Registered Massage Therapists' Association of Ontario

THE CONTRACT GUIDE

Registered Massage Therapists' Association of Ontario
1243 Islington Avenue, Suite 704, Toronto, ON M8X 1Y9
Tel: 416-979-2010, Toll Free 1-800-668-2022
Email info@rmtao.com, www.rmtao.com

TABLE OF CONTENTS

CONTRACT GUIDE

This guide was designed to help Registered Massage Therapists (RMTs) better understand the terms generally included in contracts, negotiate the terms, and confidently make informed decisions on their choice of work environment.

Why Contracts Are Important

Contracts are legal documents that outline an agreement between two or more parties. Contracts exist to protect the interests of all parties. If there is a disagreement between the parties, for example between the RMT and a clinic owner, the contract can be referred to and relied upon to resolve the disagreement. It provides a description, in writing, of how both parties intend to do business and sets out the obligations of the parties. It’s important to remember that contracts are negotiable, and you should take the time to review the terms, ensure you agree with them, request amendments where necessary and sign only when you are comfortable that your professional needs and obligations are met.

Liability Disclaimer

The Registered Massage Therapists’ Association of Ontario (RMTAO) has created The Contract Guide to inform its members about certain types of contracts and the common terminology and clauses found within them. This document is for information purposes only and should not be considered legal advice. The RMTAO, its affiliates and content licensors, assume no liability for any inaccurate, delayed or incomplete information, nor for any actions taken in reliance thereon. Accordingly, the RMTAO will not be responsible or liable in any way for the accuracy, relevancy, copyright compliance, or legality of material contained in this document.

ELEMENTS OF A CONTRACT

Below are definitions of some terms you may come across in contracts. These terms won't necessarily appear in all contracts but are common in healthcare contracts. They represent important factors to consider when writing or signing a contract.

Accessibility
This defines who can enter a business space both during business hours and after hours. This is especially applicable if the business is operating in a controlled access area, such as a corporate environment or a fitness centre with a members-only area, which may impact patients attempting to access the clinic space.

Administrative Duties
This outlines whether the RMT or the clinic is responsible for any administrative duties like answering the phones and scheduling appointments. This can also include collecting payments from patients and handling the paperwork for MVA or WSIB cases. If the clinic is offering receptionists to provide these services, the contract should include when they will be available. Some RMTs may work later or during holidays when reception is not available, which may affect how patients are scheduled to allow for the RMT to perform the additional administrative duties while unsupported by reception.

Alterations to the office
This covers whether the RMT is able to decorate the treatment space as they see fit. It may also outline the requirement to repair any damage to the space at the conclusion of the term of the agreement.

Business Registration, Income Tax and HST remittance
Typically, the practitioner will be responsible for filing their own income taxes and collecting and remitting their own HST, though the contract should outline any differences. For more information on collecting and remitting HST, review the **HST Guideline for Ontario RMTs** and the **HST and the Split Percentages**.

Confidentiality
RMTs are required to keep patient information confidential. To share patient information with others, typically RMTs are required to get the patient's express consent. However, when an RMT is speaking to another health professional about a shared patient, there is implied consent as the RMT is part of the patient's circle of care. The requirements for patient privacy and confidentiality are outlined in the **CMTO standards of practice**, and information is available from the **Information and Privacy Commissioner on Ontario website**.

This confidentiality requirement does not end when the contract ends, and in working with other health professionals, you may come across personal health information outside of the treatment room. This clause often exists in contracts so that clinics can ensure all patient information remains private.

ELEMENTS OF A CONTRACT (cont.)

Equipment and Supplies
Clinics will often provide a variety of equipment and supplies that are outlined in the contract, which factors into negotiations. Equipment that may be provided includes but is not limited to massage tables, stools, massage oils, linens, hydrotherapy supplies and remedial exercise equipment. All equipment and supplies provided should be outlined in the contract.

Record Retention
The contract should specify whether the RMT or the clinic will be responsible for the storage and maintenance of the patient files. This is particularly important in the case of an RMT leaving a practice as it is mandatory that the RMT have access to the files, even if is it specified that the clinic has responsibility for the files. The RMT is required to have access to each patient file for up to 10 years after the last appointment or 10 years after the patient turns 18, so the contract should spell out how this will be handled. Regardless of who is in physical possession of the files, it is always the RMTs responsibility to ensure the files are safely stored and that all policies and regulations are followed. For more information, review the **CMTO Guide to Record Keeping Requirements**.

Force Majeure and Interruption of Business
This clause excuses parties from responsibility under the contract in the event that situations occur out of either parties' control, including natural disasters, war, or any extraordinary circumstances that would prevent either party from fulfilling their obligations of the contract. It should also outline the obligations for rent payment should the clinic be required to close for a period under these circumstances.

Indemnity
An indemnification clause outlines the responsibility of reimbursement to either the practitioner or the clinic in the event of damage to property or injury to a person.

Marketing Expenses
The contract should outline who is responsible for marketing and advertising. When determining if someone is an independent contractor or employee, whether or not an RMT is primarily responsible for their own marketing is something the CRA will consider, though often clinics will offer additional marketing. Clinics may request some say in the design of marketing for a consistent look and feel among practitioners and the clinic marketing itself will ultimately be beneficial for the RMT's practice. RMTs should ensure that they are following the **CMTO Advertising Requirements**. For additional information and tips to market your practice, review the **RMTAO Marketing Toolkit.**

ELEMENTS OF A CONTRACT (cont.)

Non-Solicitation

This term means the practitioner can’t solicit patients for a predetermined length of time after the termination of the contract or use the clinic information to contact patients. However, the CMTO requires that when RMTs leave a practice they inform patients that they are leaving and let the patient know where they can access their file and who will be responsible for continued massage therapy care. They do not need to tell the patients where they are going and are often contractually bound to not actively solicit patients to follow them to a new practice.

Non-Competition

A non-competition clause indicates that the practitioner can’t establish a clinic or work at a clinic within the certain geographic area of the clinic while working at and after leaving the clinic. There has been some debate about the enforceability of non-competition clauses and courts have maintained they must be reasonable and not cause the practitioner significant harm to be valid. In the massage therapy profession, non-competition clauses could prevent an RMT from earning a living which would constitute significant harm. However, each situation will be treated individually and this guide does not constitute legal advice. You should not sign a contract with a clause you disagree with, and it would be best to request that non-competition clauses be removed from the contract if possible.

Non-Assignment

This clause states that the contract cannot be transferred or assigned to anyone else. You should request that you have a clause in your contract explicitly allowing you to hire a locum to cover your practice for a defined period of time.

Occupancy Fee

The occupancy fee is the rate that the clinic charges the practitioner for the use of space and amenities within their facility. More information is outlined in the “Fee Arrangement” section below.

ELEMENTS OF A CONTRACT (cont.)

Office Space and Office Hours
Office space in a contract defines the spaces in addition to the treatment room that are available to the practitioner (e.g. washroom, staff lounge, etc.). The office hours are the hours the treatment room is available for the practitioner's exclusive use.

Other Clinic Expenses or Responsibilities
This addresses expenses not addressed elsewhere in the contract, and if it is not clear what this provision covers you should ask for specifics or examples. Some examples include general cleaning of the office and the practitioner's treatment area, snow removal, and vehicle parking.

Overhead Expenses
The bulk of the practitioner's rental payment pays for overhead costs, which typically include the main lease, utilities, building insurance, clinic maintenance, common area cleaning and other operating expenses. This section may state that these expenses are covered by the clinic.

You should also consider other possible expenses related to contract provisions about overhead such as patient management software, point of sale terminal fees and office supplies.

Practitioner Payment and Invoicing
This section will detail how a practitioner will be paid. More information is outlined in the "Fee Arrangement" section below.

Practitioner Rates
Independent contractors have the right to set their rates individually and this should be stated in the contract. More information is outlined in the "Fee Arrangement" section below.

ELEMENTS OF A CONTRACT (cont.)

Professional Practitioner Licenses
A clinic owner may ask a practitioner to provide proof of registration, and the practitioner can direct them to the CMTO public register.
If this is the practitioner's main place of work, the certificate of registration should be displayed as per the **CMTO guidelines**. If this is not the main place of work, keep in mind that a practitioner may **NOT** duplicate their certificate.

Renewal or Extension of Contract
This will outline the terms for extending or renewing the contract, and may detail how notification must be received, a specific timeframe where notice must be given, and the responsibilities of both parties if amendments are to be made to the contract.

Statutory and Public Holidays
Ontario observes nine public holidays in a calendar year. The August Civic long weekend is optional but observed by most employers.

RMTs who are independent contractors may choose to work these statutory holidays but should first determine if the clinic will be open those days and whether the RMT will have to handle the administrative duties those days.

Term
This is the agreed upon length of the contract which can be measured in months, or more commonly years. It's important to keep in mind that the longer the term of the contract, the longer before you can likely make changes. It is, however, possible that a contract will outline that amendments can be made during the contract term upon agreement of both parties. The benefit of a longer term contract is that the occupancy fee cannot be raised for the term of the contract unless increases are agreed upon.

ELEMENTS OF A CONTRACT (cont.)

Termination

This outlines the process by which the contract can be terminated, including what is required by the practitioner giving notice of resignation to the clinic or the clinic giving the practitioner a notice of termination.
Most contracts also indicate that upon a breach of contract that cannot be resolved, the contract will be terminated.
Of particular importance upon termination is record retention and communicating with patients to ensure their ongoing care. This is outlined in the **RMTAO Guideline to Leaving a Practice.**

Vacation

As independent contractors, RMTs can take vacation whenever they choose. It would be prudent for the practitioner to provide notice to ensure administrative duties are handled, and you should consider how much notice should be given, whether you still need to pay the occupancy fee (this will be outlined in the contract), and if there is an option to hire a locum while you're away.

If you hire a locum, payments made during this time should go to the practitioner and it is their duty to pay the locum based on an agreed upon fee, which preserves the independent contractor relationship.

FEE ARRANGEMENTS

The compensation model and/or occupancy fees as well as any other associated fees will be outlined in the contract. The primary ways that RMT contracts are set up are either as a rental fee or a split percentage arrangement. When considering the compensation model, such as a split percentage, you should consider the compensation offered, as well as the other aspects of the package including supplies, administrative support, marketing, and other expenses, and whether your needs will change as your practice grows. If the contract will outline a fee to be charged by the clinic, such as a rental rate, you should also consider all aspects of what is included for that rental rate.

Rent

A flat fee will be collected every month from the practitioner regardless of how many patients they see. You should think of how many treatments you would need to provide to pay for rent and other expenses while still making a profit.

Split percentage

A predetermined percentage of the fee received for each treatment is remitted to the clinic. The contract may also be set up in a way that the compensation is received by the clinic instead of paid to the clinic by the practitioner. This would depend on who is collecting the fee, and further details are outlined in the "Collection of Fees" section below. You should also take into consideration what other expenses need to be paid such as equipment and supplies, marketing expenses, and administrative support.

If you're paid under a split percentage, you might see a basement and/or ceiling cap.

Basement cap – A minimum payment amount a clinic requires to meet their expenses in the form of a rent. It may only be applied after a certain amount of time at the clinic or be expected immediately.

Ceiling cap – This is the maximum amount a clinic will receive from the practitioner each month. If a split percentage arrangement is in place, and this maximum amount paid to the clinic is reached, the practitioner is not required to pay the clinic any amount above it.

It is highly advisable that you request a ceiling cap, as once the clinic has determined a reasonable amount of rent that will cover their overhead expenses, the practitioner should not be expected to pay more than that regardless of the additional treatments performed.

You should ensure all details about your fee arrangement are spelled out in the contract including whether the split percentage reflects the clinic's expenses and what they're offering you, and whether rent is expected while you're on vacation or otherwise not working.

FEE ARRANGEMENTS (cont.)

Collection of Fees

The contract should outline who is responsible for collecting fees from the patient and how exactly the RMT or the clinic will be paid. The options to collect fees include:

- The clinic collects 100% of the fee from patients and then the RMT invoices the clinic for payment for their services.
- The clinic collects 100% of the fee from the patient, deducts their portion for the occupancy fee or split percentage, and remits the rest of the payment to the practitioner.
- The practitioner collects 100% of the fee from the patient and the clinic invoices the practitioner for their occupancy fee.

If the clinic will be deducting their fee and then paying the practitioner, the practitioner should always ensure that a report on earnings and a statement of the calculations made is provided by the clinic to confirm that the correct fee has been paid. It is also advisable to maintain your own records to ensure that they match those of the clinic.

In order to function as an independent contractor, based on the factors considered by the CRA, the best approach is to invoice the patient directly and collect the fees and have the clinic invoice the practitioner for the occupancy fee. Other models may lead the CRA to believe you are an employee, though this is not definite and would depend on a variety of other individual factors in each case.

There are also implications for HST remittances depending on who is collecting the payments from the patients. For further information, please review **HST and Split Percentages**.

Practitioner Rates

As an independent contractor, the practitioner has the right to set their own rates, and this should be outlined in the contract. Generally, the practitioner does not need approval to change their rates, but clinic owners may ask to be informed of such changes. Having the rates stipulated within the contract is not advisable as it then locks those rates in for the term of the contract. The RMTAO has advice on fees in **Our Fee Guideline** about setting fees and other fee related issues.

EMPLOYEE VS. SELF EMPLOYED

At the beginning of a contract, there will often be a statement articulating the relationship (e.g., self-employed vs. employee) and the intention of the two parties. Having this statement in the contract is a good idea but remember that the actual working relationship will determine whether the CRA considers you an employee or self-employed (independent contractor).

In an employer-employee relationship, the payer is considered the employer and the worker is the employee. Employers are responsible for deducting Canada Pension Plan contributions, Employment Insurance premiums, and income tax from remuneration.

If the worker is a self-employed individual, they must operate a business and be engaged in a business relationship with the payer.

The CRA looks at a variety of factors to determine the actual nature of the working relationship. This includes:

- Control – This is the practitioner's ability to express control over the work that is done and how it is done. This should examine the clinic owner's control over the work (if any) as well as the clinic owner's influence over the RMT.
- Equipment – Whether the clinic owner or RMT provides tools or equipment.
- Subcontractors – Whether the RMT can subcontract the work, e.g. hire a locum for a long absence.
- Finances – The degree of financial risk the RMT takes, and the RMT's opportunity for profit.
- The degree of responsibility for investment and management the RMT holds.

EMPLOYEE VS. SELF EMPLOYED (cont.)

There are certain factors that might indicate that it is an employee-employer relationship. If any of the following factors are true, you might be in an employee-employer relationship, although all situations are individual and should be evaluated independently:

- A clinic owner attempts to direct, control or scrutinize how the work is carried out, treating the RMT as if they were a subordinate.
- The clinic owner controls the work the RMTs do, the method they use to complete the work and the results expected.
- The clinic owner chooses the method and amount of payment rather than having it be a mutual agreement.
- The RMT requires permission from the clinic owner to work at other clinics.
- The clinic owner has primary control over the RMT's schedule.
- The RMT receives specific training or direction from the clinic owner about how they should work.
- The clinic owner makes a significant investment in providing tools and equipment.

There are some positive indicators to show that an RMT is an independent contractor including:

- The RMT works independently and doesn't have anyone overseeing their activities.
- The RMT can work for whoever they want, including at multiple clinics at once.
- The RMT can accept or refuse work requested by the clinic owner.
- The relationship between the RMT and the clinic owner does not present a degree of continuity, loyalty, security, subordination, or integration.

These lists do not guarantee that the relationship between an RMT and a clinic owner is or is not that of an employee and employer. This is also not an exhaustive list of factors to consider. To read more about factors to consider, and to request a ruling from the Canada Revenue Agency (CRA) about the nature of the relationship between an RMT and clinic owner, **review the CRA website.**

CONCLUSION

Negotiating a contract can feel like a challenge, but not having a contract will leave an RMT unprotected and unsure about responsibilities and expectations in the working relationship. A contract will ensure your best interests are protected, you have satisfied the CMTO requirements, and both the needs of the practitioner and the clinic owner are met. RMTs should have the opportunity to review, discuss and negotiate their contract to establish a practice that works for them. Although this Guide cannot replace the advice of a lawyer when reviewing a contract, we hope it provided our members with more confidence when reading the contracts presented to them and a greater understanding of the importance of having a contract in place.