Doubtful disputations Romans 14, v. 1

Ray Goodman discusses how to deal with business disagreements

Dentists who jointly own or manage a dental practice with the intention of returning a profit have effectively formed a business partnership, in exactly the same way as traders in any other sphere of commercial activity. However, unlike most entrepreneurs in other areas, many dental practitioners work together on something of an ad hoc basis, without having a legally binding partnership agreement in place. Experience has shown that allowing this kind of relationship to develop, perhaps almost unnoticed between friends or colleagues can lead to problems in the future.

De facto, legally recognised business partnerships can occur by default even without signed agreements, and dentists need not be wary of inadvertently forming associations with which can be so interpreted, as potential disputes may be difficult to resolve and provoke rancour, expense and stress even when there has been initial good will on both sides.

A detailed partnership

Dentists are notoriously busy, and usually preoccupied with treating patients, clinical paperwork or PCT red tape, and specific business arrangements with work colleagues are easily, and all too often, taken for granted. This laissez faire approach, however comfortable at the time, is fraught with risk; a brief time-out to draw up a detailed partnership document will make no difference to day-to-day relationships but may save possibly endless, and always costly, disputes from arising in the future if circumstances or attitudes change.

Partnerships which have evolved as a result of informal professional association and with no detailed legal agreement are covered by the Partnership Act of 1890, which necessarily is concerned only with broad generalisations and fundamental principles.

Typical omissions, for example, are dealing with the removal of a partner whose behaviour has become unacceptable, or the detailed resolution of particular disputes. Since the modus operandi of every dental practice is different, the Partnership Act is inevitably an inappropriate, blunt instrument when applied to the individual needs of discrete dental partnerships.

However amicable the founding arrangement between business associates, the unforeseen accidents of life can all too often intervene to provoke disharmony or unexpected conflicts of interest.

Complications

The early retirement of a partner through ill health, or an untimely death, are common instances which introduce partnership complications in the absence of a comprehensive agreement drawn up by a legal professional. In the event of a dispute in either of these situations, when no alternative detailed agreement exists the Partnership Act decrees that dissolving the partnership is the only course.

In the case of a disputed dental partnership, the practice's premises, assets and equipment would have to be sold and the business terminated, with all the additional complications for the remaining partner(s) of dealing with staff redundancies and compensation payments, cancelling contracts and assuming responsibility for any liabilities such as debts or overdrafts. The business's tax position could also be compromised, and even if the practice was salvageable much good will would have been lost.

Partnership Act

Specific to dentistry are NHS Primary Care Trust (PCT) contracts, which may stipulate that should a contracted partner die or leave the practice during the contract period, then the contract is automatically terminated. This contract proviso is also included in the Partnership Act. Whilst it is possible to prevent this happening, the procedure is costly and time consuming, and without a legally binding agreement in place a disputed partner is powerless placed to cause disruption by simply issuing a notice of dissolution. It is also worth noting, from another perspective, that in the present economic climate PCTs are seizing every opportunity to re-negotiate dental contracts in their own interest.

If a partner should decide to leave the practice before reaching retirement age, through ill health, changed family circumstances or for career ambitions for example, a partnership agreement should cover the division, entitlement and responsibility of each individual’s share of the practice’s capital assets, debts, other liabilities and payment of any tax outstanding. Such an agreement will also include directions on how to deal with a partner who is under performing, and the procedure for expanding the partnership.

Business Security

Nothing delivers greater peace of mind than certainty. A properly constituted partnership agreement is the strongest guarantee of business security, as it unequivocally sets out the rights, obligations and responsibilities of each partner in the event of a disagreement or an unexpected shift in the status quo. The mere existence of the agreement is a powerful disincentive for errant conduct, and it offers an ever ready reference to resolve a dispute should it ever be required.

However harmoniously colleagues normally work together, inevitably over time there may be occasions when disagreements occur or unforeseen events arise. A partnership agreement provides a means of positive, impartial resolution when such disputes do arise, and is especially valuable at times of major upheaval, such as a death, retirement or a change of business focus.

The advantages of having such an agreement in place cannot be overstated, as those who have suffered the expensive consequences of disputes within less formal business associations will quickly testify. A specialist dental law firm, such as Goodman Legal, will have the industry knowledge to draft an agreement which precides suits your own practice’s circumstances.