

Hospital Contracting: 18 Contract Clauses You Should Be Prepared to Address

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Disclosure

I have nothing to disclose.

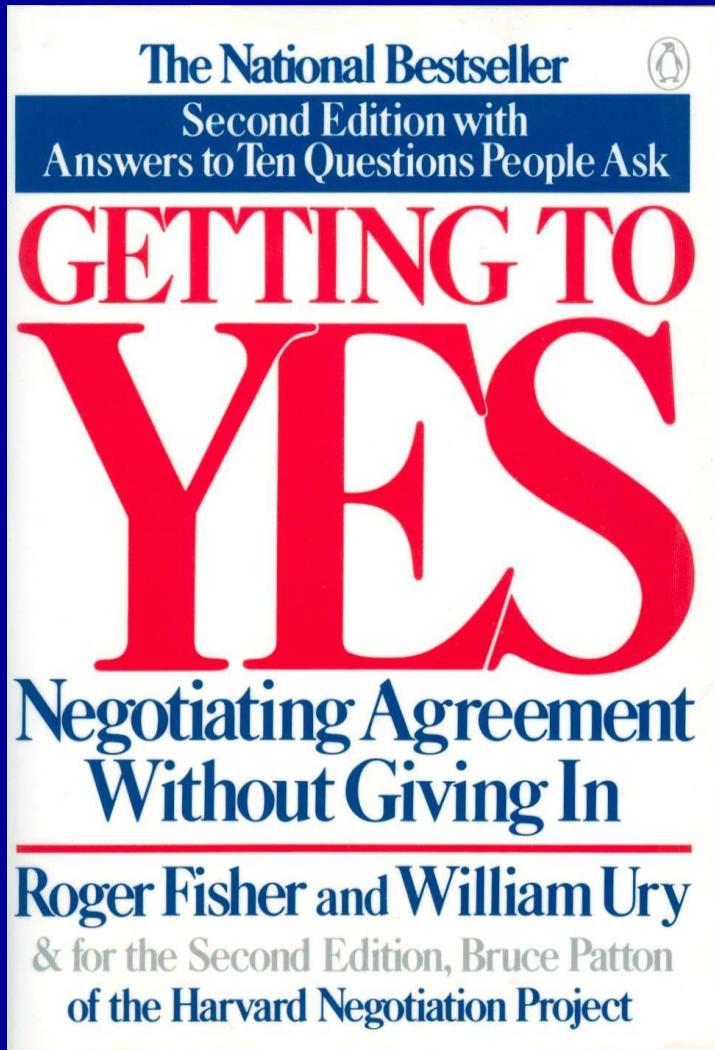
Most hospital contract negotiations have little to do with replacing the incumbent radiology group, but the resulting document can have everything to do with your current work circumstances and your future tenure.

Why Are Groups In Contract Negotiations?

- 1) There never was a contract, and now the hospital wants one.
- 2) The existing contract is not “evergreen”.
- 3) The contract is evergreen, but one of the parties (usually the hospital) wants to renegotiate certain terms. (Beware “ABR trigger”)
- 4) The hospital wants more control, wants to employ the group, or wants to replace it.

Applying Negotiation Principles To Your Hospital Contract

An Important Reference



- 1) This is a very good book that is easily understood, a quick read, and very relevant to what radiologists do.
- 2) Most important, your hospital president will have read the book.

What if my hospital doesn't want to
“get to yes”?

If you have the opportunity to negotiate your hospital contract, then most likely the hospital administration wants to “get to yes” - or at least give you a good chance to retain your contract.

Important Considerations In Hospital Contracting

- 1) Most often, it will be the practice leader alone (or with a small group of practice members) who will negotiate a contract
- 2) That does not mean that the practice should not have advisors “behind the scenes” assisting in the process
- 3) Preparation, prioritization, and open communications are key.

Most hospital administrators are skilled negotiators; most radiologists are not.

We take it personally; for them its just a walk in the park



Preparation- Your Responsibilities

1) What issues are most important to your practice? Prioritize them.

2) What is your BATNA? Your reservation price? Your target?

3) What are your sources of power? Know and when/if necessary, exploit them.

Sources of Power

- 1) Uniqueness of skill sets
- 2) Relationships with administration, hospital board members, medical staff, business and community leaders, media
- 3) Statewide influence/political relationships
- 4) Scope and extent of service provided
- 5) Medical staff offices held or a seat on the Hospital's Board of Trustees

Preparation- Understanding the “Opponent”

1) What issues are most important to the opponent (the hospital)

2) What is your opponent's BATNA?
Reservation Price? Target?

3) What are your opponent's sources of power?

Political Considerations

- 1) Any action you take depends on the circumstances.
- 2) Clauses that may be totally unacceptable if you have a history with the hospital, may be necessary in order to get a contract at a new facility.

Political Considerations

- 3) Competitive forces may also dictate what is acceptable
- 4) A new influence is the ability of the hospital to direct the imaging ordered by the hospital employed referring physicians. This makes it more difficult to resist “difficult” contract clauses.

Prioritization

- 1) Read the proposed contract and decide what is important, what is essential, and what can be used in a “give and take” of concessions (these should always be paired).
- 2) Keep that information private (share only with practice members and your advisors).
- 3) Never try to “wing it” no matter how friendly you anticipate negotiations to be.

Contract Issues

- 1) Define your services (radiology services should be as broadly defined as possible; exceptions defined as narrowly as possible)
- 2) Define your organizational status.
- 3) Define how new services / turf issues will be handled. Consider a “comparability model”.
- 4) Define all responsibilities and obligations.
- 5) Define all terms and termination.

Negotiation Advice

- 1) Attempt to establish trust
- 2) Focus on the issues, not on the people
- 3) Try to structure the outcome so that there is a win-win scenario
- 4) Link issues so that trade-offs can be made. Concessions should always be linked
- 5) Non-confrontational approach works best
- 6) The group must appear united

What if the negotiations become adversarial?

If there is any question that the discussions will be difficult, then get an attorney and possibly an advisor involved as early as possible.

HOSPITAL CONTRACT CLAUSES

- 1) Evergreen contract is best for your group.
- 2) If possible, retain due process/Medical Staff privileges- AVOID CLEAN SWEEP PROVISIONS (very difficult to do).
- 3) Broad definition of radiology services; narrow definition of any exclusions or carve-outs

HOSPITAL CONTRACT CLAUSES

- 4) Independent Contractor status.
- 5) Access to group data and policies only if this is required by state or federal investigators.
- 6) Turf issues settled by MEC. **Take my turf; take my call.** Try for a comparability model

HOSPITAL CONTRACT CLAUSES

7) Termination for cause only (if possible).
Right to cure any contract breach.

8) Avoidance of “non-compete” clauses; as a fallback position, give hospital “right of first refusal.” **Under no circumstance accept an over-hang provision on the non-compete.**

HOSPITAL CONTRACT CLAUSES

- 9) No assumption of liability or providing indemnification (fallback- assumption of liability only if permitted by insurance carrier).

- 10) A floor beneath any demands for 3rd party payor contract negotiations or, better, a value dictated by a predetermined formula.

HOSPITAL CONTRACT CLAUSES

11) Beware of confidentiality clauses!

12) Don't give hospital a unilateral right to alter exclusivity. **Exclusivity** should “trump” any action by **credentials committee or any departmental grant of privileges.**

HOSPITAL CONTRACT CLAUSES

- 13) Resist vague verbiage permitting termination for being a “bad citizen”.

- 14) Avoid giving up your right to legal redress (arbitration mandates)

HOSPITAL CONTRACT CLAUSES

- 15) Any performance metrics should be bilaterally agreed upon.

- 16) Note any provisions mandating that each radiologist sign an agreement that he/she understands and agrees to the contract provisions.

Having the radiologists sign might not be a bad idea; however, never allow a hospital non-compete (or similar restrictive provision) with your radiologists substitute for having the same or similar provision in your group's employment agreement.

HOSPITAL CONTRACT CLAUSES

17) Define exclusivity in terms of the radiology services to be provided, not the radiologists that provide the services. Also, make sure the exclusivity is for the entire hospital (and hospital owned facilities), not just in the department.

HOSPITAL CONTRACT CLAUSES

18) Do not, under any circumstances, enter into an agreement which may subject the group to civil and/or criminal liability.

Adversarial situations, unreasonable demands, and matters of questionable ethics or legality are best left to advisors and/or lawyers for resolution.

Bonus Consideration

Most hospital contracts give either party the right to terminate the contract if there is a substantial change in ownership of either entity.

If you are contemplating selling your practice to a national radiology entity, then make sure in advance that your hospital will not invoke this contract clause.



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