Welcome

Welcome to the third edition of Harrison Clark’s specialist Medical Partnerships newsletter. Aimed at Medical Partnerships, accountants and financial advisers who work with doctors, our newsletter brings you the latest issues surrounding medical partnerships in a diverse and ever changing world.

In this edition of Spot On, we consider the increasing trend of merging and consolidating existing practices, and take a brief look at the patient choice pilot scheme. We also report on the latest developments concerning authorisation of CCGs and consider the issue of expulsion of partners.

Robert Capper, Partner and head of the Commercial Department
As a provider of legal services to the medical profession, we are increasingly witnessing practices looking to pool resources in one form or the other, in order to increase competitiveness.

The various options available to practices looking to merge can have greatly differing effects – from a basic joint working agreement where practices just agree to share certain resources to a fully incorporated merger of two or more practices into a new corporate body.

By far the most important issue when considering a model for the future is for the parties to agree the legal structure from the outset. A strategy can then develop from this point forwards.

Mergers

This is certainly the most radical move for practices considering pooling resources. There are several ways that a merger can take place – the most common method owing to its ease of implementation is via the creation of an overseeing body or holding company which directly owns all of the constituent practices (making all individual practices come under the ownership of that single body).

The overseeing body can either be a company or a limited liability partnership (“LLP”) and the controlling owners (either members or shareholders) can be the current partners of the existing GP practices. They can then appoint managers of the merged practice who can oversee the day to day running of the top level institution.

Consortium

Unlike a merger, a consortium does not bring every practice under one roof. Instead, it allows for a new body to be created, that does not have control over any individual practice but allows for the newly formed group to tender for contracts and other services with the added financial clout of having several practices behind it. This may be a more attractive option as there is no legal blurring between entities. Each practice maintains its own identity, but is a member of the consortium.

Like under the merger model, the consortium could be created either as a company or a LLP. The key difference here is that the practices are the owner of the consortium who can appoint managers as with a merger to look after the administrative side of the consortium.

Other options

Mergers and consortiums are two options of creating a vehicle to share resources. A more informal approach would be to have a working agreement, where no new organisational bodies are created and instead, the respective practices merely enter into an agreement to work together.

Under a working agreement, boundaries for work and the extent of resource sharing can be decided upon from the outset, and the agreement can have provisions for exiting the agreement and for new practices to join. The major downside to a mere working agreement (when compared to a consortium body or a merger of practices) is that it does not provide a group vehicle for tendering for new contracts and services. Problems may arise during this time as to who will tender and how the benefits of a contract win will be shared.

Seek advice

Once you have an indication on the type of structure that you and your proposed working partners wish to take it is important that you seek appropriate legal and financial advice as soon as possible. Doing so will save administrative complications later on in the life of the organisation.
The NHSCB has stated it will continue to support those CCGs which are authorised with conditions, with the objective of fully meeting the criteria by April 2013. However, with 130 out of the 163 CCGs who have received authorisation thus far currently subject to conditions, the NHSCB have an arduous task to face to ensure compliance by next month.

Five of the third wave CCGs authorised with conditions are subject to ‘legal directions’ which stipulate legally binding instructions from the NHSCB and formalise the arrangements for the intensive management support required. Criteria not achieved by such CCGs included not having satisfactory arrangements in place to take over from PCTs, not having adequate quality, innovation, productivity and prevention (QIPP) plans or adequate financial plans.

CCGs will acquire wide-ranging responsibilities concerning patient safety and will be responsible for managing considerably large budgets. Dame Barbara Hakin (NHSCB national director of commissioning development) has stated that it is “vital that CCGs are robust and capable of making important decisions”. The NHSCB recognises that certain CCGs may be further advanced than others, and therefore the NHSCB shall continue to offer its support to ensure full compliance.

We continue to await further news concerning the authorisation of the final wave of CCGs with interest.

If you have any queries or concerns in relation to CCGs, contact the Harrison Clark GP Services Team who can assist with:

- Drafting CCG documentation
- Advising on staff transfers (PCB groups and PCTs)
- Updating practice agreements (partnership agreements and LLP agreements)
- Procurement related issues
- Property related issues
- Other contractual concerns
QUESTION AND ANSWER

Q) I am a doctor in a partnership with 3 other GPs. We have been in partnership for many years and our working relationship has been good, if a little strained during busier periods.

However, in the last three months one of the other partners has started taking prolonged breaks from work. Our practice manager has also received several complaints that the partner is dismissive of patients’ concerns during consultations.

At a recent partners meeting we raised our concerns with the partner in question who became rather hostile and aggressive towards us. due to the continuing difficulties experienced with this particular partner, the other partners and I wish to expel him from the partnership. can we do this?

A) The most important thing to consider is whether you have a partnership agreement in place and if so, whether there are provisions to expel a partner.

If there is no partnership agreement, you should seek legal advice immediately. Taking action against a partner without express provisions in your partnership agreement which permit this is incredibly risky and could be far more costly and time consuming without appropriate advice. Where there is no agreement in place, there will usually always have to be a negotiation with the unruly partner in their removal from the partnership.

If you do have a partnership agreement, then this is a good starting point. There may be a clause dealing with the requirements to be satisfied in order to expel a partner successfully. It is key that each step stipulated in the agreement is followed stringently in order to avoid a breach of the agreement.

You must also remain aware that even if procedures are followed correctly, there are also other issues that may arise such as discrimination, a requirement to comply with partners’ duties of good faith and whether employment rights apply to the excluded partner.

For these reasons, it is important to seek legal advice as early as possible to ensure that what may seem to be a simple expulsion does not turn into an expensive unfair dismissal claim and/or claim for discrimination under the Equality Act 2010.

Being a full service law firm, Harrison Clark’s Medical Partnerships team can draw on expertise from a wide range of departments to ensure that such issues are dealt with minimum disruption to your practice. If your practice has any concerns over the behaviour of a partner, contact Robert Capper for a confidential and no-obligation discussion on 01905 744814 or e-mail rcapper@harrison-clark.co.uk