

Partnership Agreements for Medical Practitioners

A well-drafted partnership agreement is essential to establish a clear framework for the running of the practice and the relationship between the partners. Preparing the agreement can be complex and time-consuming but the wrong agreement (or, worse still, no agreement at all) can lead to serious problems in the future, so you need to plan carefully and get the right legal advice at an early stage.

Is a written agreement necessary?

The answer is definitely “yes”. Without a written agreement, the partnership will be a “partnership at will” and the relationship between the partners will be governed by the Partnership Act 1890. A partnership at will can be dissolved at any time by any partner serving an immediate notice of termination upon the other partners.

This could result in the forced sale of the partnership’s assets (including any premises) and the redundancy of staff, which could have major financial consequences for the partners personally. Moreover, dissolution of the partnership could lead to the loss of the existing NHS contract to provide medical services. On dissolution, each partner will also be able to go their own way and set up a rival practice, because there will be no restrictive covenant to prevent them from competing with the other partners.

Finally, dissolution of the partnership could result in a messy, protracted and expensive legal dispute between the partners which will have a very damaging effect on the practice. A properly drafted partnership agreement

will not stop partners falling out with each other but it will clarify the partners’ obligations to each other and thereby help to resolve disagreements between the partners.

You should also bear in mind that a partnership at will can arise between the existing partners and an incoming partner if a new partner joins before signing up to the existing partnership agreement. You must therefore ensure that a new partnership agreement or a supplemental agreement is in place, signed and dated by all partners before the first day of the period of assessment of an incoming partner.

For these reasons, the absence of a partnership agreement can create instability in the practice, and falling back on the outdated and cumbersome provisions of the Partnership Act 1890 may produce a result which is not in the best interests of the partners or the practice as a whole.

Updating an existing agreement

Following the introduction of the new GMS and PMS contracts, all partnerships should review their partnership agreements and update them to reflect the working practices introduced by the new contract. An agreement which was prepared before the introduction of the new NHS contract may well contain provisions which are obsolete, redundant or even conflict with the terms of the NHS contract, which could lead to confusion or even a breach of the NHS contract.

Leaving aside the requirements of the new NHS contracts, partnership agreements should be reviewed on a regular basis in any event, to ensure that the provisions of the agreement genuinely reflect the working arrangements between the partners.

In order to update an existing agreement, it may not be necessary to draw up a completely new agreement. It will be sufficient to prepare a shorter supplemental agreement which changes those provisions of the old agreement that need to be updated, but leaves the rest of the old agreement intact. Preparing a supplemental agreement will usually be quicker and less expensive in terms of legal fees.

Key provisions of the written agreement

The following are examples of the matters which should be covered by the partnership agreement. Arrangements between partners can vary enormously, and those differing arrangements may require additional or alternative clauses, so the following list is not exhaustive.

- commencement date and duration of partnership
- premises from which the practice will operate
- assets (e.g. property, equipment, surgery, fixtures and fittings owned by the practice)
- valuation of partnership assets
- income and expenses
- drawings
- profits and losses
- accounting
- duties of partners
- holiday and other leave
- restrictions on partners' activities
- management and decision-making
- admission of new partners
- retirement
- suspension or expulsion
- purchase of outgoing partners' shares
- obligations of outgoing partners

Potential problems

A number of problems can arise if you operate without a partnership agreement, or if your partnership agreement is not properly drafted. The following are some examples:-

Partnership at will: As discussed above, if the partners operate without an agreement, or if new partners are admitted before signing the agreement, a partnership at will can arise, creating an unstable business structure

which can be dissolved at any time, thereby damaging the practice.

Outdated agreement: As also mentioned above, if your partnership agreement becomes out of date, it may cause confusion or even give rise to a breach of your NHS contract. The agreement therefore needs to be regularly reviewed and updated where necessary.

Decision-making/deadlock: If certain partnership decisions require unanimity, this will effectively give each partner a veto, and could therefore create a deadlock, with the partnership being unable to make a decision. You therefore need to carefully consider which matters should require unanimity (if any) and what steps can be taken in the event of a deadlock.

Expulsion: If a partner fails to perform his or her duties or the relationship breaks down between him or her and the other partners, this can have a severely damaging effect upon the practice, so the other partners need to ensure that they can expel a problematic partner in certain circumstances, or require him to retire compulsorily.

Suspension/garden leave: If a problem arises with a particular partner, it can have a damaging effect on the practice for that partner to continue working, so it is advisable to include a right for the other partners to suspend the problematic partner while the case is being investigated, or even to require him to work "garden leave" (i.e. not come into the surgery premises) during any period of notice of termination.

Repayment of capital: If a partner with a share of capital leaves the practice, the remaining partners could face real difficulties in buying out the outgoing partner's share, particularly if the practice owns the surgery premises. You should therefore ensure that any period of notice of retirement or expulsion is sufficiently long to enable the partners to obtain any necessary finance. An alternative would be for the practice to take out insurance which would produce the necessary lump sum required to buy out an outgoing partner's share, although you should be aware that insurance premiums can be expensive.

Several partners leaving: If several partners leave at the same time, this could present severe financial and operational difficulties for the remaining partners. The partnership agreement might therefore provide that only one partner can leave at any one time.

Ongoing obligations: If a partner leaves a practice, this could expose the remaining partners to additional liability for ongoing arrangements (e.g. loan repayments or rent under a lease of the surgery)? You should

therefore ensure that the period of notice is sufficiently long to enable the remaining partners to make alternative arrangements. By contrast, the outgoing partner may wish to be released from all liability and indemnified by the remaining partners, so how the partnership deed deals with this aspect needs to be discussed.

Competition from former partners: If a partner leaves and then immediately sets up another practice in the same local area, this could severely damage the practice. The partnership agreement should therefore contain carefully worded restrictions preventing a former partner from competing with the practice, within a specified geographical area and for a specified period after leaving.

Non-GP partners

The new GMS and PMS Regulations allow practices much more flexibility and permit the introduction of non-GP partners including practice managers, nurses, consultants, pharmacists or other allied health professionals, provided that the firm includes at least one general medical practitioner.

If you are proposing to admit a non-GP partner, you will need to consider changing your existing partnership arrangements, because some of the provisions usually found in partnership deeds may not be appropriate for non-medical partners - for example, the non-GP partner may not have any medical obligations or may be subject to different professional obligations (e.g. nursing regulations) from those of the other partners. You should also consider what role the non-GP partner will play in management, decision-making and administration, as there may be certain tasks which are more or less suited to their particular abilities.

Limited companies and LLPs

The new NHS Regulations provide that both GMS and PMS contracts can be awarded to companies limited by shares where at least one share in the company is legally and beneficially owned by a medical practitioner and the other shares are owned by other qualifying persons (including medical practitioners, healthcare

professionals, GMS/PMS providers, NHS/PMS employees or NHS trusts). Despite this increased flexibility, however, the vast majority of GMS and PMS practices are still operated through traditional partnerships.

The limited company model could have advantages for your practice, as compared with the partnership arrangement. The partners in a general partnership are personally liable for their negligence and debts and that of their fellow partners, meaning that their personal assets may be at risk, particularly if a claim is not covered by insurance. For example, if one partner incurs substantial debts in the name of the partnership, then the other partners will be jointly liable for those debts and can be sued together, or one partner could be sued for the whole amount, even if they had no knowledge of the first partner's activities. In comparison, the shareholders in a limited company will in many cases have no personal liability, other than an obligation to pay up any unpaid amounts due on their shares (which may be nil).

The members of a limited liability partnership ("LLP") also benefit from limited liability in many cases. It appears that, at the time of the negotiation of the new NHS contracts, LLPs were not considered, and therefore the regulations do not allow for LLPs to enter into GMS or PMS contracts. It is possible that this may change in the future.

If you are interested in forming, or transferring your existing business to, a limited company, please let us know.

Conclusion

Preparing a partnership agreement can be complex and time-consuming, but a properly drafted agreement can help to establish clear guidelines for the running of a practice.

It is therefore essential that you get the right advice at an early stage, as this can help to identify potential problems and minimise the risk of costly disputes in the future.

How we can help?

RadcliffesLeBrasseur has built a reputation for its legal services throughout the healthcare sector, acting for medical defence organisations, doctors' partnerships and individual GPs (both NHS and private), NHS Trusts, health authorities, private sector providers, insurers and medical charities. Our services for medical practitioners include advice on partnerships, the acquisition and development of surgery premises, clinical negligence and regulatory issues. We also advise individual clients on their personal affairs, including buying and selling their home, matrimonial law, wills and probate.

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If you require any further information regarding the issues mentioned in this bulletin please contact Peter Coats, a Partner in our Primary Care Team at peter.coats@rlb-law.com.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.