HOW TO HIRE & WORK WITH A LOBBYIST
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I. Overview

Many ACOG Sections are interested in growing their legislative program and presence at the state capitol. In at least 15 states, the ACOG Section or State Ob-Gyn Society retains a lobbyist. This document provides practical guidance to assist ACOG Sections and State Societies in their decision to hire a lobbyist.

There are several reasons to consider hiring a lobbyist. Among them are:

1. **Time** – Do your officers and members have the time and flexibility to manage legislation without hiring a lobbyist? Effective advocacy requires being in the state capitol on a regular basis while the legislature is in session.

2. **Presence in the capitol** – A lobbyist will be in the capitol for most legislative session days giving your issues a presence and protecting your bills from unscheduled action, last minute amendments and other parliamentary maneuverings.

3. **Knowledge of the process** – A lobbyist knows the rules of the legislature, the critical deadlines, and committee structure. If your Legislative Chair is not familiar with these, you can easily run into trouble advancing your legislative agenda.

4. **Contacts** - Lobbyists know members of the legislature and legislative staff. Unless your officers and members are familiar with a number of legislators, you may need a lobbyist to provide these critical contacts.

The decision to hire (or retain) a lobbyist should be part of the overall legislative planning process of your ACOG Section. Determining your legislative goals and objectives is perhaps the most important step in selecting a lobbyist. Through legislative planning, you identify your strengths and opportunities as well as your limitations and the threats to your members. This process will tell you whether you need to pass legislation and/or kill legislation, what resources you have internally, and whether you need outside help from a professional lobbyist.
II. Finding the Right Lobbyist

The Secretary of State’s Office
The Secretary of State’s Office or Ethics Commission in your state maintains a list of registered lobbyists. The list will indicate who the lobbyist works for and the issues they’ve handled. You may also want to review lobbying reports. These public records provide information not only about a lobbyist’s clients and issues, but types of expenditures and, in many states, fees paid to the lobbyist.

Different Types of Lobbyists
Like other professionals, there are different types of lobbyists. Lobbyists may specialize in issue campaigns, communications and grassroots, technical regulatory issues, or non-profit advocacy; others specialize in trouble shooting.

What type of lobbyist do you need? Do you only need a lobbyist to manage the bill process? To do lobbying solely? What about grassroots’ activities? Communications’ activities? Organizational needs? You will also need to consider costs. The more services you need, the more the lobbyist will cost.

Contract lobbyists either work independently or with a law and/or lobbying firm. A law firm may be less likely to provide communications and grassroots support than a general public affairs firm. A single practitioner may not be able to give enough time to the organizational needs of a major legislative campaign that a group practice could handle.

The Search: Ask Around
Take the time to find the right lobbyist. Ask other organizations with similar interests and issues who they retain. The more controversial your issues are, the broader and deeper your search should be.

Start early. It is advisable to begin to identify a lobbyist well before the legislative session begins. Because of potential conflicts of interest, you will have a larger selection of lobbyists if you begin the search process early. More importantly, your lobbyist can and will want to help you develop your strategy in the pre-session months. At a minimum, if you are trying to pass a bill, hire your lobbyist before you file the bill or identify or recruit a bill sponsor. These decisions will have a great impact on the legislative outcome. Many groups hire a lobbyist a full year before a legislative session to help lay the groundwork for their legislative agenda.
The best references usually come from clients. Ask other clients about the lobbyist’s accessibility as well as effectiveness. You can learn more about a lobbyist’s reputation, credibility, track record and legislative relationships from former and current clients. Although it can be useful to check a lobbyist’s references with a legislator, asking a legislator which lobbyist to hire is usually not a good idea. The recommendations they give you may not fit your needs and rejecting the legislator’s recommendation may have a downside for your future legislative efforts.

Don’t assume that you cannot afford a top-level lobbyist. In some cases, lobbyists with a personal commitment to women’s health issues and/or an interest in expanding their client base may reduce their regular fee. On the other hand, some lobbyists are more expensive than others, especially former legislators and those with political connections to the current leadership.

Personal connections to key decision makers at the Capitol will be important. Some lobbyists have high-level political connections; others know certain committees well. Look at the power structure in the legislature. Who has power? Can the candidate reach those persons?

**Client Conflicts & Exclusivity**
Review the candidate’s client list for potential conflicts of interest. Your lobbyist should have no conflict of interest with your issues.

Will they work for ACOG exclusively, or do they have other clients? If they have other clients, how much time can they devote to ACOG?

**Personal Style – It Counts!**
You’re going to spend a lot of time together, so select someone you like. Make sure you have a good rapport and a sense of confidence. You will have to rely on this person’s judgment when there is no time for a second opinion.

Gender counts, but need not be a disqualifier.

Some lobbyists work independently with very little guidance; others are more collaborative in their approach. What style best fits your Section?

Since your lobbyist represents your interests to other people, you should ensure that he or she will reflect well on your Section, as well as advance your legislative goals.
III. Fee Arrangements

There are different types of fee arrangements made with lobbyists. Your options are (1) an annual contract; (2) a retainer contract (monthly, yearly or session based); or (3) an hourly contract. Fees vary greatly by state depending on the issue, the length of the legislative session, and the standard rates in the area.

The contract or letter of agreement with your lobbyist should be inclusive and specific. Include the fee amount, duration of the contract, names of your Section contact person(s), payment schedule, scope of the project, expense reimbursement policy, and a termination clause.

Negotiating a flat fee for the session is preferable to paying a lobbyist on an hourly basis which is almost always the most expensive option. (Law firms may prefer hourly billing.) Initially, you may want to enter into a year-long or session-long commitment to the legislative project and the relationship, with the option of retaining. One exception to the rule against using an hourly fee might be the case of limited pre-session work in one year leading to a retainer for the next year.

Once you agree on a fee, you will need to discuss a payment schedule. Ask the lobbyist to suggest a fair price for the whole project, and then divide the fee by 12 months. If your budget and the lobbyist’s fees are far apart, you might gain some negotiating room by offering to pay half up-front and the balance throughout the contract.

It is unfair to terminate for lack of a win. That is “contingency” lobbying and it’s illegal federally and in most states.

Make sure you know what expenses will be billed to you. Some lobbyists charge only for extraordinary expenses such as overnight mailing or long-distance calls. Others will charge for routine office expenses.

Spell out the travel expense reimbursement. You should expect to pay expenses if your lobbyist travels to one of your Section meetings or on other Section business. But if your lobbyist lives outside the capitol, you may not want to pay travel to and from the Capitol.
Be clear with the lobbyist regarding entertainment expenses such as meals with legislators, assuming this is allowed by state law. For example, you may not want to participate in sharing the costs for attendance at numerous receptions held in the Capitol unless Section members are in attendance. Your lobbyist may suggest that the Section host a reception or jointly host it with other allied groups. Your legislative committee will want to review these issues before beginning the legislative campaign.

If you are hiring a firm with multiple lobbyists, make sure you know who will be doing the bulk of the work on your issues and document this in writing in your letter of agreement. Find out who the alternate will be if the principal lobbyist is unavailable for some reason and also whether any of your issues will be delegated to other (usually junior) members of your lobbyist’s firm. Consider requiring the lobbyist to obtain your approval before delegating.
IV. MANAGING YOUR LOBBYIST

The type of work your lobbyist will be doing depends on your legislative agenda and objectives and your Section members’ own involvement in lobbying activity. Much of the work of a lobbyist is automatic and not easily captured in detail beyond general descriptions. Make your expectations as specific as possible. Your understanding of what is included in “lobbying” and the lobbyist’s may be different.

The following are typical duties of a lobbyist:

- meets one-on-one with legislators and their staff to make a case for your issues and concerns
- advises you on which legislators to target
- drafts or helps draft legislation (optional)
- manages the committee assignment process for your bills
- recruits bill sponsors and co-sponsors
- monitors legislation of interest; watches calendar deadlines
- drafts calls to action
- prepares testimony or helps members prepare testimony
- provides consultative advice on legislative and grassroots strategy
- attends key hearings and testifies or helps you arrange for members to testify
- identifies legislative support (including conducting vote counts) and targets swing votes
- submits periodic status reports
- attends relevant meetings of the Section as specified, including ACOG’s Annual State Lobbyist Roundtable held each fall in Washington, DC
- provides a final report outlining action taken on key bills, including a detailed analysis of successes and failures
- serves as media spokesperson (optional)
- helps develop your grassroots program (optional)
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- helps with coalition building and serves as your representative in specific coalitions (optional)

**Clarify your expectations as far as reporting.**
Determine who will be the primary contact person within your Section—either your Legislative Chair, or the Section Chair or Vice Chair. Be accessible and have a back-up contact. Telephone calls and e-mails are necessary. Written reports may be optional. Do not expect your lobbyist to e-mail or call everyone on the executive committee or legislative committee with updates, questions, etc. Your lobbyist needs to know who can make decisions and who cannot. Also, how often will your lobbyist report to you? To whom should these reports be made?

**Include your lobbyist in meetings of your legislative committee.**
In addition, consider having members of your legislative committee spend time with the lobbyist in the capitol during the legislative session attending hearings and meeting legislators, other lobbyists and legislative staff as appropriate.

**Who will talk to the press?**
You may choose to handle all press contacts. But you will need to discuss these arrangements with your lobbyist so that she/he will know what to do with inquiries.

**A good lobbyist’s advice is critical – you pay a lot for it, so use it.**
However, as much as you value their judgment on political matters and strategy, you should have the final word on policy matters. Be clear up-front what if anything is negotiable and what your “bottom line” is for an acceptable bill. But do trust them to know the culture they’re working with and when to call the shots. Go through as many scenarios as possible in advance, so that the lobbyist can make the close calls if necessary. Give them the parameters on compromises, and set milestones and goals.

**Compliance with lobbyist reporting laws.**
You should obtain a copy of the lobbying rules and regulations in your state and review them carefully. Some states require both the lobbyist and the group hiring the lobbyist to file reports. Become familiar with the obligations and make sure you and your lobbyist comply fully. You will want to maintain copies of all reports your lobbyist files on behalf of your Section.
V. The Ongoing Relationship With Your Lobbyist

Your presence at the state capitol will grow over time. It is important to maintain relationships with your lobbyist and with legislators during the off-session months and to thank them for their work.

Regardless of how well satisfied you are with your lobbyist, you will need to evaluate periodically their work and decide whether to continue the relationship. Many lobbyists will ask for a formal evaluation at the end of the contract period, and it is good to prepare an evaluation even if you are recommending that the contract be continued.

Lobbyists can be evaluated on any of the following criteria:

- Effectiveness
- Effort
- Quality
- Timelines
- Communication
- Skills
- Knowledge
- Contacts

In certain instances, it will be evident that your lobbyist is not the right person for the job. You are not obligated to retain the same lobbyist for the following legislative session if you are not comfortable or happy with the outcome of the previous session. Make a clean break and look for someone better suited to your Section’s needs and circumstances.

If you inherit a lobbyist who is not doing an effective job but has established a strong relationship with key members of the Section, a formal evaluation may be the only practical way to terminate the lobbyist’s services.
VI. Secrets To Success

You understand your issues better than the lobbyist ever will. Take the time to provide your lobbyist with a complete understanding of your issue, your supporters and opponents, and the research available to document your position.

You will never know as much about the legislative process as your lobbyist. That’s why you’re hiring him or her. Although you should be involved in all major decisions related to your legislation, you will not be able to micro-manage the process any more than a patient can manage his or her own case.

Remember you are partners and the better you can make that partnership work, the more likely you are to meet your objectives.

Defining what you expect from your lobbyist up-front will go a long way toward ensuring a successful relationship. A lobbyist should never be perceived as the one responsible for the Section’s legislative program, but rather as a resource to assist the Section with its legislative efforts.

Lobbyists are not miracle workers. They can execute a vital piece of your legislative action plan, but they need both the grassroots support and issue expertise that your Section can provide. Without these, even the best lobbyist will not succeed.

A lobbyist does not take the place of a good grassroots program. If you lack the public presence to back up their efforts at the capitol, the money you spend could be wasted.