

# Negotiating The Professional Contract

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Despite years of clinical and professional education, NPs and PAs are often unprepared for the subsequent job search. This article discusses how to successfully navigate the process of practice evaluation and contract negotiation.

**F**or the freshly minted NP or PA, finding the right place to practice and negotiating a reasonable professional contract can be a challenge. The keys to successful negotiation are similar to those for attaining proficiency in your clinical practice—providing insight into your personality, an evaluation of your personal and professional goals, and a commitment of time for preparation. For most NPs and PAs, employment opportunities do not just *happen*. Preparation, persistence, and personal contacts are basic requirements for finding the right position.

Of great interest to NPs and PAs—especially those with looming loan payments—is the compensation package. There are many important questions and topics to discuss regarding compensation (see Table 1). However, salaries are often determined by the “going rate” for particular services in your geographic region, in addition to your specialty, experience, and credentials. Your professional association (AAPA for PAs, AANP for NPs) has robust data on salaries in your particular specialty, practice setting, and geographic region; the average salary for both professions is currently about \$97,000.<sup>1,2</sup>

Familiarize yourself with the statutes and regulations that govern the scope of practice in your

state—this is especially important if there are specific supervision or collaboration rules. Be prepared to present applicable statutes, rules, and regulations to the physician and/or office manager. Know whether any reimbursement restrictions exist. Be sure to review IRS guidelines for employee status versus independent contractor status.

The diversity of NP and PA practices means one size does not fit all, so it is best to identify the practice that complements your own personality. So, before you open negotiations, it is important that you research the practice. (For suggestions on what to inquire about, see Table 2, page 30). It is also a good idea to check the Docinfo website (<http://docinfo.org/#/search/query>), sponsored by the Federation of State Medical Boards, to research disciplinary records of the physician(s). Additional information can be acquired at each state regulatory board site.

## NEGOTIATION

When you’ve decided which employment offer to pursue, it’s time to think about how you want to negotiate your contract. Many people feel that negotiation is equivalent to confrontation, inevitably leading to an awkward disagreement with the practice. This is rarely the case; negotiation is simply a professional conversation, best had one-on-one with the key decision maker, rather than a group.

Never assume that your compensation package is predetermined. Whether you are starting a new job or looking to enhance your current situation, you can make a difference by asking for what you need.<sup>3</sup> Knowing the local market and data is essential. Research the average salary in the region (for experienced versus new NP or PA). Be sure to think beyond

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TABLE 1

## Compensation

Category	✓	Questions
<b>Base salary</b>	— — — — —	Is the position salaried or per hour, per day, or per patient? How often will you be paid? How often will you be reviewed? Will you be an exempt employee (W-2), or will you be an independent contractor (1099)? What is the base salary, and does it increase each year of the contract? How are increases determined each year—general increase, merit increase, productivity increase?
<b>Profit-sharing</b>	— —	Is profit-sharing available? If so, how is it determined?
<b>Call</b>	— —	If you are expected to take call, is there extra compensation for that and how is it determined? Is call equally shared among the providers in the practice?
<b>Bonus</b>	— — — —	Is there a sign-on bonus (especially if you are losing options or other benefits in making your job switch)? What is the formula used: Productivity-based? Patient satisfaction-based? Quality-based? Is there a quarterly or annual bonus? Is the bonus guaranteed, dependent on achievement of milestones, or wholly discretionary?
<b>Partnership</b>	—	Is partnership or co-ownership of the practice available (if legal in your state)?

salary and evaluate which benefits you'd like to have as part of your compensation package (see Table 3, page 31, as well as our survey results, on page 23).

Carolyn Buppert, a specialist in legal and reimbursement issues for NPs and PAs, suggests three "P's" of negotiation: Prepare, probe, and propose.<sup>4</sup>

**Prepare.** Learn how to calculate the projected revenue you would bring into a practice. You can determine the profit you generate by asking the practice administrator for data, noting Current Procedural Terminology codes and dates and becoming familiar with the fee schedule. According to Buppert, your salary and benefits should amount to about one-third of your total billings, and the benefits should equate to about 25% of your base salary.<sup>4</sup> It is worthwhile to discuss non-monetary contributions to the practice, such as improvements in patient satisfaction or reduction in no-shows.

**Probe.** Ask about the practice's financial health during your interview and determine employer expectations for profits.

**Propose.** Once your prospective employer proves their value to you and after you have done due diligence researching the practice, do not hesitate to ask for what you deserve. When doing this, it is important to maintain neutral body language, keep an unemotional tone of voice, and convey an understanding of the employer's point of view.<sup>4</sup>

Most successful negotiations occur over a couple of meetings. *Careful listening* is essential to avoid misunderstandings and false assumptions. By listening intently, you can identify the issues most important to the employer (eg, pay may be negotiable, but moonlighting not; or control over shift schedules is a hot button, but pay is not). Evaluating and weighing those against your own requirements may avoid an unnecessary impasse and result in a better outcome for you.

One question lives at the heart of negotiations: Should agreements be in writing? Written agreements carry more weight and prevent misunderstandings, a benefit to both parties involved. Formal, written negotiation of a contract forces the parties to discuss issues and provides a record for future reference.<sup>5</sup>

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TABLE 2

**Practice and Organizational Assessment**

Assessment	✓	Questions
<b>Practice assessment</b>	—	What types of patients are most often seen in the practice?
	—	Does the practice have more than one location? If so, will you be expected to work in other locations?
	—	What are the most common diagnoses that are managed?
	—	What is the average inpatient census?
	—	What is the average number of patients seen each day?
	—	Are there mandated patient visit times (ie, every 15 minutes)?
	—	What is the average number of admissions? What are the common procedures performed for practice patients?
<b>Organizational analysis</b>	—	Is the practice affiliated/owned by an organization, practice management plan, or hospital?
	—	What is the financial status of the practice?
	—	Are any mergers or acquisitions pending?
	—	Is there a business plan for the practice?
	—	What is the performance of the practice on quality indicators?
<b>Reimbursement structure</b>	—	What type of payment mechanism is used by the practice (Medicare, Medicaid, insurance, managed care contracts, etc)?
	—	What reimbursable services can be provided by the PA or NP?
<b>Practice expectations</b>	—	Is there a clearly spelled-out job description?
	—	Will you be able to practice to the fullest extent of your scope of practice?
	—	Are there any barriers in the practice that may be more stringent than those in any statute or regulation?
	—	How many hours per week you will be expected to work?
	—	Will you be sharing in call, rounding, and office visits?
	—	What are the expected levels of supervision/collaboration, and who will perform that (based on state statutes; ie, written collaborative/supervisory agreements)?
	—	Is there an employee handbook, and can you review it in advance?

**CONTRACTS**

Because courses in negotiations, contract law, and business principles are rarely taught in educational programs, you should consider consulting an attorney who is familiar with contract and business issues. Avoid attorneys who have to research the laws regarding NP and PA practice—there are many who are well versed in these contracts. It is also usually more acceptable to conduct initial negotiations yourself, rather than through an attorney.

First, ask the attorney to review the contract and advise you of any troublesome provision or obvious omissions (see Table 4, page 32; a sample contract

is also available on our website).<sup>6-8</sup> Many attorneys with experience reviewing and negotiating such contracts will be willing to do an initial read and consultation for a fixed, predetermined fee. Following that consultation, it is best to discuss your concerns and questions directly with your potential employer. If you can come to a general agreement on revisions, either your lawyer or the employer's can make the necessary changes.

When considering an employment agreement, there are specific issues and potential hurdles to look out for. Following is a brief discussion of some of them.

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TABLE 3

**Benefits**

Category	✓	Questions
<b>Absence from the practice</b>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p>How much paid time is allowed to attend continuing medical education courses/programs?</p> <p>How much vacation time is allowed per year?</p> <p>Does the vacation time accrue?</p> <p>On what days, including holidays, will the practice be closed or will you be off?</p> <p>Will the practice provide you with maternity/paternity leave?</p> <p>How much sick time is allowed?</p>
<b>Insurance</b>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p>Will the practice provide you with ...</p> <p>Professional liability insurance?</p> <p>Short- and long-term disability insurance?</p> <p>Life insurance? Term? Amount?</p> <p>Medical benefits? Will it cover your spouse and dependents? What portion of the premium will you be responsible to pay?</p> <p>Dental insurance?</p> <p>Vision care?</p> <p>Daycare discount options?</p>
<b>Retirement plan</b>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p>Will the practice provide you with a retirement plan (401-K)?</p> <p>What are the contribution limits?</p> <p>Is employer matching offered, and if so, how much?</p>
<b>Professional expenses</b>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<p>Will the practice pay for or reimburse expenses for ...</p> <p>Your state professional license?</p> <p>Your DEA registration?</p> <p>State-based prescriptive authority registration?</p> <p>Your certification or recertification fees (including conference attendance)?</p> <p>Your professional dues (state, national, specialty)?</p> <p>Tuition for additional education?</p> <p>A car or car allowance?</p> <p>A cell phone or cell phone allowance?</p> <p>A fitness gym membership?</p>
<b>Loan forgiveness</b>	<input type="checkbox"/>	<p>Are there any special loans or loan forgiveness arrangements?</p>
<b>Moving expenses</b>	<input type="checkbox"/> <input type="checkbox"/>	<p>Are moving expenses to be reimbursed?</p> <p>Is there a relocation package?</p>
<b>Golden parachute (payment to or other benefits to the employee)</b>	<input type="checkbox"/> <input type="checkbox"/>	<p>In the event of a change of control of the practice, are you entitled to terminate employment and receive a "Golden Parachute"?</p> <p>What are the tax implications?</p>

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TABLE 4

**Important Components of a Professional Contract**

Category	✓	Questions
<b>Terms and termination</b>	— — —	What is the term (or length) of the contract? What is the starting date and the duration of the initial contract? What are the terms of termination “with cause” and “without cause”?
<b>Contract renewal</b>	—	Does the contract have renewal options with provisions to renegotiate?
<b>Employee status</b>	—	Will you be an employee or independent contractor?
<b>Services</b>	— —	What are your duties and obligations? Are they clearly defined?
<b>Privileges/credentials</b>	— — —	What is required by the practice in terms of credentials/certification/recertification? Will you be required to apply for certain privileges at the hospital or other institutions? Will you be required to be approved as a provider for third-party payers (ie, Medicare)?
<b>Compensation</b>	—	Terms should be clearly defined (see Table 1)
<b>Malpractice insurance</b>	—	Who will be paying for your professional liability insurance (see Table 3)?
<b>Fringe benefits</b>	—	Are they listed clearly in your contract (see Table 3)?
<b>Restrictive covenants (aka noncompete clauses)</b>	— —	Are there any restrictive covenants in the contract? Is there a noncompete clause that prohibits you from practicing in a given geographic region after you leave the practice?
<b>Disputes</b>	— — —	Does the contract specify how disputes will be handled? Will it be by mandatory arbitration or court? Who will be responsible for the legal fees?

Sources: AAPA. 2016<sup>6</sup>; AANP<sup>7</sup>; Buppert. *Nurse Pract.* 1997.<sup>8</sup>**Liability insurance**

Find out which type of liability insurance is offered (occurrence-based or claims-made), as well as the limits of liability. Occurrence-based insurance is usually recommended. However, if the policy is claims-made, it's important to know if the tail coverage will be paid by the employer, or if there is a rider on the physician's policy. Determine if your contract will allow for the cost of the tail to be deducted from final amounts that may be owed to you upon termination. Be prepared to acquire the tail, if needed, to ensure coverage.

**Restrictive covenants (noncompete clauses)**

Unfortunately, not all employment relationships work out in the long term. In recognition of this, many professional contracts contain an agreement known as a *restrictive covenant*, which impedes the NP's or PA's ability to practice in the community following a relationship cessation. Depending on where the practice is located, such restrictions can be devastating and may even require the NP or PA to move in order to pursue a career. The law of restrictive covenants varies greatly from state to state. Your attorney can help you evaluate the enforceability and effect of

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a restrictive covenant, advise you on what is or isn't reasonable in the community, and give you suggestions on how to negotiate a more reasonable one.

### **Moonlighting**

Whether or not you can moonlight—and where—is often negotiable. An employer certainly has the right to require that moonlighting not interfere with your regular duties or schedule; endorse competitors of your employer or potentially divert patients; or expose the employer to malpractice liability. If you can assure your employer that these three situations will not transpire, then moonlighting (with advance scheduling notice and permission) should be acceptable.

### **Training/continuing education**

It is typical for the employer to reimburse some or all of the cost of continuing education, up to a maximum annual amount. It is also reasonable for the employer (if paying for the CME) to pre-approve the curriculum, as well as the timing to avoid scheduling problems.

### **Salary and bonus**

Compensation systems can be entirely objective (ie, production based), subjective (entirely up to the discretion of the employer based on internal criteria), or a combination of both. It is important to get a clear understanding of the system so that you know what is expected of you and what the rewards are for meeting performance goals.

### **Income guarantee/advanced expenses/repayment obligation**

It is not uncommon for a local hospital to help a medical practice by guaranteeing the salary for a certain period of time. In this situation, the guarantee can be structured in a number of different ways—but it typically involves an obligation to repay a predetermined amount if you leave the practice area before the expiration of the term. Often, the practice will seek to pass that liability on to you. The same may apply for advanced moving expenses, CME, etc. A practice may require you to be employed for a specified amount of time to “earn” those advanced expenses, or to pay them back if an early termination occurs. In

any case, it is important to know what the expectations are, and what circumstances could lead to an early termination and/or repayment obligation.

### **Terms and termination**

Pay particular attention to the terms of your agreement. In one paragraph, it may say that the contract is for one year with annual renewals, but later on it explains that it can be terminated by either party upon 30 days notice. In that case, it is not a one-year contract; it is a 30-day contract. If there is a possibility of early termination and a restrictive covenant, or even a repayment obligation, you could really be at risk. Pay attention to whether early termination is “for cause” or “without cause.” If it is only for cause, inquire what constitutes a cause and whether there are any opportunities to rectify a perceived problem.

### **CONCLUSION**

Constant changes in the health care marketplace will continue to generate opportunities for NPs and PAs. This is especially true for clinicians who demonstrate competence, enthusiasm, and commitment to quality patient care. The same clinical skills you learned in school and practice will help you find a clinical position and negotiate a good professional contract. Attention to detail, evidence-based research, and excellent communication skills will enable you to land a position beneficial to both parties. **CR**

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