

SECTION SEVEN

WORKING WITH A PROFESSIONAL LOBBYIST

The First Amendment to the Constitution guarantees “the right of the people to petition the government for redress of grievances.” This right has nurtured the development of a host of activities that have come to be known as lobbying. While certain abuses of the process have caused some to view lobbying with a jaundiced eye, it is, in reality, a vital component of our political process.

Legislators cannot function properly in a vacuum. They need the input and assistance of concerned citizens who have intimate knowledge of the area to be addressed by proposed legislation. Unfortunately, most citizens, including emergency physicians, are unable to give the legislative process their complete and undivided attention. They are often unaware of when matters of vital interest to them are being considered. Even when citizens are aware of such matters, it is often impossible to monitor and participate in the process with maximal effectiveness. It is for this reason that professional lobbyists have assumed such an important role.

Deciding if a Professional Lobbyist is Right for Your Chapter

Most chapters that have decided to enlist the services of a professional lobbyist have done so only after long periods of analysis and soul-searching. Effective lobbying can be expensive and resource intensive. It requires a significant commitment of time and expertise by a core group of chapter members who are willing to support the activities of the professional lobbyist with testimony, letter writing, and phone calls. It also requires a commitment of significant chapter staff time that is then not available for other activities.

Because of these significant direct and indirect costs, it is crucial that any chapter considering hiring a lobbyist proceed only after a careful analysis of its unique situation. The following are just a few of the many questions that a chapter should ask.

- Does the chapter have a legislative agenda that requires a lobbyist?
- If so, is this agenda already being represented effectively by the chapter membership or the state

medical association? Could the chapter better utilize the existing services available through the state medical association's lobbyist or could the chapter consider additional collaboration with the state medical association to better address the chapter's lobbying needs?

- Is the chapter's legislative agenda realistic and achievable?
- Does the chapter have the resources needed to carry out a professional lobbying program?

These resources include:

- **financial** – the direct and indirect costs are variable
 - **chapter staff** – at least five to ten hours per week are usually required for mailings, telephone calls, copying, and support of the government affairs committee
 - **physician leadership** – dedicated members must be willing to commit themselves for “the long haul” or any lobbying effort is likely to fail
 - **support structure** – does the chapter have a political action committee, is it a member of any strong coalition groups, does it have the support of the state medical association, and does it have established positions on key issues (for example, position papers, model legislation)
- Even if it has the necessary resources, is the chapter willing and able to commit those resources to a lobbying effort?

Determining the Duties of the Lobbyist

Once a chapter has determined that it is in its best interest to embark on a professional lobbying effort, it is crucial that

it develop clear objectives and goals for that effort. This planning process should take place prior to hiring a lobbyist, as it is only through this process that the chapter can define who is the right lobbyist. The chapter leadership must decide if it is looking for a lobbyist who will work for them full time or only on an as-needed basis. Some chapters may consider They must define the scope of the lobbying effort. Are they looking for someone to be the chapter's eyes and ears at the state house, or are they looking for an advocate who will work on the chapter's behalf to introduce, amend, and kill legislation? Are they looking for an educator as well as a representative? Do they want representation in the regulatory as well as the legislative halls of government?

More resources related to the evaluation of potential lobbyists are available to chapters through ACEP's State Legislative Office.

Strategies for Finding a Lobbyist

Contrary to popular belief, quality lobbyists cannot be found in every nook and cranny of the state house. When looking for a good health care lobbyist, it is best to start by asking the state medical association for its recommendations. It is also useful to talk with other professional organizations, legislative staff, other lobbyists, and the legislators themselves. Many legislators, who rely on lobbyists to provide them with good information, may be willing to assist you in identifying individuals or firms that can provide them with good information on health care issues.

Choosing the Right Lobbyist for Your Chapter

Before beginning the interview process, it is crucial that the chapter leadership develop a very specific job description and expectations for their professional lobbyist. The basis for the job description should include the answers to the questions raised during the discussion that

led to the decision to hire a lobbyist. Specific attention should be paid to the following issues.

- Issues identification
 - The chapter leadership must set the legislative agenda, not the lobbyist.
 - The chapter should identify immediate and long-term goals.
 - The chapter leadership may wish to create several scenarios to which the lobbyist is expected to respond.
- Level of representation:
 - “Eyes and ears” only?
 - As needed in specific situations?
 - Active representation?
- Scope of the representation you expect:
 - Legislature only?
 - Regulatory agencies?
 - Fundraisers?
- Nonlegislative services:
 - Assistance setting up a political action committee and key contact program?
 - Filing required reports with state government?
 - Chapter newsletter articles?
 - Member educational activities?
 - Frequency and types of reports? Attendance at board meetings?

Once these decisions are made, it is time to begin interviewing candidates. It is important to approach this activity with an open but critical mind. The chapter leadership and key staff should be involved in the interview process. Pay close attention to gut feelings. If any candidate makes you uncomfortable during the interview, this person is probably not right for you.

Although not always easy to find, some chapters have hired the same professional group to perform lobbying and chapter management services.

It is important that you choose a lobbyist whose personality is a good match for your chapter. Most chapters will probably want a low-key individual rather than a wheeler-dealer who is used to working with lots of financial resources. While it is not important that the lobbyist have a medical background, this expertise definitely helps. At the very least, the lobbyist should demonstrate a genuine interest in emergency medicine and a willingness to learn about what emergency physicians do.

Be sure to provide all candidates with written materials that describe the structure, history, resources, and philosophy of your chapter. Position papers, annual reports, and promotional materials from ACEP are often helpful.

As in most interview situations, open-ended questions are best. You should guide but not dominate the discussion. It is important that you develop a feeling for the candidate’s general lobbying philosophy and that the candidate demonstrates the ability to ask pertinent questions and learns from your answers. If your initial feelings are positive, proceed to a discussion of your specific issues, projects, and requirements, and ask for a fee proposal. Request references and a list of past and current clients, and check with them. It is of critical importance to review the list of current clients for any potential conflicts of interest. Many health care lobbyists work for various medical specialties that may not share the same interests as your chapter.

You should plan to interview several candidates, even if one of the early candidates strikes you as the right choice. Interviewing a variety of candidates will give you the opportunity to get a better understanding and appreciation of the range of services available and the quality of the individual that you choose. It will also give you a better idea of the appropriate fee for the services that you desire.

Once you have chosen a lobbyist who agrees to represent you, have the courtesy to let the other candidates know that you have made your choice. It is not fair

to leave them hanging and it is unwise to alienate individuals with whom you or your new lobbyist may have future encounters.

The Lobbying Contract

An attorney should draw up the contract between your chapter and your new lobbyist. At the very least, it should include the duration of the contract, scope of the activity expected, fee amount and payment schedule, expense reimbursement policy, and a termination clause. You should also identify a clear chain of command from whom the lobbyist will take direction and to whom he or she will direct feedback and questions. Sample lobbyist contracts are available from the State Legislative Office.

experience usually indicates that you either chose the wrong person to represent you or that a government affairs program using a professional lobbyist was not really the best alternative for your chapter.

Evaluation of the Lobbyist's Performance

A lobbyist should be evaluated using the same procedures that the chapter uses to evaluate other employees. Goals and objectives should be agreed on in writing by the chapter leadership and lobbyist prior to the start of a session. The lobbyist's performance should be evaluated annually or semi-annually, based on achievement of those goals and objectives; responsiveness to calls, needs, and requests; timeliness and quality of reports; and overall chapter satisfaction with the lobbying experience.

The individuals responsible for the evaluation of the lobbyist should take every opportunity to observe the lobbyist in action – testifying, interacting with legislators, monitoring committee hearings – to have as complete an understanding as possible of the lobbyist's skills, credibility, integrity, commitment, and contributions.

Perhaps the best question to ask at evaluation time is, "Did we get what we paid for, and do we want to buy more?" If the answer is "Yes," your chapter's lobbying experience has probably been a positive one that should continue. If not, it is time to re-evaluate the entire program; begin with the initial needs assessment. An unsatisfactory