

Starting Your Medical Career

Legal & Other Issues to
Consider

Adam Farber, General Counsel, May 26, 2021

Outline

- Guiding Principles & Legislation
- Key Medical-Legal Issues in Contracts
- Various Practice Settings & Models
- Various Remuneration Models
- Taking Over a Practice
- OMA Legal & Resources

Guiding Principles and Legislation

A physician has a duty to act in their patient's best interest

Level of care required:

“A physician is bound to exercise that degree of care and skill which could reasonably be expected of a normal, prudent practitioner of the same experience and standing.”

CPSO Professional Standards / Policies

Patient Confidentiality

Primary Legislation

Personal Health Information Protection Act, 2004 (PHIPA)

Medicine Act, 1991

Regulated Health Professions Act, 1991

Key Medical-Legal Issues in Contracts

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**"Sign here to indicate you have no idea
what you've signed for."**

Key Medical-Legal Issues in Contracts

It is very important to have the terms of the relationship set out in writing.

- Disclosure of confidential information
- Termination for convenience
- Leaving a practice; Medical records, patient notification
- CMPA membership
- Mutual indemnification
- Non-competition & non-solicitation



Your Practice – Where Will You be Working?

Hospital Setting

- Submission of application for privileges
- Review of department rules and agreements
- On-call requirements
- Academic groups, APP/practice plan, agreement with University, commitment, and remunerations
- Employment contract with hospital?
- HR processes, including MAC

Your Practice – Where Will You be Working?

Private Practice

- Solo Practice
- Group Practice (i.e., more than 1 physician)
 - Principal - Associate relationship
 - Group governance – FHOs, FHGs, associated FHTs
- Employment (CHC, Community sponsored FHTs)
- Locum Tenens

Various Practice Arrangements

Principal – Associate Model

- Very common for a physician joining an established practice
- New physician steps into an existing practice that provides an office, examination rooms, staff, supplies, equipment, etc.
- Associate provides services on principal's behalf
 - Associate does not own their own practice or share in expenses
- This arrangement is like becoming an “employee” of the principal, but the associate remains an independent contractor
- The “split”: principal(s) apply a percentage of the associate's gross income against overhead costs of the practice

Various Practice Arrangements

Principal – Associate Agreements: Key Terms

- Billings
 - The “split” percentage can be negotiated between the principal(s) and the associate (i.e., 80/20 split)
 - Specify what billings will be included (i.e., OHIP, WSIB, uninsured AFP premiums, third party payments)
- Applicability of HST (where will it apply? will it not apply?)
- What services, facilities, equipment, supplies, staff, will be provided to the associate by the principal(s)
- Associate’s service obligations (ex. hours per week, on-call)

Various Practice Arrangements

Cost-Sharing Agreements: Key Terms

- Scope of agreement (i.e., all encompassing, or only dealing with a portion of the practice)
- Decision making and voting
- Group meetings
- How physicians are added, and membership terminated
- On departure, how are medical records handled?
- What expenses are shared and how?
- How revenues are paid to physicians.
- HST?

Various Practice Arrangements

Locum Agreements

- A common practice for new graduates to have an opportunity to test out a type of practice without making a long-term commitment
- A locum physician is hired by a physician to maintain the physician's practice during a period of absence or to split work
- Locum steps into the shoes of the absent physician and cares for the absent physician's patients
- A locum is typically paid a percentage split of the billings that they generate
 - May have to pay the absent physician a fixed fee to account for overhead

Various Practice Arrangements

Locum Agreements: Key Terms

- Orientation session explaining how the office is organized, how records are kept
- Access to staff, examination rooms, medical equipment
- Access to patient records and EMR (both during & after arrangement)
- Locum's service obligations (ex. hours per week, weekends, on-call, specialized care)
- Who submits the billings (i.e., locum or staff on behalf of locum)
- Transition provisions

Various Practice Arrangements

Return of Service Agreements

- Funding is provided by MOH by physician in return for the physician committing to serve an “underservice area” for a specified period equal to the number of years that the medical school funding was provided
- Return of Service contracts are in place for:
 - Free tuition – Canadian students
 - Free tuition – International medical graduates
 - Re-entry funding – training a physician in a new specialty
- Ministry must approve the physician’s return of service proposal
- Ministry must approve any change of practice location, service type

Various Practice Arrangements

Incentive Agreements

- Agreements offered by a community to recruit physician
- Often will offer terms such as interest free loans, clinic space, or funding
- Physician required to providing services in the community for a specified period
- Agreement terms will vary – *important to obtain legal advice*
- Consideration needs to be given to tax issues on funds received

Taking over a practice

Key Questions to Ask Yourself

- What will happen to the practice's existing employees?
- Have the patients been notified that you are taking over the practice?
- What will happen to the patients' medical records?
- Am I assuming the lease and/or other contracts or will these arrangements end?
- Am I purchasing the medical equipment, furniture, or other assets?
- Is this a group practice and have other physicians consented to admission to the practice?

Staffing and Employment

- Depending on a specific situation, a physician may hire staff as a sole practitioner, or collectively with other physicians
- Staff are hired either as independent contractors or employees – a significant difference
- Determination of independent contract employment relationship is based on many factors, including level of independence in carrying out responsibilities, ability to set own schedule and vacations, and location for the provision of service
 - Factors used by Canada Revenue Agency evaluates this relationship: <http://www.cra-arc.gc.ca/E/pub/tg/rc4110/rc4110-e.html>
- For either situation, it is important to have a contract with each staff member that clearly sets out the terms of the relationship

Remuneration Models



“Run this diagnosis by legal and accounting.”

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Various Remuneration Models

- Self-employed physicians have historically been paid primarily on a fee-for-service (FFS) basis
- Newer ways to reimburse physicians for services emerging:
 - **Alternative Payment Plan (APP):** addresses alternative methods of remunerating physicians for clinical work
 - **Alternative Funding Plan (AFP):** addresses alternative methods of remunerating physicians for clinical, academic, and administrative work where a significant part of the physician's work and time is not remunerated by FFS

Various Remuneration Models

Primary Care Models

- **Blended Models:** compensation through capitation (annual basic fee per rostered patient) that is adjusted by the age and sex of the patient
- **Family Health Network (FHN) & Family Health Organization (FHO)**
 - Three or more physicians practicing together
 - Enrolment requirements
 - After-hours coverage requirements
 - Entry into a FHN or FHO is currently only permitted in areas of high need and is limited to 20 physicians per month, unless replacing another physician

The main difference between FHNs and FHOs is their respective defined baskets of services for enrolled patients

Various Remuneration Models (Cont'd)

Rural and Northern Physician Agreement (RNPGA)

- RNPGA is a complement-based community contract (vs. capitation)
- Communities were designated a certain “complement” of physicians.
- Designed to fund care beyond typical family practice in the community –(including ED, and certain specialties, where applicable)
- There are two types of RNPGA – Group 1 and Group 2
 - Group 1 (14 groups) is for larger communities – physician complement 3+
 - Group 2 (24 groups but 2 vacant) is for the smaller communities – physician complement ≤ 2
- Unlike the FHO, the RNPGA is an ALL IN contract, unless codes are explicitly excluded

Gratuitous Doctor-Lawyer Joke

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Take-Home Points

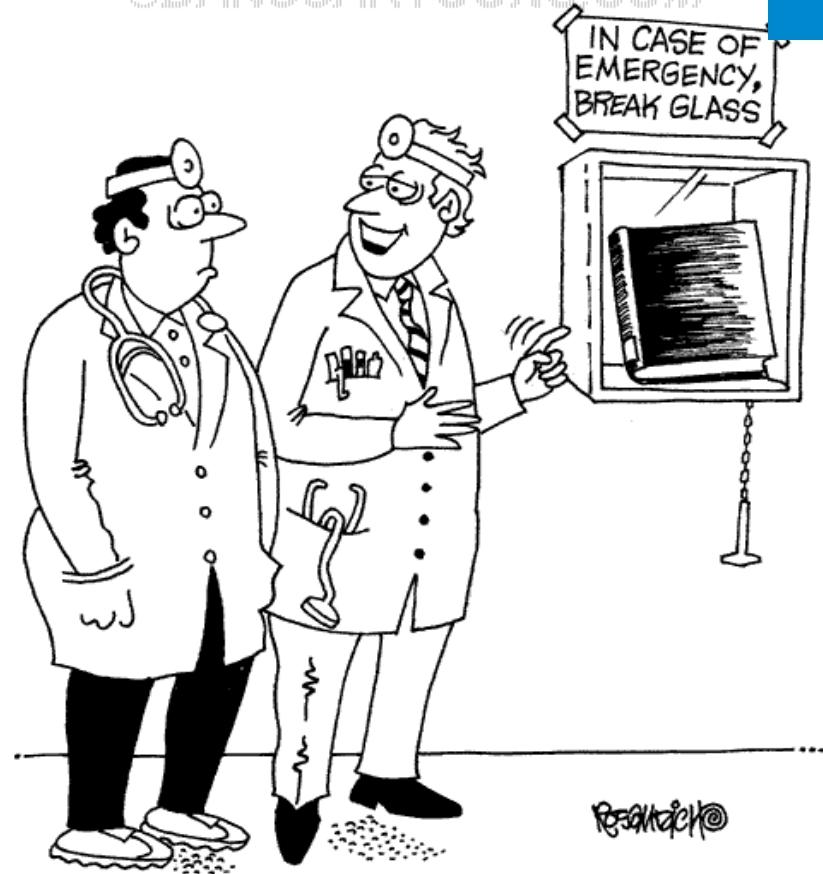
Primary Care Models

- General information only goes so far – specifics of each situation should be evaluated (i.e., get legal advice, speak to your accountant)
- It is important to have terms of a relationship set out in writing
- Don't forget your professional obligations when considering opportunities?

OMA Legal Services

legal.affairs@oma.org

Email a description of your issue and attach and relevant documentation (contracts, etc.)



"...My little black book of lawyer's numbers."

OMA Legal Services: What We Do

Assist members with a variety of practice-related issues

- General medical-legal matters
- Interpretation of health and CPSO policies/legislation
- Incorporation service
- Group practice agreements: FHNs, FHOs, RNPAGAs, FHTs, FHGs, CCMs, and FFS arrangements
- Unincorporated associations, partnerships, and practice plan development and support
- Alternative funding and payment plan negotiation assistance

OMA Legal Services: What We Don't Do

- Commercial leases
- Purchase and sale agreements
- Dispute between OMA members
- Medical malpractice
- Family law matters
- HST or tax related questions
- Wills & estate or tax planning

Thank you.

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