

Understanding your medical services contract



Quick guide

- Read your proposed medical services contract carefully and ensure you understand its terms
- If there is anything you do not understand or you do not agree with, speak with the practice and/or seek legal advice

This factsheet provides some useful information about the clauses that are typically included in a medical services contract between a medical practitioner and medical practice, where the medical practitioner is not an employee of the practice.

The purpose of this factsheet is to help you understand the terms and conditions of your medical services contract and to give you a brief explanation of the key terms and conditions that may be included as outlined in the *Appendix*.

Medical service contracts can be set up as either:

- "service agreements" under which a medical practitioner runs their own business and engages a practice to provide practice management services to the medical practitioner; or
- "contractor agreements" under which a practice engages a medical practitioner as a contractor to provide medical services to patients of the practice.

Increasingly, medical practices are being required to pay payroll tax and superannuation on amounts paid to medical practitioners. The law in

this area is complex and whether a practice is required to pay these amounts will often depend on the terms and conditions contained in a medical services contract. Many medical services contracts seek to pass the requirement to pay payroll tax and superannuation on to medical practitioners. We strongly recommend that you seek accounting or legal advice about the possible requirement to reimburse the practice for payroll tax and superannuation.

For more information or immediate medico-legal advice, call us on **1800 128 268**, 24/7 in emergencies. avant.org.au/mlas



avant.org.au/avant-learning-centre

Appendix

Understanding your medical services contract Factsheet

Appendix

Clause	Medical services contract
Terms	The terms of a medical services contract may be contained in an agreement, a contract, a deed or a letter. Some terms may be verbal (i.e. agreed orally but not written down).
Parties	<p>The parties to a medical services contract are generally:</p> <ul style="list-style-type: none">• the medical practitioner;• the practice. <p>Sometimes, the medical practitioner's service entity (for example, a company) may also be a party.</p> <p>Your medical services contract should state the proper name of each legal entity that is a party to the agreement. A business name is not a legal entity and should not be a party to an agreement. For example, if you work at the City Medical Practice which is owned by Smith Pty Ltd, your medical services contract should be with Smith Pty Ltd rather than City Medical Practice.</p> <p>Your medical services contract should state the ABN of the parties.</p>
Location	<p>Your medical services contract should state the location from which work will be performed, including whether work can be performed from your home via telehealth.</p> <p>There may be a single location or multiple locations (for example, 'all practices operated by Smith Pty Ltd' or '12 Smith Street and any other location to which the practice relocates').</p>
Services the practice will provide	<p>Your medical services contract should set out the services that the practice will provide to you.</p> <p>Generally, the practice will determine the standard of services to be provided and whether particular services are required. For example, the practice will determine how often the practice is cleaned and what consumables are used by the practice. If there are particular services that you require or you have particular requirements relating to your services, you may wish to include this in your medical services contract.</p>
Your obligations	<p>Your medical services contract should set out your obligations.</p> <p>As a doctor, you should have autonomy in clinical decision making. Your medical services contract should not include any clauses which limit this autonomy.</p>
Commencement date	<p>Your medical services contract should state the date on which it will commence. This should be after the date you sign the document.</p> <p>Your medical services contract may say that it will commence when a certain event occurs such as obtaining a Medicare provider number.</p>
Hours of work	<p>As you are not an employee, you should be able to work the hours that you choose and be absent (i.e. "take leave") when you choose.</p> <p>However, in the interests of ensuring the smooth functioning of the practice and the continuity of patient care, most medical services contracts include some requirements about hours of work and absence from work. This reflects the practical reality that a practice requires a minimum number of medical practitioners to work at any time and all medical practitioners cannot work at the same time if there is a limited number of consultation rooms.</p> <p>Your medical services contract is likely to say:</p> <ul style="list-style-type: none">• you will usually work agreed hours but can change those hours upon giving notice; or• you can be absent if you give sufficient notice and there are other medical practitioners available to cover your patients.
Term	<p>The term of your medical services contract may be:</p> <ul style="list-style-type: none">• ongoing – your medical services contract will end if it is terminated by one of the parties in accordance with its terms• fixed term – your medical services contract will end on the specified end date. It cannot be terminated by either party before this date. If it is terminated before this date, the other party may be able to commence a breach of contract claim seeking damages for any loss the party has suffered (for example, the amount of the service fee that the practice would have earned during the period of notice not given).• maximum term – your medical services contract will end on the specified end date but either party can terminate before that date in accordance with its terms. <p>If your medical services contract is a fixed term or maximum term agreement, it is important that the commencement date and end date are clearly stated.</p>
Remuneration	<p>Your medical services contract should explain:</p> <ul style="list-style-type: none">• how you will pay the practice for providing practice management services – typically you will be required to pay a service fee which is a percentage of your billings.• when the practice will be paid. <p>A service fee will generally be a percentage of your 'receipted billings' (i.e. money that is actually received from Medicare and other sources) rather than amounts that are billed.</p> <p>Your medical services contract should specify whether you are entitled to a share of incentive payments such as SIPs and PIPs.</p> <p>Your agreement should explain the invoicing and taxation requirements.</p>

Clause	Medical services contract
Medicare and other billing	<p>You are personally responsible for all amounts billed against your Medicare provider number even if the practice does the billing on your behalf. You should ensure that invoicing is done correctly.</p> <p>It is generally the case that patients will assign their Medicare refund directly to you.</p> <p>Historically, practices have asked medical practitioners to assign all incoming monies to the practice bank account. As a result of recent developments in payroll tax law, many medical services contracts now require all incoming monies to be paid to a medical practitioner's bank account and for the medical practitioner to pay the service fee to the practice from that account.</p> <p>Your practice should provide billing sheets to you on a daily basis (or within another agreed timeframe) so you can assess whether Medicare has been billed correctly. The practice may do this by giving you a hard copy of the information or by giving you access to the information on the system.</p> <p>We recommend that you carefully review your daily billing sheets as you are ultimately responsible for their accuracy.</p>
Taxation	<p>GST is generally payable on practice management services provided by the practice. You may wish to speak with your accountant about the taxation requirements.</p>
Policies and procedures	<p>Your medical service's contract will generally require you to comply with practice policies, procedures, and other documents (such as the Medical Board's Good Medical Practice: A code of conduct for doctors in Australia).</p> <p>Although you are not an employee, you can still be required to comply with practice policies that regulate workplace behaviour and work health and safety (such as bullying or sexual harassment) and administrative policies.</p>
Room allocation	<p>You do not have a right to an allocated room or location in the practice unless your medical services contract provides for it.</p>
Restrictions on your ability to practise	<p>It is sensible to disclose any restrictions on your ability to practise upfront so that suitable arrangements can be made.</p> <p>Restrictions may include:</p> <ul style="list-style-type: none"> • conditions on your Ahpra registration • supervision requirements • medical issues • personal belief restrictions such as refusal to write scripts for the contraceptive pill or referrals for pregnancy terminations.
Termination	<p>You can only end the medical services contract in accordance with its terms. If your medical services contract is for a fixed term or maximum term, it will automatically come to an end at the end of the term.</p> <p>If your medical services contract is ongoing, it should state the period of notice that the parties can give to terminate it. You should consider whether the termination provisions are reasonable.</p> <p>Some medical service contracts provide for a long notice period (say, three or six months). You should consider whether you will be able to continue working for this period of time after you give notice of termination.</p>
Confidential information	<p>Your medical services contract will likely prevent you from using or disclosing confidential information for purposes that are not related to the engagement.</p> <p>Confidential information will generally include patient contact information and may include patient medical records. Patient information is owned by the practice and you will not be able to use it after you leave the practice.</p>
Intellectual property	<p>The law about intellectual property is complex. If you create intellectual property while you work at the practice (including in another job or at your home), you should seek specific advice about your right to retain ownership of the intellectual property.</p> <p>In some cases, you might have conflicting intellectual property obligations (for example, to a University that employs you as an academic and to a practice under a medical services contract). You need to carefully manage any potential conflict.</p>
Restraint of trade	<p>Please see our Restraint of Trade fact sheet.</p>
Medical records	<p>Your medical services contract will generally state which party owns the medical records.</p> <p>Your medical services contract may say that you own the medical records that you create and that you can ask for them to be transferred to your new practice after you leave at a cost.</p> <p>The difficulty that arises in this case is that you have a right to the records you created, but not the entire patient record including records created by other practitioners or staff such as nurses. Your patients will need to complete a consent form for the transfer of their medical record.</p> <p>We strongly recommend that you speak with the practice about what medical record ownership means when you leave the practice (for example, who is responsible for continuity of patient care and checking incoming results and letters).</p> <p>If the practice owns the medical records, you should ask for your medical services contract to include a right for you to obtain a complete copy of any patient records if a complaint, claim or disciplinary or other process is commenced against you to assist you in responding to such claim, complaint or process.</p>
Professional indemnity insurance	<p>A medical services contract will typically require you to hold medical indemnity insurance to a certain value. You can contact Avant member services on 1800 128 268 to discuss your policy coverage.</p>

Clause	Medical services contract
Workers compensation insurance	<p>Worker's compensation insurance protects a worker if they are injured as a result of the worker's work.</p> <p>It is generally not possible to obtain worker's compensation insurance to cover yourself personally.</p> <p>You will not be covered by the practice's workers compensation policy as you are not an employee of the practice. You may wish to generally consider obtaining your own income protection or TPD insurance cover although there is no legal requirement for you to do this.</p>
Public liability insurance	<p>Public liability insurance protects a business or person from the financial consequences of causing property damage or personal injury to another person.</p> <p>The law does not require a medical practitioner to hold public liability insurance. It is a matter for agreement between the parties. However, it is becoming increasingly common for medical services contracts to require medical practitioners to hold public liability insurance.</p> <p>Many medical practitioners choose to hold this insurance even if they are not required to do so by their practice. The insurance will usually cover their public liability risk at multiple sites.</p> <p>Avant can offer public liability insurance to members. Please contact our member services team on 1800 128 268 if you wish to discuss this insurance.</p> <p>You can find further information in our Avant article.</p>
Indemnity	<p>Please see our Indemnity Clauses factsheet.</p>
Entire agreement	<p>Your agreement may include a clause that says that the words contained in the written agreement are the entire agreement between the parties.</p> <p>You will not be able to rely on any verbal representations that have been made to you if they are not included in the written agreement.</p>