

Chapter 6 How to Gain Power in a Negotiation

Executive Summary

- Knowledge is power. Gain knowledge through research, preparation, asking questions, and active listening.
- Having alternatives gives you power. Shop around.
- Citing industry standards and precedents can help gain power.
- The more unique what you have to offer is, the more power you will have because your opponent will have fewer alternatives.
- The more your opponent invests time, emotional energy, and money into a negotiation, the more power you will have.
- If you are somewhat flexible and open-minded, you will have more power in the negotiation.
- Persistence is an invaluable attribute that generates power. The best negotiators are persistent.

Introduction

To be successful, you need to identify the sources of power in your negotiations and use these sources effectively. *Power* in negotiating means the ability to exercise authority and influence. The ability or perceived ability to get things done is also power. The sources of power or perceived power of physician negotiators are numerous and are limited only by the negotiator's creativity and imagination. Lewicki describes the sources of power in the following manner.

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<i>Sources of Power</i>	<i>Description</i>
Information and expertise	The accumulation and presentation of data intended to change the other person's point of view or position on an issue; and (for expertise) an acknowledged accumulation of information, or mastery of a body of information, on a particular problem or issue.
Control over resources	The accumulation of money, raw material, labor, time, and equipment that can be used as incentives to encourage compliance or as punishments for noncompliance.
Position	Power derived from being located in a particular position in an organizational or communication structure; leads to two different kinds of leverage: <ul style="list-style-type: none">• Formal authority, derived from occupying a key position in a hierarchical organization.• Access to or control over information or supply flows, derived from location within a network.¹

If you can convince your opponent that you are in control, you will have gained power.

Knowledge Is Power

Preparation and information will greatly increase your power. (See pages 109–22 on preparation.) You will be at a distinct advantage if you have done your homework. You should have at your fingertips all of the pertinent statistical, financial, and historical data. You will also need to know about your opponent's needs, desires, and pressures, as well as her business organization and its structure. The most important knowledge for you to obtain is the real, as opposed to the expressed, needs of your

¹ Lewicki, *Essentials of Negotiation*, 3rd Edition (New York: McGraw Hill, 2004) p. 150.

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opponent. This knowledge can rapidly shift the balance of power in your favor.

Finding out information requires research. As part of this research, you may want to consider talking to physicians who have already gone through similar negotiations. You will also need to ask a lot of questions. Often, the answers you need will not appear in print anywhere and must be obtained by talking to people. Timid, shy, and unquestioning doctors will not be good negotiators. Knowledge is power. Obtain it and use it to your advantage.

Example 6.1 Doing homework pays off

Opponent: We know you would like to sell your practice and we can offer you one-and-a-half times gross in stock in our company with a one-year employment agreement. We will need a five-year covenant not to compete in this state.

Doctor: As a publicly traded company your financial and acquisition history is a matter of public record. We have checked your SEC form 10Q and your annual report. After reviewing these documents and talking to the heads of the last five practices you acquired, we know that you have paid up to two-and-a-half times gross with 50% cash and 50% stock. The one-year employment contract is considerably shorter than the one you offered *x*, *y*, and *z*, and the covenant not to compete is twice as long as Dr. Hardball signed. In addition, we are concerned about the way you treated Drs. Smith and Cohen after their acquisition.

Lesson: This is a doctor who has done her homework. She has thoroughly researched her opponent and is therefore in a strong position to obtain more favorable terms.

Example 6.2 Knowledge is power

Background: A physician we know was negotiating to sell his practice to a multi-state group. The negotiations were stalled until he found out that this new company was planning to go public shortly and needed to quickly acquire the licenses his practice maintained. After some tough negotiating, he obtained an excellent offer for his practice of six times his gross revenue.

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Lesson: Knowledge is power. By determining that the opponent needed to purchase his practice, the physician was able to obtain very favorable terms.

Example 6.3 Gathering priceless intelligence by asking around

Background: (a young physician is negotiating to join a group practice)

Young physician to former physician employee: I am thinking about joining the XYZ group medical practice and know that you worked there for 2 years. Any words of wisdom you could offer me would be greatly appreciated.

Physician: (former employee) Well, when I started they told me they would take care of me. They never did. I guess it was my fault for never getting it spelled out in writing. Did you know they have had 12 new physicians go through there the last 14 years?

Lesson: The young physician gathered invaluable intelligence by seeking out a former employee. He is in a much better position to evaluate the prospective employer and decide if and how he might negotiate with them.

Alternatives

You should *always* walk into negotiations with several options. You can then compare these options to your opponent's proposal, use them as a benchmark, and, when helpful, show them to your opponent to obtain a better deal. You also need to be aware of your opponent's possible options. You gain power in negotiations when you have more alternatives at your disposal than your opponent does. You are at a tremendous disadvantage when you have no alternatives and absolutely need to make a deal with your opponent.

The experts talk about your BATNA (Best Alternative to a Negotiating Agreement). As Fisher and Ury explain:

The reason you negotiate is to produce something better than the results you can obtain without negotiating. What are those results? What is the alternative? What is your BATNA—your Best Alternative to a Negotiating Agreement? *That* is the standard against which any proposed agreement should be measured. That is the only standard which can protect you both from accepting terms that are too

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unfavorable and from rejecting terms it would be in your interest to accept.

Your BATNA not only is a better measure but also has the advantage of being flexible enough to permit the exploration of imaginative solutions. Instead of ruling out any solution which does not meet your bottom line, you can compare a proposal with your BATNA to see whether it better satisfies your interests.

The insecurity of an unknown BATNA. If you have not thought carefully about what you will do if you fail to reach an agreement, you are negotiating with your eyes closed. You may, for instance, be too optimistic and assume that you have many other choices: other houses for sale, other buyers for your secondhand car, other plumbers, other jobs available, other wholesalers, and so on. Even when your alternative is fixed, you may be taking too rosy a view of the consequences of not reaching agreement. You may not be appreciating the full agony of a law-suit, a contested divorce, a strike, an arms race, or a war.²

The key points to remember regarding your alternatives and your BATNA are as follows.

- You should have more than one BATNA.
- The more alternatives you have, the greater your power in the negotiation.
- You need to commit to putting in the requisite time to find viable alternatives.
- Do not be afraid to communicate to your opponent the alternatives you already have in hand.

If you have written alternative contracts or proposals, do not hesitate to show them to your opponent. This is an extremely effective tactic to force your opponent's hand.

² Roger Fisher and William Ury, *Getting to Yes*, 2nd Edition (New York: Penguin Books, 1991) p. 100.

Example 6.4 Mentioning better options gains the negotiator power

Doctor: As you know, we would like to book our medical convention for 2008. We need 400 sleeping rooms and meeting rooms for 800 (classroom style). We will have continental breakfasts and lunches and maybe another food and beverage function.

Hotel sales manager: We can accommodate you. We need you to sign a \$100,000 cancellation clause and an attrition clause indicating that your organization will agree to pay for all the rooms not rented. Here is our standard form....

Doctor: We know about the medical conventions you lost last year and the trouble you had. We do not sign \$100,000 cancellation clauses and do not sign any attrition clauses. Here are two proposed contracts from four-star hotels in this area. If you meet their terms we can talk. If not...By the way, this will be an annual event. We will be making a decision in 48 hours.

Lesson: A combination of techniques was used successfully to attempt to negotiate a better contract. They include knowledge of lost meetings, research on the opponent, developing options, having information readily available, and knowing exactly what the options were. It is hard for an opponent to argue against a written contract proposal from a competitor. You need to define your options clearly so that they can be used at the negotiation session.

Obtaining bids or requests for proposals (RFPs) and using them in a negotiation is a standard, yet effective, negotiating technique. Even if you do not go with the lowest bidder, the alternative proposal can help drive the price down.

Industry Standards

It may be useful to demonstrate that your proposal or terms are the industry standard or accepted practice. You can use this fact to gain power in the negotiation. The result can be that your opponent is no longer negotiating against you, but, instead, against the industry. Knowing your opponent's actual cost and usual mark-up or profit can be a great advantage. It is best to bring in the documents, facts, and figures and to have them available on the table. If your opponent was unaware of the

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industry standards or unaware that you *were* aware of them, your power will be increased.

Normative leverage is the skillful use of standards, norms, and coherent positioning to gain advantage or protect a position. You maximize your normative leverage when the standards, norms, and themes you assert are ones *the other party views as legitimate and relevant to the resolution of your differences.*³

Example 6.5 Opponent's use of industry standards works against the physician

Doctor: I would love to write and edit a national newsletter for you on medical ethics. I understand it will be published bimonthly. How about \$4,500 an issue?

Publisher: With your national reputation the newsletter will be great! Doctor, we publish twelve other medical newsletters. We pay a straight 10% royalty payable annually. Here are the contracts for the other newsletters. The 10% is standard in the industry. Feel free to check around. If you are not interested....

Doctor: The 10% will be fine. When do I start?

Lesson: The publisher's knowledge of industry standards increased her power.

Skilled negotiators use a host of ploys to combine the use of standards with our willingness to defer to authority. They present us with dense, authoritative-looking standard form contracts written in unintelligible legalese and resort to other expert talk in explaining what they call the routine aspects of a transaction...this is a standards-based argument that gains additional power from being combined with an authority ploy.⁴

INDUSTRY STANDARD AS A STARTING POINT

When industry standards are used against you as a negotiation tactic, you can take the position that the standard is only a good starting point. If you have something more to offer, the question you want to pose is how far beyond the starting point will your opponent go to get you signed.

³ G. Richard Shell, *Bargaining for Advantage: Negotiation Strategies for Reasonable People* (New York: Penguin, 2000) p. 43.

⁴ Shell, p. 53.

Example 6.6 Industry average is good for the average physician, you deserve better

Some time ago, one of the authors gave a negotiation presentation to resident gastroenterologists who were about to sign their first employment contracts.

A physician speaking for management gave a lengthy PowerPoint presentation citing all of the statistical information about how much the average new gastroenterologist could expect to make broken down geographically.

When it was the author's turn to speak, he turned to the crowd of young residents and asked all of the doctors who were "average" to raise their hands. Only a few hands went up. Then the author posed a second question: "How many of you are *better* than the average doctors?" Almost all the hands went up.

Lesson: Why settle for the average salary or industry standard if your ability and work ethic distinguish you? The industry standard can be just a starting point for the savvy physician negotiator.

Expertise

It may be useful to portray yourself as an expert. If you do, your opponent could have a tendency to treat you respectfully and to defer to your expertise. To appear to be an expert, you need to give the perception that you have superior knowledge, expertise, experience, information, or technical skills. Note that if you need to obtain information directly from your opponent, making yourself out as an expert could make this more difficult. (See pages 46–47 on playing dumb.) Also note that when this technique is used against you, you should cite your own experts and refuse to buy or sign anything you don't understand. Consider the following examples.

Example 6.7 Sell yourself by characterizing your qualifications as rare or unique

Doctor: As I understand this proposal, you would like us to set up a telemedicine service for your multinational company to increase quality of service and hold down costs. Is that correct?

Entrepreneur: Yes. In essence, that's it.

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Doctor: I assume the reason you are here is because we have written the text on telemedicine and have developed the standard in interactive computer services.

Entrepreneur: Yes. You are the experts.

Doctor: To make this happen and run a high quality service, we will need the following computer equipment...; the following staff...; and a budget annually of...In the long run, you will increase the quality of medical care and hold down costs.

Lesson: The doctor/expert has used her acknowledged superior technical expertise and experience as powerful negotiating tools. If there are few other doctors with the requisite expertise, the doctor should capitalize on this situation.

Example 6.8 Get technical assistance when negotiating in an area where you lack technical expertise

Salesperson: As you know, Doctor, we developed the fax-on-demand system. What your practice needs is the supercharged 179 system that costs \$29,400. Should we draw up the contract?

Doctor: We have retained Ms. Hartley as a consultant. I am sure you have heard of her. She recommends the 119 system and told us not to spend more than \$14,500. Before we even get to which model to consider, I have a simple rule of life. I do not purchase or invest in anything I do not fully understand. Can you break this down so someone without a Ph.D. in computer science can understand it? I have set aside ten minutes for this meeting.

Lesson: By employing her own expert/consultant, refusing to sign anything that was not understood, and setting a tight deadline, the physician in the above example neutralized the salesperson's expertise and regained control over the negotiation.

Investment

The more effort, expense, time, and emotional energy your opponent invests in the negotiation, the more your power increases. Such an investment of time and effort indicates your opponent's strong desire to close a deal. After hours, days, or weeks of ongoing negotiation, your

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opponent does not want to go back to his boss and tell her that he could not reach an agreement. Psychologically, once your opponent has sensed, decided, or in the best case, informed his superior that a deal is close, it is very difficult for that person to walk away. In such a case, he has invested psychic energy and can almost taste the agreement. Anything less is seen as a personal and professional failure.

This is the psychological point of no return or tipping point for your opponent. This may result from the money and effort expended, the periodic favorable reports he has given his supervisors, or the fact that he badly needs to make this happen. A savvy physician negotiator can sense his opponent's desperation and knows when he has reached his point of no return. Some experts call this investment "commitment."

Commitment. Researchers have long recognized that once people have decided something, they can be remarkably persistent in their beliefs. This process has been labeled *commitment to a position*, and it relies heavily on the common need that people have to appear consistent, both to themselves and to others. Most people are familiar with the bait-and-switch sales technique. Unscrupulous organizations advertise merchandise for sale at an incredibly low price but "run out" of stock by the time you arrive at the store. They then try to sell you alternate merchandise at a higher price. Why does this work? One reason is that once you have made the decision to purchase a product (a commitment), you almost automatically follow through with the commitment (even at a higher price).⁵

Once your opponent reaches his point of no return, he will do almost whatever it takes to close the deal. This provides the physician with power to get an excellent deal. You need to recognize this power of investment and use it to your advantage.

Example 6.9 Being prepared to walk away results in a better deal for the physician

Doctor: This is your third and, as far as I am concerned, your final sales call. The \$72,000 system you are trying to sell us is priced too high. I know you put a lot of time and money into your presentations and demonstrations. I am sorry. I have to run.

⁵ Lewicki, p. 170.

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Computer salesperson: (sensing a sale slipping away) I hate to see this fall through over a few dollars. What if we reduced the price 5%?

Doctor: Maybe we can reconsider this next year. Thanks again.

Salesperson: (a little more desperate) What will it take to make this sale?

Doctor: A 10% price reduction, two years free service, and the software we discussed. We would need installation within one week.

Salesperson: Give me five minutes to call my sales manager.

Lesson: The physician used the fact that the salesperson was more invested in the deal than she was to her advantage.

Legitimacy and Precedents

You should use precedents and/or legitimacy to increase your power during negotiations. For example, people generally do not question hotel check-in policies of 2:00 P.M. and checkout policies of 11:00 A.M. This is a result of the power of precedents and legitimacy. This policy is printed on the official notices on the inside of the hotel doors and is the way “everyone” does it.

When you receive a standard form, set price, usual and customary mark up, 16% service charge, or penalty for early withdrawal, you see the power of legitimacy and precedents in action against you. Frequently your opponent will utilize pre-printed “standard forms” or “contracts” to drive home the psychological point that there can be no negotiation. Just because a physician is presented with a pre-printed fill-in-the-blank form does not mean that negotiation is not possible.

Example 6.10 Standard practices can be modified, but only if you ask

Doctor: (to hotel employee on phone) I need an early check-in as I will be arriving from the East Coast on Jet Blue at noon. Can you accommodate me please?

Employee: No problem. I put you down for an early check-in.

Lesson: If you do not *ask* for special treatment, you will never get it.

The power of legitimacy and precedents is unquestioned and self-perpetuating. If the reason you pay X is because it has always been X and everyone else pays X, you and everyone else will always pay X. You

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need to use this technique to your own advantage. You also need to effectively respond to it when it's used against you. The best way to do this is to make your situation appear unique, thus meriting special consideration.

Example 6.11 Doctor uses precedent to his advantage

Corporate sponsor: We would like to be a corporate sponsor for your upcoming medical meeting.

Doctor: Fine. That will be \$25,000 and we will need you to pay for the lunch as well.

Corporate sponsor: Well, we didn't really plan on spending that much.

Doctor: The \$25,000 fee is set by the Board. Here is the resolution. It has been unchanged for three years. As a matter of fact, it is less than the sponsorship requirements of these three comparable medical conferences (handing him documents). We do have another party interested.

Corporate sponsor: Let me make a few calls. I will get back to you this afternoon.

Lesson: The physician effectively used precedents, legitimacy, knowledge, alternatives, industry standards, and time pressure. As in many cases when this power technique is used effectively, the discussion never turns to whether \$25,000 plus the food and beverages was a fair price because it was *the* price.

Example 6.12 An argument to break precedent—your situation is different

Doctor: Our rate for capitation compensation is \$1,200 per patient.

Opponent: I'm sorry, Doctor, the set price in our standard contract is \$1,000 per patient.

Doctor: Our standard rate is \$1,200 per patient. We are currently receiving that from companies X, Y, and Z. We are the most prestigious practice in this part of the state. Without us, you'll never have a strong following here.

Opponent: I appreciate that, Doctor, but \$1,000 is our standard rate.

Doctor: Standard service rates a standard rate. Our practice delivers exceptionally good care. Have you had a chance to read the 100 letters of recommendation from our patients that I sent to you? If your doctors give standard care in this industry you'll never get anyone to sign up for your

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plan. Our practice is proven to be of the highest quality and, as such, our rate is \$1,200 per patient.

Opponent: You may have a point. Let me talk to my boss and get back to you later.

Lesson: The physician successfully set his practice apart from others that received the standard rate. He employed other precedents and used his own standard rate, which he justified, as a way to gain movement on his opponent's set price.

Example 6.13 Everything is negotiable if you ask

Background: A doctor and his wife go away off-season to a beach resort community to have a romantic Saturday night. They prefer to stay at Inn X. Inn X's large parking lot is empty when they arrive.

Doctor: I'd like to get a room for the night, please. What's your rate?

Innkeeper: Our standard rates are published on this card...\$119 per night.

Doctor: Wow, that's pretty steep for January. I was quoted \$69 per night at Inn Y and that place has a Jacuzzi. Listen, this place is nearly empty. We'd love to stay here and give you the business, but we need to get a rate of \$69 per night.

Innkeeper: Fine. We'd love to have you. Let's do it for \$69. I'll need to see a major credit card.

Lesson: *Everything* is negotiable. This is especially true of standard rates or prices.

Coping with Uncertainty

You need to be able to cope with uncertainty and react appropriately to unforeseen events. Such flexibility increases your negotiation power. If you follow a script or plan strictly, no matter how well-thought out and well prepared, you will be at a distinct disadvantage and will decrease your negotiation power. This is true because your inflexibility will be perceived as a sign of weakness and a lack of expertise and sophistication. If your opponent senses your inflexibility, he may start to throw you curve balls, red herrings, or negotiation bombshells to see how you react.

Example 6.14 Inflexibility and failure to pause and think hurt the physician

Real estate agent: We can rent this space to you for \$4,500 a month.

Doctor: We need to get a long-term lease, medical upgrading so we don't get invoiced, buildout costs, and the right to sublet or assign.

Real estate agent: We can work with those requirements as long as we get a triple net lease.

Doctor: We have never signed anything like that before. It will not be acceptable.

Lesson: The doctor has potentially lost a very good deal. He obtained all the terms he was seeking. However, his inflexibility in not even considering the triple net lease has worked strongly to his disadvantage. The doctor needed to be more flexible and to prepare for the unexpected. He might have been better served by asking a few more questions and at least considering the triple net lease as a possible alternative.

Persistence

Persistence pays off. Physicians who are relentless, who do not back down or give up, and who continue to come back to their central points increase their power in negotiations. Once you are able to convince your opponents that you will not give in, they start to think, "What is it going to take to get this person to sign off?"

Successful physician negotiators are not worn down and do not give up on their central points because a negotiation is taking too long. They know a negotiation will take as long as necessary. When you feel you are right and project the sincerity of your belief to your opponent, you start to raise his anxiety level and increase your power in the negotiation process.⁶

Example 6.15 The best negotiators are persistent

Attorney: Doctor, we have been over this three or four times already. We cannot get you the \$189,000. Be reasonable. Compromise and let's be done with it. We are both losing more time and money than this is worth.

Doctor: I don't care if we go over this 44 times. I do *not* back down when I am right. And I am right. You know it and I know it. I will

⁶ Remember, "persistence is to power, what carbon is to steel." Cohen, p. 83.

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continue to stick to the price unless I am convinced otherwise. As to wasting time and money, unfortunately I cannot bill \$250 an hour like you do.

Lesson: Persistence can give you power and it often pays off.

Example 6.16 Persistence generates power

Attorneys are professional negotiators. The top negotiator at one of Boston's largest law firms has been described to the authors as the best for one overriding reason: his relentless persistence. He has been described as follows, "Absolutely relentless, will not move on and come back to a difficult point later. Always has another persuasive argument ready to go."

When one of the authors was helping his child with a class project, it became rapidly evident that to get the project done correctly would require renting several pieces of equipment and a substantial amount of time and effort. When he explained this dilemma to his child and suggested a possible new and easier project, she looked him right in the eye and said, "We don't give up just because it is hard. Right, Dad?"

Lesson: This is the attitude you need to be a successful negotiator.

Sole Source

In nearly every physician's life there will be one or more golden business opportunities when she is the only game in town. She may have expertise, knowledge, programs, or products that are unavailable elsewhere or at least are perceived as difficult, if not impossible, to replace. The successful physician negotiator will actively pursue putting herself into this position and will capitalize on this when it occurs. When you are the sole source of information, products, programs, and expertise, many of the standard negotiation rules do not apply. You should no longer concern yourself with or be bound by industry standards, legitimacy, and precedent. The truth is quite simple. Number one, you have what they want. Number two, you are worth whatever they are willing to pay and whatever you are willing accept. Nothing else matters!

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Example 6.17 The sole source is in the driver's seat

Attorney: As the leading expert on the *AMA Guides*, we want you to fly down to Texas to testify on the issues of its fairness and constitutionality.

Doctor: No, I am too busy.

Attorney: We will pay you \$300 an hour.

Doctor: I am too busy.

Attorney: We will pay you \$400 an hour.

Doctor: I am too busy.

Attorney: OK. What will it take?

Doctor: \$500 an hour portal to portal, airfare, and out-of-pocket expenses with a \$15,000 retainer.

Attorney: But the testimony with travel will be three days...72 hours at \$500 an hour.

Doctor: Exactly.

Attorney: OK.⁷

Lesson: The doctor was uniquely qualified. He was the sole source. As such, he was able to command extremely favorable terms. All that was required was that he ask and hold out for them.

Conclusion

Acting as if you have power will increase your opponent's perception of your power in any negotiation. Emphasize and demonstrate your knowledge and expertise. Develop your options and alternatives. Use industry standards, the power of investment, legitimacy, persistence, and flexibility to your advantage. Position yourself whenever possible to become the sole source. If you can, don't be afraid to capitalize on it. Perception *is* reality in negotiation. When you act as if you have power, your opponent will perceive that you actually have power. When your opponent perceives your power, you will be able to negotiate better deals.

⁷ This example is based upon an actual event.