

BULLETIN 6

LAST MAN STANDING: PARTNERSHIPS

March 2016

In the current climate, more practices are finding that continuing the practice business under current workload pressures is becoming unsustainable. There has, therefore, been an increase in queries in respect of practice closures and the responsibilities associated with them, but more importantly, what happens when several partners leave the partnership within a short period of time, resulting in the “Last Man Standing”.

Most partnerships should have a reasonably robust, up to date partnership agreement. The majority have a retirement clause which allows for a staggered retirement among partners (e.g. no two partners can give notice at the same time). The purpose of this is to prevent destabilisation of the business while the practice recruits another partner or re-structures the workload.

However, since the current recruitment crisis is making it considerably harder to find partners/salaried GPs to fill the gap, if two or more partners give notice and intend to leave within a short time, the remaining partner may find himself in a dilemma. Without being able to recruit effectively, there are limited options and severe consequences.

1. Merging with another practice

One of the best methods to promote survival and sustainability is to merge with another practice and form one partnership. This means that backroom services and resource may be shared. Strength in numbers ensures the sustainability of the contract and, in some cases, cuts operational and usually premises/staffing costs.

2. Merging with the Local Federation

This has happened on occasions where the federation is a company limited by shares and wishes to preserve the core contract held by a failing practice. Bringing in a company as a partner is permissible in law (as long as the conditions of the relevant core Regulations are satisfied).

3. Recruitment

Is the obvious option, but as stated above, not always possible in the current climate.

CONSEQUENCES

Failing all of the above, the issue is that more often than not, one partner remains holding the contract while others have resigned, effectively walking away with their full partnership share. The core contract is potentially unsustainable with one partner remaining and it is only a matter of time before NHSE may serve notice to terminate. Both PMS and GMS contracts provide options for NHSE to terminate if they believe that the contract is unsustainable and thereby possibly placing patients at risk.

The problem for the remaining partner is that he is left with all the costs of winding up the business. One significant cost would be employee redundancies. There is, of course, always the possibility that NHSE puts into place a caretaking arrangement with a neighbouring practice, thereby reducing the financial fallout for the partner left standing. This means that the most significant staffing costs are passed to NHSE and/or the caretaking practice. In any event, this route lessens the effect on the remaining partner financially, but is not always guaranteed.

What happens if the practice closes and the list is dispersed?

The last partner will bear the costs of winding up and walk away with possibly less than his previous partners. Bearing in mind that the unsustainability of the practice has, more often than not, been caused by the leaving partners, it hardly seems fair and equitable that there is no mechanism in place for previous partners to shoulder some of the responsibility.

Advice

The best way of mitigating the effects of this type of situation is to amend the partnership agreement to include something that caters for when more than one partner leaves the partnership within a short time frame, there is an option for partners as a whole to consider closure and hold back a proportion of drawings from leaving partners to cater for closure costs. At the very least an exit agreement with leaving partners should buy some time for the remaining partner/s to seek a suitable solution. If a solution is found (as outlined above), then the remainder of drawings can be paid back in full with interest.

It is certainly something that requires careful consideration by all partnerships during this period of uncertainty and provides a fairer solution to the remaining partner. This is especially so where the partner is put into a position of having to shoulder all of the responsibility of closure, merely because of not submitting a resignation within the time set out in the agreement before other partners and has, in any event, been placed in the position by the resignation of those very same partners.

Since it is highly unlikely that most partnership agreements will not have covered this, the only option is for the partners to agree to separate exit arrangements. This doesn't always work. If partners do not agree to fairer exit arrangements, then the only option for the potential remaining partner would be to inform NHSE of the destabilisation and give notice that the contract will now be unsustainable. This should be done before all partners leave. NHSE then have the option to look for a caretaking arrangement (in which case the remaining partner is slightly better off on closure), or NHSE may give notice to terminate themselves on grounds of unsustainability – in which case the argument is that the contract is at an end BEFORE the partners leave and therefore they may be obliged to contribute to the closure costs.

This is by no means guaranteed and the practice is far “safer” in amending their current agreement.

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