com. Ryan A. Haas, Esq., practices employment law affecting healthcare providers and can be reached at rhaas@chuhak.com. 