

Guidance: Service Agreements

It is not unusual for persons operating a pharmacy business to enter into an agreement with a service entity (often a related company or subsidiary) to assist in the operation and administration of the business. The services provided pursuant to such agreements usually include things like book keeping, administrative support, human resources and management, stock management, advertising and marketing and managing accounts payable and receivable.

When negotiating and entering into a Services Agreement it is very important to be aware of the undue influence provisions of the *Pharmacy Regulation Act 2010 (Vic)* (**the Act**).

Undue influence

Section 11 of the Act makes void any provision of a commercial arrangement that gives any person other than the person licenced to carry on the pharmacy business:

- a) the right to control the manner in which the pharmacy business is carried on; or
- b) the right to access books of accounts or records kept in respect of that business, otherwise than for the purpose of determining whether or not the conditions of the relevant document are being complied with; or
- c) the right to receive any consideration that varies according to the profits or takings of the business.

For example, Pharmacy business licensees should be wary of and avoid the following types of clauses in Service Agreements:

- clauses that provide the service provider with unfettered (or unlimited) discretion to make decisions with respect to the business;
- clauses that provide a service provider with a **right** of access to books of account or records kept in respect of the business (otherwise than for the purpose of determining whether the agreement is being complied with), as opposed to the licensee having the **option** to provide certain information to the service provider so that a specific requested service can be provided (for example, book keeping or management services).
- clauses that provide that any fee payable to the service provider will be increased if the profits of the business increase (even if the increase in profits is as a result of the services being provided).

Important Note – Trust or other commercial arrangement assessment:

*All service agreements will be examined by an Authority officer for compliance with the Act. If deemed non-compliant, documents may (with an applicant or licensee's authorisation) be referred to the Authority's lawyers for preparation of a schedule of amendments necessary to ensure compliance, and the licensee will incur a fee. The fee for the preparation of these documents is **\$1,900.00 per commercial arrangement** (exempt from GST).*

Last updated: 1 May 2019