

A GUIDE TO GROUP GOVERNANCE AGREEMENTS



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INTRODUCTION

What is a group governance agreement and why do I need one?



Practising in a group setting has many advantages, including an ability to help reduce expenses through sharing the cost of office space, medical equipment, and support staff.

Working in a group practice can also help reduce feelings of isolation through increased opportunities for engagement and/or support of one another. Like any relationship or business arrangement, group practices can also come with challenges, as shared decision-making can be difficult and cause conflicts to arise.

The issues and challenges that arise in group practice settings are often specific and unique to a particular group; however, there are many common hurdles as well. This guide highlights both considerations related to creation of group governance agreements as well as common challenges and pitfalls that, when considered up front, can potentially be avoided to ensure positive and collegial working relationships over the long term.

This guide was created with the help of BC physicians who have years of experience working in group practices. Its purpose is to help physicians gain a better understanding of group governance, including challenges commonly associated with working in a group practice and key elements to consider when developing a group governance agreement.

NOTE

This guide is not intended as accounting or legal advice, and no reader should act or refrain from acting on the basis of information in this guide without first seeking professional advice.

Physicians should seek professional accounting and tax advice when considering (1) whether to enter into a new group governance arrangement, and (2) how that arrangement should be set up.

Additionally, physicians should retain a lawyer with experience in preparing physician group agreements to develop a new group governance agreement, or when amending an existing agreement.

It is important, where the group is entering into an agreement as required under a funding arrangement (generally, with a Health Authority or other publicly funded Agency), to ensure that the accountant and lawyer are aware of the funding agreement and ensure the group governance agreement complies with the requirements of the funding agreement.

What is a group governance agreement?

This type of agreement may take the form of an association or partnership agreement or various other forms. It is a formal written document that outlines the key rights, responsibilities, and obligations of each physician in the group. A group governance agreement also outlines the general operation of the group's practice, including how expenses will be shared, who will undertake key activities, and how disputes will be managed.

Before joining or forming a group practice arrangement, it is important to develop a formal group governance agreement so that your group's intentions are documented. Planning in advance will help mitigate potential problems, saving time, stress, and financial impact in the future.

For more information on the importance of group governance agreements, read "[Don't Practice Without a Formal Written Agreement](#)" by the College of Physicians and Surgeon of BC.

1. TYPES OF GROUP PRACTICE

What type of group governance agreement is right for you?



The two main types of group practices that exist in BC are associations and partnerships.

Association model

- Physicians remain independent and autonomous, for the most part, but share overhead expenses and other administrative tasks.
- Physicians do not share income or professional liability.

Partnership model

- Physicians not only share overhead expenses, they also share income and personal and medical liability.

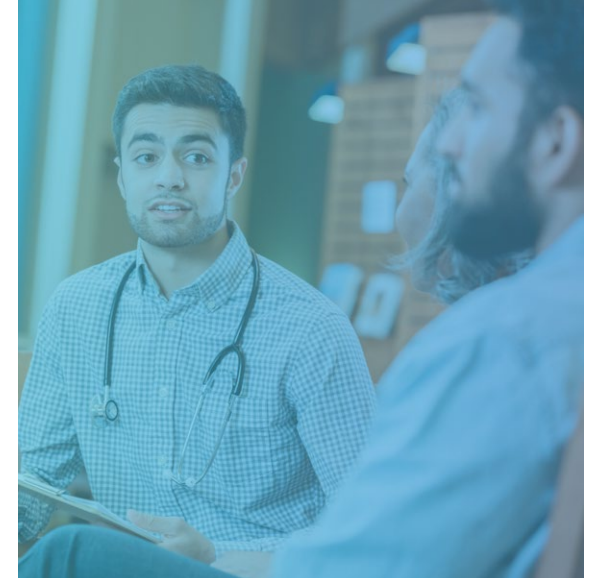
Your group governance agreement will be specific to the type of practice arrangement your group chooses. There are additional arrangements that your accountant or lawyer may identify as more appropriate for your group.

Common pitfalls and challenges

- Not seeking accounting or legal advice to determine what type of practice arrangement is appropriate for your group and running into issues later.
Examples include: issues with taxes and managing conflicts/disputes.
- Not having a formal or written group governance agreement that is based on the type of practice arrangement your group has chosen.

Key considerations

- Consider the advantages and disadvantages of each type of group practice arrangement, such as individual and group obligations, remuneration, and tax implications.
- Consider whether the funding contract you are signing indicates the type of practice arrangement your group is allowed or required to form.



TIP

For more information on the advantages and disadvantages of various practice arrangements, read [“The Essential Guide to a Successful Practice: New in Practice 2017”](#) by Joule/Canadian Medical Association.

2. REMUNERATION

What will your payment model look like and how will it affect your group governance agreement?



Physicians in group practices can be paid in a variety of ways, either through traditional fee-for-service billing or through various funding agreements/arrangements under contracts for services with Health Authorities or Agencies.

How funds are distributed depends on your group's remuneration model, in addition to your practice arrangement.

- Example 1: In a partnership arrangement, physicians share income based on a formula outlined in their group governance agreement.
- Example 2: Groups working under a contract for services with a Health Authority/Agency may receive funding that is sent to their clinic for distribution to physicians.

NOTE

Accountants can provide you with information related to the tax implications of your remuneration model and how your group governance agreement should be structured based on your contract. If your group does not allocate funding based on the Ministry of Health's data/calculations, as applied to each physician, your group may be considered a "partnership," which has tax and legal implications. Be sure to seek advice from your accountant to structure your group's funding distribution appropriately.

Common pitfalls and challenges

- Not being explicit in terms of how funds will be distributed. For instance, not differentiating payment based on patient panel demographics influencing volume of patients seen and not defining work done that contributes to hours worked.
- For groups working under a contract, not ensuring that all physicians are meeting the requirements outlined in the contract. For example, some contracts include expectations that physicians will actively engage in work related to the Patient Medical Home, Primary Care Networks, and quality improvement activities.

Key considerations

Note: remuneration considerations can differ significantly depending on the type of group practice you operate. Not all of these considerations may apply under your remuneration model.

- Consider the impact of your remuneration model on you, your colleagues, and your staff.
- Consider whether you and your colleagues will engage in work that is remunerated outside of your group agreement. For example: teaching, ICBC, WorkSafeBC, and hospital work.

If your clinic receives funding from a Health Authority/ Agency under a contract for services provided:

- Consider how each physician will be remunerated, including full-time and part-time physicians. Will payment be based on hours worked, size and complexity of patient panels, volume, or a combination?
- Consider the tax implications for both partnership and association models. Keep in mind how your group allocates payment to each physician impacts whether the Canada Revenue Agency views your group as either a partnership or an association.
- Consider whether will you be relying on the Ministry of Health for data in order to distribute funding among your group. Subject to potential operational limitations, the Ministry of Health can provide data related to the number of services provided by physicians, as well as cross-coverage of services among physicians in a group practice. Over time, this can help build a profile of each physician's productivity and cross-coverage, which can form the basis for funding distribution discussions among your group.
- Consider how you will meet the requirements and obligations outlined in your contract/funding arrangement with your Health Authority or Agency. What changes might you need to make to fulfill these requirements?

3. START-UP COSTS AND DAILY OPERATING EXPENSES

Who pays what and how much?



Start-up costs are the costs of starting a new business and can include capital costs such as purchasing office and medical equipment and technology. Additionally, there may be costs associated with procuring an office space.

Operating expenses are the recurring costs of running a business and can include both fixed and variable expenses.

- Examples of fixed costs include rent/mortgage, utilities, phone lines and internet, practice insurance, business interruption insurance, salaries for staff who may be assisting everyone (a clinic manager for instance).
- Examples of variable costs include medical and office supplies and equipment, office renovations and maintenance, and staffing required to support clinical work.

Some groups share all operating expenses, including CMPA dues for each practising physician, while other groups separate individual and group expenses.

There are many ways to divide operating expenses. Discussing what works best for your group arrangement and outlining this in your group governance agreement will be helpful.

Common pitfalls and challenges

- Not planning ahead for things such as departing/retiring physicians and new physicians joining your established group practice.
- Not planning for unexpected expenses, such as staff lay-offs, building repairs, and technology upgrades.
- Not being flexible/adaptable to change.

KEEP IN MIND

COVID-19 has brought about change that has impacted the health system in unexpected ways. Having a plan in place to respond to emergencies is key to ensuring an effective response and optimal recovery for your clinic. For more information on medical clinic preparedness planning, visit Doctors of BC's resource page "[Emergency Preparedness Resources for Physicians](#)".

NOTE

All physicians are required to maintain the appropriate licensure and have adequate medical liability protection. The Canadian Medical Protective Association also recommends general liability insurance coverage for issues that are outside the scope of medical professional work. It is also advisable to consider whether all physicians in your group have adequate disability insurance and that this is outlined in your group governance agreement.

Key considerations

- Consider whether all physicians in the group will pay the same portion of operating expenses, including full-time and part-time physicians.
- Consider what portion, if any, a physician will need to pay while on holiday and/or if required to take an extended leave of absence.
- Consider whether your group will "pay out" departing physicians for their portion of the clinic's start-up costs.
- Consider whether new physicians joining the group practice will be required to "buy in" to the clinic to cover capital costs, or how these costs will be factored into the agreement when new physicians join.

TIP

Seek advice from an accountant to help you determine how cost sharing will work best for your group's situation. While there is no magic cost sharing formula, some groups find that splitting the clinic's expenses based on a ratio of individual usage factors, such as hours of work, helps to evenly divide expenses.

4. RESPONSIBILITIES AND SHARED DECISION-MAKING

What is a Managing Physician and how are decisions made?



Common leadership roles include a Managing Physician and Scheduler.

Managing Physicians typically ensure the smooth running of a clinic by liaising with clinic managers or staff leads, overseeing day-to-day operations, and developing business plans, including managing a clinic's short- and long-term budget.

Schedulers ensure physicians' shifts, vacation periods, and other schedule-related considerations are managed in a way that facilitates the clinic's efficiency.

Managing Physician

- The [College of Physicians and Surgeons of BC](#) requires one physician to be designated as the medical director in all multi-physician clinics. This physician is responsible for medical administration in the clinical office where the care of patients, office space, staff, equipment, or resources are shared by a number of physicians.
- Having a single decision-maker (to make decisions of an operational nature) can allow for the clinic to be run more efficiently, as day to day business management decisions are made much faster.
- Some groups have a leader rotation so that every physician takes on this role.

It is important to hold group meetings regularly and keep a record of meeting decisions in writing.

When there are decisions that require the input of all physicians, it is important to outline how these decisions will be made. For instance, majority vote, two-thirds, or unanimous.

Common pitfalls and challenges

- Not reviewing decisions and roles on a regular basis.
- Not determining who will be the managing physician and whether this will be a paid or unpaid role.
- Not having explicit management roles or clarity regarding responsibilities or the division of such responsibilities, if shared.

“This doesn't happen by magic. You need to formally consider how you will allocate the leadership responsibilities in your clinic.”

—Dr. Brenda Hefford

Key considerations

- Consider whether the management role will be an unpaid or paid role. Keep in mind that having a “managing physician” who is responsible for all or most of the business operations of the clinic allows the remaining physicians to have a reduced administrative/management workload.
- Consider if the management role is to be rotated through physicians or assigned based on skillset.

NOTE

Physicians creating medical records in a group or shared medical record environment must establish a data sharing agreement, which addresses how issues of ownership, custody, and ensuring access by individual physicians and patients will be addressed, including following relocation, retirement, or death of the physician. For more information, read the [“Practice Standard: Medical Records, Data Stewardship and Confidentiality of Personal Health Information”](#) by the College of Physicians and Surgeons of BC.

5. WORKING TOGETHER IN HARMONY

How will you manage conflicts and ensure a healthy work environment?



Maintaining healthy relationships and ensuring a healthy work environment takes time and effort.

A focus on ensuring a healthy work environment among physicians and staff also means recognizing that conflicts are healthy and inevitable and that there is an individual and collective responsibility to respond to conflicts accordingly.

In addition to discussing the roles and responsibilities of each physician and how decisions will be made, it is important to prioritize ongoing communication, team building, and to promote collegiality to mitigate conflicts.

Common pitfalls and challenges

- Not holding regular group meetings and recording decisions in writing during meetings.
- Not taking the time to discuss how a healthy work environment will be created and maintained.
- Not having a dispute resolution clause in your group governance agreement.
- Not having explicit management roles or clarity regarding responsibilities or the division of such responsibilities, if shared.

Key considerations

- Consider formalizing how often group meetings will occur in your agreement.
- Consider discussing the practice philosophy and style of each physician in the group and setting clinic goals and values. This might include a covenant or code of conduct to support a culture of respect, civility, and collegiality among the group and to promote a psychologically safe workplace.
- Consider formalizing in your agreement how disputes and conflicts will be managed. Formalizing how disputes will be handled and prioritizing ongoing communication and relationship building will help mitigate conflicts as they arise. This may include when/how to seek assistance from a third party to manage conflicts.

“There needs to be a clear way for people to raise issues and have them discussed. The group should meet at least quarterly to talk about how everything is working. Periodically, there should be a deeper dive where potential amendments to the group governance agreement are discussed. It may be worthwhile hiring an external facilitator to assist the group for these conversations.”

—Dr. Andrew Clarke, Vice-President, Physician Health Program

6. SCHEDULING

How will you plan vacations, leaves of absence, and cross coverage?



Scheduling is an important aspect in any group practice.

This includes the process for taking vacation, clinical coverage, the use of locums, personal leaves of absence, maternity leave, and time related to clinical teaching commitments/other administrative duties.

Scheduling also includes agreeing to the clinic's business hours of operation, arranging for on-call shifts, and scheduling for support staff.

Common pitfalls and challenges

- Scheduling is one of the largest daily challenges that physicians working in group practices experience. Not being explicit in terms of expectations can lead to tension and added stress within your group.
- Not outlining an accountability process can also lead to feelings of unfairness and, when left unresolved, disputes.

Key considerations

- Consider outlining scheduling expectations in your group practice with the ability to be flexible.
- Consider formalizing an accountability process/disciplinary action in your group governance agreement to promote accountability.

"It's best to sort out scheduling issues in advance to avoid functioning on guilt and bribery."

—Dr. Trina Larsen Soles



7. TERMS OF AGREEMENT AND NOTICE OF TERMINATION

How will you plan for the future to minimize disruption to the clinic and patients?



It is inevitable that physicians will come and go from your group practice.

Planning for the future is necessary to minimize disruption to the clinic and patients.

For instance, do you want to buy out departing physicians? What happens to the patients of the departing physician? Will they go with the physician or get absorbed into the clinic?

Common pitfalls and challenges

- Not planning ahead for departing physicians and new physicians joining.
- Not discussing expectations and responsibilities of each physician in the group when it comes to departures.
- Not including a termination clause in your group's governance agreement.

Key considerations

- Consider what termination terms and notice periods are appropriate for your clinic. This includes what procedures will be followed if a physician wishes to leave the clinic and when a new physician joins.
- Consider clarifying notice/termination provisions so that obligations of a departing physician and a new physician coming into the group are clear.
- Consider formalizing that notices of termination, including retirement, are provided with a sufficient time period and that physicians are responsible for communicating any changes well in advance.
- Consider how your geographic location impacts your group practice. For instance, it may be more difficult to recruit physicians to fill positions in rural communities. Some rural communities also include a non-compete clause in their group governance agreement to limit the ability of a departing physician from opening a clinic within a particular geographic proximity.



CONCLUSION

What is the main takeaway?



Establishing a group practice can be a very rewarding enterprise, but requires thoughtful consideration and planning.

Group governance agreements are designed to help you and your colleagues maximize the advantages that group practices have to offer while mitigating some of the challenges you may encounter. This guide is intended to provide physicians with an idea of what these challenges often look like and things to consider when planning ahead.

It is important that you and your group meet to discuss these challenges and considerations before seeking legal or financial advice; much of the benefit of creating a group governance agreement comes from the process itself. Discussing the topics highlighted throughout this guide in detail with your colleagues is an invaluable activity that not only helps ensure everyone has a mutual understanding of how the clinic will operate, but also fosters collegiality, teamwork, and communication skills.

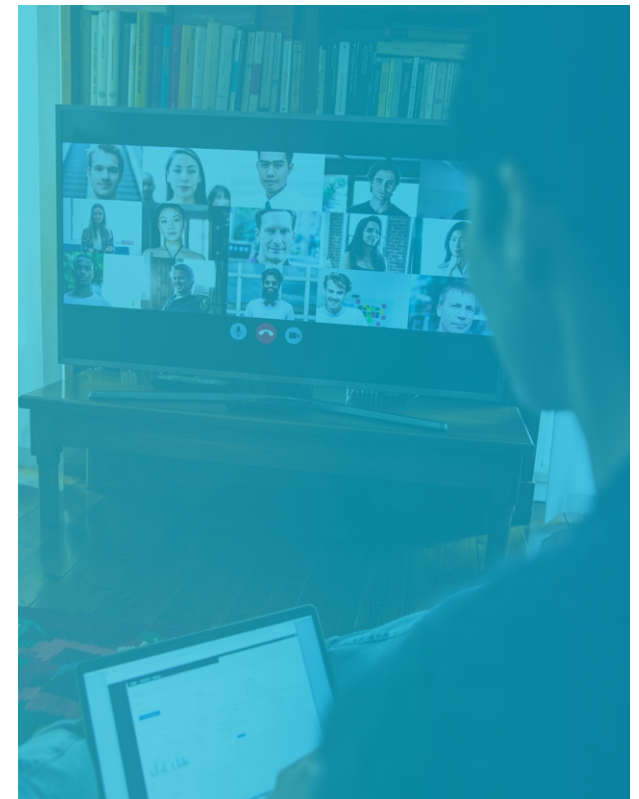
While the development of a formal group governance agreement is strongly recommended when establishing a group practice, **the key piece of advice from the physicians involved in the development of this guide was that no agreement, no matter how thorough, will compensate for challenged relationships.** Poor relationships and prolonged conflicts can be both professionally damaging and emotionally draining. Group governance agreements can serve as a useful guide when disputes emerge, but they are only as strong as the underlying relationships between you and your colleagues. Investing in these relationships is critical to the robustness of your agreement, the success of your clinic, and your group's overall wellbeing.

“Group counselling is needed before the group practice gets created.”

—Dr. Hymie Fox

“Attack issues, not people.”

—Dr. Adam Thompson



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