

Finding the Right Negotiator

by

Ira G. Asherman

Introduction

Each year pharmaceutical companies negotiate billions of dollars of agreements with suppliers, CROs, corporate partners and clinical sites. In addition to those agreements, negotiations with regulatory agencies have a tremendous impact on the success of our companies and their products. The size, speed and cost of clinical trials are determined in these regulatory interactions. Agreements with regulators will also define the nature and breadth of market approval and the label accorded to new products. Thus, how our companies negotiate is a key factor in the success of every pharmaceutical organization. The key question is: Are we obtaining the maximum value from our current approach to negotiations? In the remainder of this article, I will try to answer that question along with the following:

- Why I believe we are not being well served by our current negotiators
- What steps we can take to ensure we are achieving our negotiation objectives

My 30 years of experience conducting training programs for and consulting with pharmaceutical companies, CROs and the FDA on negotiation issues convinces me that there is much we can do to improve our approach to and the results from our negotiations. Poor negotiations and their outcomes affect almost every aspect of the pharmaceutical business. Those outcomes exist in part because we fail to recognize the powerful impact of negotiations. We fail to appreciate that when done correctly, negotiation can make a significant contribution to the bottom line. Instead, we allow people to develop their own approach and to negotiate in whatever manner they deem appropriate. We do not provide clear guidelines and expectations to the people who negotiate for us nor do we question if a better deal was available. Thus, the outcome is a mixed bag of results. At times we achieve our objectives, but more frequently our corporate objectives are not being well served. There is no reason why this should be the case.

Two Approaches to Negotiation

There is a distinction between what we call contract-driven and implementation-minded negotiators. [The latter term is used by Danny Ertel in his HBR article *Getting Past Yes.*]

Contract-driven

Getting a signed contract is the objective for the contract-driven negotiator. The problem with this approach is that it does little to enhance the relationship between the parties. Negotiators who focus on the contract can be useful in situations where you do not expect to see the other party again. In the pharmaceutical industry, however this is rarely the case. Many of the people you do business with are people you have done business with previously or will do business with again. People remember how they have been treated. Think about that FDA medical reviewer

who is working on your current compound and is asking for more data and studies then you think necessary. Or consider that CRO which, though a preferred provider and working on your newest program, will not assign the experienced staff you want on the project. Or think about the joint venture partner who is not interested in working with you on their newest compound. The contract-driven approach rarely serves our long term interest.

Implementation-minded

The implementation-minded negotiator is also concerned with getting the contract signed, but not at the expense of getting the right deal, one that both parties can implement and that contributes to long-lasting high-trust working relationships. They understand that the parties will do business again and that the contract is only the beginning of the process. As a result, they work to create value that goes beyond the specifics of the contract. Danny Ertel, in discussing the behavior of what he calls the deal-minded negotiator, suggests that “People who view the contract as the conclusion and see themselves as solely responsible for getting there behave very differently from those who see the agreement as just the beginning and believe their role is to ensure that the parties involved actually realize the value they are trying to create.” John Baker, in his article *After the Ink Dries ... Fulfilling the Promise*, further clarified this issue when he pointed out, “The negotiation process is, after all, only a means to an end. The negotiation is not the end. It is to the contrary, a cost undertaken to achieve a future result.” He went on to clarify “The pay-off for the cost of the negotiation and implementation only occurs when the deal is implemented. Negotiation and implementation are, therefore, inextricably linked. It is the negotiator’s job to see that *both* processes succeed.”

Contract-Driven Negotiation Culture

Contract-driven negotiators are not always easy to identify. They present themselves as if only they can be so creative and insightful and reach the solutions they do. They are able to create an illusion of negotiation success because, during the implementation phase, nobody looks back or questions what happened during the negotiation phase. The objective is how to identify the contract-driven negotiators before you select one to represent your company.

Contract-driven negotiators are driven by a three part philosophy:

- A focus on winning. They engage in position bargaining and use an approach that is based on power, leverage and pushing for every concession possible. They frequently brag about the concessions they have gotten and are proud of having beaten the other party. In their mind there is only room for one winner. They feel that being a tough negotiator and being concerned with the relationship are in direct conflict.
- Getting the deal, not necessarily the right deal - just a deal. The other party and the long term relationship between the parties is of little or no concern – “just get the contract signed.” What happens after the deal is signed? They are too busy to worry about how well the contract served its purpose. As they frequently remind us, “Nobody has complained and my boss is happy with the results.”
- A focus on themselves as the key player. “I know what I am doing. Give me the authority to negotiate and I will get the job done.” As a result of this attitude, they are

always asking for more authority, taking all the credit and are quick to blame others when things do not go as they promised. Concurrently, they frequently view the involvement of others as interference rather than helpful. A favorite excuse is “you had to be there to appreciate the problems we had”

It is important to recognize that these behaviors do not exist in a vacuum. Rather they exist within a culture that explicitly values them or at the very least never questions them, thus sending a message that the behavior is acceptable. This is further reinforced by a culture that views each negotiation on an individual basis and fails to appreciate the cumulative impact on the company of all the negotiations conducted.

Moving Beyond the Contract Mindset

You do not need to accept second rate outcomes. You can influence the quality of your negotiators by taking an active role in:

- Creating the right culture
- Selecting the right negotiators
- Having the patience to allow the process to play out.

Step 1 - Create the right culture.

Create a culture that promotes and supports the implementation-oriented approach to negotiating. People behave the way the culture dictates. Change the culture and you can change performance. To accomplish this you need to do the following:

- Assess your current situation. Do you have a clearly communicated philosophy about how you want people to negotiate or are your negotiators left to take their own approach?
- Acknowledge and openly discuss what you see as currently happening and why you feel the need to make a change.
- Clearly articulate the new approach and explain that you will support your negotiators to ensure they get the deal you want. Reinforce your interest in getting the right deal, not just any deal and make it known that you are prepared to walk away from a bad deal.
- Develop a planning model that you expect everyone to use.
- Make it clear that while outcomes such as price are important, building high-trust working relationships is equally important. We can be tough negotiators and still maintain good working relationships. They are not mutually exclusive.
- Provide the necessary training. Learning implementation-focused negotiation requires both a change in attitude and an increase in the repertoire of skills that negotiators bring to the table.
- Meet with staff on a regular basis to review the negotiations they have conducted and to reinforce their new behavior. Highlight those deals that reinforce the culture you want to establish.
- Make negotiation skills part of the performance appraisal process.

Step 2 - Select the right negotiator.

You want someone who brings an implementation mindset - one who appreciates the importance of the relationship, who considers the long term and is concerned with building trust. Asking prospective negotiators the following questions will help:

- Describe your approach to the negotiation process?
- Describe the deals you are most proud of having negotiated. What happened and what did you do that made a difference?
- Describe a negotiation you are not happy about. What happened and do you think you could have done anything differently?
- What do you see as your major strength as a negotiator?
- How do you think people you have negotiated with would describe your negotiation skills?
- What do you see as the role of your stakeholders?
- What is the most important thing you have learned as a negotiator?
- How can you apply what you have learned to future negotiations?

You should be listening for an approach that suggests that individual is comfortable with what you are trying to achieve.

Step 3 – Have Patience

For many people transitioning to this approach will not be easy and will require a great deal of management support. Over time, however, people will come to appreciate the importance and value of high-trust working relationships and the implementation-minded approach. If you are consistent, they will come to appreciate that the objective is not a contract but a process that ends with both parties meeting their obligations and being willing to work together again.

Conclusion

In thinking about this issue, I am reminded of a lawyer for one of America's foremost pharmaceutical firms whose job, in part, was negotiating licensing deals with other firms. He had a reputation as a first-rate, tough negotiator. Shortly after he retired, he was approached by one of the firms he did deals with wanting to hire him to represent them. They indicated how impressed they were with his approach and concern with ensuring that the deal made sense for both parties. They saw him as a tough principled negotiator and they welcomed doing business with him. When I think about the people I would like representing me, it is this type of individual. It is the type of reputation I would hope to have and the type of person *you* should be looking for to represent *you*.

Additional Reading

Getting Past Yes: Negotiating as if Implementation Mattered, by Danny Ertel, HBR November 2004. Reprint R0411C. This article clearly draws the distinction between the deal-minded and implementation-minded negotiators. It is a first rate article.

Turning Negotiation into A Corporate Capability, by Danny Ertel, HBR May – June 1999, Reprint 99304

Trust Based Influence and the Sponsor/ CRO Relationship, by Ira G. Asherman and Barry Sagotsky, Monitor August 2009. This article discusses the importance of trust and reviews a fair amount of the trust research.

After The Ink Dries....Fulfilling the Promise, by John Baker, The Negotiator magazine, September 2014. This article looks at the negotiators role in ensuring the agreements implementation.