THE SURGEON
- A HIGH PERFORMANCE ATHLETE?
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High Performance Coaching

I was so impressed with an article I read recently, published on LinkedIn by a Plastic Surgeon, that I immediately got in touch, asked permission to re-publish him here in our magazine and for the first time ever will share my Editor’s Message with a fellow contributor.

Thanks Dr Jack Zoumaras for mirroring the essence of our message, in this instance in the clinical/surgical setting.

We have reproduced here a snippet of a longer article that will feature in our next edition – make sure, however, to read Jack’s inaugural contribution to our magazine in this edition on page 10: Surgeons can Consider themselves Athletes.

“Sporting teams such as the Adelaide Crows, Liverpool FC and New England Patriots are managed by a manager/coach. The manager and coach develop tactics and execute a game plan on match day. He/she also adjusts tactics and makes game day changes due to certain match conditions and unexpected injuries.

The surgeon on the other hand has no manager or coach on game day and any unforeseeable issues or events like complications or unexpected anatomical variants force the surgeon to decision making and adjustment of operation on the operating table with no dialogue with a mentor or coach.

As a surgeon who has been in the position of an unexpected event such as major bleeding, unexpected anatomy or tumour extension, I have taken mental ‘times out’ to process the situation and then make adjustments to the surgery. I have even called senior colleagues for advice on a few occasions during the surgery. How good would it be to have a coach or manager in surgery with you to advise on these situations and, not only that, but constantly give you feedback about your performance. I think efficiency would increase and the result of the operation would be improved with faster recovery” – Dr Jack Zoumaras.

I echo Jack’s sentiments and aim them at the doctor’s business and financial life. I can’t overstate how empowering and life changing it can be to work with an effective business mentor and a financial, or wealth, coach. To be truly effective, these individuals need to have a proven track record, have achieved unquestionable success and, in the case of business advice, possess the wisdom of an experienced entrepreneur.

When it comes to wealth coaches, good signs to look for are their own financial independence and an effective communication style.

In the private practice context, such ‘performance coaches’ can be found within medical specialist accounting firms, business advisory firms and specialised financial advisory practices.

Further specialised ‘coaching’ on specific aspects of business and financial management can be accessed via a diverse consulting team expert in marketing, risk management, law, property, finance, investments and so on.

The place to start is always from an informed perspective – knowledge is, and always will be, King... or Queen as the case may be.

The Private Practice team continue to be passionately focussed on providing that effective platform to help you gain knowledge on business, financial and lifestyle management.

Couple this knowledge with good advice, effective implementation and powerful coaching and success is all but ensured.

Happy Reading.

Steven Macarounas, Managing Editor
editor@theprivatepractice.com.au
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Starting from Scratch

Professor David Williams is Managing Director of Hoxton Medical Practice Management.
Professor David Williams makes the case for outsourced practice administration services.

The first steps in starting in Private Practice are often viewed as the most difficult. Finishing training as highly-trained experts, we are soon faced with tasks that have nothing to do with the skills learnt during our Fellowship years. Coupled with the insecurity of starting a small business and competing with mentors, entrance into specialist practice can be daunting.

In years past, most doctors would start up with the help of their spouse and lean heavily on the practice software companies for assistance, the private hospitals for networking and their cousin, who is an expert in computers, to arrange their IT infrastructure and website. There are many reasons why this is no longer a viable option, including concerns that security, efficiency and compliance cannot be guaranteed unless a whole-of-practice approach is adopted to setting-up your practice.

I am a strong advocate for doctors learning the trade and understanding the business mechanics of Private Practice. It has been a source of pleasure and a challenge for me over the past 15 years as a Neurologist. But business expertise is not for everyone. It is important to be aware that lack of expertise and lack of interest are not good excuses for cutting corners.

The fundamentals to developing a viable and successful practice are reasonably straight forward. I recommend the following approach to colleagues who ask me about Practice Management.

A WHOLE OF PRACTICE APPROACH TO SETTING-UP

The modern practice is best started with a plan. A plan that is definitive and knowledgeable, including business goals and financial goals, covered by experts in other articles in this publication.

The administration systems, human resources policies, IT infrastructure and workflows need to be included in the careful design of your practice, no matter how small or new it is. Careful planning saves time and money and also increases your chances of remaining compliant for tax and registration purposes.

The design of your Practice IT infrastructure needs to meet your immediate needs, but also your needs next year and be scalable for the future. I have met many doctors who looked to save $50 per month on software or IT costs only to find that scaling up or transferring data, cost them many thousands of dollars three years later. Money is well spent if your IT systems are integrated and support your administration team in being efficient.

Communication needs to fit in with your IT infrastructure, including email, e-fax and secure messaging systems. These services need to meet Australian Privacy Principles (APP) guidelines for data security, and all require work to integrate.

Human Resources are usually the last thing on a new specialist’s mind when starting a Private Practice. Clear position descriptions, defined protocols and procedures, a plan for professional development and a process of continual improvement, are all foundational to a proper running team. This includes training around the IT environment, communication systems and various software.

Finally, the financial handling systems should plug in to each of these components as well as your accounting software and practice software. Consideration for methods of payment (eftpos, Tyro, online or cash/cheque) and systems for banking and reconciliation should be in-place prior to seeing your first patient.

By considering all of these aspects globally, cost savings, improvements of efficiency and reduction in administration burden can be more easily identified.

Be aware of:

1. **Internet and telephone:** The lowest cost NBN and telephone packages may not give you high enough bandwidth to operate your cloud-based software or the flexibility to move your telephone number elsewhere in future.

2. **Email:** Overseas based email services built on the back of your website might not be compliant with APP; web-based email services are notoriously difficult for secretaries to access and particularly to add files to and download files from. An Office 365 subscription or similar provides useful infrastructure around which to build an email system that is efficient, transparent and flexible.

3. **Position descriptions:** make sure that they’re tailored to your practice and specifically to your systems to lock in responsibilities around what work needs to be done.
OUTSOURCING WHERE YOU LACK CRITICAL EXPERTISE

Even from the first tentative steps to starting up, most of us will rely on our accountant and solicitor to arrange tax and business structures. This simple process of outsourcing is sensible given the obvious expertise being paid for.

In the same way, outsourcing Private Practice Start-Up makes sense. It is a relatively new service built to fill an important knowledge gap for doctors. While many doctors have the ambition to independently pull these components together themselves, it’s rarely done well and can end up costing substantially more.

The potential impact external, expert advice can provide is highlighted in the recent Macquarie Healthcare “business pulse check report”. In a survey of doctors already in practice, 39% were most concerned about their business efficiency and 29% were most concerned about the business finance. Three-quarters of doctors ranked “acquiring the right technology” and “effectively integrating technology” as their biggest IT challenges.

A plan with a global perspective of administration and business infrastructure can overcome hassles of poor business efficiency and vulnerable finances. Further, this approach is invaluable when you’re setting up for the long term. In the same way that solicitors and accountants are valued for their expertise, it makes sense to seek professional advice and guidance for building your practice infrastructure.

PRACTICE START-UP CHECK LIST

Here is a list of most of the basic administration components required to set-up your Private Practice. Most of these do not require a specialist physician or surgeon (costing $250+/hour) to complete or initiate, and should sensibly be outsourced to a central, Practice Start-Up Service (approx. $30/hour).

Business Infrastructure
Phone number & PABX/message service; Practice email; Electronic fax system; Website domain name registration; Appointment & business cards; Social media account registration;

Medicare
Medicare provider number(s); Provider Digital Access (PRODA) and Medicare PKI & Location Certificates

Software & Technology
Clinical Software - Advice & Optimisation; Accounting software (using MYOB or Xero); Secure message delivery (SMD) software; Transcription software

Financial Management
Setting Fees – discuss what to charge & how with our experts; Liaise with your Accountant; Bank Accounts; Eftpos/Tyro machine; In-Patient Medical Billing; Financial Handling Systems; Payroll

Miscellaneous
MIMS registration; Prescription Stationery; Electronic results – coordinating with radiology & pathology groups; Staff contracts; Policies and procedures; Establish Practice Consumables ordering

Want to know more?

If you would like more information in relation to this article, or would like to discuss the outsourcing services of Hoxton Medical Practice Management, please contact us for an introduction to David Williams.

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Surgeons can consider themselves athletes.

Dr Jack Zoumaras from Artiste Plastic Surgery.
Dr Jack Zoumaras believes surgeons are high performance athletes and therefore require physical and mental training as well as coaching.

On the football field you have a defence and attack to win a game, and this is led by an on field leader the captain. The overall co-ordination and management of the team comes from the ‘manager/coach’. In the operating theatre you have the surgeon (leader/captain), scrub and scout nurse and assistant who are team mates during the operation. The co-ordination of the theatre is by the theatre manager of the day. But the person who manages the actual operation is the captain. The surgeon is the captain and coach.

To prepare for a game, the team trains on the training track under the guidance of the captain and coach. Tactics and set-up is prepared for the weekends game. To prepare for surgery the surgeon books the surgery, discusses with the patient the process and executes the operation in his/her mind prior to the day of surgery. Any necessary equipment for the operation is organised at the hospital or brought to the hospital.

To prepare for a season and become a sporting player takes years of training from a young age, at junior and senior level and skill development with coaching and specific physical and tactical training during a pre-season for the upcoming season. For a surgeon, you start in medical school, progress to internship and then surgical training which is an apprenticeship based training to develop surgical skills for procedures over at least 9 years and thousands of operations.

What makes an athlete stand out from the crowd or a surgeon stand out from the crowd?

An athlete is in peak physical condition and the only thing that differentiates superstardom and success are the one percenters, such as mental strength, sacrifice, consistency, performance under pressure and stress management.

For a surgeon the reverse is true, surgeons are natural stress handlers as it takes a lot of mental fortitude to deal with an intra-operative complication that can be life threatening and hours of concentration during operations even in the middle of the night. Athletes don’t compete at 0200 but a surgeon does if required for emergency surgery. Could the difference between great and average surgeons be the physical performance. I know a lot of excellent surgeons that trained me and I would be happy for them to operate on my loved ones, but would they be even better if they were physically fit. Many surgeons are not in optimal physical condition, and I was guilty of this for a period of time as I was adjusting to having a new born and setting up a private practice.

I do believe that as a surgeon because our work is largely physical, and all physical when operating, we should be treating our bodies and mind as a high performance athlete would. Athletes train weekly, monitor their diet, meditate and prepare. That means paying attention to diet, exercising, being in the right mind space and perhaps having a coach or mentor.

Athletes and sports figures have their own gymnasium, sporting equipment and shoes. Surgeons on the other hand don’t always operate in the same hospital we rely on hospital equipment and this is one area, having your own equipment consistently operating with the same team, will make us more efficient and ultimately better surgeons.

While athletes have personal coaches or team managers, surgeons don’t really have anyone. This is a critical difference that I will address in another article.

Dr Jack Zoumaras Opinion

This is my opinion only, but I do believe the physical labour of surgery warrants viewing oneself as an athlete that needs to be in peak physical condition. Since I have been training with a personal trainer (acero series) I feel fitter, less tired and perform the physical labour of surgery more seamlessly. During a long case it is the mental strain from concentration and problem solving that I feel, not the physical tiredness of standing on your feet all day, and the biggest change is the recovery. At the end of a case or surgical list I no longer feel physically exhausted, as my body is training and training for surgery, much like an athlete trains for sport.
KEYS TO GAIN THAT EXTRA 1 PERCENT AS A SURGEON:

Diet:
This is where as a surgeon you can get into bad eating habits with the crazy hours that one works and the fact that sometimes lunch does not come or comes after 3pm. The easy thing to eat in these circumstances is fast food, crisps and processed food. The important thing is to take diet seriously, eat in moderation and take a 20 minute dedicated break during a surgical list for lunch. This takes planning and discipline. You can plan for meal breaks, organise healthy balanced meals and don’t indulge just because you finished late or had no lunch break. All surgeons have the discipline and planning skills but need to apply this to their diet.

Exercise:
Standing up for 8 hours a day 3 days a week, despite being physical labour, does not constitute exercise. In fact if we see this surgery as our performance then we can prepare physically for it. In peak physical condition performing 24 hours of operating per week is seamless and allows the surgeon to focus on the procedure at hand rather than be frustrated with physical tiredness, especially when the adrenaline of the operation ends. Putting aside 30-45 minutes 2-3 times a week at a gym or park can be crucial to boosting your fitness.

Meditation/Spirituality:
As surgery is stressful and after surgery we still care for patients as well as see new patients and run a business, down time can be hard to come by and almost impossible. It is important to meditate or be in tune with peacefulness to perform. This is true of everybody. Whether you are religious, spiritual or meditate, you just need your own personal outlet to reflect, refocus and just simply tune out.

Recovery and Rest:
In any profession it is important to rest the body and the mind. While meditation or praying can help the mind the body needs to physically rest also. That means feet up after surgery, having some hours of physical rest and enough sleep to recover from the days operating. A minimum of 7 hours sleep is ideal but any less than 6 hours results in tiredness and fatigue the next day. Being fit and eating well enables you to get less sleep but ideally all three factors working for you results in optional wellness and performance.

Similarities and Key Differences Between Athlete and Surgeon

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<td>Years of Training</td>
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<td>Performance in Moments</td>
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<td>Diet</td>
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<td>Physical Training</td>
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<td>Coaching</td>
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<td>Teamwork</td>
<td>+++</td>
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<td>Rest</td>
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<td>Recovery</td>
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<td>Reflection-Audit</td>
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<td>Mindfulness</td>
<td>+</td>
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<td>Equipment</td>
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Want to know more?
If you would like more information in relation to this article, please contact us for an introduction to Dr Jack Zoumaras.

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EVENTS

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Education and continuous development are important components of an individual’s personal and professional journey. Medical professionals have spent more time than most studying and training to be the best doctors they can be. Although they have been clinically educated for many years, all too often, they’ve been offered little in the way of financial education or business management skills.

This is a key gap that we aim to fill for our clients. At DPM, we want to inspire clients to learn and grow their financial literacy. We want to help them understand the most beneficial way to manage their personal circumstances, and empower them to make smarter financial decisions for themselves, their families and their businesses. DPM is about more than just completing annual tax returns or providing advice on financial products and services, we want to ensure that we put this advice into context so that it has a meaningful and lasting impact on our clients personal and professional lives.
To help us achieve this vision, we are excited to announce our education partnership with The Private Practice which will see DPM become a key contributor to the education program across taxation, business structuring and lending. DPM’s contribution will be complimented through our collaboration with Fletcher Clarendon, a specialist law firm dedicated to providing tailored advice and guidance around the legal obligations and agreements that need to be considered for structuring and operating a successful practice.

“DPM has made a decision to partner with The Private Practice because we feel this extended education program is important for doctors to put their personal and professional life into perspective and context.”
- Paul Grubb, Executive Director - DPM Financial Services

The partnership provides DPM and Fletcher Clarendon with an opportunity to further extend the value that we offer to clients, by providing guidance on all aspects of practice management, delivered by industry experts from around the country.

We look forward to sharing our specialist knowledge and expertise with the broader medical community to ensure that attendees are armed with the tools and skillset to run successful practices, and ensure they get the most out of their time and investment.

GETTING TO KNOW DPM FINANCIAL SERVICES

DPM Financial Services have been providing financial advice to medical professionals for over 50 years. With this experience, comes a deep understanding of the financial requirements a doctor has, from their intern year all the way through to their retirement. Our service offering has been designed to specifically cater to the needs of medical professionals and progress with them as their career advances. The structure of our website is reflective of this highly segmented and personalised approach, tailoring our content and advice to each stage of a medical professionals career.

Our promise to our clients is to deliver financial peace of mind and this is the driving motivation behind how we operate every aspect of our business. Our goal is to empower our clients, and all Australian medical professionals to make smarter financial decisions. Clients rely on us to nurture their financial security and provide guidance about the next steps in their professional and financial future.

GETTING TO KNOW FLETCHER CLARENDON

Fletcher Clarendon understand the unique challenges faced by doctors at the different stages of their careers and work collaboratively with their other advisers to ensure a consistent approach towards achieving their objectives. We are passionate about assisting our clients to achieve their aspirations, whilst ensuring that appropriate strategies are implemented to mitigate a practitioner’s personal risk and liabilities thereby protecting their personal assets.

HOW WILL DPM AND FLETCHER CLARENDON CONTRIBUTE TO THE PROGRAM?

Tax Advice
As a medical practitioner and business owner, your taxation requirements and obligations are more complex than in most professions. By applying unique insight into the journey of a medical professional, DPM will provide proactive tax planning and structuring advice to help you meet your obligations and requirements as an employer, and ensure you maximise your overall tax position.

How to structure your practice
Making the move to private practice is an exciting milestone and one of the most rewarding ventures you can undertake as a medical professional.
However, being an excellent doctor, doesn’t guarantee success as a private practitioner. To run a successful medical practice, you need to have the right structure and business model in place to enable your practice to grow into a successful business.

Every practice is unique in its requirements and there is no one size fits all approach. As a business owner, it’s important to have an understanding of the different options available, and recognise the needs, structures and agreements required for each. DPM will help to explain the benefits and restrictions of the various frameworks and provide guidance around the practical implementation of these structures to your medical practice.

**Legal Advice**
Running your own practice introduces significant changes to your responsibilities. This is likely to present new challenges that may require a shift in how you approach your work. You’ll likely be working through complexities such as contracts, business structures and workplace obligations for the first time and it’s imperative that you have reliable legal advice to support you through this process.

Fletcher Clarendon specialise in providing legal advice to medical professionals and will help you understand what you need to look out for and some of the mechanisms you can put in place to ensure you adequately protect your business and financial interests.

**Lending Advice**
The lending market can be overwhelming, and as a doctor and business owner, time is precious. Putting in the effort to research and compare various loan rates, mortgages and different institutions can be a huge time burden. However, securing appropriate and flexible lending solutions for your personal and business affairs is an essential step in maintaining a healthy financial plan.

DPM will provide guidance around the facilitation of residential and commercial lending options and advice on the best way to implement suitable and adaptive borrowing structures tailored to a variety of situations.

**Next steps**
Understanding how to run your practice as a business is the first step in operating a thriving medical practice. DPM and Fletcher Clarendon are excited to take part in this journey with you and use our knowledge and expertise to help ensure you, and your practice succeed.

We look forward to seeing you at a Private Practice course in the near future!
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Mystery Shops

How does your practice perform with potential patients?

Caroline Ucherek
Managing Director,
CJU Medical Marketing.
Caroline Ucherek explains the importance of Mystery Shopping.

As a medical marketing agency, one of our key indicators of a successful practice is how that practice handles a ‘mystery shop’. We do this for each client we work with along with their competitors, so we have amassed extensive research findings.

A ‘mystery shop’ is when an anonymous call is placed to the practice whereby a ‘potential patient’ queries costs, availability, skill set and if appropriate – types of specialised procedures.

WHY ARE “MYSTERY SHOPS” IMPORTANT?
Current marketplace data shows us that more and more potential patients are either doctor shopping, shopping on price, or wanting to find out more about the doctor they have been referred to. Due to an abundance of online data resources and increased expectations, patients no longer feel reliant on referrals or word of mouth and are now able to take charge and do their own investigating. To ensure you are performing well and to benchmark you against your competitors, it is now more important than ever to present your practice in the best light possible, both online and offline. Mystery shop programs are a key ingredient for this.

YOUR ONLINE PRESENCE
The first thing most potential patients are going to do is to ‘Google’ you. If you don’t have a solid online presence with a modern, professional website and a Google listing, then they tend to believe you are not credible and out of date with modern practice. Although this might be an unrealistic assumption, it is nevertheless what market research data tells us is occurring. Think of your website as today’s version of a business card, an essential part of your business. It can also be a 24-hour shopfront with the ability to have patients make appointments at any time of the day, 365 days a year. For GP practices and some specialist practices this is a fantastic, cost saving resource.

FIRST CONTACT WITH YOUR PRACTICE
The next step for potential patients will be to call your practice. This is where there is enormous opportunity to really stand out from your competitors and start building a relationship with a potential patient.

Most mystery shops we do to practices tend to deliver similar results. The call is usually answered promptly. For the times when it isn’t, this really makes a practice stand out badly when compared to their competitors. It can also be common for the call to be answered using the terms ‘Surgery, Medical suites of some kind’ or a doctor’s name rather than the practice brand (i.e. Dr Youknowwho’s rather than The Central Medical Practice).

WHAT HAPPENS WHEN YOUR PATIENT IS PUT ON HOLD?
Many mystery shops have had us experience elevator music rather than informative on hold messages that can tell us more about the practice. This is a real lost opportunity as well as an effective underutilised resource for conveying important information. On hold messaging should be covering some key aspects including making your patient feel valued, letting them know they will be attended to shortly, key aspects of the practice and any update of services as well as mandatory messages regarding medical emergencies.

YOUR RECEPTION STAFF ARE YOUR SALES TEAM
Although this may feel uncomfortable, in today’s medical businesses an essential part of your reception’s role is to be your sales team.

In most instances during mystery shops when we finally speak to one of the practice team and explain what we want to know based on a pre-arranged script, the responses are often similar. The ‘fall back’ position is to provide just the bare minimum. This includes stating the costs, how much can be claimed from Medicare and when the next available appointment is. Although we always make it obvious as part of our exercise that we are open to being persuaded to make the destination of our call the practice of choice, it is rare for the receptionist to say anything that endorses the doctor outside of the basics of what they do. It is also seldom that there is reassurance about the doctor’s experience or how well he is regarded and respected by many patients.

On the rare occasion that a reception gets involved with our
caller, it immediately highlights the positive image of the practice. For a real caller, your receptionist’s call answering ability will make a considerable difference as to how the potential patient views the practice as a whole and by implication, the care that they can expect to be provided by the doctor.

THE SWEETEST SOUND IN THE WORLD…

Dale Carnegie, renowned author of How to Win Friends and Influence People tells us that the sweetest sound in the world is….

A person’s name.

The simple act of the receptionist that asks for a name and uses it in the conversation will make your practice really stand out from the crowd. It is a delight when we are referred to by our name and demonstrates that the receptionist has interest in us as a human being. Although a simple act, it is very powerful as it moves the conversation from being transactional to creating the start of a relationship.

DATA, DATA, DATA

Practices that ask our mystery caller for contact details are a rarity and invariably those in a competitive speciality. They are also usually those that are already experiencing good levels of success. This is because most medical practices unlike other businesses are still yet to fully realise the value of data capture.

Why data capture? If someone is shopping around, they may not be ready to commit right away. By capturing their details, you can then continue to communicate with them by providing useful information via email or other communication that may be just the touchpoint in helping them to make a decision to use your service. Having your team take the time to follow them up in a positive, respectful manner will show a sense of caring and going the extra mile – again giving an insight into the type of service and treatment they can expect to receive at your practice.

Not entirely sure how your receptionist handles potential patients?

Please contact us for an introduction to Caroline Ucherek to discuss how you can optimise your practice marketing.

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“"It was an absolute pleasure working with 1Group. They went above and beyond when I was buying my first property. They are not only efficient, but also highly professional.

DR. G KWON"

“We are very blessed to work with Tal and his team. They are honest, professional and trustworthy. They understand our concerns and they often go out of their way to make things easier for us.

DR. ERWIN FLORES"
FROM RELIEVER TO RURAL REVERENCE

Setting up a private practice can be one of the most rewarding accomplishments of a doctor’s career. Setting up in a rural location – even more so.

This charismatic rural GP has found that taking the leap provides opportunities beyond standard working environments and allows for entrepreneurial perspectives within our industry.

Dr Manu Nithianantha describes why he moved his expertise to the Central Highlands of Queensland, and never looked back.

“Starting out in a medical career is both exciting and challenging. You’ve done the hard yards and you’re driven to make a difference in the lives of those who need it most. My career took a mammoth leap from providing my professional services to publicly owned institutions, to the North Blackwater General Practice/Manu Medical Group practices I have built from Dec 2008, and what I genuinely feel is revered by the community I serve.

“See a Need, Fill a Need.”

Don’t get me wrong, it wasn’t all butterflies and rainbows; I have been humbled by many experiences and have learned from mistakes along the way. Like many young doctors I worked in Emergency, Surgical training and then Physician training for years followed by rounds as a young rural reliever in ten to fifteen different towns (when I was soul searching after losing family in the war in Sri Lanka).

I grew to love rural people, the lifestyle and the variety of work which was enhanced by my various experiences in training as well. Through this, I saw opportunity to grow the services in the Central Highlands, basically quoting my favourite cartoon “See a need, fill a need”. Growth and diversification happened only when I went out on my own. I focussed on community medicine and other industries like mining came to us as a result.
You need resilience to start a private practice in a small town and then grow it. A demonstrated commitment not only to the community, but to yourself is paramount. Be prepared to take care of your own mental health, as fatigue and over-commitment can be real possibilities. It was these opportunities to better myself, and the desire to make technologically advanced resources available to my communities however, that ultimately pushed me to where I am today. Be true to what you really love about your vocation.

You will find things flow much more smoothly with the support that you crave, when investing in the whole community. I firmly believe, much like Sir Richard Branson advises; when you look after your staff, they will look after your customers, who will look after your business. This for me means supporting local programs, schools, town committees, town redevelopment programs and infrastructure, both financially and through your time and personal involvement.

A message to all rural and new, young doctors: a community is as welcoming as you want it to be. The more you put into the community, the more welcoming it will be. This includes not doing things searching for gratitude but for the love of doing it. Gratitude will follow when your love and happiness in your practice is evident.

“A demonstrated commitment not only to the community, but to yourself is paramount.”

When investing for the right reasons, you can end up being a very powerful voice for the communities that you service. With that comes a responsibility to your community, which you enjoy and learn to relish, rather than it being a burden. What facilitates that enjoyment is something most rural communities are very good at: “gratitude, support and affection.”

The proprietor of multiple practices including services at the Capella Clinic, Gemfields Clinic in Sapphire and our North Blackwater General Practice, Dr Manu is also now undertaking self-funded research projects to better understand, prevent and treat mental health issues and the Black Lung. Dr Manu provides over 50% of the data collected across Australia for the Black Dog Institute’s current Stepcare program.
What is Capital Gains Withholding

Angela Stavropoulos and Kristy Baxter explain Australia’s capital gains withholding requirements.

When it comes to investments, many medical practitioners choose to invest in property. However, the world of investing in Australian property is an ever-changing landscape. Increasing regulation, paperwork and tax requirements can become overwhelming and confusing. As busy professionals, we understand your desire to simplify the transaction as much as possible. One way to do this is to gain an understanding of the new capital gains withholding requirements.

WHAT IS CAPITAL GAINS WITHHOLDING?

The Australian Taxation Office (“ATO”) first implemented the Foreign Resident Capital Gains Withholding regime from 1 July 2016. It was introduced to assist the ATO with the collection of a foreign resident’s Australian tax liabilities, however, its application affects many Australian taxpayers.

Effective from 1 July 2017 the withholding rules apply to all property transactions where the market value is greater than $750,000, regardless of whether the seller is a foreign resident or not. With the initial regime applied to property transactions of $2 million or more, this significant reduction will affect a greater proportion of the public, given rising property prices across Australia. It is highly likely that most property transactions entered into by a medico are impacted.
IF YOU ARE AFFECTED, WHAT’S INVOLVED?

The purchaser is required to withhold 12.5% of the purchase price of a property valued at $750,000 and higher and pay this amount directly to the ATO on settlement, unless the seller obtains a clearance certificate or a vendor declaration.

For contracts that were entered into during the period 1 July 2016 to 30 June 2017, even if the settlement date was after 1 July 2017, the withholding rate is 10% and only applies to property transactions where the contract price is $2 million or higher.

Notably, the burden falls on Australian resident sellers to confirm with both the ATO and the purchaser that they are not a foreign resident in order to avoid the purchaser withholding on the sale. Any amounts that are withheld must be paid to the ATO along with the appropriate form being lodged on or before the day the purchaser becomes the owner of the asset.

WHAT CONSTITUTES A PROPERTY TRANSACTION?

The property withholding regime will affect property transactions and transfers of property with market values above $750,000 for the following asset types:
1. Australian real property;
   a) Vacant land, buildings, residential and commercial property.
   b) Mining, quarrying or prospecting rights where the material is situated in Australia.
   c) A lease over real property in Australia if a lease premium has been paid for the grant of the lease.
2. Indirect Australian real property interests of 10% or more in an Australian entity whose underlying value is principally derived from Australian real property; and
3. Options or rights to acquire any of the above asset types.

WHAT CONSTITUTES MARKET VALUE?

The ATO generally views and accepts the market value of a property to be the purchase price when it has been negotiated between the seller and the purchaser at arm’s length. However, where the buyer and seller are related parties and did not deal with each other at arm’s length, the ATO will not accept the purchase price as a proxy for the market value. The purchaser will then be required to seek an independent valuation.

CLEARANCE CERTIFICATES

A clearance certificate provides certainty to purchasers of Australian real property (details mentioned above) as it confirms that the property withholding tax is not applicable. It is the seller’s responsibility to obtain a valid clearance certificate and to provide it to the purchaser at or before settlement, otherwise the purchaser has an obligation to remit 12.5% of the purchase price to the ATO.

The certificate can be requested online on the ATO website. It may take anywhere from 14 to 28 days to receive the certificate via e-mail. Therefore, the ATO recommends lodging the application well in advance of the settlement date to ensure the certificate is ready before then. The certificate only applies to the entity specified, is valid for 12 months from the date of issue and can also be utilised for multiple disposals of real property over this period. Please refer to the ATO’s website for further details as it provides a comprehensive guide for various circumstances.

VENDOR DECLARATIONS

A seller may provide the purchaser with a vendor’s declaration to avoid the property withholding requirement for all other property transactions (not Australian real property).

If the seller does not supply a declaration when requested, the purchaser should withhold 12.5% from the purchase price at settlement. A vendor’s declaration is valid for six months from the date it is signed by the seller. The ATO has specified that there is no approved form however, have provided a template on their website for convenience. The two types of vendor declarations are:

1. Residency declaration
   Where a purchaser believes a seller is a foreign resident (seller has an address outside Australia or sales proceeds are to be paid outside of Australia), they can request the seller make a declaration confirming their Australian tax residency. Alternatively, the seller may voluntarily provide a declaration to the purchaser.

2. Not an indirect Australian real property interest declaration
   A seller may provide the purchaser with a declaration confirming that the membership interests they are
disposing of are not indirect Australian real property interests. They can also confirm where an option is granted, that the membership interests subject to the option are not indirect Australian real property interests.

EXEMPTIONS AVAILABLE
The ATO has stated that there is may be no requirement to withhold on certain property transactions.

Examples of such circumstances include:
1. The acquisition of ownership of a relevant property asset from a deceased estate;
2. The seller expects to not incur a capital gain (for example, due to incurring a capital loss or a Capital Gains Tax roll-over applies);
3. The seller will not have an income tax liability in Australia (for example, due to carried-forward capital losses or tax losses); or
4. There is likely to be insufficient proceeds to cover the withholding and outstanding debt over the asset.

This is not a default exemption. The seller must apply for the exemption/variation by completing an online application on the ATO website.

WHAT HAPPENS TO THE AMOUNT WITHHELD?
If an amount is withheld on the sale of a property by the purchaser, the seller will be able to lodge an income tax return with the ATO at the end of the income tax year declaring their taxable income (including any capital gain on the sale of the property) and claim the amount withheld as a credit against the tax payable. Where the seller does not have capital gains tax to pay on the sale, or the amount payable is less that the amount withheld, the excess may be refunded. Note that there are circumstances where an early tax return may be lodged to go through this process sooner.

WHAT YOU NEED TO DO
When it comes to property withholding tax, there is a plethora of obligations you need to understand and many facets of the regime that need to be considered. These rules are complex and need to be considered on a case-by-case basis so we recommend engaging with a professional when considering your property investment.

Want to know more?
If you would like more information in relation to this article, please contact us for an introduction to Angela Stavropoulos or Kristy Baxter.

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ONE PLUS ONE EQUALS SIX

Hanya Oversby – Director of Health Business Network; interviews Dr Belinda Welsh and Dr Cara McDonald of Complete Skin Specialists.
Dr Belinda Welsh founded the Sunbury Dermatology and Skin Cancer Clinic in 2002. Dr Cara McDonald was an Associate and Belinda invited her to become her business partner in Complete Skin Specialists. 3 years later this has proved to be a wise decision, as the practice is flourishing with 5 dermatologists, cosmetic services and the imminent opening of a satellite clinic with another dermatologist.

Belinda invited me to work with her practice in strategic business development in September 2016. At this time Belinda was the sole owner of her practice. Since then, I have been invited back to work with Belinda and Cara in strategic business planning and implementation for their growing private practice which now has 5 Dermatologists on board, a separate cosmetic clinic and now a satellite site.

Cara, can you tell me about your journey from the decision to study medicine to joining Complete Skin Specialists and becoming a Director?

CM: At school my passion was in fine art, especially painting and for a while I considered this as a career. I was concerned, though, about it becoming a “chore” if my livelihood depended on it. As I also loved problem-solving, people and science, I felt like medicine might be a better career choice. I really had no idea where it could lead but the problem-solving and visual aspect of skin diseases always appealed to me. I also found that dermatology allowed me to be practical and hands-on, creative and people-oriented, using all my strengths and keeping me interested.

As business women in the medical specialist field, I’m sure that this has come with its own unique challenges. Belinda, can you tell me about your journey from the decision to study medicine to starting and growing your private practice, Sunbury Dermatology and Skin Cancer Clinic and then Complete Skin Specialists?

BW: I grew up on a property riding horses so I spent most of my teenage years dreaming of being a vet. I just missed out on a spot but got into medicine instead. After a year I decided not to swap over to vet science and stay in medicine. I don’t regret this. I decided to do dermatology while I was in final year. I moved to Sydney after my intern year and spent several years as a junior doctor at the Royal North Shore Hospital while trying to study for my first part Dermatology exams. I then did a Master of Medicine at Sydney University and got offered a job on the training program in Melbourne which I started in 1996. I spent the first two years as a specialist working as a locum and started out on my own one day a week in Sunbury in a rented suite in late 2002. I had one receptionist, one consulting room a procedure room and a very small waiting room. That had the rather lofty title of Sunbury Dermatology and Skin Cancer Clinic. After a couple of years, I moved to a bigger suite but essentially rented rooms for 11 years. It was during this time that I rebranded as Complete Skin Specialists. Cara arrived in 2010. I bought a block with an old house on it in the centre of Sunbury in 2012 and spent the next two years designing and building our current practice. Cara and I became business partners in 2016 and she bought the building next door for our Cosmetic and Laser clinic. Last year we were joined by 4 other dermatologists so that has really represented a big expansion phase for us which has been very exciting.

I also went to several courses run by The Private Practice which were extremely useful. This is where I first heard Hanya speak.

Luckily during my junior doctor-years I met my now business partner, Belinda Welsh. She was a fantastic role model and mentor and inspired me not only to pursue dermatology, but to prioritise being a kind and empathetic doctor. After completing my specialist training, I was fortunate to have her welcome me into her already-established practice and together we grew the business.

Initially where did you seek knowledge on the business of running a medical practice?

BW: I found the AMA a good source. They have an annual “Setting up in Private Practice” information day which exposed me to a number of companies and services which were useful.

My loyal and supportive but exasperated husband insisted at one stage I read a book called “The E Myth: Why most small businesses don’t work and what to do about it.” by Michael E Gerber.

It took me a few reads to understand what he was trying to say especially with regards to running a medical practice (in fact he has a book specifically for doctors – The E Myth Physician) but ultimately it was this book which really changed my
A PRIVATE PRACTICE
SUCCESS STORY
being a rather humble little practice hospital in Sunbury. Despite this, I was working out of a small consulting suite attached to the local private medical care to patients.

I think we have very similar values, beliefs and ambitions which is critical to the success of our partnership. Not to mention a shared sense of humour on the tougher days. We are both working mothers and understand the challenges this presents and the need to balance all our responsibilities.

Confident she was staying for the longer term, I purchased a property in the more central part of the town and designed and built our current practice. By the time we moved into this building we had been together for 6 years with an excellent working relationship based on mutual trust and respect. Cara, understandably, was keen to transition to have a more secure position as a business owner and I was happy to share this with her. I strongly felt we could achieve more as an equal team – which has certainly proved to be right.

What have been some of the key advantages that came from working with the business consultant?

BW: Hanya has brought improved structure, organization and oversight which has been very welcome.

She has improved our lines of communication which has been welcomed by all staff. She has bought us new ideas and introduced us to technology to streamline our business processes. We also engaged her to find us a new practice coordinator which has proved very successful.

Overall, we feel with Hanya’s guidance, knowledge and expertise, we can grow the business more effectively with more confidence in our decision making. Ultimately, we hope this translates to a better experience for our patients.

Belinda, how did you come to the decision to invite Cara to become a partner in your business?

BW: Actually, I found that an easy decision. She joined me in 2010 when I was working out of a small consulting suite attached to the local private hospital in Sunbury. Despite this being a rather humble little practice to my great fortune, Cara stayed. Basically, we just got along really well and enjoyed working together and supporting one another.

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CM: Working with a business consultant has given us some clarity around the needs of our business and enabled us to develop the business in a more professional and strategic fashion. Hanya has provided mentoring for the management team and created more harmony and alignment within the practice. Ultimately, I hope it will relieve Belinda and me of some of the management duties, allowing us to focus on what we love and do best.

Belinda, through the experiences of starting a new private practice, what were the key challenges that you faced from a business and personal perspective and what strategies helped you through this?

BW: Many of the challenges have come from trying to teach myself about managing a business, whilst at the same time trying to do the work of being the doctor as well as fulfilling the myriad of other expectations of being a professional (writing papers, giving talks, being on College committees etc etc). Time always feels in short supply – not to mention having 3 children along the way. Unfortunately work can become all consuming. A very supportive spouse is critical.

In my early years I was rather rigid in my thinking, believing people outside of the medical world couldn’t possibly understand how a medical practice needs to be run. I was wrong. The challenge here was to broaden my thinking, be more open minded and listen to the wisdom of other business people. I now enjoy reading books on business and listening to podcasts like Harvard Business review for ideas. Undoubtedly, my biggest challenge was designing and building our current practice from a pile of dirt. I did this mostly on my own and that pretty much consumed two years of my life.

Having a vision coupled with quiet determination and persistence was how I got through. I’m very proud of it now.
Cara, what were the key challenges that you faced from a business and personal perspective and what strategies helped you through these, in joining a private practice?

CM: There have been many challenges in becoming a director of a private practice. We have grown organically so it has been difficult to put in place formal strategic planning or review systems for personal and business performance. Learning to delegate and mentoring from our business consultant, Hanya, has helped us develop frameworks for decision making and working collaboratively.

Which leads well into the question of leadership…

As a business owner, you would have noticed that there was a need to take on a leadership role. What was this journey like?

BW: Having a vision and being able to communicate this to your team is very important. Leadership is not always easy and I’ve never had any formal training in this area. I’ve really just grown into it over the years and no doubt made plenty of mistakes.

I think being fair, consistent and understanding are essential but at the same time having a strong set of values and demanding accountability of those around you is key. I would like to improve my skills in this area especially as our team and business grows.

CM: Although I was not so aware of it at the time, my experience working in large hospitals and well-run private practices provided me with a very good foundation, so the transition was not too difficult. The intense schedule required to complete specialist training and exams gave me a good understanding of many issues including goal setting, the importance of good communication, clear definition of responsibilities and risk management.

Having to employ and manage a growing team for Complete Skin Specialists can be daunting for a business owner. What do you feel has been the triumphs and challenges in this process?

BW: Triumphs. Seeing wonderful professionally motivated passionate people grow and develop their skills and expertise with me over the years.

Challenges. Having the time to devote to all the areas of management and generally managing people!

CM: I was fortunate that Belinda had set up a very professional business, which gave us an excellent base. The main challenge has been the expansion. This has required careful planning for the key pillars of the business, so that we provide exceptional patient care and maintain the highest professional standards in training, administration and communication.

What is your vision moving forward as a practice? How does the satellite clinic work into your business plan?

BW: At the moment we have grown quickly with more doctors so I’m keen to improve our internal systems and processes to run as efficiently and effectively as possible. The satellite clinic came about more to support a young dermatologist who is on a rural bonded scholarship scheme. He needs to spend 3 years in a rural area after he has graduated. As we are located right at the edge of the metropolitan zoning he will be able to work under our umbrella at two large GP practices to the north of us. We will be able to provide him administrative support and he will work a day a week with us so we can help with more complex medical and surgical cases and provide mentoring in general. We are hopeful that if it all works out, he may choose to stay with us in the longer term.

CM: Our vision is to exceed expectations in providing an exceptional service to our customers. We strive to put our patients first and treat everyone with respect. We are committed to excellence and we are keen to support and mentor dermatologists to help meet the needs of our community. We look forward to supporting a new dermatologist in our practice who consults from satellite locations (within GP clinics) to make our services more accessible.

A PRIVATE PRACTICE SUCCESS STORY
As a woman in business, what do you find you stand for and how is this reflected in your brand? Can you tell me more about this?

BW: I’m not sure being a woman particularly makes a difference to the values we hold dear for our practice. We are all dedicated professionals who are deeply committed to providing the very best service and care we can to our patients. We hope our brand reflects this integrity, commitment and passion.

CM: My personal values in business are excellence, service and integrity. I believe that communication and trust are the foundation of all good relationships and this includes those between business partners, doctor and patient and also between staff members.

I want to provide value to our customers and be an excellent employer for our staff. In order to do this, I try to be open to ideas and suggestions from all areas and always operate on the assumption that I could be wrong, or there might be a different or better way at any time.

Aside from owning and running a successful dermatology and cosmetic practice, you are involved in a number of industry bodies and have a family life to manage. How do you balance all of these important parts of your life?

BW: Well if I’m honest I don’t always – it’s very hard. I spend a lot of time working. I have a very supportive and understanding husband and three wonderful kids. I think they all think mum works too hard though. Dermatology is probably one of the more “lifestyle friendly” specialties so I have been able to modify my work over the years depending on family demands which has been extremely helpful.

CM: I think the reality is that it’s hard to do it all well. I’ve got an amazing husband and lots of support on the home front which allows me to spend the time and energy I do on work. I have learnt to let go of the small things – if nobody is going to get hurt or suffer in the long run, then I don’t worry about it.

Having said that, I frequently have #fail moments like missing appointments and birthdays and feel guilty about missing out on more time with my three small children.

I try to maintain some balance by taking frequent short breaks from work to spend time with the children and by prioritising some me-time for yoga or catching up with friends.

What is the best thing about being the Director and owner of Complete Skin Specialists?

BW: Going to work every day to a place I created and have been able to grow with Cara and our team. The sense of purpose and the care we have been able to provide to thousands of patients has been a great privilege and pleasure.

CM: The sense of achievement in providing great service to our patients and a sense of belonging for our staff. I am proud of our happy and productive team and the way they deliver excellence and expertise to our customers.

Most of all I love my work and the opportunities that come from it, such as teaching and providing education about the skin to both colleagues and the community.

If you were to have the opportunity to speak to your recent graduate – what advice would you give yourself?

BW: Enjoy the journey. Have a go. Work hard but take time to enjoy life too. Appreciate how lucky you are to have been given opportunities in life and be brave enough to take them.

Remember to stay true to who you are and to your values and I think you’ll be OK!!

CM: The sacrifices you make and the work you put in will definitely be worth it. When it all seems overwhelming, just focus on the tasks of the hour or the day and the big picture will take care of itself.

If you would like to discuss your medical business needs and how to help you grow, please contact us for an introduction to Hanya Oversby.

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**SUPERANNUATION CONTRIBUTIONS**

Superannuation contributions include your pre-tax concessional contributions (CCs) and your after-tax non-concessional contributions (NCCs).

Anyone under age 65 can contribute to super. For those aged 65 to 74, to be eligible to make personal contributions to super, you must satisfy the work test or, from 1 July 2019, the work test exemption. The exception to this rule is Downsizer contributions which can be made from the age of 65.

Once age 75, you can no longer make personal contributions other than Downsizer contributions which have no upper age limit.

The work test requires an individual to have worked at least 40 hours during a consecutive 30-day period during the financial year in which the super contribution is made.

From 1 July 2019, individuals aged 65 to 74 with a ‘total superannuation balance’ (TSB) less than $300,000 at 30 June in the previous financial year, will be eligible to make personal contributions and voluntary employer contributions, in the financial year following the financial year in which they last satisfied the work test (work test exemption). For instance, if you retire in the 2018/19 financial year, and your TSB is less than $300,000 at 30 June 2019, you could still contribute in the 2019/20 financial year despite not being gainfully employed in that year.

Your ability to make NCCs is dependent upon your TSB which represents the total amount you have in super across all funds (if you have more than one). For example, your ability to make NCCs in the 2018/19 financial year depends on the value of your TSB as at 30 June 2018. This is discussed further below.
CONCESSIONAL CONTRIBUTIONS

CCs include employer contributions (including SG and salary sacrifice), or personal deductible contributions, such personal deductible contributions being made, for which you will claim a tax deduction.

Your CCs are subject to an annual cap, currently $25,000 from all sources.

Care should be taken to ensure your CCs do not cause you to inadvertently breach the CCs cap. If you exceed your CCs cap, the excess amount is included in your assessable income and taxed at your marginal rate (plus Medicare levy), less a 15% non-refundable tax offset. Additionally, the net increase in personal tax liability is subject to the ‘Excess concessional contributions charge’.

In some circumstances, the excess contributions can count towards the non-concessional contributions (NCCs) cap, potentially causing you to exceed your NCCs cap.

Matters to consider when reviewing your current CCs strategy:
1. Where appropriate, consider maximising your CCs for the year. This could be 'topping-up' employer contributions for the year or by making a personal deductible contribution.

Again, care should be taken to ensure the contribution does not cause you to inadvertently breach the CCs cap. You should also ensure all requirements for claiming a tax deduction are met and, the amount claimed as a tax deduction does not exceed your assessable income for the 2018/19 financial year.

2. As an alternative to making personal deductible contributions in 2018/19, some individuals may find it more appropriate to carry-forward any unused CCs into the 2019/20 financial year (’catch-up CCs’).

Since 1 July 2018, individuals with a TSB below $500,000 have been able to carry forward their unused concessional caps over a 5-year rolling period.

For example, if in the 2018/19 financial year, your CCs were $15,000, you could carry forward $10,000 to the next year, which would allow you to make CCs of $35,000 in the 2019/20 financial year, subject to having sufficient assessable income to do so.

Note: this option is only available to individuals with a TSB less than $500,000 at 30 June of the financial year preceeding the year in which the contribution is made (commencing 30 June 2019).

Individuals aged 65 to 74 would also need to satisfy the work test or work test exemption in the financial year the contribution is made.

3. Individuals can apply to their superannuation fund to split up to 85% of their CCs (employer and personal deductible contributions) from the preceding financial year, to an eligible spouse’s superannuation fund. Contributions made in the 2017/18 financial year must be split before 30 June 2019. Amongst other things, splitting contributions can be an effective strategy to manage the TSB for NCCs and catch-up CCs.

NON-CONCESSIONAL CONTRIBUTIONS

For the 2018/19 financial year, the annual NCCs cap is $100,000.

For individuals under age 65 at any time during the year, it may be possible to bring-forward two future years which allows them to contribute up to $300,000.

Like CCs, care must be taken to ensure you don’t exceed your NCCs cap.

If you exceed the cap, you have the option to make an election to release the excess amount plus 85% of ‘associated earnings’. Additionally, 100% of the associated earnings is included in your assessable income and taxed at your marginal rate (plus Medicare levy), less a 15% non-refundable tax offset.

If an election to release is not made, the excess contribution amount is subject to ‘Excess non-concessional contributions tax’ of 47% (including Medicare levy).
SUPERANNUATION

Matters to consider when reviewing your current NCCs strategy:

1. For an individual to make NCCs in 2018/19, their TSB on 30 June 2018 must be less than $1.6 million. If your TSB in the year preceding the year you wish to contribute is more than $1.6 million, you will not be able to make any more NCCs without breaching the NCCs cap.

There are exceptions to this rule, namely, Downsizer contributions (up to $300,000) and CGT cap contributions ($1.48 million).

2. As noted above, depending on the value of your TSB on 30 June 2018, you may be eligible to access the 'bring-forward' provisions as indicated in the table below:

<table>
<thead>
<tr>
<th>TSB as at 30 June 2018</th>
<th>Maximum NCCs cap</th>
<th>Bring forward period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $1.4 million</td>
<td>$300,000</td>
<td>3 years</td>
</tr>
<tr>
<td>$1.4 million to less than $1.5 million</td>
<td>$200,000</td>
<td>2 years</td>
</tr>
<tr>
<td>$1.5 million to less than $1.6 million</td>
<td>$100,000</td>
<td>No bring-forward period</td>
</tr>
<tr>
<td>$1.6 million</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

   A transitional arrangement applies to individuals who triggered the 'bring-forward' rule during the 2016/17 financial year but did not fully utilise the bring-forward amount of $540,000 by 30 June 2017. If you triggered the bring-forward rule in 2016/17, your transitional 'bring-forward' cap for the 2016/17, 2017/18 and 2018/19 financial years is $380,000.

3. If your spouse has not exceeded their NCCs cap and had a TSB less than $1.6 million on 30 June 2018, you may be eligible for a tax offset of up to $540 for making superannuation contributions on their behalf.

4. Individuals who have not exceeded their NCCs cap and have a TSB less than $1.6 million on 30 June 2018, may be eligible to receive the Government co-contribution of up to $500 for making personal contributions to their superannuation fund.

We have addressed some aspects of super contribution planning for the 2018/19 financial year. There are a number of other strategies you may wish to consider that may be appropriate to your circumstances. Accordingly, we recommend you speak to your financial adviser prior to acting on the above information.

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Julian Muldoon is the Managing Director of 1Group Property Advisory.
Ten tips to take into your next commercial lease negotiations

Buying or starting a business is probably one of the most life changing and significant ventures you’ll undertake in your life. It’s up there with buying your first home, having your first child, getting married or getting divorced. It’s really hard work. But when you find the right site and you can visualise yourself, your staff and clients operating in that space, it’s pretty thrilling. After the initial transition into the new premises, when you begin to find your groove and your business begins to thrive, it makes all the effort you put into searching for the right site worth it. But what if your business changes? Or you change? Or you want to expand or sell? Does the lease agreement you signed all those months, or even years ago, accommodate that?

Leases are almost always in favour of the landlord, the ‘lessor’, so it’s critical you understand the terms of your agreement before you make a commitment. Trying to negotiate a commercial lease mid-term is almost impossible. You may have more luck in between terms but it’s still very difficult. What you may not know is that everything in the agreement is negotiable before you sign but once the agreement is finalised, you are legally locked in until the end of the term - which may be years - and the associated financial obligation could amount to hundreds of thousands of dollars.

We often see business owners engaging independent valuers when purchasing but not leasing, when really, they are often the same, if not riskier. Here’s why:

Let’s take a basic example of a five-year lease at $10,000 a month. This amounts to $600,000 over the term of the lease. That’s a lot of cash.

Unlike a property purchase which is an asset that can be sold if required, leases are complex and extremely tough to get out of. This is great protection for you in the event the landlord wants to increase your rent or develop the site but not so great if things change in your business and the lease terms become unfavourable or you can no longer afford the rent. If your business struggles, or the location doesn’t work, you are legally bound to the repayments until the term expires. And if business grows and prospers, the terms of the lease could choke you, especially when the vendor knows how important it is for you to keep your business location.

If you’re about to go head to head with an agent or landlord, I would strongly advise you to get the support of a trusted lawyer or advocate to ensure:

- the lease is not heavily weighted in the lessor’s favour; and
- the terminology in the lease is not open to interpretation.
Some common terms and conditions that you need to look out for in a lease agreement.

<table>
<thead>
<tr>
<th>TERM</th>
<th>Tip</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease duration (or term) and options to renew</td>
<td>This is an important negotiation lever and provides security for both parties.</td>
</tr>
<tr>
<td>Rent and rent reviews</td>
<td>Getting some certainty around your monthly rent obligation and when it is due for renewal provides security and helps with calculating monthly expenses and cash flow.</td>
</tr>
<tr>
<td>Permitted use</td>
<td>Make sure all parties are clear on what the premises can and cannot be used for.</td>
</tr>
<tr>
<td>Tenancy mix and competition</td>
<td>Do you have exclusivity in the building or could a competitor set up shop next door?</td>
</tr>
<tr>
<td>Fixtures and fit-out</td>
<td>Who is responsible for the cost of the fit-out or refurbishment of the site and who owns it should you move on?</td>
</tr>
<tr>
<td>Outgoings/ Additional charges</td>
<td>Do your homework here: these can be a big cost.</td>
</tr>
<tr>
<td>Repair and maintenance</td>
<td>Make sure you know who is responsible for repair work and upkeep of the property to ensure it is safe and compliant with building standards.</td>
</tr>
<tr>
<td>Assignment and sub-lease/ sub-letting</td>
<td>If you sell your business, the lease needs to be assigned, so having the flexibility to sublease can be a huge cash flow advantage and enhances your offering.</td>
</tr>
<tr>
<td>Default and breaches</td>
<td>If you miss a payment, the landlord and agent could make you pay back any incentives you received.</td>
</tr>
<tr>
<td>Redevelopment and relocation</td>
<td>What happens if the landlord decides to sell to a developer? If you need to temporarily or permanently vacate the premises, will that hurt your business and will you be compensated?</td>
</tr>
<tr>
<td>Termination</td>
<td>Is there an exit clause if you want to get out of the lease?</td>
</tr>
</tbody>
</table>

If you’re game enough to negotiate the terms independently, here are my top ten tips to help you navigate the process so you get the best outcome for your business.

1. **KNOW YOUR VALUE AS A MEDICAL TENANT AND KNOW WHEN TO USE IT**

Put yourself in the shoes of a landlord. What would you look for? A landlord wants a tenant with a successful business that has high demand, longevity and ethical practices. A property with a medical tenant has status and is of higher value to the landlord than if it was occupied by a business that carries more risk such as a café or boutique retailer.

As a medical tenant, you have leverage so use it in your discussions, especially in the early stages when they are trying to ‘court’ you.

You’ll often hear agents say: “It’s a standard lease.” Let me tell you, even standard leases are not your friend and you can definitely negotiate better terms, especially since you’re not a “standard” tenant.

Get to know the leasing agent and vendor situation; find out what’s important to them well before you start talking terms and price.
2. MAKE SURE YOU GET THE RIGHT SITE

This seems like a really obvious one but this step involves much more than finding a location with great exposure and high foot traffic. It’s also extremely time consuming and will be a day in day out exercise requiring a lot of expertise and discretion.

The site you’re considering may be occupied by a competitor, or the agent could know your current landlord or boss. If they knew you were looking to take over the site, would that have an impact on your own business?

What’s the implication of your current leasing agent knowing your circumstances? If there’s plentiful supply of sites that are right for your practice, this may put you in a better position to re-negotiate terms with your current landlord – or not if suitable sites are scarce.

Does the vendor of the prospective site know your circumstances? If they know they have the only available site that meets your requirements, your bargaining power is greatly diminished.

I’ve also found some business owners are too narrow with the search and miss opportunities in neighbouring suburbs. Additionally, they’ll go for sites that are larger – or in some cases smaller – than what they actually need. Does the site allow for your business to grow and expand? What are your blind spots?

My recommendation is to outsource this process to an expert so you can focus on your customers through the transition.

3. UNDERSTAND THE CONCEPT OF ‘FACE RENT’ VERSUS ‘EFFECTIVE RENT’

There are two types of rental payments in a negotiation - Face Rent and Effective Rent - something many first-time negotiators are unaware of. Face Rent is the landlord’s official asking price and Effective Rent is the amount you pay post negotiations, hopefully a lot less!

Every dollar that is reduced from the monthly fee diminishes the value of the asset so the landlord will be loath to discount the rent. However, getting the landlord to make contributions or including rent free periods to sweeten the deal are easier to obtain. By seeking a monthly ‘abatement’ (an amount that is paid back to you each month) you are able to allow the landlord to protect the official value of the building, but also achieve a lower monthly rent.

Once you have negotiated a great deal, you need to protect it. Fixed increases to the effective rent are crucial and ensures any increases are made to the reduced rent and not the original asking rent. We like a bit of everything so always ask for all kinds of concessions before you agree to the payment terms.

4. CHECK IF YOUR CONTRACT INCLUDES A ‘DEVELOPMENT CLAUSE’

Most of our clients are engaging in expensive, specialists fit outs with the intent to stay at the current location for long periods of time. A development clause is often inserted by the vendor to allow them to sell or develop the site should it present as a lucrative option or when they can make a high margin on a sale.

For your own protection, it’s best to have this clause removed at least for the first term (if not two terms) to ensure you’re not forced out of the premises after you’ve invested a lot of cash in a fit-out and time building your profile. Alternatively, you can negotiate compensation for relocation costs, loss of business and goodwill, and a financial contribution to the fit-out at the new premises.

5. MAKE SURE YOU ARE ALLOWED TO ASSIGN OR SUB-LET THE SITE

Assigning the lease means the lease is taken on by another party. This is an alternative to ending a lease before the agreed duration of tenancy for which you are financially liable. You may need to do this if you decide to sell your business or can no longer keep operating. If this is the case, you will need the permission of the landlord so make sure your lease states they cannot unreasonably withhold their consent. This is very important if you are looking at a ‘scale and sell’ business model.

Similarly, if you sub-let part or all of your premises, you are still liable for the lease until the end of the term. This means you must pay the full rent even if your incoming tenant fails to pay. It is important to undertake a credit check and ensure that the incoming tenant is able to meet the lease requirements.
Keep in mind if you are assigning a lease or sub-letting, you may be required to pay the landlord’s reasonable legal costs and other associated expenses.

6. RESEARCH THE LOCAL MARKET
You must know the market as well as the agent with whom you are dealing. Recently leased sites and any terms they achieved will be used in negotiations. Knowing how these sites compare to yours will ensure you don’t get overloaded with information and sold based on sites that are inferior.

7. KNOW WHO IS RESPONSIBLE FOR THE MAINTENANCE OF AN AGEING BUILDING
With many older residential or heritage properties being converted into medical and health centres, veterinary clinics or dental practices, we are often seeing these buildings begin to deteriorate and become unsafe. The maintenance and general upkeep of these ageing buildings requires significant investment that, in some cases, the landlord is reluctant to provide.

If your lease is negotiated properly, the landlord is responsible for the structure of the building and major capital items (i.e. roof, walls, air-conditioner, exterior fittings such as gutters and downpipes, plant and equipment that is the property of the landlord, etc). If your building is not compliant with state government legislation, the lessor could be in breach. Obtaining an independent building inspection will help you understand the severity of the issues so you can enforce renovation, maintenance or possibly renegotiate your lease.

8. ENSURE YOU ARE THE OWNER OF THE SITE FITOUT
Whether establishing a new business or expanding, the fitout and refurbishing costs can be steep. Factoring in a contribution from the landlord to lighten this load, and making the premises more attractive to a prospective medical tenant, is a smart move. But keep in mind the lessor may request you leave behind any improvements made to the site upon vacating. Depending on your reason for leaving, vacating a fully fitted-out site could open you up to a competitor seamlessly transitioning into your established location...to the extreme joy and satisfaction of the landlord, especially if the relationship has broken down (which unfortunately is often the case).

9. FAMILIARISE YOURSELF WITH THE RULES OF STRATA SITES
If you are considering a move to a strata site, speak with the body corporate to make sure your business can operate from that specific site. Do you need to install specialist equipment that requires certain plumbing, insulation or electrical work which they need to approve? Make sure you include a clause that allows you to exit the agreement if this isn’t approved on the body corporate side.

The due diligence list for a lease negotiation is extensive and one of the most complex pieces of work we engage in. Go into your negotiations with your eyes wide open and scrutinise all items in the agreement.
10. **CHECK YOUR ‘HEADS OF AGREEMENT’**

Leasing agents work hard to get a result and are commission-based operators just like sales agents which is why a Heads of Agreement comes in handy. A Heads of Agreement document is drafted for review prior to the lease agreement so both parties can review the terms. It is usually non-binding and is like an overview of the key terms that are set out in the actual contract. Always run the Heads of Agreement past your solicitor before signing and ensure they are not trying to lock you in at this early stage with a non-refundable deposit.

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Just like you wouldn’t recommend your patients treat their health and medical issues without proper advice, we at 1Group would always recommend you get the right advice and support from a trusted adviser or tenant representative before you accept a long-term lease agreement. Get in touch with us to find out how we can negotiate the right terms on your behalf to mitigate risk and optimise margins, while keeping your profile confidential until the time is right.

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Is cyber insurance worth it (and what is it anyway?)

Chris Mariani is the Director at Medical and General Risk Solutions.
22 February 2019 marked the first-year anniversary of the Notifiable Data Breach (NDB) Scheme under the Privacy Act 1988. The NDB Scheme requires entities which are subject to the Privacy Act to notify the Office of the Australian Information Commissioner (OAIC) and all impacted individuals of an “eligible data breach”. For a breach to be classified as an eligible data breach – all three criteria as follows need to apply:

1. there is unauthorised access to or unauthorised disclosure of personal information, or a loss of personal information, that an entity holds
2. this is likely to result in serious harm to one or more individuals, and
3. the entity has not been able to prevent the likely risk of serious harm with remedial action

In the period 22 Feb 2018 to 31 December 2019 Health businesses notified 163 breaches under the NDB Scheme, more than any other industry. Refer to the reports by clicking here.

Every week we work with clients who have privacy breaches ranging from a fax going to the wrong address, or personal or health information being accidently sent to the wrong patient or hospital. The reality is there are far more ‘human error’ privacy breaches, than the cyber criminals successfully breaching a practice’s IT security. The only way to guarantee you will not have a privacy breach, is to simply not collect any personal information in the first place!

There are a number of potential reasons why healthcare ‘tops the tables’ under the NDB Scheme:

1. Most organisations are not subject to the Privacy Act (or NBD scheme), until their annual revenue reaches $3 million - whereas healthcare organisations are subject to the Privacy Act from $1
2. Loss of, or access to healthcare information is generally regarded as likely to result in serious harm, which is one of the triggers of the requirements to report a data breach under the NDB scheme.
3. Doctors have ethical duties and are likely more aware of their obligations to report matters, and cyber criminals see healthcare organisations as attractive targets due to the sensitive information they hold, the value of the data on the dark web and the willingness of the practices to pay the ransom to recover their data.

The OAIC website notes: 

Health information is regarded as one of the most sensitive types of personal information. For this reason, the Privacy Act 1988 (Privacy Act) provides extra protections around its handling. For example, an organisation generally needs an individual's consent before they can collect their health information. In addition, all organisations that provide a health service and hold health information (other than in an employee record) are covered by the Privacy Act, whether or not they are a small business.

After a significant privacy breach or cyber event hits the media, I often receive calls from medical practices enquiring about cyber/privacy insurance, and what, if any cover, exists within their existing medical indemnity or other insurances. Usually the discussion goes along the lines of:

Hi Chris, I think we need a cyber/privacy breach policy. How much does it cost?

Hi Dr, can we first talk about your ‘privacy framework’ and whether you are confident you are compliant with the Privacy Act. This is your first layer of defence and in my view you need to first get compliant, and then consider the value of cyber/privacy insurance, which can range from less than $1,000 to maybe $5,000 as a small/medium practice, but this does depend on your practice size, what policy limit and covers you purchase and the quality of your IT security and privacy processes. While the insurance can pay for the costs associated with a cyber or privacy event, it won’t necessarily protect your reputation, if you’re dragged through the papers in a fashion where it shows you failed to take even the most basic precautions to protect patient privacy. Not only that, but you largely remove the risk of a privacy fine of up to ~$2million where you can demonstrate you have taken reasonable steps.
Thanks Chris, what’s a privacy framework? I’m not really sure what we are required to do under the Privacy Act. I think we have a privacy policy somewhere, what else is needed? I think our IT security is pretty good, we use X IT.

Essentially Dr, the Privacy Act requires you to take ‘reasonable steps to protect patient privacy’. You are dealing with what is regarded as ‘sensitive information’ so there is a higher expectation on you. To say you are compliant, you would need to be able to demonstrate:

• You have a Privacy Policy that complies with the Australian Privacy Principles and other relevant documents such as a Breach Response Plan, Patient Consent forms and other documents.

• You have trained your staff, both at induction and ongoing – so for example running an annual staff session on privacy.

• You have done an assessment of your IT providers, security, backups, and have considered options to collect, store and use personal information. You also make sure they comply with the Privacy Act and there’s a strong contract in place where they are there to assist you meet your privacy obligations, such as notifying you and assisting with a ‘Notifiable Data Breach’.

• Plus there’s lots more. There is an excellent resource on the OAIC website. Refer to OAIC framework here. This talks about a 4 step framework, starting with embedding a culture of privacy that enables compliance. Please go and have a read and see how many of the items on the checklist you are confident you can tick off.

That sounds like lots of work Chris. I’m not confident we are compliant.

That’s the usual response I get Dr, now is a good time to start. Put privacy compliance at the top of your practice managers to-do list. They should be your ‘Privacy Officer’ which is another requirement in the framework. We have a ‘Privacy Starter Pack’ available to clients and can also come and help you set up your framework. Usually in 2 days, we can help your PM draft your key documents, run staff training, help you ask your IT guys the right questions (like a mini-audit) and put you on the road to having a framework which your PM can then own and run. I suggest start a conversation with your IT guys now. I’ll send you a list of draft questions. Ask them to give you a written ‘bullet point’ response to each question. I’ll also send you some info on what the cyber/privacy insurance covers and we can have a discussion on that once you have digested the info.

EXAMPLE QUESTIONS TO SEND TO YOUR IT CONSULTANTS:

Note: The following questions are draft questions for you to send to your IT consultants. Change/add/delete as applicable to your situation. You are essentially asking for their assistance to do a ‘mini-audit’ and to help you demonstrate you are taking reasonable steps (and if not, then what you may need to do to improve your IT systems).

• Can you explain our current IT structure and provide some options, should we be server in rooms, cloud based, or a hybrid structure. What are the benefits and risks of each, as well as cost considerations?

• Do you believe we are taking reasonable steps to protect patient privacy, secure and back-up our sensitive data (from patient records and personal information, to company financials)?

• Where do we rate according to other practices you manage?

• What else should/could we do to further improve our IT security?

• Please provide us an overview of all of the security features and steps currently taken to protect our data, including firewalls, virus protection, multi-site backup and other security features.
• In the event of a cyber-attack on our system (e.g., staff member opens the cryptolocker virus), would hackers gain entry or be able to lock our system down preventing us from running our business? If they are successful, how long would it take to restore our system and be back up and running?

• Can we have a copy of your breach response plan, disaster recovery plan and other documentation which shows what you do in the event of a breach?

• Please confirm you are compliant with Australian Privacy Laws. Please send me your current Privacy Policy. Can you also send me the latest contract we signed with you?

• What training can you provide to staff which would assist (we understand people are often the weak point so what can we do to lessen our risks)?

• Does any of our data leave Australia (e.g., backed-up on an overseas server)?

In the event where no 'personal information' is lost or accessed, but where sensitive company information may be.

1. there will likely be some insurance cover under a doctor’s/practice’s medical indemnity cover. Each of the medical indemnity insurers differ in what they will cover (with some being far superior to others). Generally, under a doctor medical indemnity - insurers consider a patient bringing a ‘civil claim’ (e.g., a legal demand for $1million) for a breach of privacy as covered – as the privacy breach is of a similar nature to allegations of medical negligence – such as failure to follow up inconclusive test results which leads to delayed or missed diagnosis). Most insurances have been broadening out their policies to pick up some of the additional risks, such as a small limit for the potential privacy fine and/or the costs to deal with a privacy breach under the NDB scheme. BUT, the cover under medical indemnity does not cover every risk that is covered under a cyber/privacy policy. So asking your medical indemnity insurer “am I covered for a privacy breach” should be will likely not be a simple Yes and No answer.

So what does a cyber/privacy cover?
There are a number of specialist insurers who each offer differing levels of cyber/privacy cover. Generally these policies are purchased through insurance brokers and advisers as many of these specialist insurers will not deal with the public direct.

Cyber cover is in many ways like medical indemnity. While you are buying an insurance policy, what you really get is access to a range of experts who can help you through the initial event, provide advice, arrange for experts such as lawyers, IT security/forensics specialists, PR consultants to help you deal with media issues. Secondly, these experts are funded by the insurer, along with other costs you may be required to pay, such as the privacy fine, credit monitoring (if say patient credit card details were stolen) and other costs. Thirdly, policies can also pay the ransom payment and your lost revenue following the event.

In some policies, cover also extends to Social Engineering, Phishing and Cyber Fraud (e.g., a supplier is hacked and the hackers access their system and see they regularly send you an invoice for $10,000. The hacker simply alters a PDF invoice they have access to, updating it with new payment details linked to their bank-account. Your practice manager receives what looks to be a genuine email and invoice and pays the invoice without question. Several weeks later the fraud is discovered when the real supplier calls and asks why their invoice hasn’t been paid). TIP: While this insurance is available the policy requires you to take steps to verify payments, so without appropriate financial controls, the insurance may be worthless. This cover for loss of your money through social engineering is often offered as part of a Management Liability policy under the 'crime section' (each insurer does this differently so important you seek advice on what suits you circumstances).
So, in short, what does a cyber/privacy cover:

<table>
<thead>
<tr>
<th>Cover</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your costs to deal with a cyber breach</td>
<td>Lawyers, IT experts, forensic investigations, notifying patients, PR consultants and other experts.</td>
</tr>
<tr>
<td>Cyber Business Interruption</td>
<td>Pays your lost revenue (usually no cover for the first day).</td>
</tr>
<tr>
<td>Systems Damage</td>
<td>Pays costs to restore data, programs and networks after a hacking/malicious event.</td>
</tr>
<tr>
<td>Cyber Extortion</td>
<td>Ransom amounts paid and associated costs</td>
</tr>
<tr>
<td>Third Party liability</td>
<td>Privacy fines, civil claims and liabilities you may be required to pay.</td>
</tr>
<tr>
<td>Social Engineering, Phishing and Cyber Fraud</td>
<td>Loss of your money through cyber fraud. Note some insurers don’t cover this in the cyber policy and include it within a Management Liability.</td>
</tr>
</tbody>
</table>

Not only do policies differ in cover, so does the insurers expectation of what IT security and privacy compliance you are required to abide by. For example, insurers would expect all systems, computers, storage devices are password protected at a minimum. Further, I would not want to lodge a claim with an insurer where the Privacy Fine is $2m as the practice clearly was not even close to Privacy Compliant (potentially you give an insurer a reason to attempt to deny a claim under your 'Duty of Disclosure' to disclose facts which may be relevant to the risk).

So what does a cyber/privacy cost
Providing an exact cost is difficult as insurers rate the policy off various factors including revenue, staff numbers, policy limits and covers selected, as well as the quality of your IT security and other factors. As a guide for small medical practice of say $1m annual revenue, a policy with a $1m policy limit will likely cost ~$2,000 and a $3m revenue practice may be closer to $3,000.

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“Forgotten” Medicare Compliance Issues IN A NUTSHELL

Loryn Einstein is the Managing Director at Medical Billing Experts.
Most conversations I have with medical billing clients regarding Medicare compliance centre on item number specific queries that the doctor or practice raises. The focus of this article is the “forgotten” Medicare compliance issues that are just as important as the item numbers themselves.

The compliance and audit activities being run by the Department of Health are focusing as much on these “forgotten” issues as they are on item number usage and proper choice of item numbers to be billed.

**COMPLETE MEDICAL SERVICE PRINCIPLE**

The Medicare guidelines regarding the ‘Complete Medical Service Principle’ are the basis of many of the Medicare compliance activities in the last few years. The core principles are:

**To bill any MBS item number, you must fulfil all of the service requirements as specified in the item descriptor.**

The billing of MBS item 133 is a good example of an item number that has numerous service requirements that need to be fulfilled for billing purposes.

**Item 133**

Professional attendance of at least 20 minutes duration subsequent to the first attendance in a single course of treatment for a review of a patient with at least two morbidities (this can include complex congenital, developmental and behavioural disorders), where

a) a review is undertaken that covers:
   • review of initial presenting problem/s and results of diagnostic investigations
   • review of responses to treatment

b) A modified consultant physician treatment and management plan is provided to the referring practitioner that involves, where appropriate:
   • a revised opinion on the diagnosis and risk assessment
   • treatment options and decisions
   • revised medication recommendations

The service requirements that must be fulfilled before billing an item 133 include:

- A professional attendance of at least 20 minutes duration; and
- Patient must have at least two morbidities; and
- A review must be undertaken of the items listed in a); and
- A modified consultant physician treatment plan is provided to the referring practitioner including the information listed in b); and

**Per Medicare Benefits Schedule Note AN.0.23**

- If appropriate, a written copy of the physician treatment and management plan should be provided to the patient; and
- Preparation of the consultant physician treatment and management plan should be in consultation with the patient; and
- If a GP management plan or Team Care Arrangement is in place, the treatment and management plan should augment the GPMP or TCA for that patient; and
- The modified consultant physician treatment and management plan should address the specific questions and issues raised by the referring practitioner and should include:
  - Comprehensive patient history
  - The clinically relevant findings of a full multi-system or detailed single organ system assessment
  - Diagnosis based on information obtained from the history and medical examination of the patient
  - A plan regarding the follow-up of issues and/or conditions, including an outline of the recommended intervention activities and treatment options.
  - Medication Recommendations
  - Social issues and recommendations for addressing them
  - Life style changes including exercise and diet, any rehabilitation recommendations and discussion of any relevant referrals to other health providers.
  - Indications for further review
  - Recommendations for longer term management

In the 2017/2018 financial year, Physicians across Australia billed a total of 750,625 item number 133’s. When Medicare audits the use of this item number by Consultant Physicians (and similar item numbers for other practitioners), it is often the lack of either fulfilling or documenting fulfilment of all of the requirements of this item number that leads to the practitioner being ordered to repay the benefit paid for the items billed.

Loryn Einstein shines a light on the “forgotten” Medicare compliance issues.
MEDICAL BILLING

One of the most frequent errors made by doctors billing item 133 is failure to document the elements of the item in clinical notes and/or failing to provide a modified treatment plan to the referring practitioner. Even if the physician did complete all other requirements of the item number, the failure to document the actions taken at the consultation and/or the failure to communicate the required information with the referring practitioner is in itself grounds for Medicare to demand repayment of the benefit paid in relation to the billing of the item.

Where a comprehensive item is performed, separate items should not be claimed for any of the individual serves included in the comprehensive service.

One example of billing a comprehensive item number is when correcting a claw or hammer toe, item 49848 (correction of claw or hammer toe) should be billed. As item 50112 (correction of contracted joint) and item 49809 (foot tenotomy - cutting of the tendon) are an integral part of the operation for correcting claw or hammer toe, these item numbers should not be billed with item 49848.

It is also prohibited to bill individual item numbers where composite item numbers are available.

One example is that if both a right heart catheterisation (item 38200) and a left heart catheterisation (item 38203), the composite item number for right heart catheterisation with left heart catheterisation (item 38206) must be billed as the composite item number.

DOCUMENTATION REQUIREMENTS

Professional Services Review findings against practitioners often focus on the fulfilment of the Medicare requirements for record keeping. The Medicare guidelines require that for any MBS item number that you perform and bill for you must keep adequate, up to date records. In the case of a Medicare audit, clinical records will be reviewed to ensure that they include:

- Clear identification of the patient
- A separate entry for each patient attendance or service
- The date of service
- A clear explanation of the service provided
- Notes that are clear and legible enough that another health professional could take over the patient care based on that record

The notes must be created during or soon after the treatment or service occurred and can be in either paper or electronic form.

COMPLETE MEDICAL SERVICE QUICK CHECK

When you are choosing the most appropriate MBS item number to bill, ask yourself three questions:

1. Does the service rendered comply with all time and content requirements of the MBS item number descriptor;
2. Would a review by the majority of my peer accept that the treatment provided during the service was clinically appropriate for this patient?; and
3. Have I adequately documented the service?

LOCUM-TENENS RULES

One of the most frequently forgotten Medicare rules is the locum-tenens rule. Most specialists do not realise that when they are providing weekend cover for their colleagues, that they are actually a locum-tenens and are thus restricted from billing initial consultations for patients seen in these circumstances.

When you provide weekend cover for your colleagues, you meet Medicare’s definition of a “locum-tenens”. Whilst you are able to bill subsequent attendances when providing weekend/locum-tenens cover of other doctors’ patients, Medicare does not allow you to bill initial attendances as per the paragraph below from the MBS.
“Fresh referrals are not required for locum-tenens acting according to accepted medical practice for the principal of a practice i.e. referrals to the former and benefit is not payable at the initial attendance rate for an attendance by a locum-tenens if the principal has already performed an initial attendance in respect of the particular instrument of referral.”

If you are the primary specialist and/or the admitting specialist for the patient AND you comply with the below rules pertaining to initial attendances, you are able to bill an initial attendance.

The Department of Health is able to use electronic records to identify potential locum-tenens activity by electronically tracking multiple initial consultations performed on a singular patient during the course of a hospital admission.

Checklist for reviewing initial attendance items 104 and 110

1. The attendance is the first attendance in a single course of treatment for the patient’s condition/s.
2. A valid referral has been provided by the referring practitioner.
3. It has been more than 9 months since the last attendance with the patient for that condition, and
4. The referring practitioner provides a new referral as they deem it necessary for the patient’s condition to be reviewed, and
5. You are seeing the patient outside currency of the last referral (i.e. previous referral has expired).
6. The attendance following the new referral initiates a new course of treatment for which Medicare benefit would be payable at the initial consultation rates.
7. A new referral is presented for the continuing management of a previously referred condition (i.e. the same condition) and it has been less than 9 months since the last attendance.
8. A valid referral has not been provided.

Stay on top of medical billing

Keep an eye out for the next Medical Billing Experts article to make sure that you stay up to date with new insurance regulations, medical billing news and updates, and if you have questions about your medical billing, contact us for an introduction to Loryn Einstein.

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Anita Filleti from MIGA, is a Solicitor with Claims & Legal Services.
Think before signing your life away

Restraint of trade clauses

Anita Filleti takes us through some important fine print.

Often as a practitioner plans their next career move, they realise the restrictions imposed by an existing Employment Agreement. The importance of reading, understanding and negotiating acceptable terms of an Agreement before signing, cannot be overstated. Once the Agreement is signed it is very likely to be binding.

An increasing number of health practitioners are seeking our advice regarding the validity of restraint of trade clauses included in their employment contracts. Unfortunately, our advice is often sought under circumstances where the health practitioner has already breached the clause. Accordingly, MIGA strongly encourages health practitioners to carefully consider the terms and conditions of proposed employment contracts before accepting them as a failure to do so may have career consequences.

A client recently requested our assistance after a breakdown in the relationship with their employer. They had resigned, and wanted to move immediately to a nearby practice to continue treating their current patients.

Unfortunately, the Employment Agreement they had signed 3 years prior, prevented this. The Agreement required 4 weeks written notice of termination, and provided that upon termination, they could not work within a 5 kilometre radius of the practice for 1 year, and could not treat existing patients of the practice. This prevented the client from pursuing the position they wanted, and meant they had to move to a practice away from the area and “their” existing patients. The client admitted to not having read or sought advice about the Agreement before signing.

WHAT DOES A RESTRAINT OF TRADE CLAUSE LOOK LIKE?

It is now common place for larger medical practices to require a health practitioner to accept a restraint of trade clause before being permitted to work at the practice. A typical restraint of trade clause might state:

“The Doctor acknowledges and agrees that upon termination of this contract, he or she will not, without the prior written consent of the Medical Centre, be directly or indirectly involved in any other medical centre and shall not attempt to entice or obtain any patients to another medical centre within a radius of 15 kilometres and for a period of 12 months from the date of termination of this contract”.

IS THE RESTRAINT OF TRADE CLAUSE IN MY CONTRACT UNFAIR?

Whether or not a restraint of trade clause is fair and enforceable, is ultimately determined on a case by case basis, however the following general matters are likely to be considered by a Court making this assessment:

1. Whether the geographical distance and period of time prescribed is required for the reasonable protection of the employer’s legitimate interest. In a medical setting, the legitimate interest of the employer is likely to include preserving the confidentiality of its patients’ information.

2. Whether the geographical distance and period of time prescribed is reasonable based on the location of the employer and the nature of the business. For a medical practice based in a metropolitan area, a Court may consider a restraint in excess of 15 kilometres and
12 months to be unrealistic and therefore unreasonable.

3. Whether the parties voluntarily accepted the restraint of trade clause at the time of entering into the contract. It will be difficult for a health practitioner to later claim that the clause is unreasonable if he or she voluntarily agreed to it before commencing employment.

WHAT MIGHT HAPPEN IF I HAVE ALREADY BREACHED THE RESTRAINT OF TRADE CLAUSE IN MY CONTRACT?

The following remedies are available in the event of a breach of a restraint of trade clause:

1. A Court ordered injunction. An injunction might restrain the health practitioner from working at another medical practice for a certain period of time. The period of time set by the Court might be equal to the amount originally envisaged by the employer (i.e. 12 months).

2. A Court ordered monetary award that is payable by the health practitioner in favour of the medical practice. The amount of the award as determined by the Court, is likely to be an amount that is sufficient to compensate the employer for any financial loss incurred as a result of the breach (i.e. the loss of patients to another medical practice during the period of the breach).

WHAT CAN I DO IF I THINK THE RESTRAINT OF TRADE CLAUSE IS UNFAIR?

MIGA encourages doctors to engage in open and transparent communication with their potential employers, prior to entering into any employment contract and engaging in any activity that may constitute a breach of a restraint of trade clause.

It is open to both parties to negotiate the terms of a proposed contract prior to and during the term of employment. We recommend documenting such negotiations in writing to protect both parties in the unfortunate event of a future dispute. This process is often facilitated by other terms in the employment contract which set out alternative dispute resolution processes for the parties (i.e. in the event of a disagreement or dispute regarding the terms of the contract).

If you suspect that you may have already breached a restraint of trade clause in your employment contract, we suggest clients of MIGA contact our Claims and Legal Services team for further advice and support.

THINGS TO KEEP IN MIND

Restraint of trade clauses

Restraint of trade clauses are used to protect a genuine business interest. Such a clause usually prohibits the practitioner from working in a particular geographical area, for a specific period of time after the Agreement is terminated. It can also prohibit the practitioner from "taking" patients or employees of the practice when they go.

The laws governing restraint of trade clauses vary between states, however they will only be enforced to the extent that they are reasonable. The Courts have upheld restraint of trade clauses and each case is determined based on its unique facts. In the case *Dr Angel-Honnibal v Idameneo* (No 123) Pty Ltd the Court upheld a restraint of trade clause preventing the doctor from practicing within an 8 kilometre radius of her former practice for 5 years. The doctor was required to pay approximately $58,000 in damages.

*Our recommendation*

Before signing an Agreement, check the restraint of trade clause. Consider whether you are likely to want to stay in the area once the Agreement comes to an end and if so, consider whether the proposed clause...
might limit your options. If you think it could, you should negotiate this term before signing the Agreement. For example you may be comfortable agreeing to a 1 kilometre restriction for 3 years, but not a 5 kilometre restriction for 1 year.

**Indemnity clause**

Be wary of indemnity clauses which require you to indemnify another party. We sometimes see agreements which attempt to extend the practitioner’s liability to include liability arising from acts and omissions of the other party, or their employees. These contractually assumed liabilities will not necessarily be covered by your medical indemnity insurance policy, and could leave you personally exposed.

*Our recommendation*

Ordinarily you are liable for your own acts and omissions, not those of another entity. You should carefully review any indemnity clause and contact your medical indemnity insurer if you are in any doubt as to whether your insurance will cover your liability under the clause.

**Termination clause**

Termination clauses govern the way in which an Agreement can be ended, including whether written notice is required, length of any notice period, and under what circumstances the other party can end the Agreement. Often, Agreements are drafted to give the health company or employer broader powers to terminate the Agreement than the practitioner.

*Our recommendation*

If you are signing a fixed term agreement, it is particularly important to pay attention to the termination clause, to ensure it is reasonable and that there is a way for you to end the Agreement if you need to before the term is complete.

The Agreement provided to you is a starting point and should be open to negotiation. It needs to work for both you and your employer. Once signed, it is binding, and it could leave you in a disadvantaged position if it is not read, understood and negotiated appropriately upfront.

If you have concerns about certain clauses in your employment contract please contact your medical indemnity insurer. They may be able to provide you with preliminary advice or refer you to someone who can assist you on a private basis. Where an issue arises concerning your employment and your policy provides cover, please contact your insurer early so that they can advise and assist you in managing the situation.

Guidance such as that provided in this article is just one of the many ways MIGA helps its insured clients. We offer superior cover complemented by expert medico-legal support that is available 24/7. If you are not insured with us, give us a call to see if MIGA can offer you more value and better protection. At MIGA, we are always here for you.

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**Practice Support**

Guidance such as that provided in this article is just one of the many ways MIGA helps its insured clients. MIGA offer superior cover complemented by expert medico-legal support that is available 24/7. If you’d like to discuss further, please contact us for an introduction to Nihal D’Cruz.

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Fitout Checklist

Mike Watson explains how when you view a property for the first time, emotions might get in the way. Here are the major points to consider before committing. Almost everything is possible but usually there is a cost and time implication.

1. **How much space do I need?**
   Real estate will be one of your biggest financial commitments so use it wisely. With efficient space planning you will be surprised how little space you actually need. Be careful with the shape of the tenancy as this also has a bearing on its efficiency. A Column free rectangle shape floorplan with the entry to one side will produce the best results and in under 100sqm you can accommodate a 3 Consult Room practice.

2. **What approvals do I need?**
   Check the previous use. If it was retail or commercial office then a DA (Development Application) wont be required. Instead you need a CDC (Complying Development Certificate) which takes only a fraction of the time and can be done through a Private Certifier rather than dealing with Council. If you are unsure as to the previous use, order a Section 149 Certificate from the relevant Council’s website. This certificate states the uses which are permitted without a DA.

3. **Does it comply with the Disability Discrimination Act?**
   For a quick guide, imagine you are in a wheelchair – can you access the site from the main entry? Is there a disabled toilet in the tenancy or the building? If so as a rule of thumb it will comply or can be made to.

4. **What about Parking?**
   Parking Requirements vary from Council to Council and State to State. 5 for the first consult and 3 for every other in Victoria. In Balmain 2 spaces will suffice for 3 consult rooms. Generally if you have difficulty parking when you inspect the site then there is cause for alarm. Parking consultants can be employed to argue the case for a reduced parking requirement.

5. **Existing Services**
   A substantial portion of the fitout cost can be in providing the basic services for air conditioning, fire and plumbing. If the ceiling, lighting, air conditioning and sprinklers/smoke detectors are existing this will result in considerable savings.

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