

GUIDELINES

for Health Professionals negotiating a Service Agreement with a Sporting Team/Association/Event

For many sporting team health professionals, the relationships that they negotiate with a sporting club, association or sporting event have often been sealed with a verbal agreement and a handshake. These agreements, in general, have been remarkably successful. However, over time, teams' and health professionals' expectations, demands and responsibilities have increased and it may now be worth having a written agreement between the health professional and the club/association/event, which stipulates their roles and responsibilities and other important matters.

It should also be acknowledged that there can be a large difference in the expectations and responsibilities of the parties depending on the type of club/association/event requiring health services. Thus, each negotiation will need to be individualized, depending on the type and level of service required.

The following guidelines may be used when negotiating a service agreement between the health professional and the club/association/event and personalised as necessary. These guidelines are not a substitute for formal legal, accounting, tax or other professional advice. Topics marked with an * should ideally be specified in the written Agreement.

Parties discussed

- The parties to any agreement will generally be the club/association/event, the athlete and the professional health care provider.
- Other parties may include coaches, team management, trainers and other health care professionals providing services to a team/club/association/event.
- * Ensure the parties are correctly identified and that the relevant representative of the club/association/event is named, together with current contact details.

Health Care Professional's Responsibilities

- Be appropriately certified and registered
- Hold the appropriate qualifications and have undergone the appropriate training and continuing professional education in order to care for athletes
- * Keep contemporaneous notes. The health care professional should retain the right to hold the notes.
- Hold appropriate professional indemnity insurance for the scope of work and travel involved. (See below under Insurance and Risk Management).
- * Stipulate the level of service(s) to be provided. This may include presence at training, games (home vs. away games), specified clinics for the athletes to attend either at consulting rooms or at a training venue e.g. post game clinic. (Generally, the greater the risk of injury, the greater the level of coverage required).
- * Consider including the right to designate another health professional to act in lieu of the party if that party is unable to attend.

- * Stipulate the right to maintain practitioner independence with regard to referrals to specialists and allied health professionals.
- * Define your role in pre-participation screening of athletes and advice you may be required to give team management in the 'purchase' of players. Make sure that athletes have agreed to have their medical information discussed with a third party.
- * Agree and stipulate how sensitive health information and confidentiality is to be handled. For example, if an athlete confesses, in confidence, to taking a prohibited substance to a health care professional, how is that information then to be handled by the health care professional?
- * Set out requirements for notification to the appropriate body of all therapeutic use of prohibited substances. Be aware of any ASADA contract with the sport you are negotiating a contract. This contract may stipulate that the health professional has an obligation to report prohibited drug use to ASADA and that no confidentiality exists between the health professional and the athlete with regard to prohibited substance use.
- * Be familiar with what is stated in players' contracts with regard to players' medical information and how that medical information is to be handled. For example, it may be stated in the player contracts that 'medical matters will be divulged to the appropriate people.' Define what type of medical information is to be divulged e.g. only medical information that will directly impact on a player's participation or performance. Also, define who 'appropriate people' are e.g. coach, team manager. Also define how, or if medical information is to be released/divulged to the media. It is important to obtain permission from an athlete prior to medical information being divulged as to 'what' and to 'whom' medical information will be disclosed.
- Be able to deliver the service required, and ensure it is clearly described. For example, a sporting team may, as part of a service agreement, require that the health professional show a reduction in the number of injuries or a reduction in the amount of game time lost due to injury. This may be an unrealistic expectation from team management and not achievable by the health care provider as well as putting at risk the optimum care and recovery time for the athlete.
- * Agree whether any particular athletes will be given priority service. If so, specify this.
- * Agree what role "clinical policies" will play. E.g. management of concussion or environmental issues, removing an injured player from the field. If part of the role of the health care professional is, for example to collect injury stats, develop procedure and management systems, discuss who shall be the owner of these systems. The health care professional should negotiate to retain the ownership of such systems.
- * Address whether duties extend to the care of team staff. You may want or be expected to provide care to the staff. Be careful of giving 'sideline' advice to staff. It may be better to arrange an appropriate consultation in rooms.
- Be aware if you are traveling with a team internationally, that Customs requires notification of medications that you will be exporting and importing into the country. You may be required to hold a license for such import/exports.

Club/Association/Event Responsibilities

- * Team management will stipulate the health care professional as the official team health care provider in all media.
- * Specify if the athletes are to use only the official health care professional or if they are free to see any health care provider of their choice. If the athletes are free to choose a health care provider, discuss how health information is to be communicated between the parties.
- * Be responsible for making sure that their athletes have the appropriate level of health insurance to expedite their athletes' health care needs.
- * Identify who is responsible for any 'gap' payments the athlete may encounter.
- * Provide appropriate clothing in order for the health care professional to represent the team or market the health care professional's practice.
- Provide appropriate training room facilities
- * Provide appropriate trainers and staff in order for the health care professional to perform their job appropriately.
- * Provide appropriate equipment and supplies, including braces, instruments, medication, bandages etc
- * Cover all travel costs as necessary.
- * Determine how each party may use the other's logo
- * Be aware that health care professionals are bound by patient confidentiality. Specify the issues involved so that all parties – athlete, team management and health care professional have their role and responsibility defined and agreed to.
- * Discuss agree and document what the health care professional's role will be with dealing with the media.

Communication

- both the health care professional and the club/association/event should discuss how communication is to take place, clarify their expectations of one another, build a relationship with each other, establish a flow of information and chain of command. Health care professionals must respect the athlete's right to confidentiality, clarify with the athlete what may be communicated with other staff and make staff aware that they are bound by confidentiality laws.

Terms

- * Agree the duration of the agreement.
- * Agree the basis for early termination – usually for breach by another party after written notice has been given, or (without any breach) after giving a minimum period of notice. Remember that the health professional's circumstances may change and they may need to terminate on relatively short notice.

Remuneration

- Time is the greatest negative financial burden that a health care professional will accept when agreeing to provide health care services. Points to consider are total number of athletes requiring care, game and training coverage requirements, length of season, sole or shared provider position, on-site clinic requirements, travel commitments including local, interstate and international, time away from billable patients in your clinic, reduction of fees to athletes under your care, availability for advice to team management and other staff associated with the team.
- There are many ways that health care professionals can be remunerated for their service to a team and each may have different tax and legal consequences.
- Packages might be
 - 1) Fee for service e.g. match and training day fee, fee for pre-participation and post season screening, fee for providing medical kit, fee for providing a health care service to an athlete.
 - 2) 'Soft-Money' arrangements, whereby there is no dollar value attached to the health care service (or part of it) provided in exchange for intangibles e.g. clothing and official attire, advertisement in print and broadcast media, stadium advertisement, official affiliation, complimentary tickets and parking, travel and accommodation for health care professional and family, vehicle cost reimbursement, invitations as a guest to VIP events, reimbursement for conferences and continuing education expenses.
 - 3) Volunteer. This is a difficult category as the role is often ill-defined and ambiguous, can lead to over-commitment and can create liability issues. It is just as important for health professionals providing services for no reward to have an Agreement outlining expectations and responsibilities.
 - 4) Employment. The health care professional is an employee of the club/association/event. The health care professional is paid a salary with the employer obliged to pay PAYE tax installments, pay superannuation with the employee entitled to sick leave, annual leave, public holidays and long service leave. An employee is covered by WorkCover. The employer would be obliged to pay the health care professionals professional indemnity cover and would need to carry vicarious liability for their employees. The employer is usually vicariously liable for the employee.
 - "Employment" can lead to conflict of interest for the health care provider who has an obligation to work in the best interest of his/her employer but also for the best interest of the athlete. The conflict arises when what is in the best interests of the employer are not in the best interests of the athlete.
- Note – all parties are expected to be responsible for their own tax and accounting advice. Nothing in these Guidelines is to be seen as any form of advice or suggestion as to tax or legal ramifications of any arrangement.

Insurance and Risk Management

(including Professional Indemnity Cover)

- Make sure that the professional indemnity insurance you have purchased covers your activities with the team/association/event.
- Discuss and document who is responsible for the payment of that professional indemnity insurance and make sure the premium is paid and cover is confirmed in writing.
- Discuss with your insurer the extent of that cover.
- Be aware of the limitations placed on professional indemnity cover. For example, if you are intending to work with a team that travels interstate, make sure you have indemnity insurance that covers you Australia wide. As well, if you are intending to work with a team that travels internationally, does your indemnity insurance cover you for the countries that the team intends to travel to and through. Be aware that many (if not all) medical indemnity insurers have detailed countries of exclusion. The team or its National Federation may have a separate insurance policy for support staff traveling with that team. Avail yourself as to what this insurance policy covers and if it covers you for professional indemnity. Ask to be provided with a certificate of insurance for this cover.
- Does the team provide you with travel insurance, especially if you are required to travel internationally with that team?
- If you are the team physician and are **not** going to travel with the team, but other allied health e.g. physio is traveling with the team, discuss as to whether the physio will have access to the medical kit, discuss whether they will be acting autonomously or under your direction and whether your professional indemnity insurer covers this arrangement. Be aware that there may be differences between traveling locally, interstate and internationally. Document any professional dealings you have with allied health over a particular player.
- If you are an allied health professional and are traveling with a team alone, be sure that your role and responsibilities to the team are understood and you are not practicing outside your scope of practice. If there is a team physician but that physician is not traveling with the team, be aware that the team physician may not have professional indemnity insurance that covers them with respect to communication with you if you are traveling interstate or internationally and they may not be willing to give advice via the telephone or other communication devices such as email.
- Does the team or its National Federation have an insurance product that covers the above events, if your professional indemnity insurance does not?

Registration

- In order to practice legally in any state of Australia, it may be necessary to be registered in that particular state.
- This may also be true in order to treat Australian athletes internationally.
- Check with your local Professional registration board as to the necessary requirements for work to be undertaken interstate and internationally.
- * Agree with the team who will bear the costs if such registration is necessary.

Summary

- Negotiating a service agreement with a sporting team/association/event can be a dynamic process but it may not always be the case. Listing the issues for discussion up front will ensure you have a solid basis for an Agreement. Writing down the agreed outcomes as you go, and signing the terms agreed (even if not formally typed up) will go a long way towards making sure expectations and responsibilities are clear. Make sure all parties have a copy. Any changes should also be confirmed in writing.
- Some teams are highly sought after, so a thorough assessment of the realistic risks and benefits of covering the team are needed.
- A contract may be drafted by the other party's advisers to protect their interests, not yours, so understand what you are signing and seek clarification and independent advice if necessary. Be prepared to walk away from the deal if the risks are too high.