MANAGING YOUR PRACTICE
Lesson 4 | Establishing a cost-shared practice
TABLE OF CONTENTS

INTRODUCTION 3
IMPORTANT CONSIDERATIONS 3
ESSENTIALS OF A COST-SHARING AGREEMENT 3
COMMENCEMENT OF COST-SHARING ARRANGEMENT 4
OPERATION OF COST-SHARING ARRANGEMENT 6
GENERAL PROVISIONS 13
TERMINATION OF COST-SHARING ARRANGEMENT 10
INTRODUCTION

It is not uncommon for conflicts to arise among physicians upon changes to, or termination of cost-shared joint medical practices. In many instances, such conflicts could have been avoided if a formal agreement on obligations to the practice had been reached by the physicians in advance.

This course is designed to walk physicians through the process of creating a cost-sharing practice contract. It is intended to help physicians bring clarity to the expectations of each partner in the cost-sharing agreement. This course will prompt physicians to consider topics such as the term of the contract, the financial management of the practice, the responsibilities of the financial partners and the practice itself, and contract termination.

IMPORTANT CONSIDERATIONS

This document is intended for use by groups of two or more physicians in community-based private practice who intend to share costs. The provisions suggested in this document must be considered in relation to the particular facts in the matter at hand and augmented and revised as appropriate. This checklist is current to August 31, 2011.

This document is not intended for use by physicians in hospital-based private practices operating under alternative funding plans or by physicians who are practicing in partnership with other physicians.

The course is not designed to replace seeking professional advice when establishing a cost-sharing practice. It is recommended that physicians consult with a lawyer when preparing a cost-sharing agreement to ensure their personal interests are considered.

ESSENTIALS OF A COST-SHARING AGREEMENT

A cost-sharing agreement should begin by stating the type of agreement it is and the date it is made. For example, the first line of the agreement could read “This Cost-Sharing Agreement is made on the 1st day of September, 2011.”

The next section of the agreement is where the parties to the agreement are listed. If you are carrying on the practice of medicine through a professional corporation then the corporation should be listed as a party to the
agreement and be responsible for the payment of the costs. The physician providing services through the professional corporation should only be listed if the physician agrees to provide a guarantee of the obligations of the professional corporation to the other members of the cost-sharing arrangement.

This balance of the agreement should be divided into four sections:

1. Commencement of Cost-sharing arrangement;
2. Operation of Cost-sharing arrangement;
3. Termination of Cost-sharing arrangement; and

COMMENCEMENT OF COST-SHARING ARRANGEMENT

1. What is the nature of the relationship between the physicians?

This article generally describes the association between the parties to the agreement. For example, in the case of a cost-sharing arrangement, the article would provide that the association referred to in the agreement is intended to be a cost-sharing arrangement between independent contractors and not a partnership. It also may generally state that each party is only responsible for their own debts, liabilities and obligations.

2. What name is to be given to the cost-sharing arrangement (if any)?

This article identifies the name of the cost-sharing arrangement, if there is one, and provide for the appropriate filing of the business name under the provisions of the Nova Scotia Partnerships and Business Names Registration Act. The section should go on to specify that the mere fact of registration of the business name in the registration made pursuant to the Partnerships and Business Names Registration Act is not to be taken as indicating an intention to form a legal partnership.

3. Where is the business to be carried on?

This article will specify the location in which the cost-sharing arrangement will operate.

4. How long will the cost-sharing arrangement last?

This article sets the term of the agreement. Usually, the term of the agreement lasts from year-to-year with automatic renewals unless one of the participants gives notice within a specified period of the end of the year (3-6 months) that they do not intend to renew their participation in the agreement. The agreement term may alternatively be tied to the term of the lease of the premises and provide for a renewal upon agreement by the parties at that time.

5. How will the costs be allocated?

This article will require the parties to the agreement will set out how the cost-sharing arrangement will work. For example, will each party be required to contribute a fixed amount of costs or expenses or will each party be responsible for a percentage of the costs or expenses actually incurred by the practice? Importantly, the cost-sharing percentage should not be based upon the percentage of revenues which each physician earns.

Importantly, the cost-sharing percentage should not be based upon the percentage of revenues which each physician earns.
based upon the percentage of revenues which each physician earns. Doing so would be akin to sharing profits, which could cause the relationship to be characterized as a legal partnership rather than a true cost-sharing arrangement.

6. What expenses do you anticipate? The parties may wish to define the relevant expenses that may or may not be subject to the agreement and accordingly assign each party’s responsibility for such expenses. Specifically parties may wish to categorize and define the types of expenses that may be relevant. These categories include:

a) Individual expenses of each participant (not shared) Typically included would be accounting, legal other financial costs, corporation registration fees, banking charges, automotive expenses, travel expenses, convention expenses, individual borrowing costs, personal licensing fees, professional liability insurance, and continuing education;

b) Fixed expenses (shared) Typically included would be rent and costs of leasehold improvements;

c) Operating expenses (shared) Typically included would be electrical power, other utilities, staff, computers, supplies, telephones, and marketing;

7. How will revenue be handled? To be a cost-sharing arrangement, the parties must include a statement explaining that each participant has a proprietary interest over revenue generated from the practice of that participant.

8. Will capital or loans be required? Parties may wish to set out whether monies, if required, are to be paid up front or provide for signing authority if loans are required.

Parties may also want to consider whether they will agree to be subject to joint and several liability with respect to future loans taken for capital improvements.

9. What property will be involved / required? Similar to the article describing expenses, parties may want to define the physical property that is required to operate the cost-sharing arrangement and will be subject to or excluded from the agreement. These should be classified into common assets which each participant will have joint ownership interests in and individual assets which a participant may have a proprietary interest in.
OPERATION OF COST-SHARING ARRANGEMENT

10. What are the responsibilities of each participant?
The agreement should consider each owner or party’s duties and obligations under the terms of the agreement. Issues to consider include maintaining good standing with the College, maintaining proper insurances, and maintaining financial duties and obligations. The agreement may also want to address an owner or party’s responsibility to his or her individual responsibilities in the context of the formation of the arrangement between all the parties to this agreement.

11. How will the clinic be managed?
Under the management clause, the parties should set out each party’s responsibility for the management of the clinic under the cost-sharing arrangement. Alternative options are to require involvement by all the parties to the agreement in management decisions or appointing managers who are tasked with management duties (and fixing their compensation for taking on this additional responsibility).

The parties should also set out that no party can bind another party into a contract on that other party’s behalf since this type of agency power is also an indication that a partnership at law exists versus a cost-sharing arrangement.

12. Who can or will make decisions?
The agreement should also consider whether certain parties to the arrangement will be appointed as representatives or decision makers. If parties will be appointed as a representative of the arrangement or will be provided with decision making authority, the agreement should consider how the appointments are to be made and the scope of the appointments including any potential restrictions.

13. Will you have meetings?
The agreement should consider whether the parties to the agreement will hold meetings, the frequency of the meetings, the forum in which meetings can take place (in person, conference call, or video conference), the notice requirements for meetings, and the quorum (how many people have to attend before the meeting business is valid).

The parties may also want to determine whether certain decisions require special resolutions (e.g., decisions respecting the lease, staffing and other major decisions) and what the requirements are for passing a special majority (e.g., two-thirds, three-quarters or unanimous).
14. What is the purpose or function of the clinic?
The parties may choose to include a clause to ensure that the practice of medicine is the only business that each party will undertake in the office or clinic under the cost-sharing arrangement.

15. Will the clinic have a schedule?
The agreement should consider the setting of an office schedule. Specifically, the agreement should consider the hours of operation, physician and staff requirements, office space and access to observation rooms among other potential issues.

16. Who will be the responsible physician for each patient?
It is important that parties in group practices clearly set out rules or procedures that determine the responsibility each physician will have to the patients of the clinic.

If each physician is entering into the arrangement with their own roster of patients, the parties may want to specify that those patients will remain the patients of the physician to whom they are presently assigned.

Where new patients are either referred to the clinic or come to the clinic on their own, the parties to the arrangement may want to set an objective procedure for determining to which physician the new patient will be assigned. The assignment of a patient may be based on the number of hours or visits a patient has spent with a particular physician. This could be measured by the number of chart notes recorded by a physician on the patient’s medical record.

17. Will the clinic provide emergency care?
The agreement should consider procedures for the emergency care of patients. The agreement should also address any obligation to provide emergency care. For example what will be the policy and procedure for emergency care during office hours? What will be the policy and procedure for emergency care outside of office hours? Will each physician have access to patient files for the purpose of dealing with an emergency?

18. Does each physician have a duty to the practice?
The agreement should contemplate each physician’s duty and obligation to report to the clinic to practice medicine for a minimum number of hours weekly. The agreement should also contemplate a procedure for locums if a physician is unable to meet the
practice obligations of the physician and an approval mechanism for the use of locums.

19. Will you be hiring employees to work in the clinic?
The agreement should consider the staffing requirements of the office. In particular, how many employees are required, their respective duties and responsibilities, the responsibility of each physician to provide individual employees for their personal practice requirements (if any), the assignment of employees to particular physician(s), and the assignment of employees as common employees.

20. Will physicians be allowed to take a leave of absence? How will it work?
The agreement should consider the necessary procedures and responsibilities that apply under the terms of the agreement when a physician takes a leave of absence. In particular, it should consider such issues as, whether there are notice requirements, whether there are any restrictions on the absence, how many physicians can be on leave at one time, expense obligations and treatment of the physician’s patients among other relevant issues.

21. Will physicians be allowed to take vacation? How will it work?
The agreement should consider the necessary procedures and responsibilities that apply under the terms of the agreement when a physician requests vacation time. In particular, it should consider such issues as, whether there are notice requirements, whether there are any restrictions on the length of vacation at one particular time, the amount of weeks available for vacation, how many physicians can be on vacation at one particular time, expense obligations and treatment of the physician’s patients among other relevant issues.

22. Will physicians be allowed to take maternity or parental leaves? How will it work?
The agreement should consider the necessary procedures and responsibilities that apply under the terms of the agreement when a physician requests a parental leave. In particular, it should consider such issues as, whether there are notice requirements, expense obligations and treatment of the physician’s patients among other relevant issues.

23. Will the clinic permit the introduction of new members to the agreement?
Parties in a joint practice may want
to consider increasing the number of physicians involved in the arrangement from time to time. The agreement should consider procedures for including and approving new physicians under the agreement and setting out the responsibilities assigned to the new physicians joining the arrangement.

24. What are the expectations for making required payments?
The agreement should consider whether each physician will have a duty to pay their respective financial contributions individually or whether there will be a common account to which each physician will contribute their share of the expenses. Issues to consider include the frequency of payment/deposits, the amount of the payment/deposits, and procedures where a physician or physicians have breached their duty to pay.

25. What are the clinic’s accounting practices?
The agreement should consider how often accounting work is to be completed and provide for statements to be delivered periodically to all participants. Further, the parties should consider who will be responsible for accounting requirements.

26. What will be done with the books and records?
The agreement should consider such issues as the availability of the books and records for inspection, the storage of the books and records, how long they should be stored, who is responsible for the books and records.

27. How will the clinic do its banking?
Issues regarding banking may include: who is authorized to participate in banking transactions; what responsibilities each physician has with respect to bank, what restrictions a physician may have with respect to banking, among other issues physicians may want to consider.

28. Will you be entering into contracts? Who can enter into contracts? What kinds of contracts?
Similar to banking authority, issues regarding banking include: who is authorized to participate in contracting; what restrictions are in place on contracting authority; what types of contracts may be entered into.

29. Will physicians indemnify each other for professional negligence?
The Agreement ought to specify that each party to the arrangement indemnifies all other parties for any professional negligence claims that arise.
30. Will physicians carry professional liability insurance?
The agreement should contemplate each physician’s obligation to carry professional liability insurance, a discussion of those requirements and any other issues relevant to professional liability insurance in the context of the agreement.

31. What other types of insurance may be required?
The agreement should also consider any obligations to carry third party liability insurance, property insurance and other insurances that may be applicable to the operation of the clinic under this agreement.

32. What information can be disclosed?
The agreement should provide for the non-disclosure of the records of the group, and of any other documents that may be relevant to the clinic. The agreement should also contemplate compliance with federal and provincial privacy legislation with respect to patients and employees.

33. Can a participant solicit employees?
The agreement should consider whether physicians to the agreement can solicit employees should a physician’s contractual obligations to the agreement and the clinic cease and that physician continues his or her practice at a new clinic.

TERMINATION OF COST-SHARING ARRANGEMENT

34. What happens when the cost-sharing arrangement is dissolved?
The agreement should include some general discussion regarding the dissolution of the relationship between the physicians under the agreement. It may include a general discussion about particular events that may result in the dissolution of the relationship as well as procedures, all of which can be discussed will be set out in further detail below.

35. Will operations continue?
The agreement should consider the possible continuity of operations going forward should a physician depart from the agreement, or should the agreement entirely dissolve. Specifically, the agreement should consider whether the clinic or office can continue to operate on an ongoing basis, what requirements must be in place for continuity of operations, what the responsibilities and liabilities will be in moving forward.
36. What will happen should the clinic close?
The agreement should consider the closing of the clinic. A clinic may be required to close for a number of reasons including mutual agreement, the end or breakdown of a relationship that is of such significance the clinic cannot continue, or other events that could require a clinic to close. The agreement should set out the procedures and obligations where the clinic is required to close.

37. How will patient care continue?
The agreement should consider procedures for continuity of patient care in the event of an end to the physician relationship under the agreement. Issues to consider include whether the patient will remain with the departing physician or the clinic, determining responsibility for a patient and his or her medical records throughout during the transition period and procedures for determining which physician will continue to treat the patient should the patient remain with the clinic and not the departing physician.

38. Who will require notice? How should notice be provided?
The agreement should consider the following with respect to notice: who requires notice, including, patients, partners, colleagues, the College of Physicians and Surgeons, CMPA, Doctors Nova Scotia, MSI, the Registry of Joint Stock Companies, and other relevant associations; procedures for providing notice; including the required notice period, method of notice and other relevant issues; and whether the departing physician has the responsibility to provide all of the required notices.

39. What will happen with the patient records?
The agreement should consider which patient records are assigned to each physician and their responsibility for the long term custody of the patient records. One question to ask may be who is the “responsible physician” for the patient?

40. How will patient records be preserved?
The agreement should consider a physician’s obligation to preserve patient records and should provide the appropriate preservation procedures including, determining where the patient records will be preserved, for how long they will be preserved and any notices required with respect to the preservation of records and any other issues that may arise with respect to the preservation of records. Payment obligations for long-term
41. Who can access patient records?  
The agreement should consider the provision and restriction of access to patient records by both patients and physicians. In particular, it should consider procedures for obtaining access to the patient records and circumstances in which a physician may access a patient’s record if the record does not remain in his or her possession.

Patient confidentiality requirements must be considered in structuring this provision.

42. What does the Medical Act require?  
The agreement should mandate each physician comply with his or her duties under the Medical Act in the event of the termination of the cost-sharing arrangement.

43. What happens when there are outstanding reports?  
The agreement should consider the departing physician’s responsibilities with respect to any outstanding laboratory, imaging and other reports pertaining to a patient he or she is treating and whether the departing physician’s responsibility continues following his or her departure.

44. What happens when a physician suddenly ceases to practice, due to death, disability, or suspension?  
The agreement should generally consider a physician’s unplanned cessation of practice and any relevant procedures and responsibilities (particularly related to the ongoing costs of operation of the clinic) pursuant to the terms of the agreement.

45. What happens when a physician retires with appropriate notice to the other parties?  
The agreement should consider the necessary procedures and responsibilities that apply under the terms of the agreement when the relationship ends as a result of a physician retiring in the normal course.

46. What types of offences will end the relationship under this agreement?  
The agreement should consider expellable offences for which the physician will not be permitted to remain as part of the cost-sharing arrangement.

47. What rights will a departing member have?  
The agreement should consider what rights a departing member will have in the event that a physician is no longer a party to the agreement. Rights to
consider include without limitation, financial entitlements and access to patient records among others.

48. **Will there be a dispute resolution process outside traditional litigation?**
   The parties should consider whether they prefer to provide for mediation and arbitration procedures in the event that a dispute arises under the terms of the agreement which the agreement has not contemplated or the parties believe cannot adequately resolve. In particular the parties should determine how a mediator or arbitrator will be selected, and whether the decision will be final and binding.

**GENERAL PROVISIONS**

49. **Will you want to revise the agreement?**
   The agreement should consider whether the agreement can be revised or amended and the procedures required to revise and approve of such revisions and amendments. In larger groups, consideration should be given to whether an amendment requires unanimous approval or some lower threshold such a special resolution.

50. **What effect does the agreement have on the parties?**
   The agreement should include a provision addressing the binding effect of the agreement on the parties.

51. **What are some general considerations about the operation and interpretation of the agreement?**
   The agreement should also include a number of “boilerplate” clauses that are included in most contracts. These include:
   - Entire agreement;
   - Governing law;
   - Invalidity and severability;
   - Rules of interpretation;
   - Notice; and
   - Waiver of default.