



Locum Tenens

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I was recently on the committee of an HPCSA Professional Conduct Committee where the employment status of an practitioner was central to the complaint. In the end, the case was finalized without needing to pronounce on the meaning of the word 'locum.' Another example: A colleague will say that they've been at 'Practice ABC' for a few years, that they locum there on Wednesday afternoons.' Except, that's not what 'locum' means. The word continues to be used incorrectly, and it's not only because I like language and words that I share the reasons with you. There can be all manner of consequences.



History

Locum comes from the Latin: locum tenens, meaning 'one holding a place.' In the Middle Ages the Catholic Church provided clergy for churches where there was no priest, and these traveling clergymen were known as *locum tenentes*.

With dire staff shortages in rural hospitals in the US in the 1970's, the term was adopted for doctors who traveled to fill in wherever they were needed. Healthcare locums in the US continue to be placed largely by agencies that undertake to provide the right *type* of practitioner, rather than a specific one. It may feel a bit weird for a solo practitioner not to know who is coming to work in their place, but in a large, multi-practitioner hospital or group practice, it makes perfect sense for an agency to send someone who is familiar with your computer software, your instruments and processes, someone who knows the products from the labs and suppliers that you prefer to deal with. A locum is expected to fit in with current systems and adhere to existing treatment protocols, rather than to contribute to, improve or disrupt them... even if disruption nowadays is supposed to be a good thing.

In the UK, the biggest difference between a locum and a principal optometrist seems to be the depth of administration that they get into. Locums see patients and don't get involved in billing/ claiming, ordering or even dispensing. The [college specifically includes](#) locums in many of its documents, reiterating that professionalism and clinical standards are the same, whether the practitioner is permanent or locum.

If you are a solo practitioner, and you're going on leave, how much of what you do would you expect a locum to step into? In other words, how much of your day is spent doing non-clinical work? Could you hire an extra staff member to allow you to get back to seeing patients?

On the other hand, loads of [business coaches](#) recommend that practitioners dedicate time to working **on** our businesses, not just **in** them. Perhaps you need a locum to take care of the clinical work every now and then so that you can refocus on the business aspects of your practice... and I don't mean admin. A practice needs someone to lead, prioritise, motivate, strategize and build, but it may feel like there isn't enough time.

Bottom line is that a locum fills a vacancy temporarily, perhaps while you're considering filling the position permanently, or while the principal provider is on leave for any reason. So, what we describe as locum work is often actually part time work. Does it really matter? Yes, because it may matter to SARS, the CCMA, HPCSA and your professional indemnity insurers. Whether you are a locum yourself, or make use of the services of one, this information may be of use to you.

[The Employment Relationship](#)

In Roman Dutch law, which played an enormous role in the development of South African law, the [employment contract](#) was a subtype of a contract of lease. It implies a great deal of control over the subject and the relationship it creates has much in common with actual ownership. In our modern law, an 'individual employment contract commences when the parties agree to the

essential terms in the contract and the contract complies with the general requirements for a valid contract, namely:

- there must be consensus between the parties,
- both parties must have contractual capacity,
- the rights and duties stipulated in the contract must be possible to perform,
- the rights created and duties assumed must be permitted by law, and
- the formalities, if prescribed, must be adhered to.'

At common law, both parties must have the intention of creating obligations (in this case for the employee to place their labour potential at the disposal and under the control of the employer, in exchange for which the employer remunerates them. However, things have become more complicated than that. Employment can be casual, temporary, permanent or non-standard.

Casual: An irregular event, sometimes a crisis, typically precipitates these employment relationships. A family member may have taken ill, or someone is going on maternity leave. Maternity leave can be planned, of course, but the requirements of the practice and the new mom may change. It's flexible and all about matching the parties' needs and availability.

Temporary: If you do decide to formalise maternity leave, for example, as 4 months from this date to that, such employment is temporary, and fixed term. There is a clear beginning and end, where the contract terminates. There is no expectation of future employment. The beginning need not be a date, but can be an event e.g. from the birth of her baby for 4 months. Another example could be appointing someone while you attend a congress.

Permanent: In this, the most common employment relationship, there is an expectation of the relationship continuing indefinitely, with a prescribed manner for each party to end it should they choose to. If you have been with Practice ABC for a few years, doing Wednesday afternoons, you are permanent, albeit part time.

Non-standard: Contractors, employees of contractors and piece workers. If I reached an agreement with a low vision specialist to come and see low vision patients in my practice whenever necessary, they would probably be a contractor. How does this differ, you may ask, from what we all call 'locums'? Good question. Read on.

For the Employer

Each party has certain rights and obligations as a result of the agreement reached. The employer's responsibilities are:

1. Ensure employees (locum or not) are registered with the HPCSA.

As regulated healthcare professionals, we are all required to be registered with the HPCSA, which has jurisdiction over us and is tasked with guiding us and protecting the public. In its [General Ethical Guidelines for Healthcare Professionals](#) (Booklet 1) professionals are reminded 'not employ any intern, healthcare provider in community service, or healthcare practitioner who is not appropriately registered with the HPCSA, as locum tenens - or otherwise - in their own or any associated healthcare practice.

In its updated [Ethical Rules of Conduct](#), the HPCSA reiterates that a 'practitioner shall employ as a professional assistant or locum tenens, or in any other contractual capacity and, in the case of locum tenens for a period not exceeding **six** months, only a person –

- (a) who is registered under the Act to practise in independent practice;
- (b) whose name currently appears on the register kept by the registrar in terms of section 18 of the Act; and
- (c) who is not suspended from practising his or her profession.

That means an employer must ensure that employed professional assistants and locums are appropriately qualified, registered and fit to practice. '[Interns](#) shall not act as a locum or perform professional acts in a private practice.

To confirm registration, visit the [HPCSA website's iRegister](#).

Council is making an effort to streamline the registration of new practitioners but it is certainly not immediate. Strictly speaking, recently qualified practitioners may only work under supervision until they are registered.



Ask for an academic record that confirms that they have completed their qualification. During internships, the relevant practitioners hold a limited registration and may not be appointed to work independently.

2. Remuneration/ Payment for services rendered

As you probably know, the HPCSA requires employed professionals to have a contract. A 'practitioner shall accept a professional appointment or employment from employers in accordance with a written contract of appointment or employment which is drawn up on a basis which is in the interest of the public and the profession: Provided that the health practitioner ensures that the employment contract has as its primary aim the enhancement of the quality of health-care services to patients, is structured to contain costs, enhance access to appropriate, high quality health-care services or products to patients, and is not designed to extract profit for the benefit of the practitioner or their employer to the detriment of patients.' The HPCSA may require sight of the contract e.g. in case of a complaint.

In November 2023, new 'guidelines' were gazetted, covering e.g. practice ownership, employment and the sharing of fees. Already under review, the HPCSA's concern seems to be the ability of the practitioner owner versus a lay owner to balance patient care and managing overhead costs to ensure a reasonable profits. As they open up healthcare employment and practice ownership, the HPCSA place more and more responsibility on individual practitioners, rather than practice owners/ employers/ facilities, which may not fall under HPCSA jurisdiction in the future.

Although still frowned on by the HPCSA, commission-based salaries have become common, particularly in professions that rely mostly on professional

fees. An hourly remuneration is also common practice, particularly for locums and part-time employees.

Remuneration is defined in paragraph 1 of the Fourth Schedule of the *Income Tax Act 58 of 1962* as 'any amount of income which is paid or is payable to any person whether in cash or otherwise and whether or not in respect of services rendered.' In its notes to the interpretation of the Fourth Schedule, SARS lists 3 requirements for the deduction of tax: An *employer (1)* must pay *remuneration (2)* to an *employee (3)*. Tax need not be deducted when paying a person who carries on an independent trade e.g. a contractor who comes to set up your computer network. A worker is **not** independent according to the Fourth Schedule of the *Income Tax Act 58 of 1962* if you...

- instruct, control and supervise them,
- tell them how many hours to work and what their duties are
- expect them to report on work done
- pay them at regular intervals e.g. daily/ weekly/ monthly.

So, if you agree with a handyman to come in for the day to paint your skirting boards, hang your pictures, and sand down your antique table while you helicopter around him giving direction, is he an employee? No, because this will not be a regular occurrence. If he also does similar work for a property developer every Friday, he is much more likely be their employee. If the intention of the employer/ employee, the contract between them and the type of work done, does not determine whether the relationship is one of employment or not, what does? And why does it matter?



If the person is an employee, the employer is required to deduct tax and pay it over to SARS. They also enjoy protection in terms of the *Labour Relations Act* and the *Basic Conditions of Employment Act*. More about that later.

Employers are required to deduct tax from all employees and pay it over to SARS. SARS, the courts, and the South African Institute of Chartered

Accountants generally recommend deducting if there is any uncertainty about the status of the employee/ contractor. During a ruling in the tax court (ITC 1787 (67 SATC 142)) Rampai J identified these 4 elementary principles: Firstly, the employee is liable to pay employees' tax. Secondly, the employer has a statutory obligation to deduct the tax. Thirdly, the general norm is that an independent contractor, in other words a person who earns remuneration by acting autonomously and without 'prescriptive and authoritative' instructions from an employer, is not liable for employees' tax. Finally an 'ambivalent independent contractor', someone who holds himself out as one but is in fact subject to the 'prescriptive and authoritative' instructions of another, is liable to pay employees' tax.



How do we decide whether a relationship is that of a principal and agent (contractor) or an employer and employee? Many tests have been hatched, applied and rejected. There is still no clear answer.

One of the simpler tests is whether one is buying the result (i.e. contractor) or the productive capacity (i.e. employee) of the person. On the other edge of the spectrum is the extensive 'dominant impression' test, which derives from common law, and lists

- (a) near-conclusive,
- (b) persuasive and
- (c) resonant indicators for the employer to consider.

It is the employer who must make this distinction, and carefully, because '*an employer who has incorrectly determined that a worker is an independent contractor is liable for the employees' tax that should have been deducted, as well as the concomitant penalties and interest. The employer has the right to recover the tax paid from the employee.*' And good luck with that recovery, I can tell you from expensive experience.

The indicators of the dominant impression include:

Control of manner:

Detailed clinical instructions about the process, instruments, which patent or technology to use etc may be a relevant example. If the right to control is included in the contract, even if it is not exercised, the relationship leans towards one of employment.

Payment regime:

Payment with the reference to a result, e.g. at the end of a project is more likely with contract workers while daily, weekly or monthly payments are common for employees. If you are unhappy with the work of an employee, the sanction is not withholding payment. However, and incomplete or unsatisfactorily completed project may result in non-payment of a contractor.

Personal service:

An employee is contracted to be at the employer's beck and call while a contractor's availability is by agreement. A contractor may choose to substitute a suitable worker instead of coming themselves; they may choose to bring an assistant, none of which would change the work done or the outcome achieved.

If you have an occupational therapist using your second consulting room at times for dyslexia assessments, they could be either an employee or a contractor. Do they hire the space, make their own appointments and bill the patients with their own practice number? Clearly, they are a contractor. How about if they come in, do the assessments and earn a percentage of their turnover. That's not as clear. Also: Are those patients considered patients of the practice, or of that practitioner. An employee is restricted from building up a personal patient base, but a locum (technically) is not.

HPCSA regulations require practitioners to be available for continuous care at a known physical address, so best you locum at a place where you can trust

the practice to continue your care. Similarly, practitioners are responsible for the security of their patient records. Do you trust the practice's systems?

Work or activities that compete with the employer would be unacceptable when it's an employee. An employee may even be subject to a restraint of trade after the employment relationship ends. However, a contractor does do work for others, even for your competition. At most, they may be subject to a secrecy clause.

Risk: Profit and loss.

Any exposure to risk, or opportunity to profit suggests economic independence, which is consistent with being a contractor. Employees, by the way, rank before contractors in case of insolvency of the employer.

VAT:

Registration (or not) as a VAT vendor is of little value in determining the status of an employee/ contractor. PAYE deducted from a VAT vendor should be from the exclusive amount.

Viability on termination:

Also referred as the economic viability test, this factor can be highly persuasive. A contractor is likely to have another job secured, or have a network of potential employers/ principals. An employed practitioner may take a while to secure a full-time position and may take up locum positions in the interim.

Complete as it seems, the dominant impression test was rejected by Zondo AJ in [Medical Association of SA v Minister of Health:](#)

'The dominant impression test it seems, entails that one should have regard to all those considerations or indicia which would contribute towards an indication whether the contract is that of service or a contract of work and react to the impression one gets upon consideration of all such indicia... This is still unsatisfactory as is the question of how one decides whether a dismissal

is fair or unfair and indeed, whether certain conduct is reasonable or unreasonable.'

Besides the common law dominant impression test, SARS and the tax courts have based decisions on tests derived from statute and legal precedent:

- Control test
- Organisational or integration test

The control test was first formulated in the case of [Colonial Mutual Life Assurance Society Ltd v Macdonald](#) in which De Villiers CJ said:

'...one thing appears to me beyond dispute and that is that the relation of master and servant cannot exist where there is a total absence of the right of supervising and controlling the workman under the contract; in other words, unless the master not only has the right to prescribe to the workplace what work has to be done but also the manner in which such work has to be done.'

The [Fourth Schedule to the Income Tax Act](#) now provides for 'a deeming provision that a person shall not carry on a trade independently if the services or duties are required to be...

- performed mainly at the premises of the client and – the worker is subject to the **control** of any other person as to the manner in which the worker's duties are or will be performed, or as to the hours of work...
- or the worker is subject to the **supervision** of any other person as to the manner in which the worker's duties are or will be performed, or as to the hours of work.

Only 1 of these needs to apply for the person to be deemed an employee. However, 'an independent contractor who [employs three or more](#) full-time employees, who are not connected persons in relation to him or her and are assessment, will be deemed to be carrying on a trade independently.' So, if a dental practice employs a dentist for 2 months while the dentist attends to his spiritual needs, and the locum dentist brings her own assistant, X-ray technician and sterilisation expert, and those 3 are permanently employed

by her, then she is considered a contractor by SARS. Without her entourage, she would have been a temporary employee of the dental practice.

In [SABC v McKenzie](#), Myburgh JP said: *'The second [test] is the organisational test: a person is an employee if he is part and parcel of the organisation... whereas the work of an independent contractor, although done for the business, is not integrated into it but only accessory to it.'*

All three these tests have now been rejected by the labour courts in favour of the reality test, first described in [Denel \(Pty\) Ltd v Gerber](#) and subsequently confirmed. Effectively, the parties decide on (and stipulate in the contract) the nature of their relationship. Where it is not described, or is disputed, or there is no written contract, the 3 alternative tests are still relied on. An employer would prefer a locum to be a contractor, because then the employer generally escapes liability for any complaints, but don't forget about the presumption in terms of the BCEA and LRA that the locum is an employee. SARS won't.

3. Contract

Legalese for putting things on paper is to 'reduce to writing.' I'm not sure where the 'reduce' really comes from, but it can certainly *reduce* problems later. As we've seen, the reality test relies on the relationship defined in the contract, so good reason to have a contract. The HPCSA requires a written contract of employment anyway, which must be submitted to Council should it be requested.



Specify the total cost to company, including any benefits such as travel and uniform allowances, HPCSA registration or CPD/ conference attendance so that both parties understand the total remuneration package.

Restraint of trade (RoT) clauses

Contracts (including any RoT clauses) are generally valid, and therefore enforceable, provided they are not against public policy ([Magna Alloys & Research \(SA\) \(Pty\) Ltd v Ellis](#)). In an RoT dispute, the courts will balance the employer's rights to safeguard their goodwill, customer connections and trade secrets, with the rights of individuals to trade and pursue their professions, as protected in the Constitution (s22). Any restriction must comply with the Limitations Clause (s 36(1)) and with common law requirements as developed by the courts, and must not be contrary to public policy. The court will decide whether the *public interest* is best served by enforcing contractual obligations or allowing free commerce and professional activity. The contract may be modified to balance the agreement (partial enforcement), rather than being either completely enforced or invalidated.

The court will consider the interests of both parties, and whether the restraint is *reasonable* in nature, extent and duration. The onus of proving the reasonableness lies with the employee ([Basson v Chilwan & Others](#)).

The circumstances at the time of dispute, rather than the time of contracting, will be applied. This usually protects the employee, who may have been in a weaker bargaining position at the outset and unable to avoid harsh and unfair conditions.

Although the circumstances of termination may play a role in deciding what is reasonable, an RoT can be enforced, regardless of how the employment relationship ended ([Reeves and Another v Marfield Insurance Brokers CC and Another](#)).

In [Dr DM De Jongh & Associates No. 64 Incorporated v Botha and Another \(34071/2017\) \[2018\]](#), the respondent had worked for the complainant – a Medicross – as well as 2 other locations. At the time of her ending her employment, the complainant sought to enforce the restraint of trade that they had initially agreed to, preventing her from working within 4km of the complainant's facility for 3 years. However, her 2 other existing positions were within the 4km radius. The court decided that the conditions were unreasonable if they prevented her from continuing her existing work for 3 years. The duration was amended to 12 months, which had already run by this time.

4. Status of the employee

Not only is it critically important for the employer to establish whether the locum is an employee or an independent contractor, but also to deduct the appropriate amount of tax. If you have decided that they are not an employee, keep all the evidence you have used to reach this decision, including provisional tax numbers. Insist on an invoice from them, just like you would any other creditor. Without these, an employer will be held liable for their PAYE, together with penalties and interest. This is a technical area of employment and tax law – seek an expert opinion.

Responsibilities of the Locum

As practitioners, we are responsible for our patients from taking a history through the examination, diagnosis, discussion of treatment options to dispensing and follow-up care. A practice owner/ employer/ principal has clinical as well as administrative, accounting, business and financial control, and can complete that entire process. A long term professional employee will have clinical autonomy, and extensive control over the whole process, but what happens if you're a locum, and you can't do all of that yourself? Where does a locum's responsibility begin and end? Even a written spectacle Rx is open to so much interpretation, so I like to control that process until the time of dispensing. Locums may not get to see or dispense the final products when they are ready, having to trust that the practice permanent staff would continue with the patient as they would like. This is one aspect of locum work that I don't like, and find myself either wondering or following up on patients that are no longer my responsibility. How do you feel about leaving work for other to complete, perhaps based on practice policies that you had no part in developing.

1. Contract

[Section 18](#) of the HPCSA's general ethical rules stipulates that practitioners must be employed in terms of a written contract:

(1) A practitioner shall accept a professional appointment or employment from employers approved by the council only in accordance with a written contract of appointment or employment which is drawn up on a basis which is in the interest of the public and the profession.

(2) A written contract of appointment or employment referred to in sub rule (1) shall be made available to the council at its request.

So, while a written employment contract is not required in terms of labour law, the HPCSA requires it. It should include any restrictions to their clinical decisions. Such a restriction may be exploitative, and the general ethical guidelines of the HPCSA ([section 22](#)) specify that a 'practitioner shall not permit himself or herself to be exploited in any manner.' Because of this rule, there is the presumption that a practitioner has complete clinical discretion and the employed practitioner may need to prove that this was not the case. In addition, your contract should include:

- the extent to which you participate in pricing, coding and billing (and therefor what you are liable for,)
- remuneration, including commissions and turnover targets. Beware of coercive remuneration e.g. where commission is earned on some products and not on others.
- any restrictions on suppliers or products that may prevent the practitioner from ordering or supplying what is in the patient's interest. It may be as innocuous as 'We don't have an account with them. Is there a product from [insert preferred supplier] that will work?'

Due to their temporary nature, locums are not expected to participate in the development of policies and protocols. What if you disagree with what's going on the practice? Both temporary and part time professional employees should be familiar with all relevant legislation e.g. the POPIA and HPCSA's requirements for recordkeeping.

For a principal optometrist it would be a tough call to refuse CLs to a -6.00D patient who is known to overwear them when she 'pops in,' as they do, just before her driver's license test. Imagine taking that position as a locum and

risk alienating a patient of the practice while you're standing in. Yet, I would argue that a locum has to be more clinically conservative, and even more scrupulously ethical, exactly because they don't have the luxury of the greater scheme of things.

The *Health Professions Act* does not define the term 'locum', nor does it indicate whether a locum should be appointed as an employee or an independent contractor. [Naidoo](#) describes it as 'a position that is offered when a practitioner in private practice is going on holiday, attending a congress, taking study leave or is absent due to illness or other reason, and therefore the appointment is of short duration.'



The Department of Labour has recognised that employers may try to avoid their responsibilities in terms of the [Basic Conditions of Employment Act 75 of 1997](#) (BCEA) and the [Labour Relations Act 65 of 1995](#) (LRA) and have declared non-standard employees vulnerable. These two Acts have been amended accordingly. In the [LRA, for example, s200A](#) now describes the rebuttable presumption that a worker is an employee, rather than a contractor:

- (1) Until the contrary is proved, a person, who works for or renders services to any other person, is presumed, regardless of the form of the contract, to be an employee, if any one or more of the following factors are present:*
- (a) the manner in which the person works is subject to the control or direction of another person;*
 - (b) the person's hours of work are subject to the control or direction of another person;*
 - (c) in the case of a person who works for an organisation, the person forms part of that organisation;*
 - (d) the person has worked for that other person for an average of at least 40 hours per month over the last three months;*
 - (e) the person is economically dependent on the other person for whom he or she works or renders services;*

(f) the person is provided with tools of trade or work equipment by the other person; or

(g) the person only works for or renders services to one person.

(2) Subsection (1) does not apply to any person who earns in excess of the amount determined by the Minister in terms of section 6(3) of the Basic Conditions of Employment Act.

The purpose of the *Basic Conditions of Employment Act* is the protection of employees. In terms of this Act, employers are required to

- inform their staff of their rights (s30)
- keep records of their hours, work requirements, job description (s31)
- keep records of remuneration, including any deductions, overtime paid or bonuses, as well as length of employment (s33)

An employer with fewer than 5 employees has some administrative leniency, but all employees subject to the BCEA are entitled to benefits such as overtime pay, paid leave, maternity leave, family responsibility leave and sick leave. However, the BCEA does not apply to all employees. Some aspects do not apply to those who...

- Earn above the current (1 April 2025) earnings threshold of R261748.45/year.
- Are commissioned sales staff who choose and work their own hours.
- Work less than 24 hrs/ month for that employer.

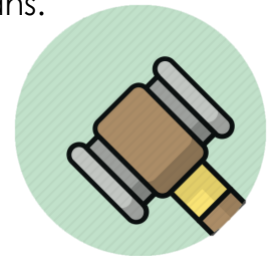
Employees have a recourse to the [CCMA](#), contractors do not.

2. Professional Indemnity

Generally speaking*, professional indemnity insurance refers only to a specific practitioner. It certainly is not blanket cover for everyone and anyone working in the practice. Make sure your insurer knows that you locum.

* Some products will extend to cover the practitioner and the practice, but only in so far as the owner/ practitioner is named as respondent. This offers little/ no cover to a locum working in the practice.

Here's why: Timeous notification is an important condition of cover. The moment you realise that there may be a complaint against you, you must notify your insurers and not attempt to deal with the case yourself. As a locum, you may be unaware of trouble brewing and the practice owner/principal may already have acted in a way that compromises you. They (and their insurance) are protecting the practice, without necessarily considering the implications to you. The patient decides whether to complain to the HPCSA, or sue. They may bring a suit against the individual practitioner, the practice or the locum. Their attorney, should one be involved, will encourage them to look to the practice owner, an obvious choice if the practice bears their name, but they are also more likely to be a person of means. Nothing stops the patient from naming all three in the suit. If they complain to Council and name the practice owner, the legal department's initial process will look at the named practitioner.

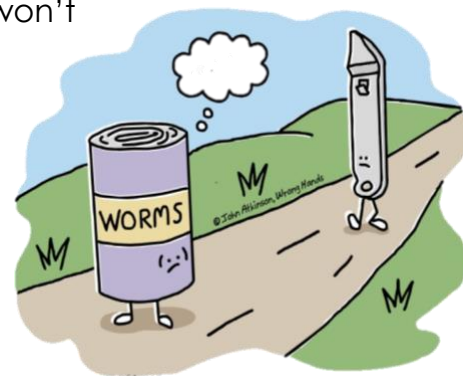


Vicarious liability is a principle according to which an employer can be held liable for the wrongful acts or omissions of an employee, provided the employee was acting within the scope of their employment and not 'embarking on a frolic of their own'. (Got to love the lawyer-speak!) We're all familiar with the general requirement to establish proof before assigning guilt, but vicarious liability is one of the few exceptions. It is not necessary to prove that the employer was directly at fault. Practitioners can be held liable for the wrongful acts or omissions of their staff. A practitioner would, for example, be liable if their billing clerk incorrectly claimed for services not rendered. Mistakes happen, of course, but consistent overclaiming with no benefit to the employee can be assumed to be at the instruction of the employer. Should the errant billing clerk be pocketing the balance, however, it could be shown to be a frolic of her own.

The HPCSA tends to look to the practice owner rather than the practitioner regarding complaints arising out of billing, even if the consulting practitioner is permanently appointed. If there is evidence that the employed practitioner

has influence over the billing and claiming, they may be held liable. Changing your LinkedIn profile to 'optometrist and practice manager' implies that you are indeed assuming those responsibilities, so don't blithely update your profile without clarification or definition in your contract.

Vicarious liability does not mean that the locum or employed optometrist will escape liability. When there is a complaint at the HPCSA, the process is to inform the relevant practitioner and give them the opportunity to respond. The employer/ practice owner may then indicate that the employed or locum practitioner should be held responsible. The principle, from [NK v Minister of Safety and Security 2005 26 ILJ 1205 \(CC\)](#) is that 'damages should not be borne by employers in all circumstances, but only in those circumstances in which it is fair to require them to do so.' A practice owner would generally not be liable for the wrongful professional acts of locum who acts independently, unless the owner authorised or intentionally participated in the wrongful conduct, or had been negligent in appointing someone incompetent, inexperienced or unqualified. If the relationship is one of contractor/ principal, the principal cannot be held vicariously responsible. It is therefore in the interest of the employer to employ a locum as a contractor. What's more, and I won't open this very squirmy can of worms completely, the locum then assumes responsibility in terms of the *Consumer Protection Act*. If you like labour law worms, please [click here](#).



3. Communicate

A locum has to trust others to perform aspects of patient care while they are not there, and continue care that they didn't initiate. It is in the patient's best interest for the locum to ensure that systems are in place for such continued care. The locum must work constructively with colleagues and practitioners within the practice and the referral base to share or take over patients. Even

more than in a permanent position, a locum needs to delegate with care, communicate effectively and share information appropriately.

4. Registration

For an unregistered person to perform any act that falls within the scope of any profession regulated by the HPCSA, is a crime. Check your registration on the [HPCSA website using iRegister](#).

Conclusion

Locums allow those of us in permanent positions to travel, learn, rest and recover while the business and clinical care in our practices continue uninterrupted. The Latin instruction to healthcare providers to practice self-care (*cura te ipsum*) and to protect themselves, should include certainty in their contractual obligations and complete freedom to make the best clinical decisions in patient care. Employees (whether locum, temporary or permanent) should be clear about the nature of their relationship and the legal obligations that arise. Extending from labour and business on the one hand, to responsibility and substantial liability for patient care on the other, practitioners should know and mediate their risks. Employers must be clear about their responsibilities, and not incorrectly suggest to employees, that their insurance, tax or risk situation is different to what it is.

Questions



1. The original *locum tenentes* were
 - a) Travelling Catholic priests
 - b) Crusaders
 - c) The king's tax collectors

2. Which statement is true?
 - a) Locum optometrists in the UK do not generally become involved in administrative work relating to the patient or practice.
 - b) The College of Optometrists has developed a distinct set of clinical protocols for locum optometrists.
 - c) Locum agencies may not substitute practitioners in the UK.

3. Business coaches often recommend that practitioners work more
 - a) In their business
 - b) On their business
 - c) Outside their business

4. A logophile is someone who...
 - a) Works as a locum
 - b) Collects logos
 - c) Loves words

5. Which is CORRECT? Tom is depressed because he can't find a locum for the weekend. Malu commiserates and over a few... well, many drinks, they agree and reduce to writing that Malu will locum for Tom.
 - a) Valid contract, provided it is properly signed.
 - b) Neither party has capacity to act while they are drunk.
 - c) Valid contract provided the time frame has been specified.

6. Which is CORRECT? Tom remains depressed and locumless until Sylvia offers to work for him on 6/8. Sylvia means 6 August and Tom means June 8.
 - a) No consensus so no contract.
 - b) Valid contract – Sylvia should be more careful.

- c) Impossible to say whether a contract is created or not.
7. Which statement is NOT correct? A restraint of trade clause is enforceable if it...
- a) Complies with the Constitution (sections 22 and 36) and it is not against public policy.
 - b) Is reasonable in nature, extent and duration
 - c) If it is reduced to writing. The court will generally not interfere in contracts of this nature.
8. Which statement is NOT correct?
- a) Roman Dutch law is the basis of our common law
 - b) Indigenous law is the basis of our labour law
 - c) The employment contract is a variation on the contract of lease
9. What type of employment exists in this scenario: Zoe's friends have clubbed in to buy her an introductory course - 6 golf lessons. She employs Zama to work for her on the first Tuesday morning of each month while she completes her course.
- a) Casual
 - b) Temporary
 - c) Non-standard
10. In the example in question 9, is Zama eligible for paid sick leave?
- a) Yes
 - b) No
 - c) Only if they have a contract.
11. It is quickly apparent that Zoe loves golf and asks Zama to continue their monthly Tuesday arrangement indefinitely. Zama is now...
- a) Casual
 - b) Temporary
 - c) Permanent

12. Which statement is true for the Basic Conditions of Employment Act?
- a) The BCEA only applies to practitioners earning at the specified earnings threshold, at the moment about R261748.45/ year or higher.
 - b) Applies to independent contractors
 - c) Specifies minimum employee benefit e.g. paid leave, maternity leave and sick leave.
13. Thea, the receptionist at Zoe's practice, claims for RGP lenses instead of the lenses supplied and a case of fraud is opened by the medical aid. Who is presumed liable?
- a) Zama, as the practitioner.
 - b) Zoe, as the practice owner.
 - c) Thea – she made the mistake.
14. Which statement is WRONG? Vicarious liability is...
- a) when the practice owner is liable for the acts of their employee
 - b) an unusual system in that the practice owner is presumed guilty of knowing of the acts of their employee (as opposed to the usual 'presumed innocent')
 - c) applies both to employees, piece workers and contractors.
15. Brian offers Carol a job. He uses lenses from his in-house lab exclusively, limiting Carol's choice to the range supplied by that lab.
- a) Carol should ask for this restriction of her professional freedom to be specified in her contract.
 - b) Carol should not accept. This could amount to exploitation.
 - c) Both a) and b) are correct.
16. Daniel works for Eva on a Thursday when she lectures at the university. Who is responsible for paying Daniel's tax over to SARS?
- a) Daniel
 - b) Eva
 - c) They should decide between themselves

17. Daniel dilates a patient and occludes the angle, resulting in a complaint at Council. In which circumstances is Eva liable?
- a) Never: Daniel is liable for his own clinical acts
 - b) If Daniel is not registered with the HPCSA
 - c) If Eva pays for Daniel's professional indemnity insurance
18. Daniel's patient from number 17 is very angry about the pain and anxiety caused by the angle closure attack. He can sue...
- a) Daniel and Eva
 - b) Daniel and his insurers
 - c) All of the above
19. The employment of a psychologist must be in the form of a written contract in terms of....
- a) Basic Conditions of Employment Act (BCEA)
 - b) The Health Professions Council's Regulations
 - c) Both the BCEA and the Labour Relations Act (LRA)
20. Which statement is TRUE?
- a) Turnover targets are potentially perverse incentives
 - b) Commission-based salaries are forbidden by the HPCSA
 - c) Turnover targets and commissions cause overservicing.