

## CMA Negotiation Handouts

*This checklist was developed for CMA Joule by Dr. Adam Shehata, MD, JD, ATPL.*

### Principles of Interest-Based Negotiation

Contracts for the provision of medical care tend not to be transactional; they're usually about long-term relationships involving multiple issues. Medicine is a small community and when you're seeking to negotiate for a position, you must balance competing interests: on the one hand, you may need to press for what you want because no one will give you something for nothing, but on the other hand you don't want to appear to be exploiting the other party's need to fill a position. Above all, reputation is paramount: negotiating in good faith (and appearing to do so), providing excellent care to patients and being seen as someone who's easy to work with will pay far more dividends than any individual contract's favourable terms.

- **Preparation is key.** Know what terms are standard; find out what others have been offered or managed to negotiate; and have a general idea of the type and amount of work and availability you're offering and know what these are worth. Ideally, consult someone who has recently been in this position (even if you need to ask the other party for references) and ask them about the terms of their contract, as well as the best and worst parts of working in that role.
- **Be aspirational.** In general, ask for a little more than what you think the other party is willing to offer or settle on. Ideally, you would know exactly what their walk-away point is (reservation value) and make an offer just above it and have them negotiate down to close to it. Where you have little idea of what they may be willing to offer, do not make the first offer. Be prepared with a series of questions designed to gain a better understanding of what they're capable of offering and let them make the first offer, unless you have a good sense of their reservation value.
- **Know what your Best Alternative To a Negotiated Agreement (BATNA) is.** If you do not negotiate a deal with the other party, what will you do? Work somewhere else? Take a sabbatical? This is your BATNA. Next, develop it — get a specific offer or seek clarification to determine if your BATNA is truly possible and on what terms. The more attractive your BATNA, the stronger your bargaining position. Caution is advised: no one likes being used as leverage to improve your offer in a separate deal. (See Appendix A – Useful Phrases and Tactics in Negotiation for other strategies.)
- **Justify your request.** The other party has a constituency (their boss, board of directors, etc.). Even if they can give you what you're asking for, they need to be able to justify it. Have a justification (objective standard) for every offer: what's been paid before, what the market value is currently, what you would be giving up by not pursuing your BATNA, what you need to recoup specific expenses, what the competitor pays, what the Canada Revenue Agency reimburses at, and so on. Part of this is knowing what you're worth and what separates you from other clinicians, such as your experience, the recency of your training (up to date, awareness of current issues), your experience with this patient population and the courses you've taken (ACLS, ATLS, NRP, ALARM, PALS, POCUS, etc.).

- **Make them justify their offer.** By what standard is that a reasonable offer? Is that what they recently paid someone for the same work? Is this the market rate? Discuss the offer with your confidants, such as your partner or business partner. A mentor (ideally in the same specialty) who can look over the offer is invaluable.
- **Think about more than just money.** There are many issues on the table. Budgets are often tight, but compensation can come in many forms (types of clinical work or experience, vacation, use of vehicle, accommodation, protected time, etc. – see Appendix B – Issues to Negotiate and Understand for Individual Practice). Before the negotiation begins, think of all the ways in which your time can be compensated and then rank them by how you value them. Look for areas where a trade-off exists where the other party can give you something at low cost to them (e.g., unpaid time off) that you value greatly (e.g., a later start date).
- **Negotiate multiple issues simultaneously.** If you get an offer and there are several aspects that are less than satisfactory to you, do not negotiate issue A (e.g., salary) first, then issue B (e.g., hours) later. This is inefficient and annoying, and it can be counter-productive, particularly if the other party has given as much as they can on the first issue, leaving them no room to negotiate on the other issues, when in fact you valued the other issues more. Instead, signal to them which of the issues is most important to you (see Appendix A – Useful Phrases and Tactics in Negotiation for how to communicate this) and they'll revise their offer as they can.
- **Think about the worst-case scenario.** Legal drafting is about risk allocation. What happens if you or they need to terminate the contract? On what terms and what notice? What if you need to leave town to deal with a family emergency? Who will follow up on results, and so on?
- **Think about the best-case scenario.** How will this experience further your career and your personal/family life? In the ideal world, could this lead to a position of your dreams in several years? This dovetails with “thinking aspirationally” and seeing if your counterpart can offer something that you value highly but that is low-cost to them, such as a specific experience). Consider asking, even if you think it may not be possible, whether your dream scenario would be possible — this puts more issues on the bargaining table and provides more ways to satisfy your needs. Even if it turns out that your dream scenario is not possible, the discussion opens the door to future possibilities that may otherwise never have been uncovered. This is “expanding the pie before dividing it.” What may not be possible today may be possible tomorrow.

- **Rushing a negotiation is a recipe for disaster.** Time pressure results in poorly thought-out deals. Even when the bargain struck is fair, lack of time makes people wonder whether a better deal could have been structured. Execution of the deal may then be in jeopardy. When there's no alternative but to negotiate quickly, a two-tiered approach is advisable. Negotiate a short-term deal (e.g., for the first month) and then agree to negotiate the remainder of the term by a later date.
- **Have a lawyer who's familiar with these types of deals review the contract.** The adage "an ounce of prevention is worth a pound of cure" is true for legal advice. Also, one hopes to never need to enforce a contract in court, but it would be a shame to have bargained hard for a deal that isn't worth the paper it's written on because it could either a) never be performed by the parties or b) never be enforced.
- **Stay in touch. Staying on good terms and staying in touch creates possibilities.** The other party may not have been able to share certain things during the negotiation process, but this may change after the deal is done. Understanding the other party, their needs and their constraints leads to better deals in the future.

## Appendix A: Useful Phrases and Tactics in Negotiation

### Negotiating multiple issues simultaneously

- “All of these issues are important to me and I may not have a lot of room to move on any of them, but of these, the most important are [X, Y, and Z].”

### To buy time

- “I don’t have that information in front of me. Would you mind if I got back to you [insert time]?”
- “It seems to me that you’ve put a lot of thought and effort into your offer. I would like to do it justice and take some time to consider it.”

### How to respond to a question you do not want to directly answer

- “I’d rather not say.”
- “Perhaps I’d feel more comfortable discussing that later.”
- “For reasons I think you’ll understand, that’s not up for discussion at the moment.”
- “I respectfully decline your invitation.”

### The hard-hearted partner

Where the other party reports they must run the offer by their constituency and you do not, you often give up power. Think of the car salesperson who needs to run every serious offer by their manager: they come back with a revised offer that’s never improved. In such cases, it’s a good idea to also have a similarly hard-hearted “manager” and say, “I’ll have to run this by my partner.” (No one needs to know that your hard-hearted partner is your cat.) Later you can come back to the table and report, “I/We’ve had time to consider your offer and I/we propose...”

## Appendix B – Issues to Negotiate and Understand for Individual Practice

### 1. Pay

- a. Salary versus fee for service versus blended
- b. Shadow billing
- c. Stipend + billing
- d. Method and timing of payment

### 2. Hours

- a. Clinic hours
- b. Patient population and type of clinic (more or fewer procedures, certain patient populations, etc.), such as more or less emergency work or work as a hospitalist for a general practitioner
- c. After-hours clinics
- d. Payment for administrative time (and specifics on what constitutes administrative time)
- e. On-call (and location home vs. in-hospital vs. call-out fee)

### 3. Coverage

- a. Support from colleagues (who else is in the hospital or clinic and available)
- b. Allied health professionals (physiotherapists, occupational therapists, respiratory therapists, etc.)
- c. Consultants available

### 4. Allied health support

- a. Office administrator
- b. Receptionist
- c. Clinic nurse

### 5. Start and end date (length of contract)

### 6. Billing (and access to patient records to bill when no longer on site)

### 7. Who follows up on results

### 8. Vacation

### 9. Transportation to and from location

### 10. Use of vehicle

### 11. Accommodation

12. Utilities, phone, Internet, cable, etc.
13. Insurance: Canadian Medical Protective Association (CMPA), other
14. Exclusivity: no other practitioner they hire will perform X procedure (probably not possible in strict terms, but you should know how many others are doing similar work)
15. Contingency agreements: If X occurs, Y happens (e.g., if there is no nurse available, the clinic will close); ensure there is an objective measurement for determining that X has occurred; otherwise, a dispute as to how to measure X may ensue
16. Right of first refusal with respect to future hires (this will be of particular interest to general practitioners with enhanced skills or specialists with a special interest)
17. Most favoured nation clause (where the other party is unable to give someone else a deal better than yours)
18. Future business (amount, rate, discount)
19. Reference (letter, phone call)
20. Training courses before, during or after contract

## Appendix C – Negotiation Resources

1. Fisher R, Ury W, Patton B. *Getting to Yes: negotiating agreement without giving in*. 2nd ed. London (UK): Penguin; 2006.
2. Malhotra D. How to negotiate your job offer [YouTube video by a Harvard Business School professor]. 2012. Available from: [https://youtu.be/km2Hd\\_xgo9Q](https://youtu.be/km2Hd_xgo9Q)
3. Canadian Medical Protective Association. Medical-legal issues to consider with individual contracts. Available from: <https://www.cmpa-acpm.ca/en/membership/protection-for-members/principles-of-assistance/medico-legal-issues-to-consider-with-individual-contracts>
4. Malhotra D, Bazerman M. *Negotiation genius: how to overcome obstacles and achieve brilliant results at the bargaining table and beyond*. New York (NY): Bantam; 2008.
5. Voss C, Raz T. *Never split the difference: negotiating as if your life depended on it*. New York (NY): Harper Business; 2017.