Dream partnerships and nightmare endings

Ray Goodman discusses the finer details of practice partnerships

It is probably true to say that all partnerships are a potential minefield of personal, legal and financial disagreements. However well-intentioned the partners are at the outset, problems can and do emerge, and despite best efforts to resolve disputes there comes a point of no return when the partnership has to be dissolved. Dental professionals know better than anyone that prevention is better than cure and it makes sense to follow that same advice when setting up a practice partnership.

There are a number of legal issues that should be thoroughly discussed and incorporated into an appropriate agreement which will serve as a legal safeguard against future disputes over profit shares, property ownership, leave of absence and other matters. It is better to confront such issues with clarity of mind rather than after a disagreement has arisen and emotions are running high.

A written agreement, drawn up with an expert in dental law, should cover potential problem areas such as expulsion and retirement, prolonged absence due to accident or ill health and even death. The roles of all parties must be clearly outlined to ensure that everyone understands their responsibilities and the mechanisms are laid out for dealing with a problem before it impacts on the practice business. Such an agreement serves not only as a vital legal asset, but also a financial one. For instance, in the event of a tax dispute with HMRC, evidence of an appropriate legal agreement gives your practice credibility.

Dental practitioners should be aware that without a current up-to-date agreement, legally the partnership will fall into the category of a ‘partnership at will’, subjected to outdated statutory provisions which may not reflect the wishes and interests of all those involved. A ‘partnership at will’ can also be dissolved with immediate effect by any partner, which could potentially lead to the termination of the PCT contract. Similarly, should a partner in a ‘partnership at will’ retire or die, this will effectively dissolve the partnership as a whole, with potentially devastating consequences for the remaining partner or partners. It is remarkable that under the provisions of the Partnership Act 1890 on which the implied terms are based, there is no provision enabling the expulsion of a delinquent partner.

Once a partnership agreement is in place, it is essential to keep it updated, especially when a new member joins the partnership, because if the agreement is not renewed, it will revert to the ‘partnership at will’ regardless of any prior agreement which will no longer be recognised as a valid legal document. A qualified solicitor will be able to help draft and amend partnership agreements thus avoiding the dangers of a serious dispute or expensive civil litigation.

Across a whole range of partnerships, it is a sad fact that some do fail, and when that happens, partners must be aware of the proper procedures that need to be taken. Unless such provisions are included in a partnership agreement, a notice of dissolution can be issued by any partner without the need to state their reason for doing so and once started, that process cannot be reversed without the consent of all partners.

When the worst happens and a partnership faces dissolution, it is a priority to reach a settlement of shared finances. Firstly, any liabilities are paid, then capital, and in the event of a short-fall, debts will be payable by the partners personally according to their partnership share. Deciding what should happen to your business in such circumstances is inevitably fraught with difficulties and disagreements; however, expert legal assistance will help ease the process quickly and fairly.

Regardless of the strength of mutual trust, understanding and friendship on which your business partnership is based, it would be foolhardy to dismiss the many complex scenarios that may arise should there be a breakdown in the partnership relationship. To avoid difficult legal and financial consequences and indeed, to safeguard your dependants, the importance of having a clear, up-to-date partnership agreement in the dental practice cannot be emphasised enough.

About the author

Senior Partner Ray Goodman is a Member of the Association of Specialist Providers for Dentists (ASPD), legal member of NASDA (National Association of Dental Accountants) and included on the BDA list of recommended dental solicitors. He has a comprehensive understanding of the commercial and professional objectives of Dental Practices, along with the relevant legal requirements. He is a regular contributor to dental journals and has ambitions to be the next Eric Clapton.

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Dream partnerships can turn into nightmare partnerships if legal issues aren’t thoroughly discussed.