

# How to Influence State Legislatures and Regulatory Agencies

By Robert L. Guyer, Esq.

**Seemingly few people today understand the context in which American citizens influence the United States government.** Among the many consequences of this widespread lack of understanding is a distorted public perception of the role of advocacy in the government.

“Self-interest is the engine of government,” said James Madison. The framers of the Constitution realized that those who hold legislative office and those who petition government would be doing so, not for the common good, but in pursuit of their own particular self-interests.

In 1798 Thomas Jefferson wrote: “In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.”

The “chains of the Constitution” to which he referred were the various structural devices—federalism, separation of powers, checks and balances, and ultimately, the ability of the people to amend the Constitution—the devices that its framers put in the document to help check the abuse of political power.<sup>1</sup>

Jefferson said “Our people in a body are wise, because they are under the unrestrained and unperverted operation of their own understandings.”

And, “If once they (i.e., the people) become inattentive to the public affairs, you and I, and Congress, and Assemblies, judges and governors shall all become wolves.”

The Constitutional framers in the First Amendment placed alongside the freedoms of religion, speech, and press the inviolable right of the people to influence government. Specifically, “Congress shall make no law...abridging...the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

The framers ensured that, as a protected constitutional right, every citizen or group of citizens has the legal right to influence government decision makers.

## IN THIS ARTICLE...

Take a look at how physicians can better influence legislative and regulatory outcomes at the state level.

## Influencing is lobbying

“Influencing political outcomes” has many synonyms including educating lawmakers and providing helpful information. Regardless of the phrase chosen to describe advocacy —“educating,” “informing,” “advising” —it is statute, not linguistics, that classifies activities before the law. The common statutory term for educating and informing lawmakers and agency staff is “lobbying.”

Statutory definitions of lobbying coalesce around conduct; specifically, conduct that could reasonably influence a legislative or executive agency official. Consider, for example, the following definitions from Michigan statutes for lobbying and influencing:

- “Lobbying” means communicating directly with an official in the executive...or...legislative branch...for the purpose of influencing legislative or administrative action.”
- “Influencing” means promoting, supporting, affecting, modifying, opposing or delaying by any means, including the providing of or use of information, statistics, studies, or analysis.”<sup>2</sup>

In short, lobbying means contacting, or urging others to contact, an official regarding an impending legislative or agency action.

## Why lobby at the state level?

Lobbying at the state level is important for at least two reasons.

**Government officials, in particular lawmakers, can be as arbitrary and capricious as they wish. Offend a legislative committee chair and the committee may never take up your bill, no matter its merits.**



1. “Neither liberty nor property is safe when the legislature is in session.” (Edmund Burke) For most practical purposes legislatures can do almost anything they want to do, to you or for you. Favorable legislation can lead to an interest’s greater success. Unfavorable legislation can bring marginal performance or even failure.
2. The second reason is growing. That is, for the last 25 years the federal government has been returning to states more and more of the domestic authority seized by Washington during the New Deal.

Leadership in legislative and regulatory domestic matters has shifted from Washington to the state capitals. Federal devolution, the incremental return of domestic

authority by the federal government to the states, plays a part.

But the greater part is played by the states themselves having more money, professionalism, credibility and, most of all, more leadership ambition than they have had in the last 50 years. Today, two sovereigns increasingly characterize federalism: the states for domestic matters and the national government for the interstate and international.<sup>3</sup>

The Constitutional principle that each state is sovereign means the United States has in fact 50 state sovereigns. Very similar legislative issues can have very different or even conflicting outcomes among the sovereign states.

For example, in 2004 Florida’s legislature adopted legislation licensing anesthesiologist assistants. That same year, Louisiana took the opposite position by banning anes-

thesiologist assistants from practice in the state.

Even with 50 state sovereigns there are common fundamentals that physicians may apply to lobbying that will lead to greater success and political influence.

### **Fundamentals of legislative lobbying**

Like medicine, lobbying is both an art and science. As an art it has a general set of fundamentals which, when applied, increase lobbying quality. Some of the fundamentals are:

#### **Facts don’t vote.**

Lawmakers have no legal requirement to make factually rational decisions. Few lawmakers read the bills on which they will vote. Thousands of bills are introduced annually on topics ranging from

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anesthesiologist assistants to welfare reform. Most state legislators are part-time lawmakers, the average duration of a state legislative general session is 120 days.

When not in the capitol, most lawmakers have their own livelihoods to pursue. State lawmakers do not have the time, interest, technical background, staff support or resources to understand the factual content of bills. While lawmakers may well grasp the political facts surrounding an issue, technical facts often are ignored in the legislative process.

As a result, physicians cannot rely on good science or public policy to prevail in the legislature. A good set of political facts is necessary.

## **Lawmakers are almost exclusively motivated by special interests**

How do most lawmakers decide how to vote on a particular piece of legislation? The answer is that they generally support the legislative goals of the special interest groups that placed and keep them in public office.

Lawmakers vote to please their supporters, to gain more political support, and to avoid giving potential election challengers grounds on which to attack them politically.

A lawmaker will listen more to physicians that support the lawmaker.

## **Campaign contributions are the sine qua non of gaining and keeping political influence**

Jesse Unruh, former speaker of the California Assembly, said, "Money is the mother's milk of politics." Today money is one of many kinds of campaign contributions. Gaining political influence means making campaign contributions in different forms including money and endorsements, and attending fundraisers.

Physicians must make campaign contributions in order to build and sustain political influence.

## **Nobody cares about your issue as much as you do**

You are more interested in your well-being than anyone else. Consultants can make invaluable contributors to your legislative campaign. However, your interests will be balanced against their own business interests and the interests of their other clients.

You can speak more passionately, with greater depth of knowledge and credibility than your best contractors. Lawmakers are much more interested in you and their other constituents than in your contractors.

Physicians must be fully involved in key legislative decisions affecting them. They cannot transfer their duty of involvement to contractors and still expect as much political success.

## **The best time to lobby is when you don't need anything**

Lawmakers hear steady streams of "give me, give me, give me" or, "unless you do what I am asking, it will be the end of (health care, education, prosperity, fill in the blank) as we know it."

In contrast to demands and hyperbole, genuine relationship building sets the foundation on which political influence can prosper. Those wanting political influence should ask themselves, "Am I a friend of my lawmaker?" If not, ask yourself why not and fix that lack of relationship.

Lobbying the legislature is just a first step. Thomas Jefferson said, "The execution of laws is more important than the making of them." So after you have finished the legislative stage, the next step is to go to the executive agencies.

## **Fundamentals of executive agency lobbying**

The founders created, through the separation of powers, checks to ensure that no branch of our government would become too powerful. James Madison said, "There can be no liberty where the legislative and executive powers are united in the same person or body of magistrates."

The framers assigned to the legislature exclusive authority to make law and appropriate money, but denied them authority to implement law. To the executive they assigned the sole authority to implement the legislature's laws, but

denied the executive authority to make law or appropriate money.

The practical result is that the legislature can pass a statute, but the executive can, in effect, nullify that law. An executive may do this by choosing to not implement the statute and let the appropriation revert back to the general fund. Or the executive can decide to make rules that greatly exceed the requirements of the enabling statute. Or may only implement sections of the statute that the executive branch approves.

Here are a few select fundamentals to help physicians work more effectively with executive agencies.

#### Facts matter

Unlike legislators who are free to devalue or even ignore technical facts, executive actions must be

supported by science, economics, and established public policy.

Agency lobbying is much more fact driven than is legislative. So an advocacy presentation appropriate to the legislature may be of little use or even counter-productive with an executive agency.

Physicians must tailor their lobbying approaches to the branch of government they are attempting to influence.

#### Agencies must stay within limits set by the legislature

These limits are both procedural and substantive. Legislatures can pretty much do whatever they want, except as limited by federal law, the U.S. Constitution and their respective state constitutions. Executive agencies, on the other hand, must stay within the limits of procedural statutes and enabling legislation.

An agency action that would be the best solution from a purely medical perspective, for example, may be wholly illegal if that action exceeds what is reasonably necessary to implement the enabling legislation.

When lobbying agencies, physicians must know both the technical and legal abilities and restraints that affect agency actions.

#### Impediments to successful lobbying

A myriad of impediments exist to successful lobbying, a few more common among physicians. However, the most encompassing impediment is simply not knowing or appreciating the system to be influenced and the advocate's role within that system.

The advocate's goal is to convince both legislature and executive

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- Inappropriate expression of anger or resentment towards others
- Inappropriate words or actions directed towards others
- Sexual comments/harassment
- Seductive, aggressive or assaultive behaviors
- Racial, ethnic, gender, or socioeconomic bias
- Being avoidant or unreliable
- Recurrent conflict with others
- Difficulty with authority
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- Belittling remarks near clients/staff

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agency to use their immense discretion in a way that advances the advocate's cause.

The advocate's threshold question becomes, "Why would that lawmaker give me his or her vote?" or "Why would that agency official choose to implement the law in the way I suggest?" Until you can answer the respective question, you are not likely to get a lawmaker's vote or an agency's support.

Among impediments to successfully lobbying are:

### **Using the wrong person to lobby**

Lobbying is first about "making a sale." State officials are our "customers" who have something we want, that is, their support. The official can support or oppose you, your opponent, or no one, as he or she chooses.

High-level executives, physicians, academics, and similarly situated persons of achievement often are the worst lobbyists. This is because they find it difficult to plead, to petition, to entreat, especially people they consider inferior due to education, income, and social class.

Physicians who cannot bend their knees, especially to perceived inferiors, should not attempt to lobby.

### **Underappreciating officials' arbitrary and capricious use of power**

Government officials, in particular lawmakers, can be as arbitrary and capricious as they wish. Offend a legislative committee chair and the committee may never take up your bill, no matter its merits.

A moment of rudeness to a staff person can sink a costly lobbying campaign. Executive agency officials may simply "lose" the paperwork of those failing to demonstrate proper deference to the agency.

Physicians must realize they are working to make a sale. Hell hath no fury like that of government official slighted.

### **Not understanding the formal and informal rules of the legislature or agency**

Both legislative and agency law-making processes are founded on trust, mutual expressed respect, and the expectation that each side will abide by the rules. The rules are formal and informal, written and unwritten, and a few unwritten and unspoken.

Legislators, staff and executive agencies disrespect those who don't abide by the rules. Disrespect reduces trust. Once a petitioner shows that he or she does not understand the rules, both trust and respect are lost.

Physicians must appreciate that they are not government affairs professionals and must be schooled in the ways of effective advocacy.

### **A sense of entitlement**

Physicians as a group tend to have a profound sense of self-entitlement. On the other hand, legislators, their staffs, and agency staff have a strong sense of their own power, discretion, and pleasure in exercising both.

Officials resist the demands of the self-entitled and receive better the well thought out and properly presented requests of the petitioner.

Physicians must realize that lawmakers, unlike pharmaceutical sales people, don't need their business. The lawmaker is the physician's customer to be wooed on the customer's terms.

### **Thinking you are smarter than everyone else**

The legislative process in particular is not driven by objective facts. It is driven by political self-interest.

Advocates must not think that those in the capital are too dim to see true motives. Legislators quickly see through altruistic veneers, especially when money is involved.

Physicians should advocate with the assumption that their motives are suspect by those they petition. Those experienced in government affairs realize the truth spoken by James Madison, "Self-interest is the engine of government."

In the end, physicians must petition and monitor governmental bodies to ensure the well-being of their profession and businesses. A few of the basic fundamentals of legislative and executive lobbying presented here give a sense that to win with government you have to know how the systems operate and petition with a humble heart.



**Robert L. Guyer, Esq.,** is licensed to the practice of law in Florida and the District of Columbia. He has successfully lobbied for statutes, agency rules, and agency permits in the United States, both state and federal governments, in Canada, and within the Organisation for Economic Cooperation and Development in Europe and North America. The author acknowledges his deep debt to Laura K. Guyer, PhD, RD, for her editorial assistance.

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