

KEEP IT LEGAL: AVOIDING PARTNERSHIP DISPUTES

Don't let it come to a fight

Profitability issues for some private doctors' partnerships are among the factors affecting the business and increasing the tensions among some consultants. But put away your boxing gloves! Lawyer **Robert Capper** (left) gives his top tips for doctor partners in dispute



AS A LAW firm specialising in the provision of partnership advice, we have noted a distinct rise in the number of private medical partnership disputes over the last two to three years.

With both patient expectations and commercial challenges higher than ever, partners are no longer prepared to accept under-performance, continued absenteeism or poor behaviour putting additional pressure on the remainder of the partnership.

There has therefore been a clear increase in the number of partnerships who wish to proceed

towards the dismissal/expulsion route when partners are not willing – or able – to shoulder their share of practice responsibilities.

At the same time, we have seen a marked increase in general partnership fallouts; seeing partners leave and, in some cases, entire partnerships dissolved and wound up.

If you are in a private practice partnership and one partner is quite clearly disrupting your business, then the tips below are worth considering before taking any drastic action.

1. Talk

This should be obvious, but it is so often overlooked in our experience. Talk to the partner that you are having problems with.

Perhaps it is something outside of work that is affecting your working relationship.

It may transpire that the problem is relatively easily fixed – and that will save a lot of management time and financial strain on the practice.

It is worth noting that the vast majority of disputes can be solved without lawyers even becoming involved. Nevertheless, many disputes escalate because of a lack of basic communication.

2. Check the partnership agreement

What rights do you have, if any, to take action against a 'want-away' partner? Can they give notice to leave the partnership?

Often enough, the partnership agreement will set the strategy for negotiations, as the agreement – or lack of such an agreement – will often lead prompt negotiation between the partners.

It is not always the procedures set out in the agreement itself which are followed. It is amazing to see how many private medical



partnerships fail to check their partnership agreement before exercising rights they think they have.

This is one of the biggest and potentially most severe pitfalls to fall into. You could overlook certain provisions of your partnership agreement that could leave you exposed to a claim from your troublesome partner.

3. Consider the current working situation

Why do you want the partner out? Are they disruptive or perhaps not very good at their job?

Is the partnership making a loss or is it stagnant? Losing sight of the bigger picture can also land the partnership in trouble – particularly if too much effort and management time is focused on trying to resolve what are, essentially, the finer points of a partner leaving.

Never underestimate the value of a positive reference, if feasible, in an offer to settle a partnership dispute.

Likewise, in our experience, an agreed statement to partners and other practitioners is often of

great value to the outgoing partner. You need not be profuse in your praise of the partner, but can be seen to be supportive.

4. Make sure your finances are up to date

It always helps to have an up-to-date set of accounts that fully reflect the current financial situation of the partnership. For example, while owning property may be an asset, a hefty practice mortgage certainly won't be.

Leases are also liabilities, and a newly formed lease agreement on a property should be treated as much of a liability as a mortgage.

Also consider upcoming issues that may or may not affect your practice – such as tax bills or employees' wages.

We usually recommend that clients talk with their accountants and tax advisers at the same time as taking advice from us.

5. Know the personality

Personalities are key considerations when entering negotiations to remove a partner.

Taking an aggressive stance may not be the best approach – certainly

if the partner you are considering expelling is particularly volatile and stubborn.

Equally, if a partner is usually reserved, consider how taking an aggressive stance would affect the situation.

Interestingly, in our experience, private practice professionals are usually able to rise above the personality issues.

6. Take time about it

Do not rush to follow a particular course of action. The worst thing a private partnership can do is move in to expel a partner before all the necessary people have been consulted.

Seeking tax and accountancy advice and the views of the partnership – including the partner who is up for expulsion/removal – are important.

We have been instructed on countless occasions where the partner has already been expelled, before any advice was taken – legal or financial.

Suffice to say, these particular disputes are the most expensive to settle in terms of the actual settlement and fees.

7. Never make your dispute about money

All medical and other partners are bound under a good faith to one another and the partnership itself. Making the dispute purely about boosting the drawings amount per partner will not serve you in good stead if the dispute becomes litigious.

Always ensure the business is the first priority, not the individual partners in it. This is difficult to manage, but most professionals are able to see their way through it.

8. Take legal advice

It may seem like an obvious recommendation – especially in an article written by a lawyer – but it is also crucial to take legal advice.

It is one thing to look at the partnership agreement, but this is insufficient in the vast majority of circumstances.

The nuances of partnership law

are complex, so partnership agreements may not be applicable to the extent you believe they are, following modifications or a lapse of time.

It is always beneficial to seek the opinion of a qualified third party during the often complex nature of a partnership dispute.

A final note ...

Importantly, you must also remember that if the dispute eventually proceeds towards litigation, a court will look at the behaviour of both parties from the outset of the dispute.

A party can prejudice its position by a failure to act in accordance with pre-action protocol – and this is why seeking appropriate legal advice from a firm experienced in this area is imperative. ■

Robert Capper is a partner in the Health and Social Care Team at Harrison Clark Rickerbys



Make **Avalon** your 1st choice for electric couches



UK designed & manufactured • 3 year guarantee
Large range of colours, widths & depths
Unique height range of 45cm–99cm
Optional extras including side arms, face cradle, head cushion & much much more

Avalon stand D40

T: +44 (0)1264 364646
www.avalon-couches.co.uk

CE All Avalon electric couches are CE marked



Your clients deserve Avalon

Behind with your Invoicing?
Unpaid invoices?

Why use valuable time on these tasks when Avondale Medical could do it for you?

Complete solutions - billing, improving cash flow, minimise late payments, avoid bad debt, detailed reports.

Experts in chasing 'old' debts - no job too small.

Specialist knowledge protecting & building your practice.

Telephone 01943 660542
email info@avondalemedical.co.uk
www.avondalemedical.co.uk
Wharfedale Business Centre, Otley, LS21 3JP

a:m