



RACGP

*General practice  
management toolkit*

*Business structures*

Module

3

## **General practice management toolkit: Professional career management**

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## Introduction

Medical practices operate within a legal and regulatory framework. This framework determines how parties within a practice relate to each other, as well as their external legal, financial and taxation responsibilities. In Australia, medical practices are subject to high levels of regulatory and compliance requirements, as determined by three levels of government – federal, state or territory, and local (council).

To either set up a medical practice or merge or join existing practices requires an understanding of the legal and taxation issues relevant to the provision of medical services. Due to the complexity involved in determining the most appropriate structure for the business, it is essential to obtain advice from accounting and legal professionals. The business structure needs to address the immediate and long-term business requirements. Failure to address these matters may increase financial risk and taxation liabilities.

Some of the matters your legal adviser and accountant can help with include:

- analysing the feasibility of your business
- determining what structure is right for your business
- structuring business financing
- assessing and managing risk
- improving income efficiency while meeting taxation obligations
- reducing risk to personal assets when operating a medical practice
- obtaining necessary insurances in addition to medical indemnity
- buying or leasing business premises.

The operating environment for a business changes over time and the structures developed on earlier professional advice will not always necessarily be the most effective way to operate a medical practice. A periodic review is appropriate and this may occur when a new doctor joins the practice. Operating a successful general practice requires business acumen. While applying business-thinking to practice may not always feel comfortable for doctors, failure to do so is likely to impact on performance, sustainability, personal and financial rewards, and ultimately results in poorer health outcomes for patients and communities.

This module is intended to provide an overview of business structures and contractual arrangements available to general practitioners (GPs) as business owners.

## Learning outcomes

After completing this module you will be able to:

- recognise the business structure options available to GPs
- understand the importance of choosing the right structure for your business
- comprehend the principles of good corporate governance.





# 1. Business structures

## 1.1 Business ownership

Few GPs are taught business development at medical school. However, using the professional skills and knowledge of others enables structuring and operation of the practice as a sustainable and profitable business. One of the many advantages of ownership is the opportunity to structure your interest in the practice in a legal, tax-effective manner. If you are joining an existing practice, it is likely that the practice will already have a business structure. Even so, having a good understanding of how practices can be structured ensures a better appreciation of the tangible and intangible value of the business.

Sharing ownership with other doctors requires that you share similar professional and work attitudes. It is also important you trust their professional judgment in order to avoid future disputes and liabilities. Trust is central to any joint business enterprise and whether you are forming a partnership or medical practice company, you need to carefully consider the people you will be working with. You should determine how they approach business decisions. Do they listen to alternative points of view, explore issues or resist change? Obtaining a deep appreciation of your potential business partners' personal style, strengths and challenges will help you make a decision about what it will be like working together.

The choice of the medical practice operating structure will depend on many factors, including how other people will be involved, how profits will be shared, who will be legally liable, and your future goals for the business. This is important from a variety of aspects, such as legal risks, financing and capital requirements, ongoing costs, and taxation implications.

Creating the best business structure at the outset allows you to maximise the financial success of your business, protect your assets and enable the inclusion of new business associations in the future. Ideally, your medical practice should review its business structure every 3–5 years to ensure the most effective structure is maintained and to be aware of any changes in legislation that may support a revised structure.

Business and taxation law is complex and professional advice is recommended. Consult a business adviser, solicitor or accountant on the most appropriate ways to structure your medical practice.

## 1.2 Common business structures

Federal and state governments regulate how you conduct the business side of the practice. In particular, they want to ensure you adhere to all business-related legislative requirements.

In Australia, the most common business structures are:

- sole trader
- partnerships
- companies
- trusts.

A medical practice can be conducted through a range of business structures. In Australia, in addition to federal laws that apply across the country, each state and territory government has specific regulations for conducting a business. For practices that operate using a company structure, the *Corporations Act* is administered by the Commonwealth Government.

It is useful to clarify what makes each of these choices different when deciding on your business structure. Discuss potential business structures with your professional advisor.

## Sole trader

The simplest business structure is a sole trader. It requires lower costs to establish and run and there are fewer reporting requirements. However, solo general practice is becoming increasingly difficult to operate for a range of reasons. Only around 10% of Australian GPs worked in solo practice in 2011–12.<sup>1,2</sup>

## Partnership

The general legal definition of a partnership is set out in the *Partnership Act* of each Australian state and territory. It describes a partnership as being one or more persons (including companies) who are in business together with a common view to profit. There is no legal requirement for a written contract in order for a partnership to exist, although it would clearly be unwise to not have one. Professional tax law assistance may be required to establish the tax liability of any individual or group in a joint enterprise. A partnership submits a tax return and partners are liable to pay tax as individuals by submitting business activity statements. This will usually result in quarterly pay-as-you-go (PAYG) installments.

In addition to addressing common requirements, partnerships should have a written agreement that details the business relationship (including how conflicts will be resolved) and how new partners are admitted and the partnership will be dissolved.

Each partner is jointly and severally liable for the actions of other partners carrying out their responsibilities in connection with the partnership business. This is a serious drawback associated with partnerships.

Joint and several liability means each partner is both individually and jointly responsible for obligations of the partnership. A lender may be entitled to recover the whole of a debt from one partner who may have to in turn claim payment from the other partners.

## Companies

By setting up and registering a company you create a separate legal entity. The most common type of company is limited by shares. Each shareholder contributes capital to the company by subscribing and paying for shares. The company is owned by shareholders, but run by directors. The company may enter into contracts and sue or be sued.

Private companies may be small (satisfying two of: yearly revenue of less than \$25 million, assets of less than \$12.5 million, fewer than 50 employees) or large. Large companies have more reporting and regulatory requirements. Public companies may offer shares to the public.

Most Australian small businesses operating as companies, including small medical practice companies, do so as proprietary companies (ie. proprietary limited). These are entities regulated by the Australian Securities and Investment Corporation (ASIC) through the *Corporations Act 2001* (the Act). Under this act, a proprietary company must:

- be limited by shares or be an unlimited company with a share capital
- have no more than 50 non-employee shareholders
- not do anything that would require disclosure to investors under Chapter 6D of the Act
- have at least one director.<sup>3</sup>

For further information, visit the Australian Institute of Company Directors website, [www.companydirectors.com.au](http://www.companydirectors.com.au)

An incorporated medical practice is a proprietary limited company established to run a medical practice. A sole doctor or a group of doctors may form an incorporated medical practice.

An incorporated medical practice with a single doctor may enter an agreement to work with others as an independent contractor, associate, partnership or other incorporated doctor. The sole doctor can be both the director/secretary and the sole employee.

The limited liability of an incorporated medical practice may protect other directors when one of the doctors is sued. However, directors' personal assets can be at risk if the medical company is sued. The trend of litigants joining multiple parties into court action has led to increased personal exposure for directors.

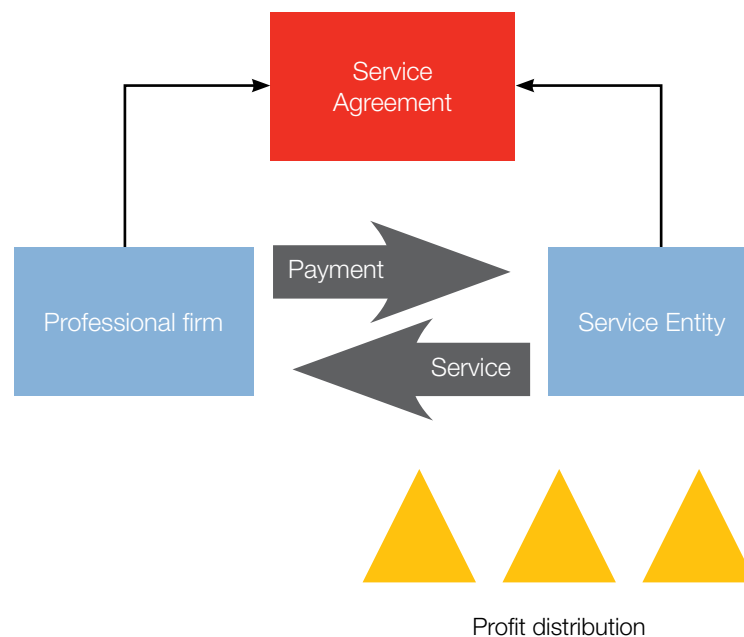
Limited liability applies when a person's financial liability is limited to a fixed sum, most commonly equal to the value of the person's investment in the company.

Always seek professional advice and keep clear documentation of all business arrangements.

## Service entities/companies and trusts

Medical practices frequently use a structure in which the doctors form a professional firm (often as a company) and use a service entity (often as a trust) (Figure 1). This service entity provides the non-medical services to support the provision of medical services to patients.

The service entity will employ staff, maintain the practice facility, power, telephone, computer services and provide the general running of the practice. Property assets can be held by this entity or in a separate entity. This provides for asset protection.



**Figure 1. A typical service entity arrangement<sup>4</sup>**

Note: the service entity is a unit trust, the triangles represent either direct beneficiaries or a second tier of entities such as family trusts.

Trusts describe the legal relationship where a trustee is allowed to hold assets on behalf of one or more beneficiaries. There are different types of trusts, but in the case of medical practices it is common for doctors to set up a family (or discretionary) trust to own and operate the service entity. Family members are the beneficiaries and receive income from the service entity trust.

An important feature of a discretionary trust is the fact beneficiaries do not have a vested interest in the trust property for the duration of the trust. Beneficiaries have the right to require the proper administration of the trust deed. Generally, dissolution of a discretionary trust can only occur with the agreement of all beneficiaries who are of full age and capacity. The assets of the trust may be protected in case of litigation against the practice.

Income of the trust is distributed to beneficiaries at the discretion of the trustee in accordance with the terms of the trust deed. The ability of the trust to distribute income to beneficiaries on lower taxation rates is one of the advantages that may flow from this structure, but you are again urged to seek professional legal advice.

A unit trust is different from the discretionary trust. A holder of units in a trust generally has an interest in the trust property. There is generally definition in terms of the number of units, the right to share in profits, and the right to sell the units in the trust. Given your circumstances and the disadvantages and advantages of the respective structures, legal advice may suggest a unit trust would be preferable to a discretionary trust, or that a hybrid structure may be possible. Careful consideration of all relevant factors is necessary.

## Taxation

Most of the work done by a doctor fits the definition of personal services. The Australian Tax Office (ATO) describes personal service income as 'income that is mainly a reward for an individual's personal effort or skills' (*Income Tax Ruling 2503*). This means a doctor is not able to allocate income to others to reduce tax liability.

Medical practice companies have particular requirements under taxation law, including that all income must be distributed during the year in which it is earned. This is different from other companies that can retain profits and be taxed at the company tax rate. Agreements and tax rulings are not necessarily binding.

For this reason, advice from an accountant or solicitor knowledgeable in medical practice incorporation is strongly advised. The use of trusts and service entities has attracted the attention of the ATO for some time due to concerns they are being used inappropriately to avoid tax.

Children under the age of 18 are subject to special tax rates on unearned income (such as trust distributions) that are higher than ordinary tax rates. This is designed to limit income splitting in families.

Table 1. Common business and professional registration requirements	
Requirement	Further information
Registration of business or company name and periodic renewal through the national business names registration system	Australian Securities and Investment Commission <a href="http://www.asic.gov.au">www.asic.gov.au</a>
Australian Business Number (ABN) is a unique 11-digit identifier required to operate within the goods and services system	Apply for an ABN online via the Australian Business Register, <a href="http://www.abr.gov.au">www.abr.gov.au</a>
Registration for Good and Services Tax (GST)	Australian Tax Office, <a href="http://www.ato.gov.au">www.ato.gov.au</a>
Australian Company Number (ACN)	Australian Securities and Investments Commission (ASIC), <a href="http://www.asic.gov.au">www.asic.gov.au</a>
Planning and building permits	Local councils are responsible for planning regulations and determine whether a medical practice can operate in a particular location  Planning officers can provide advice, or you can consult with a town planner for assistance in how to structure submissions
Medical indemnity and practice insurance	Medical indemnity insurance is required for medical registration. Five specialist insurers are represented by a peak body, Medical Indemnity Insurance Association of Australia (MIIAA), <a href="http://www.miaa.com.au">www.miaa.com.au</a>  Practice indemnity insurance may cover the actions or omissions of practice staff (receptionists, nurses) where you may be sued as a practice owner. Seek advice from your insurer
Public liability insurance Building and contents insurance Income and business expense insurance WorkCover	Public liability insurance covers potential liabilities to third parties for personal injury if your business is found to be negligent  Contact your insurance company, adviser or insurance broker to find a list of general insurers who offer particular products. Insurance Council of Australia, <a href="http://www.insurance.council.com.au">www.insurance.council.com.au</a>
Medical practitioners practising in Australia must be registered with the Medical Board of Australia (MBA), which is regulated by the Australian Health Practitioner Regulation Agency (AHPRA)  Other clinical staff (eg. nurses) must also have relevant registration through AHPRA	AHPRA, <a href="http://www.ahpra.gov.au">www.ahpra.gov.au</a>
Provider numbers are required to have medical services recognised by Medicare Australia for the provision of patient rebates, and are location-specific  You need to apply to Medicare Australia for initial and subsequent provider numbers	Medicare Australia, <a href="http://www.medicareaustralia.gov.au">www.medicareaustralia.gov.au</a>
Overseas-trained doctors and foreign graduates of accredited medical schools are subject to section 19AB of the Health Insurance Act 1973 and are generally required to work in a District of Workforce Shortage for 10 years. This is referred to as the 10-year moratorium requirement	Doctor Connect, <a href="http://www.doctorconnect.gov.au">www.doctorconnect.gov.au</a>
Registration with the Health Information (HI) Service Note HPI-I or HPI-O, if necessary	Medicare Australia Healthcare Identifiers Service, <a href="http://www.medicareaustralia.gov.au">www.medicareaustralia.gov.au</a>

## 1.3 Working with a large corporate practice

GPs may choose to work with a large corporate practice with many medical centres in a range of locations across different states and territories. A medical director is engaged by the corporate to deal with day-to-day issues and ensure appropriate clinical governance processes are in place. A set of policies and procedures is used across multiple centres.

In this environment, GPs are engaged as independent contractors or associates within the centre they are working in and they pay for services provided to them. GPs are provided with the independence to work in the way that best suits them, and usually with the hours that are suitable for them and the medical centre.

If commencing work for a large corporate practice, you may be contractually required to work for a defined period, and have the hours of work and location determined by the company. The company may be entitled to require you to move to another practice. In these situations, the terms of the contract will describe your obligations.

Some companies will take legal action if you are deemed to be in breach of the agreed terms. It is important to read the 'fine print' in any contract and to have an independent legal adviser assist you in understanding and negotiating terms.

If you decide to work in a large corporate practice, you can expect to not have direct control over your practice environment. This arrangement is suited to GPs who prefer to focus on clinical matters rather than being involved in administrative issues or taking responsibility for legal and financial issues associated with the running of a practice.

The Australian Medical Association's (AMA) detailed paper, *Corporatisation of General Practice – Decision Support Kit for Doctors* (2010), is designed to help doctors better understand working with companies. For more information, visit [www.ama.com.au](http://www.ama.com.au)

The RACGP *Employee guide* (3rd edition) has been developed for GP employees and independent contractors working in general practice. It is available for members to download at [www.racgp.org.au/your-practice/business/employment/employee-guide](http://www.racgp.org.au/your-practice/business/employment/employee-guide)

## 2. Business contracts and agreements

A medical practice requires three core elements:

- Health professionals to provide health services.
- Support staff for practice administration.
- An appropriate work environment (practice facility).

Practices engage doctors as employees or independent contractors. However, many doctors look to have some ownership of the practice, which provides a doctor with increased capacity to influence the working environment as well as being a long-term investment.

For much more detailed information regarding employment, see:

- RACGP *Employee guide* (3rd edition)  
[www.racgp.org.au/your-practice/business/employment/employee-guide](http://www.racgp.org.au/your-practice/business/employment/employee-guide)
- RACGP *Employer guide* (3rd edition)  
[www.racgp.org.au/your-practice/business/employment/employer-guide](http://www.racgp.org.au/your-practice/business/employment/employer-guide)

### 2.1 The employee GP

As of 1 January 2010, the Commonwealth Government introduced changes to employment regulations through the *Fair Work Act 2009*. This included 10 minimum employment conditions for all employees in the national workplace relations system called the National Employment Standards (NES). In addition, new awards were introduced and included for employee doctors in the *Medical Practitioners Award 2010* (code number MA 000031). Copies of awards can be found on the Fair Work Ombudsman website, <http://awardfinder.fwo.gov.au>

Please note, legislation and policies continue to change and evolve and will vary depending on each state and territory. It is important to be regularly informed of the latest changes. Contact your professional organisation for up-to-date information and subscriber services, as well as industrial advice.

For further information regarding employees and legislation, you may wish to also visit the following websites:

- Fair Work Ombudsman – [www.fairwork.gov.au](http://www.fairwork.gov.au)
- Department of Employment – [www.employment.gov.au](http://www.employment.gov.au)
- Australian Government business resource – [www.business.gov.au](http://www.business.gov.au)

### 2.2 The independent contractor GP

An independent contractor may work within a general practice.

While determining whether a person is an employee or an independent contractor is important, it is not always straightforward. It is recommended that you seek legal advice to avoid costs and penalties associated with inappropriate contracts, which occurs when someone is engaged as an independent contractor, but is deemed by law to be, in truth, an employee.

The Fair Work Australia website provides information to indicate the difference between an employee and an independent contractor. The Australian Government's business website has also developed a contractor decision tool and templates.

## 2.3 Restraint of trade clauses in employment contracts

A restraint of trade clause is a legal clause often included in contracts to protect the legitimate business interests of the practice owner. In the area of medical practice, the clause is primarily designed to prevent a GP moving to a location near the former practice where it is likely many patients will follow. The clause will usually include a geographical restraint, a restraint on contacting former patients, and a restraint on attempting to employ any persons who worked for the employer. There is usually a specified time period, which can be from a period of months to a year or more. Legal enforceability of restraint of trade clauses is subject to reasonableness tests.

More complex terms and conditions of employment will be inevitable with continued growth and incorporation of medical practices. Careful consideration of any restraint of trade clause is necessary. Medicolegal advice is strongly recommended.

## 2.4 Other practice managed contracts

A medical practice will enter into a range of service contracts. Common examples include:

- cleaning – practice facility, windows, linen
- air-conditioning – heating and cooling
- building – security, automatic doors, lifts, lighting
- telephone – systems, software and support
- computer – IT systems, software and support, testing of back-up, printers
- clinical – fridge, steriliser, equipment
- waste disposal – sharps containers
- equipment – supply, service and support
- off-site storage – patient health information
- medical consumables
- printing facilities
- tenants
- local council compliance.

All contracts should record a common understanding about priorities, responsibilities, guarantees and warranties. When you are considering a service provider, it is recommended you contact one or two of their existing clients to establish the quality of service.

A service level agreement (SLA) often forms part of a contract if a service needs to be formally defined. For example, your IT system will require ongoing maintenance, support and upgrades, therefore, an SLA outlining the services the provider will deliver to the practice is recommended.

For further information on SLAs, refer to the *Module 4 – Starting a medical practice*.

Please note, practices are responsible for creating a safe work environment that protects the health of their staff with respect to workplace risks. You also have responsibilities to the general public and patients.

For further information, refer to the following RACGP publications:

- *Infection prevention and control standards for office based practices* (5th edition) – provides a guide to running practice infection control procedures.
- *Computer and information security standards* (CISS) (2nd edition).
- *Standards for general practices* (4<sup>th</sup> edition).



## Contracts and the law

Many service providers will have a standard form contract. This is usually focused on limiting the liability of the contractor and enforcing payment with the customer (the practice). It is important that you read the 'fine print' and professional advice is recommended.

Services are covered by consumer guarantee provisions of the Australian Consumer Law (ACL), which commenced on 1 January 2011 and applies to all Australian businesses. For transactions that occurred prior to 1 January 2011, the previous separate national, state and territory consumer laws continue to apply. The ACL is a cooperative reform of the Australian Government, and the states and territories, through the Council of Australian Governments (COAG).

The Australian Competition and Consumer Commission (ACCC) is responsible for enforcing this legislation, known as the *Competition and Consumer Act 2010* (which replaced the *Trade Practices Act 1974*). It applies to goods and services purchased after 1 January 2011. Transactions before that date are subject to the previous national, state or territory laws.

For further information, refer to the Australian Consumer Law website at [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)

The Australian Securities and Investments Commission (ASIC) regulates legislation relating to financial services and insurance. For further information, visit [www.asic.gov.au](http://www.asic.gov.au)

## 2.5 Medical services implied contracts – legislation and regulation

The provision of a medical service is subject to a range of legislation and regulations. The Medical Board of Australia's (MBA) *Good Medical Practice: A Code of Conduct for Doctors in Australia* sets out the professional expectations and requirements for doctors in the practice of medicine. For further information, visit [www.medicalboard.gov.au](http://www.medicalboard.gov.au)

Each state and territory has a health services complaints commission that helps consumers address concerns about the provision of a service. The commission's role is to assist in the resolution of complaints through informal or formal processes where possible. In some situations, matters are referred to the MBA.

### Anti-competitive conduct

Care needs to be taken in setting fees or having discussions about fees with doctors from neighbouring practices. Inter-practice price-setting and collective bargaining agreements with other medical practices on the fee for particular services are prohibited by the *Competition and Consumer Act* (the Act). The ACCC released a ruling in February 2013 allowing GPs working in the same practice to collectively agree on fees. This authorisation is valid until 2018 and also allows a practice group to collectively negotiate with a hospital or other organisation.

The ACCC advises that it will not take action where there is an agreement to bulk bill. However, a discussion between independent entities (ie. not part of the same practice) over whether or not to bulk bill could be in breach of the Act. The ACCC advises being aware of others' charges is not construed as price fixing.

## Advertising medical services

Advertising medical services is regulated by the *Health Practitioner Regulation National Law* (the National Law). It states, 'a person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that:

- is false, misleading or deceptive or is likely to be misleading or deceptive
- offers a gift, discount, or other inducement to attract a person to use the service or the business, unless the advertisement also sets out the terms and conditions of the offer
- uses testimonials or purported testimonials about the service or business
- creates an unreasonable expectation of beneficial treatment
- directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

Practices also need to ensure that they comply with the Australian Privacy Principles (APPs), which were introduced in March 2014. APP 7 – Direct marketing states that an organisation must not use or disclose personal information for the purpose of direct marketing (unless an exception applies).

Members can access further information regarding direct marketing from [www.racgp.org.au/ehealth/privacy](http://www.racgp.org.au/ehealth/privacy)

## 2.6 Licensing and leasing agreements

Medical practices often choose to lease or license space to other health professionals and services, which can be beneficial in sharing costs and provides convenience to patients. However, it is important to observe existing legislation and any potential insurance implications.

Licensing and leasing agreements may help to establish that the doctors working from the practice are not employees (*refer to section 2.2*).

Medical practices also need to be aware of the legal requirement for retail leases. For more information on the Residential Tenancy Agreement, as well as state and territory differences, visit the following websites:

- Fair trading – [www.business.gov.au](http://www.business.gov.au)
- Local Tenants Advice and Advocacy service – [www.tenants.org.au](http://www.tenants.org.au)

Always ensure a contract is in place. Professional legal advice is recommended.

## 2.7 Additional services onsite

### Pathology and diagnostic imaging

Following deregulation in 2010 and changes to legislation relating to pathology and diagnostic imaging services provided under Medicare in 2011, more approved pathology collection centres are being situated within medical practices. Pathology companies highly value the co-location and it is also convenient for patients. However, it is important to observe existing legislation to prevent inappropriate incentives for referrals.

The *Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Act 2007* requires that the dedicated floor area for the pathology provider not be shared at any time. Within the Act, market value regulations permit payments for property, goods or services, provided the payments are not substantially different from market value of the property, goods or services exchanged. In that regard, *Health Insurance Amendment Regulations 2009* (No.2) were produced to provide clarity around the concept of market value and a method of determining whether a payment is substantially different from the market value. For further information, visit [www.comlaw.gov.au](http://www.comlaw.gov.au)

Conducting a formal tender process will assist in establishing a market value for rented space. For further information, the Australian Property Institute provides valuation and property standards. Visit [www.api.org.au](http://www.api.org.au)

Please note, there are specific legislation requirements that relate to the co-location of pathology collection centres and the qualifications and experience necessary in order to become an approved pathology practitioner. It is important to familiarise yourself with the legislation and review any arrangements that may be affected. You may wish to seek independent legal advice to clarify the change in legislation and how it might impact on your practice.

## Pharmacy

Following changes in 2011 to remove distance restrictions relating to the location of pharmacies, opportunities now exist to bring pharmacists much closer to general practices. This improves patient convenience and strengthens the relationship between GPs and pharmacists.

## Allied health and other services

Medical practices often choose to lease space to other health professionals and services, which can be beneficial in sharing costs and provides convenience to patients. However, it is important to observe existing legislation and any potential insurance implications. Seek professional advice from your legal advisor and medical indemnity insurer. Allied health examples include:

- occupational therapy
- physiotherapy
- psychology
- speech pathology
- exercise rehabilitation
- podiatry
- social work.

Consider the following where a new lease is to be negotiated:

- Is the rent fair market value?
- Who is responsible for public and practice liability insurance?
- Is there exclusive use of the room?
- Under what circumstances can the lease be terminated?
- What are the expectations of the lessor and lessee?
- What is the reputation of the practice and its staff, and of the quality of the facilities?
- Is equal opportunity provided for you (service provider) to tender for premises that will be used to provide 'other services'?
- Is the GP's clinical independence maintained through the ability of the practitioner to refer patients to the most appropriate service provider? The most appropriate provider may not be the 'lessee' provider.

- Are negotiations undertaken with regard to the relevant act and supporting legislation?
- Does 'rental payment' clearly show each component of consideration? For example:

Rent	\$	
Staff supplied	\$	(equivalent of one x FTE)
Outgoings	[XX]	% of actual cost incurred by landlord for utilities

Where a current lease exists, the following question should be considered:

- Does the content of the lease comply with the prohibited practices provisions contained in the relevant act and supporting legislation?
- Are the components of the 'rental payment' well defined?

Patients should also be made aware that practitioners within the practice maintain clinical independence and, where referred services are necessary, services will be provided by the most appropriate provider. To facilitate this process, practices can develop and display a relevant notice, poster and/or patient information sheet.

For laws covering retail tenants and landlords, visit the small business commissioner in your state or territory. Business law and contracts information is available from the Law Council of Australia. Visit [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au) and follow the links for business law.

## 3. Governance

### 3.1 What is corporate governance?

Governance refers to the systems by which an organisation is directed and managed. Good governance influences the setting of objectives and how they are achieved, addresses risks, and acknowledges the needs and rights of all stakeholders.

Large and small medical practices should be aware of the need for good governance that supports GPs to be ethical in the conduct of business.

Corporate governance provides a structure through which corporate objectives (social, fiscal, legal and human resources) are set and achieved and performance is monitored. Clinical governance, as defined by the RACGP, is a framework through which clinicians and health service managers are jointly accountable for patient safety and quality care.<sup>5</sup> The Australian Commission on Safety and Quality in Health Care (ACSQHC) describes a model of governance that includes both corporate and clinical.<sup>6</sup> Please also see the *Clinical Governance Module (12)* for further information.

### 3.2 Conduct of practice

High profile cases of breach of good governance attract media attention. Could this happen to your practice? Practice principals should periodically review and articulate the values they believe are important for the management and operation of the practice. Some Quality Improvement and Continuing Professional Development (QI&CPD) programs contain useful management tools directed at corporate governance. It may be that a risk profile of your practice should be referred to a legal adviser for assistance.

The *AMA Code of Ethics* is a comprehensive charter for doctors on ethical issues. It is available to download at [www.ama.com.au](http://www.ama.com.au)

### 3.3 Principles for good practice governance

There is no single model of good practice governance. Principles for good practice governance include:

- clear roles and responsibilities for principals and management
- promotion of ethical and responsible decision making
- maintenance of integrity in financial accounting and reporting, and general record keeping, with proper provision for back-up
- upholding the rights of patients. This may require reference to the APPs with a view to ensuring correct systems and procedures are in place
- maintenance of a sound system of risk management and internal controls
- encouragement of improvements in business and clinical performance
- treating colleagues and employees with respect
- fairly remunerating employees and independent contractors
- providing doctors with freedom to practise in the best interest of patients
- recognising and meeting legal and other obligations for all legitimate stakeholders.

## Special situations – unsafe or unethical practice

Difficult and complex issues arise for doctors when another practitioner is impaired due to substance abuse or other circumstances, or is engaging in unlawful or unethical behaviour. It is usually better to raise concerns directly with the practitioner, but this will not always be adequate.

A number of concerns need to be addressed, including the problems the doctor may be experiencing, the safety of patient care, and the protection of the practice's business interests. The situation may be grave enough to necessitate expulsion from the practice in order to protect the practice and its patients. Bear in mind, however, that expulsion from a partnership is not the same as dissolution of a partnership. Before taking this step, reference needs to be made to the partnership agreement with appropriate professional advice. In different structures, such as an incorporated practice, expulsion will need to be considered in light of any written agreement, also with professional advice.

The MBA has published mandatory reporting guidelines with respect to practitioners who are impaired or engaged in 'notifiable conduct', as prescribed in the *Health Practitioner Regulation National Law Act* (the National Law) in each state and territory. The National Law requires practitioners, employers and education providers to report notifiable conduct (defined in s.140 of the National Law) to the MBA to prevent the public being placed at risk of harm. While reports made in 'good faith' are provided with legal indemnity, it may be appropriate to seek advice from your medical defence organisation.

Reporting may go beyond an ethical consideration if you are potentially at risk of joint, or joint and several, liability for the incompetence of the medical practitioner in question. Your professional indemnity insurance may also be at risk. You should seek professional legal advice urgently if you have serious doubts about your professional associate's capacity to discharge the obligations of a medical practitioner.

Note: In Western Australia, a treating doctor is not required to make a notification about a patient who is a medical practitioner under the mandatory reporting laws.

For further information, visit the Australian Government's business website and the ASIC website.

## *References*

1. Britt H, Miller GC, Charles J, et al. A decade of Australian general practice activity 2002–03 to 2011–12. General practice series no. 32. Sydney: Sydney University Press, 2012.
2. Carne A, Howard S, Bywood P. Summary Data Report of the 2010–2011 Annual Survey of Divisions of General Practice. Adelaide: Primary Health Care Research & Information Service, Discipline of General Practice, Flinders University, and Australian Government Department of Health and Ageing, 2012.
3. Australian Institute of Company Directors. Organisation definitions. Available at [www.companydirectors.com.au/Director-Resource-Centre/Organisation-Type/Organisation-definitions](http://www.companydirectors.com.au/Director-Resource-Centre/Organisation-Type/Organisation-definitions)
4. Australian Taxation Office. Your service entity arrangements NAT 13086-04.2006. Section 15 and 16: Medical practice arrangements. Canberra: ATO, 2006.p.24–25.
5. The Royal Australian College of General Practitioners. Standards for general practice (4th edition). Melbourne: RACGP, 2010.
6. Australian Commission on Safety and Quality in Health Care. Draft National Safety and Quality Healthcare Standards. Sydney: ACSQHC, 2009.

## Resources

### RACGP publications

- *The RACGP Rebirth of a clinic – a design guide for architecture in general practice and primary care*  
[www.racgp.org.au/rebirthofaclinic](http://www.racgp.org.au/rebirthofaclinic)
- *The RACGP Standards for general practices* (4th edition)  
[www.racgp.org.au/standards](http://www.racgp.org.au/standards)
- *The RACGP General practice – a safe place: tips and tools*  
[www.racgp.org.au/your-practice/business/tools/safetyprivacy/gpsafeplace/](http://www.racgp.org.au/your-practice/business/tools/safetyprivacy/gpsafeplace/)
- *The RACGP Infection control standards* (4th edition)  
[www.racgp.org.au/infectioncontrol](http://www.racgp.org.au/infectioncontrol)
- *The RACGP Computer and information security standards*  
[www.racgp.org.au/ehealth/ciss](http://www.racgp.org.au/ehealth/ciss)
- Steer N. Project management – tips from the toolkit: 5. *Aust Fam Physician* 2010;39(6):439–40.  
Available at [www.racgp.org.au/afp](http://www.racgp.org.au/afp)

### Government agencies

- Medicare Australia  
[www.medicareaustralia.gov.au](http://www.medicareaustralia.gov.au)
- Medicare Australia Incentives  
[www.medicareaustralia.gov.au/provider/incentives/pip/index.jsp](http://www.medicareaustralia.gov.au/provider/incentives/pip/index.jsp)
- Australian Bureau of Statistics  
[www.abs.gov.au](http://www.abs.gov.au)
- Department of Health  
[www.health.gov.au](http://www.health.gov.au)
- Department of Transport, Planning and Local Infrastructure  
[www.dpcd.vic.gov.au](http://www.dpcd.vic.gov.au)
- Australian Government  
[www.australia.gov.au](http://www.australia.gov.au)
- Australian Government Business Resource  
[www.business.gov.au](http://www.business.gov.au)
- Australian Taxation Office  
[www.ato.gov.au](http://www.ato.gov.au)
- Australian Securities and Investments Commission  
[www.asic.gov.au](http://www.asic.gov.au)

### Other useful sites

- Australian Health Practitioner Regulation Agency  
[www.ahpra.gov.au](http://www.ahpra.gov.au)
- Commercial Real Estate  
[www.realcommercial.com.au](http://www.realcommercial.com.au)
- Australian Association of Practice Managers  
[www.aapm.org.au](http://www.aapm.org.au)
- Local Tenants Advice and Advocacy service  
[www.tenants.org.au](http://www.tenants.org.au)



## Activity

### Activity 1. Understanding the benefits of different business structures

Part 1 of this activity aims to assist you to reflect on what business structure would best benefit you, taking into consideration the personal and professional factors discussed in other activities.

	Employee or contractor	Partnership or assistantship	Employer
Advantages	<ul style="list-style-type: none"> <li>Minimum risk compared to income due to the mistakes of others</li> <li>Less administrative work associated with generating income</li> <li>Time more manageable – increased flexibility</li> </ul>	<ul style="list-style-type: none"> <li>More room to negotiate income</li> <li>More input into how practice operates</li> <li>Easy to set up</li> </ul>	<ul style="list-style-type: none"> <li>Can generate higher income</li> <li>Have significant input into practice culture and operation</li> </ul>
Disadvantages	<ul style="list-style-type: none"> <li>Cannot generate as much income</li> <li>Less input into decisions forming practice culture</li> </ul>	<ul style="list-style-type: none"> <li>More clinical work associated with generating income</li> <li>Increase in personal risk with forming partnership</li> </ul>	<ul style="list-style-type: none"> <li>Greater increase to risk of income and medicolegal implications</li> <li>Requires effective management skills, especially in regards to time</li> <li>More demanding on non-clinical aspects of work</li> </ul>

Using the above table as a guide, complete the table on page 18, examining two options that you would consider given your personal and professional situation and interests.

Option 1	Option 2
<b>Advantages</b>	<b>Advantages</b>
<b>Disadvantages</b>	<b>Disadvantages</b>





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