



Evaluating Offers Requires Apples-to-Apples Comparison

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"Trust, but verify."

Mikel Gorbachav

Negotiating a Contract

Contracts are essentially documentation of an agreement between two parties. If later there is a disagreement over any aspect of the relationship, the contract will be cited by one or both of the parties as proof that a promise was or was not made.

Any contract is only as good as the parties to it; therefore, a strong contract with an unscrupulous employer may be much worse than a weak contract with a fair one. This concern aside, each party to a contract is agreeing to the general rules which will govern the subsequent relationship. Most contracts focus on financial issues, but neither side is limited by this generality. Your contract can and should include your non-monetary concerns as well.

Once you've decided the practice that suits you best, the prospect of negotiating a contract is probably the least appetizing task awaiting you. Because it is also the most important, you need to give it proper reflection and consideration.

In the negotiation phase of a contract, it is important to have a sense of your bargaining position. If you didn't sign the contract what kind of situation would the offerer(s) be in? Do they have a list of well qualified applicants, or are you the only hope? You don't want to over negotiate your contract in a tight market because you could lose an opportunity. Conversely, if you under negotiate when you have a relative advantage, you could lose financially.

Evaluating Compensation

Compensation is usually the major focus of physicians negotiating a contract. The most important determinant of the relative amount of compensation is the location and type of the practice opportunity. If you are looking at several opportunities in the same area, you will have a sense of the market. If not, consult one of the published emergency medicine salary guides to determine the range for that area.

The emergency medicine compensation issue that causes the most confusion is comparing the compensation of an offer to be an employee with a benefit package versus being an independent contractor at a higher hourly rate.

Similarly, how do you compare two employment offers with different benefits packages?

Everyone understands the concept of being an employee. It is the status you have as a resident. Your salary is your taxable income and your benefits are set. Your compensation is the value of your salary plus your benefits.

As an independent contractor you are essentially a small business person practicing medicine. You receive all of your compensation in the form of cash. Any benefits you desire must be paid for by you out of this income. Most commonly, there will be a deduction for malpractice insurance or malpractice insurance will be given to you as part of your contract. Malpractice insurance is not usually the independent contractor's responsibility. Solo policies are expensive. Try to avoid them.

As an independent contractor you have the additional choice of working as a sole proprietorship or incorporating and becoming an employee of your professional corporation. Most emergency physicians who incorporate do so for tax advantages specific to their individual situation. Forming a corporation is not always financially advantageous, especially if you do not have a complex financial situation, so seek professional advice prior to making this decision.

To compare financial opportunities, convert every contract offer into a gross annual rate for the same number of hours worked. This requires assigning a dollar value to each benefit you would receive as an employee. It is important that these values be assigned relative to what the benefit is worth to you, not what the benefit would cost your employer. For example, great family health insurance, which would cost your employer a bundle, is of no value

to you if you are not the head of a household or if you already have paid coverage through a spouse. Find out how much it would cost you to give yourself the appropriate benefit and use this figure in your calculations. A starting point for calculating annual compensation is determining the number of hours worked in the employee offer. Multiply the hours per week by 52, then subtract the hours of paid vacation and sick time. Then multiply this number of hours by the independent contractor hourly rate to calculate the total compensation as a contractor for the same number of hours worked.

Total employee compensation is calculated by starting with the total salary paid, including vacation and sick time. To this is added the value of various benefits plus the value of the employer contribution to social security, which is \$4,650.00 for anyone with an income over \$75,000. Converting benefits into dollars allows you to compare offers. Conventional wisdom is that the value of an employee benefits package can be calculated by adding 20% to the total annual salary. While this concept is tantalizingly simple, it is not accurate when you calculate the value of benefits packages of employees earning six-figure salaries. Excluding malpractice insurance, which is provided by nearly all opportunities, the true value of emergency physician benefits packages that I reviewed has ranged from \$16,000 - \$28,000 per year, or 8%-14% of the associated salary; therefore, using the usual 20% figure will significantly overestimate compensation. Don't do it. See Figure 1 for a detailed comparison between employee and independent contractor offers.

Negotiating a Signing Bonus

Another consideration during negotiations is a signing bonus. This bonus recognizes the costs of relocation or solidifies your commitment to work under the contract. Signing bonuses vary across the U.S. Depending on the circumstances, you may be able to negotiate a five-figure bonus/relocation allowance, but don't count on it. It is extremely rare for anyone to go this high, so don't have unreasonably high expectations. You may negotiate yourself out of the offer.

Evaluating an Offer of Partnership

Partnership can be another part of the equation in evaluating a specific practice opportunity. Partnership should be approached with extreme caution and both eyes open. There are literally hundreds of emergency physicians in the U.S. who were promised partnership in a group who never become partners. Having had a number of friends fall victim to this game, my advice is to consider a partnership offer as icing on the cake. If the primary value of partnership to you is financial, think long and hard before accepting a lower paying job with a promise of partnership over a higher paying one without partnership promises.

If a partnership offer is made, get it in writing. Issues to cover in your contract are time to partnership, amount and/or percent ownership, cost of buy-in (if any), ability to sell/value of stock, and historical yield of profits to partners. Realize that even having all of this documented will not mean anything if you are dealing with an unscrupulous group. The smaller the group, the less chance you have of enforcing a partnership contract if they renege. Secret contracts with the hospital and a number of other ploys can and have been used to prevent new physicians from becoming partners. Investigation of the group's recent history of adding partners could give you some valuable insight.

A variation to partnership which is becoming more popular is profit sharing. This is a pretty safe bet in a relatively large group with a well documented program and an established track record of profit sharing payments. Again, if you are counting on it, get the profit sharing plan in writing, and refer to it in your contract.

What is a Restrictive Covenant?

Another contract issue is that of restrictive covenants. The primary restrictive covenant in emergency medicine is the "non-compete clause." When you will be practicing as part of a group of any size which has a contract with the hospital, this clause will always state that you are prevented from working at the same hospital for a different group. It may also restrict you from practicing within a certain geographic radius from the hospital, or if you are signing an employment agreement, it may prevent you from working at any other hospital during the term of employment. Nearly all of these non-compete clauses are legal "boilerplate" paragraphs in standard contracts. Their enforceability varies from state to state.

The party asking you to sign the non-compete clause is merely trying to protect proprietary information or interests. In the case of contract holders, it is a way of making it harder for someone else to take the contract away. If you are accepting a management position, it will be very difficult to avoid a restrictive covenant. If you are accepting a staff physician position, you are usually in better position on this issue.

First, ask if you can have the clause removed. In some cases, this will be done without fuss, particularly if these clauses are not enforceable in your state. Next, if the restriction is broad based, try to minimize the effect by limiting it to the specific hospital you will be working at. Ask that a dollar figure be assigned to fix the value of the clause to the hospital or contract holder. This would be payment, agreed upon in advance, which could be made to allow you

to break the restriction. Since in reality these sorts of payments are frequently made when a contract changes hands, agreeing to a value up front protects you from legal wrangling later, especially if otherwise someone would decide to "make an example of you" by taking you to court. While the purpose would be to intimidate physicians at other contract sites, you would bear the full cost of your defense.

If you cannot get the restrictive covenant deleted or modified, ask for a "golden parachute" clause in your contract. If the hospital or group is determined to limit your local practice opportunities, you should expect them to enable you to provide for yourself and your family while you relocate. Two or three months' salary and/or relocation expenses provide for reasonably appropriate protection from the potential adverse effects of a non-compete clause.

What About Due Process?

Occasionally, the physician-employer relationship will need to be dissolved. A ninety-day notice from either party is a reasonable and standard time period for notice of contract termination. More importantly, all physicians are afforded due process by law. Due process allows the physician to address adequately an employer's complaint, including retention of legal counsel, without the threat of immediate termination. For instance, the physician can be terminated without explanation or rebuttal if he or she has waived his right for due process. Due process is your right until you sign a contract containing a clause waiving it.

Conclusion

In the optimal practice environment, where everything is going well and nothing is in dispute, you may never look at your contract after signing it. When evaluating a contract, remember that contracts are a written protection in the event of a dispute. Do not let your excitement about the position cause you to overlook ominous issues in your contract, lest you have to live with them later. Just like evaluating an emergency patient, where your first thought is "what is the worst thing this person could have?", each paragraph of a contract needs to be carefully considered as to what the worst case interpretation could be. If you don't feel comfortable with contract language or finances, get the contract evaluated by a trusted lawyer and/or a CPA.