

# READ

## BEFORE YOU SIGN

**Some of us may think about setting up our own private practice while we are in medical school. Most of us do not until much later in our working life. In fact, most people do not cross the threshold of becoming business owners. For those who do, the earlier medical school curriculum did not include modules such as "How to set up your own business" or "How to read a business contract".**

Recently, the SMA Council had to assist members with respect to circumstances that arose out of contracts between private practitioners (whether family physicians or specialists) and third party administrators (TPAs).

By way of introduction, TPAs interface between healthcare providers (HCPs) (private practitioners) that join their respective panels, and insurers or private companies. TPAs charge administrative referral fees to HCPs who sign up with them, usually on a percentage basis. Apart from possible ethical breaches where this practice may be construed to be akin to "fee-splitting", about which the SMA Council has already written to the Singapore Medical Council (SMC), this is a business arrangement that has been in operation for many years.

TPAs normally invite doctors who are new to private practice. Reasons to join TPA panels include concerns that there would not be enough

business because TPAs control much of the flow of referrals in the private practice sphere. People who belong to certain insurers or companies can only see doctors who are on the panels approved by said insurers or companies in order to get reimbursed. TPAs, unlike doctors, are not regulated by any ethical codes of practice, nor are they regulated by the Ministry of Health. They are businesses governed by the Companies Act. This puts all of the practice risks upon the doctors in private practice. It is an extremely good business model to make profits from healthcare without any of the attendant professional risks.

I have been asked to write the following short non-comprehensive guide on what to look out for before signing a contract with TPAs.

### BUSINESS BASICS

Before you sign, familiarise yourself with the various contracts on the market. Do your due diligence. Talk

#### PROFILE



#### TEXT BY

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to relevant people. Find out which TPAs are good business partners; which pay on time; and which have accessible help desks. Ascertain your underlying business costs (rental, utilities, staff pay, consumables, etc) and practice costs (SMC fees, indemnity fees, insurance, etc) per unit time and work out whether whatever the TPA is offering to pay you can cover overheads or not. Find out why some doctors do not even sign with TPAs before you decide whether you want to embark on the TPA route. TPAs take on the role of collecting fees and directing business to the HCPs. However, the HCPs take the risk that if the debtor defaults, there is no way they can collect the money owed to them since there is no direct contract between the HCP and the patient.

## CONTRACT BASICS

Contracts are legal documents between two defined parties that describe clearly each party's duties and obligations, what to do in the event of a breach of contract and under what circumstances the agreement can be terminated. It is meant to clarify boundaries and expectations. A good contract protects both parties.

Standard TPA contracts are quite similar to each other and are detailed. They start with "Definitions" and/or "Interpretation", followed by a section that sets out the business arrangement between the TPA and the HCP.

Another section sets out what the TPA will do for you and what you agree to do under the contract. This includes what your staff are obligated to do (eg, verification of identity of patients), the fee schedules, putting up of signs, and your need to be approved with the SMC. You need to work out for yourself if the contract terms are onerous or not. For example, a clause that says that you have to "choose the treatment option which is most cost-effective and

economical without compromising on the quality and outcome of the treatment" is contradictory and presents you with a practical impossibility. You might even be at risk of disciplinary action by the SMC if you have to compromise on quality due to the low amount that you are reimbursed.

Another example is, "in the event a complaint is made against you or your doctors, you agree to provide to us a written report, *to our satisfaction... within 5 days* of our notice to you..." You need to clarify what "to their satisfaction" means and within five working days or calendar days. What if there is a delay by SingPost? What if the complaint is frivolous? What recourse do you have? Weigh the risk allocation between you (HCP) and the TPA. If the risks are mostly borne by you, think carefully whether you want in.

There is a section that details all that you can and cannot do for patients on the TPA panel and details of inclusions and exclusions. This is quite standard with minor variations between TPAs. Another section details the mode and timing of payments from the TPAs to you and steps on how your staff should do the claims. You need to decide if the specific clauses are viable for you, the business owner. There will be a section on indemnity, confidentiality and enquiries. Make sure that you can comply with the Personal Data Protection Act. Work out exactly what you are indemnifying the TPA for.

The most important section, arguably, is the governing law (should be that of Singapore) and dispute resolution method; what to do if either party breaches the contract, how to terminate the agreement and how much notice to give. For example, a clause that says "XXX reserves the right to unilaterally change the terms and conditions stated in this agreement..." is dodgy. Once a contract is signed, both parties have agreed in total. There should be no

further change. If any clause has to be changed afterwards, both parties have to sit down and renegotiate. Changes have to be in writing and both parties must agree.

A contract has a fixed duration: a start date and an end date. This is logical because the business environment continually evolves. TPA contracts do not last indefinitely. If there is no fixed duration, you should ask to have it included. Look out for automatic renewal clauses. Do you have to give notice if you do not wish to renew? If so, how many days' notice?

## FINAL THOUGHTS

Whenever someone offers you a contract, remember that it is only an offer. You can decide whether to accept it or not. There is no rush. Read it carefully and thoroughly to make sure you understand each line. Ask questions to clarify clauses you are unclear about. Negotiate to vary or delete clauses if they are not worded fairly. There is such an entity as an "unfair contract term". If there are terms that you do not understand such as "the contra proferentem rule", make sure you find out what that means. You have no excuse. As a doctor, you cannot claim ignorance or to not understand English. You are responsible for whatever you sign. If in doubt, engage a lawyer to go through the contracts with you before you decide. ♦