

Principles and Tactics of Negotiation

Do you want more vacation time? A better managed care agreement? A seat on an influential committee? A bank loan? Good negotiation skills can help you reach these or other goals when in talks with a prospective or current employer, third-party payer, or hospital administrator. Chances are, despite your years of training, you've never had a course in how to negotiate. "The first important lesson in negotiating is to recognize that you *are* negotiating," says George Washington University law professor Charles B. Craver, author of *The Intelligent Negotiator*.¹ "Most people don't realize that they are involved in a negotiation until it's too late."

That certainly was the case with Dr Taylor (not the individual's real name), a graduating oncology fellow who, after a two-hour interview, accepted an offer for a job with no health insurance and poor pay. Commenting on the situation as she was leaving the group after a year, she says, "It didn't occur to me to ask questions." Another physician, hired soon after Taylor, got paid more and received a better benefits package, even though she worked fewer hours. Why? "She negotiated for all of that," Taylor says.

Many candidates make the mistake of thinking that the terms of a job offer are being dictated, Craver says. "But most employers start with a lower offer and respect people who ask to negotiate." His advice? "Just ask, very politely, 'Is this negotiable?'"



Dean Gesme, MD

"Negotiating is something that can be learned—something for which there are resources," says oncologist Dean Gesme, MD (Minneapolis, Minnesota), who has been involved in many negotiations throughout his 25-year career. "Most physicians feel they are so bright that they are afraid to look into things they don't know about. They're a bit ashamed and easily cowed in those areas. Either they ignore it

and hope it goes away, or they try to put on a show that they know what they are doing when they don't."

Although physicians may not think about interactions with patients as negotiations, principles of negotiating are in play and are important in communicating with patients. "Our recommendation many times is just our opinion," Gesme comments. "We need to be sensitive that we are putting it in the perspective of how patients are looking at their problem, as well as what their current situation is."

You Are Going to Have to Sleep in the Bed You Make

Remember that in most circumstances, you are negotiating a *relationship*, not a transaction. For example, when you are negotiating an employment contract to join a group practice, you are not just trying to get the best deal for yourself; you also want the best deal for the group, which will soon be *your* group.

Negotiation with third-party payers is another area where the relationship is ongoing. "With most payers, it's all about relationship," Gesme notes. "You have to keep that longer term in mind to be sure that everyone, including the patients, gets what's best for them."



Charles B. Craver

Attorney Craver agrees. "Never be so tough in negotiations that you begin with a negative relationship," he says. "Don't do something in the short run that will come back to hurt you in the long run—that's not a smart negotiation." He urges what he calls "competitive problem solving," noting that studies have shown that most adversarial negotiators are ineffective.

"Competitive problem solvers want a good deal for themselves, but they also want to maximize the joint return of both parties." Aim for a "win-win" agreement that will make both sides feel positive about the outcome.

Never Tell a Lie, Be Nice, and Consider the Timing

As Craver points out, most of the basic principles of negotiation were learned before kindergarten. Be polite. Be honest. Be considerate.

"Skilled bargainers do not behave badly," Craver says. "If you come to me and begin negatively I will look for a reason to tell you 'no.' But if you are professional and personable, I will feel guilty if I say 'no.'" Craver uses the term "negotiating emotional intelligence" to refer to the overall interpersonal skills needed to be successful in negotiations—self-awareness, ability to adapt, ability to empathize. And he likens it to physician-patient relations. "Where you have somebody with a nicer bedside manner—doctors with good relationships with patients are likely to have long-term relationships."

Gesme stresses that honesty is paramount. "Whether negotiating with a potential employer or a patient, honesty

Evaluate Yourself

You will be in negotiating situations throughout your life. Learn from them, and after any negotiating process, ask yourself these questions:

- What additional preparation would have helped me?
- Did I listen enough?
- Did I paraphrase statements from the other party?
- Were options explored sufficiently?
- How much did the outcome meet each party's real needs?

and integrity have to be first and foremost," he notes. "You will always lose if you've been dishonest. Nobody wants to bargain when you're not bargaining in good faith. It takes too much time, too many resources, too much energy."

Timing is important. Just as a child knows not to ask for a treat in the middle of a quarrel between mom and dad, don't initiate a negotiation during a difficult time for the other party. Even when negotiations are under way, correct timing remains important. For example, you shouldn't bring up salary and other compensation details prematurely when seeking a new position. Craver advises, "Wait until you have an offer. If they ask what you expect as salary before stating a figure, the best response is 'What is your normal amount?'"

Do Your Homework

Take time to prepare before approaching a negotiation. Start with assessing your own goals. "The biggest mistake I've seen, in my own negotiations and in those of others, is coming in with a specific demand," Gesme recounts. "You may think you want the corner office, but in fact it has a water leak and the heat doesn't work, so there may be a better strategy. You want to be open going into a negotiation." Beware of assumptions and biases, which often become self-fulfilling. As Gesme says, "Be careful what you wish for."

Other Ways to Prepare Before Beginning Negotiation

Research the Other Party

Find out all you can about the other party. If you will be negotiating with a group practice, read everything on its Web site and ask to have any marketing literature or patient handouts about the practice sent to you in advance. Check to see if any of the physicians have published articles or reports. If you are talking to the chief of the medical staff about a committee, take time to learn about the individual and the committee beforehand.

Consider Your Alternatives

Go into negotiations knowing what alternatives you have. A term coined for this concept is your BATNA (best alternative to a negotiated agreement).² Your BATNA is the option you will take if no agreement can be reached. If you are negotiating an employment contract, for instance, your BATNA might be an offer from another practice. Knowing your BATNA beforehand protects you from accepting a poor offer and puts you in a stronger negotiating position.

Unbundle the Items to Be Negotiated

Break the agreement to be negotiated into small parts. In dealing with an employment contract, for instance, break "compensation" down into its smallest components, such as salary, health benefits, moving costs, bonuses, reimbursed expenses such as a car allowance or cell phone, and so on. Craver notes that the salary may or may not be negotiable, but even if it isn't, items such as licensure fees, moving expenses, and an education allowance can often compensate for a slightly lower salary.

Anticipate the Other Party's Wants and Needs

Think about what the other party's top issues are likely to be. This will help you develop strategies to negotiate your position. Estimate the other party's probable limits in reaching a compromise. Consider your counterpart's BATNA; what is likely to be his or her next best choice? In a recent move across the country, Gesme says the negotiation was much easier because he knew the values of the group he would be working with. "That's also important in negotiating with patients. You want to find out their basic values—what they want from treatment and what's important to them in their lives?"

Establish Your Bargaining Range

Identify objectives for each of the issues you have unbundled, setting an optimum, minimum, and target goal. The minimum is the point at which you would walk away from the offer if the other party can't meet your request. The optimum is your starting point—the best deal, one you see as ideal but something that is not outrageous. The target is the point where you would like to end up after negotiations.

Identify Your Leveraging Points and What You Can Give Up

Determine the areas most important to you. Use those that you do not care much about as leverage in negotiating to achieve your priorities. Also, identify the attributes you bring to the table. For example, in joining a practice, you may have special training that the practice needs or you may be fluent in a language spoken by a large percentage of its patients. Gesme advises, "Before you go into negotiation, reflect on what the other party is looking for and what you can give up."

Identify the Decision Maker

If you will be negotiating with several people, identify the person who is the authorized decision maker. Don't get into a

situation in which someone can say that he or she has to “check with the boss on that.” You want to talk directly with the person who has the authority to make agreements.

Negotiating Strategies to Help You

Now that you’ve done your homework, what about actually negotiating? Here are some techniques to help you when you sit down with the other party.

Convey Confidence, Not Cockiness

To help you stay focused, remind yourself of your own objectives. To a great extent, power is a matter of perception. You may feel at a disadvantage when negotiating with a more powerful individual, but keep in mind that you would not be negotiating unless you have something the other party needs. On the other hand, Gesme notes that “overconfidence kills most negotiation.” Speaking specifically of managed care plans, he says, “The doctors who think they do it well get fleeced more often than anyone else. Be humble but know your options.”

Set the Stage for Agreement

“The first impression is truly the lasting impression,” Craver points out. “Even in negotiation, if I start in a positive way, the other party is likely to behave more cooperatively and reach an efficient agreement, meaning we are trading the right items.” Establish rapport with the other party early in the negotiation by looking for areas on which you both agree. Bring up points on which you are fairly certain the other party can say “yes.” Agreement helps establish a foundation of trust and respect that will be useful when you address more controversial topics.

Do Not Put Off Bringing Up the Elephant in the Room

Although it is a good strategy to find areas to agree on first, avoid waiting too long to bring up points you know might be significant. Gesme likens this to the story of a young physician he knew who waited until 2 weeks before the wedding to tell his fiancée that he had been previously married. He says, “When you know there are major obstacles, be tactful, but bring them up early rather than risk going through a laborious process and then having to put a band-aid fix on it at the end.” Such an issue common today is the generational disparity in expectations about work hours. “Senior partners are used to working 70 to 80 hours a week, while young people want to work 50 hours,” Gesme explains. “It’s not an insurmountable chasm, but it’s something that has to be negotiated up front. Both sides tend to keep those issues tucked away because they are painful and a bit hard. But you want to bring it up early.”

Ask Open-Ended Questions

Use phrases such as “Tell me more about. . .” and “What is your biggest concern with. . .” instead of questions that can

Resources

- G.R. Shell: *Bargaining for Advantage: Negotiation Strategies for Reasonable People*. New York, NY: Penguin Books, 1999
- S. Babitsky, J.J. Mangraviti Jr: *The Successful Physician Negotiator: How to Get What You Deserve*. Falmouth, MA, Seak Inc, 1998
- D.B. Givens: *The Nonverbal Dictionary of Gestures, Signs, & Body Language Cues*. Spokane, WA, Center for Nonverbal Studies Press, 2006. Available at <http://members.aol.com/nonverbal2/index.htm>
- The American Management Association seminar: *Negotiating to Win*. Registration information available at <http://www.amanet.org>
- The Negotiator Magazine. Free online magazine available at <http://www.negotiormagazine.com>

be answered with a “yes” or “no.” Your goal in the early stages of negotiation is to find out more about what the other party’s real needs are. “The more time they speak, the more information they disclose,” Craver notes.

“A lot comes back to knowing who you’re dealing with, whether it’s a payer, a group of doctors, or a patient,” Gesme suggests. “With patients, for example, open-ended questions elicit a greater range of feedback about the medical problem, and also put it in the perspective of how the patient is looking at his or her problem and what the current situation is. This has to be part of the resolution.”

Listen and Restate Comments

Be wary of talking too much. By listening more than you talk, you will uncover information and attitudes that can help you understand the other party’s concerns and interests. “Listen to verbal leaks that inadvertently give away important information,” Craver recommends. “For example, someone who says he doesn’t ‘have much more room’ clearly *does* have more room.”

Paraphrase others’ statements in your own words. This lets them provide clarification or correct misinterpretations. In addition, you will often hear an elaboration on a point that will help you find out their needs and how to meet them. As Gesme notes, “It’s extremely important to understand their perspective as the negotiation proceeds.”

Watch for Nonverbal Cues

As a clinician, you are likely already familiar with the significance of nonverbal cues. Watch for meaningful gestures in your “adversary,” and be aware of the messages you are sending with your own body language. Noting gestures such as these can be helpful in negotiating: leaning back or clasping hands behind one’s head is a sign of confidence or even

dominance, but moving one hand behind one's head is usually a negative sign, and could mean uncertainty, disagreement, or frustration; sitting on the edge of one's chair shows interest; compressed lips may signal the onset of anger or uncertainty.

Stay Cool and Depersonalize Disagreements

Never negotiate when you are angry. Be aware of your own hot buttons, and do not rise to the bait if someone pushes one of them. Similarly, help the other party stay cool. When identifying potentially touchy points, refer to them objectively rather than assigning ownership. For instance, instead of saying "the way you assign call hours," say "the structure of call coverage."

Separate Discussion of Problems From Exploration of Solutions

Seek to clarify an issue and evaluate the nature of the disagreement before exploring solutions to it. Discussing solutions before the problem is fully defined can lead to trouble later because there might have been premature agreement on a problem that was not really fully understood by both parties.

Do Not Compare Offers

Although you have researched alternatives and know what someone else might be offering you, discuss the current deal on its merits. Do not compare it openly with other offers you have. Other offers you may have are your backup—your BATNA—if you can't reach a satisfactory agreement in the current negotiations.

Don't Issue an Ultimatum

Any kind of "take it or leave it" or "this is my final position" pronouncement cuts off the negotiations completely. Ultimatums are especially dangerous early in the negotiating process.

References

1. Craver CB: *The Intelligent Negotiator*. Roseville, CA, Prima Lifestyles, 2002
2. Fisher R, Ury W, Patton B: *Getting to Yes: Negotiating Agreement Without Giving In*. New York, NY, Penguin Books, 1991

Use Deferment As a Trade-Off

In negotiating an employment contract, compensation is an area in which you can sometimes gain what you want by deferring it to the second year. For example, if your goal is a first-year salary of \$120,000, but the practice seems firm on offering only \$110,000, suggest that the \$10,000 difference be added to your second-year's salary. Thus, if the second-year salary was to be \$130,000, indicate you will accept the \$110,000 offered for the first year if they make the salary \$140,000 in year two. This shows that you are thinking long-term and also conveys confidence that the practice will be happy with you.

Use Your Leverage

Do not let any of the leveraging points you identified earlier go unexpressed during negotiations. As you prepared, you thought about the attributes you have that they want. Now is the time to bring them up.

Bring Materials That Supports Your Position

Data and literature convey authority. Have reports on hand that back up your negotiating points, such as salary surveys. If you want to work part time, for example, bring articles that discuss the success stories and the benefits that such arrangements can offer.

Beware of a Stall: Reach Closure

If the other party seems uninterested in finalizing the agreement, he or she might think a delay will improve the bargaining position. Ask what additional information is needed for a final decision to be made. On the other hand, you can use a stalling technique yourself. If you want to negotiate more slowly and deliberately, tell the other party that you wish to confer with, for example, your spouse or an attorney.

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