Any practice staff expansion signifies a period of excitement and optimism. Both the employer and the newly employed recognize it as a great opportunity. Yet the notion of contract negotiation can cast a pall over this otherwise exciting time.

The decision to bring on a professional level care provider, such as a Physician Assistant or Nurse Practitioner, depends on numerous factors specific to each individual practice. Furthermore, the choice of either a PA or NP also depends on the needs and desires of the specific practice. These are points for another article. The focus here is on negotiating a contract once these decisions are made. My experience negotiating my own contracts and counseling colleagues on their contracts has helped me identify key points that both PAs and the physicians who hire them must consider. The bulk of these recommendations apply to NPs, as well, but note that specifics may vary.

Negotiating a contract can be a pleasant, mutually beneficial experience when both sides focus on long-term satisfaction and shared success.

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**Know the Goal**

In essence, a contract is a form of protection for both parties. To some extent, this has led many to equate contract negotiation with "looking out for number one." In practice, contract negotiation need not be so cynical or combative. The contract can and should be a much more useful document that lays the foundation and provides a guide for the long-term relationship between the employer and the employee. Ultimate goals of negotiation are to devise a contract that will retain the employee for as long as possible, benefit and enhance the practice, and keep both parties satisfied.

**Have a Lawyer Review Everything**

Employers handle contract writing through their attorneys, but many times the employee does not similarly seek counsel prior to signing on the dotted line. Never sign something you don't fully understand. If necessary, ask that legalese be broken down into plain English. Bottom line: If you can't understand the language, then opposing counsel can probably interpret it in a way that doesn't benefit you.

**Look at Contracts with a Pessimistic Eye**

Although I believe contract negotiation should be a positive, mutually beneficial, educational experience, I do believe parties need to consider the future with some degree of pessimism. Of course you want the working relationship to develop fabulously, but you must consider what will happen if it does not.

A PA or NP should consider, for example, what might happen if the practice is sold to someone whose personality does not match your own. Your contract may be your sole protection in such an instance. Occasionally employers grow weary or skeptical of employees who demand detailed contracts. In such cases, the PA or NP should point out that he/she is considering all possible scenarios, such as sale (no matter how remote) in order to ensure adequate protection.

At the same time, the employer must think about what will happen if the PA or NP simply doesn't "click" with the practice. Maybe patients just won't respond to the new hire, or maybe your practice styles simply won't gel. Is it better to force an unhappy or under-used employee to struggle through the contract period or to have an amicable exit strategy in place?

**Designate Duties**

During the contract negotiations, establish the duties, responsibilities, and work hours of the employee. Will the PA or NP share call duties? Will he or she offer off-site consults? Are there restrictions on the employee “moonlighting” elsewhere?

Few contracts would allow and few PAs would expect to assist at another dermatology office. But some PAs might wish to offer per diem services at the local ER, for example. If this might become an issue, it's best to address it at the outset.

**Clarify Compensation**

Employee compensation accounts for a significant portion of negotiations. The contract must specify all the agreed-upon points of salary, bonuses, and benefits. Most professional-level medical personnel are paid a salary rather than an hourly rate. Most get bonuses, as well. Bonuses may be based either on billings or collections, the selection of which could result in significant differences in the final bonus paid. This is one critical point that the contract must specify.

Additionally, determine when bonuses will be paid. A fair payout schedule will reflect the physician's bonus or profit-taking schedule. In other words, if the physician or physicians take bonuses on a quarterly basis, so should the PA. One-time, end-of-year payouts deprive the employee of opportunities to invest income and earn interest.

**Negotiate from the Professional Level**

Key contract points, such as compensation and benefits for a PA or NP, should resemble those for other professional-level medical employees, including previous partners or moonlighting/part-time physicians. At the very least, mid-level providers' benefits should reflect those of the office manager. A professional-level medical provider should not get the same sick days and vacation benefits as the receptionist. Yes, the contracted care provider is an employee, but he or she is a professional medical employee.

**Understand the Costs and Benefits of Benefits**

Other negotiable “benefits” offered to the PA or NP include vacation time, CME leave, CME reimbursement, licensure fees, health insurance, professional dues reimbursement, disability insurance, and retirement contributions. CME leave and reimbursement of CME fees contribute directly to the employee's professional development and thus represent an investment in the practice. Additionally, physicians should note that licensure and professional membership fees tend to be relatively inexpensive for PAs compared to physicians. Some physicians hesitate to absorb these expenses because they anticipate a much higher cost. Employees should make sure that reluctant employers know the real costs.

Again, health and disability insurance and retirement benefits should reflect the level and type of coverage provided to other professional medical staff and are generally more comprehensive than those offered to front-desk employees.
Contracting with PAs and NPs

Read the Employee Manual
Some elements of the contract (even some benefits) may reference general office policies. Contracts often include lingo such as “per the office policy manual” or “see employee handbook.” Additionally, specific issues not addressed in the contract will likely defer to the specifications of the general office policy.

Before finalizing the contract, the employer should provide and the potential employee should carefully review a copy of the office policy manual. Any areas of concern or disagreement must be addressed prior to contract signing.

Rethink Restrictive Covenants
Restrictive covenants aimed at preventing the employee from “taking patients” with them to a new practice have become relatively common. Typically, the clause bars the PA or NP from moving to a practice within a certain distance of the contracting practice—this may be five to seven miles in urban settings and up to 10 miles or more in rural settings—for a certain period of time (up to two years in some cases). The covenant should allow the employee to practice in another area of medicine (such as ER medicine) regardless of the location. This allowance is both wise and fair, since a PA may determine after a period of time that dermatology is not the right fit for them. It’s better for him or her, the practice, and the patients they serve for this individual to move on and find their niche than be unhappy in their day-to-day work.

Both sides should understand if and how the restrictive covenant affects a terminated employee. Additionally, consider permitting a buyout of the restrictive covenant for the PA or NP. Although the restrictive covenant confines protection to the practice, I urge physicians to avoid using the clause simply to keep a PA at the practice. If the covenant is really the only thing keeping the employee at the practice, it doesn’t bode well. Other factors, such as job satisfaction, should keep the PA in place. If the relationship isn’t working, the practice isn’t the right fit, or the PA feels he or she is better equipped for a different practice focus (maybe more cosmetic), it’s probably better to let him or her go amicably.

Another negotiable point is the validity of the restrictive covenant in the event the employee is fired without cause. Some contracts cancel the restriction in such cases.

Permit Positive Partings
As just noted, partings aren’t always negative. All parties should have this frame of mind throughout the negotiation and even the employment period. Sometimes there just isn’t a good “fit.” Perhaps practice styles or bedside manners simply don’t jibe. Sometimes patients don’t respond to the PA, or the PA determines that dermatology isn’t the best field for them. A contract that allows for amicable separations in such scenarios will spare a great deal of grief, anxiety, and money for both parties.

Address Malpractice Insurance
Contract negotiations should include discussions of who will pay the PA’s malpractice premium. Practices should agree to pay these costs. At first blush, dermatologists assume the costs will be significant and therefore are reluctant to take them on. However, malpractice premiums can be significantly lower for PAs compared to dermatologists. Also, determine whether the coverage will be occurrence or “claims made,” the former being more comprehensive and conferring better protection. For a fee, some insurers permit the covered individual to extend coverage of the “claims made” plan at the end of the term.

Understand the Terms
Does the contract automatically renew? How long is the contracted term? If the term is greater than one year, opportunities for annual salary renegotiation should be available. New employees in particular may want to include in the contract established review periods, which makes sense for both parties. They provide an opportunity to either confirm that everything is flowing smoothly or present an opportunity to address developing concerns.

Define Termination Procedures
There are basically two types of termination: “for or with cause” and “without cause.” The contract should clearly define what comprises each type of termination and provide provisions for each.

“For cause” termination may result from loss of licensure or Medicare or Malpractice eligibility on the part of the PA or NP. The contract should very specifically detail the processes for termination, including the amount of notice the employee will receive. Additionally, the contract should identify the effect of termination on bonuses, compensation, and benefits. What will happen to unused benefits? How will the employee be refunded money spent on malpractice premiums, CME, etc.?

Similarly, there must be clear policies regarding termination without cause. These situations arise when the employee is dismissed through no fault of his/her own (perhaps patients haven’t taken to the PA or there’s a personality clash with the physicians). Typically, required notice ranges anywhere from one to three months. Again, issues such as reimbursement and compensation must be addressed. Remember that collections come in up to 90 days or more after provision of service, so this bears consideration when negotiating the terms.

In some cases it may be possible and preferable for the
employee to continue providing care until the effective termination date. However, it’s wise to include a provision allowing the physician to prevent the employee working from the time of notice to the effective termination date. The employee would still receive notice per the contract specifications and would receive pay through the termination date but simply would not be on the premises providing services during that period.

Policies for resignation also deserve attention. The employee should be permitted to resign without cause with defined notice. Such action will have consequences, which must also be negotiated and detailed.

Tips for the PA

• Have a lawyer review everything and distill all legalese into plain English. Never guess the meaning of the words.
• Look at the contract with a pessimistic eye. You want everything to work out long-term, but are you covered if things don’t? Consider worst possible scenarios.
• If anything is defined “per the employee (or office procedure) manual,” obtain and carefully review a copy prior to signing the contract.
• Parting isn’t always negative. Be sure the contract allows for amicable departures.
• Be sure all duties are clearly outlined, including call, consults, etc.
• Negotiate for coverage of CME, malpractice, licensure, and professional membership dues/fees. Be sure the physician understands the relatively low cost of these.

Tips for the Physician

• Look at the contract with a pessimistic eye. You want everything to work out long-term, but are you covered if things don’t? Consider worst possible scenarios.
• Compensation, benefits, and perks should reflect those offered to other professional level medical employees. Don’t give professional medical staff the same vacation time and sick days as the receptionist.
• If anything is defined “per the employee (or office procedure) manual,” be sure the employee gets a copy prior to signing the contract.
• Parting isn’t always negative. Be sure the contract allows for amicable departures if things just don’t work out.
• CME, malpractice, licensure, and professional membership dues/fees may be much lower than you expect. Consider covering these.
• Don’t use a restrictive covenant just to keep an unhappy PA at your practice. The employee should stay for other, more important reasons.

Anticipate Disputes

Disputes are bound to develop, even within the best professional relationships or with the most well-thought and executed contracts in place. Therefore, the contract should describe the handling of disputes. The contract should specify whether disputes will be handled through arbitration or in court. There are pros and cons to each. At the most basic level, arbitration tends to be more expedient and less costly, but rulings are usually binding. Court hearings can be longer and more costly, but the parties have the opportunity to appeal.

An important but sometimes overlooked element is the payment of legal fees. The fairest scenarios are those where each party pays its own lawyer fees or the non-prevailing (losing) party pays fees for both sides. Some contracts assign responsibility for all lawyer fees to one party—usually the employee—regardless of the outcome. Beware of such provisions.

Ensure Access to Records

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In the event that a suit is filed sometime after the employee leaves the practice, that employee legally has access to the practice’s medical records relating to the plaintiff. But obtaining these records through subpoena can be time-consuming and costly. Therefore, many contracts now include and the American Academy of Physician Assistants recommends provisions that automatically grant the employed medical professional access to records in the event a suit is brought.

Mutual Success and Satisfaction

With a good contract, both parties feel protected. Best and worst outcomes are clearly defined, and a framework exists to handle just about any scenario that may arise. Rather than approach contract negotiation with anxiety, both parties should bring to the process the same qualities they will bring to their long-term professional relationship: respect, trust, optimism, and cooperation.