Introduction

I am delighted to introduce NASSAD’s second newsletter, with excellent articles from members Andy Drane in Edinburgh and Kevin Stillwell in Southampton. Further information regarding our members can be found at our website: www.nassad.co.uk.

Andrew Lockhart-Mirams
Chairman

The Rise of 24 Hour Retirement

Andy Drane

During the last twelve months, a number of GP clients have approached Davidson Chalmers Commercial Lawyers about including a “24 Hour Retirement” clause in their Partnership Agreements. In light of the current uncertainty around public sector pension reform, GPs are taking advantage of NHS pension rules that allow them to draw down their pension while continuing their NHS responsibilities. This is known as “24 Hour Retirement” because the NHS Pension Scheme (as opposed to the 2008 Pension Scheme) require their staff to retire for 24 hours to enable them to take advantage of the arrangements.

24 hour retirement is now something Davidson Chalmers Commercial Lawyers are raising with their GP clients as a matter of course. We expect to see increasing numbers of GPs providing for 24 hour retirement in their partnership agreements over the next few months as GPs seek to align their pension arrangements with their partnership arrangements.

The normal age of retirement under the NHS Pension Scheme is 60, but members can retire before or after the normal retirement age. Under the Pension Scheme rules, a GP (or any other member of the NHS pension scheme) may choose to “retire” from the NHS for a minimum period of 24 hours, thereby qualifying for retirement benefits, and the GP may then return to work provided he does not undertake more than 16 hours’ NHS work per week for one month following his or her “retirement”.

Commonly a GP taking 24 hour retirement would hire (and pay for) a locum to cover his workload for the month following his “retirement”, and the GP would continue to draw down his partnership profits, as well as receiving retirement benefits. Where the partnership agree to pay for the locum the “retired” GPs profit share should for that month reflect his work commitment.

A GP considering taking 24 hour retirement should consider the following:

1. What does their Partnership Agreement say about 24 hour retirement? Is it permitted?
2. How many hours will the GP work when they return to the practice?
3. Is a locum required to cover the absent GP’s work (for the initial retirement period and the period in which they are working reduced hours) and if so, who pays?

4. Have the partnership accountants been consulted? They will need to adjust the GP’s profit share and make the necessary adjustments to the partnership accounts. They will also ensure that the GP is aware of the financial implications of 24 hour retirement and chooses the correct date on which to retire.

A 24 hour retirement provision in a GP partnership agreement might run along the lines of the following, which Davidson Chalmers Commercial Lawyers recently prepared for a GP practice operating in the Scottish Central Belt:

- An overarching statement permitting 24 hour retirement in principle;
- Statements providing that the partner must comply with the NHS Pension rules surrounding 24 hour retirement;
- Locum arrangements – who arranges the locum; who pays for the locum whilst the partner is absent from the practice in order to fulfill the conditions of 24 hour retirement;
- A general statement that on returning to the practice, the GP’s partnership duties continue as if s/he had never “retired”;
- A statement that if the NHS Pension rules surrounding 24 hour retirement change, the partnership agreement should be updated to reflect any amendments to the rules.

Each clause will be different, of course, but we believe that these points cover the basic requirements of a 24 hour retirement clause in a GP partnership agreement, which are undoubtedly becoming more common.

- NB, for sole practitioners 24 hour retirement is not as straightforward as it is for GPs working in partnership with other GPs, because if a sole practitioner retires the responsibility for his or her patients and services falls to the Health Board and it may not be possible to reinstate the NHS contract.
- NB, for PMS practitioners 24 hour retirement is not as straightforward as it is for GPs working under a GMS Contract because of the contractual arrangements with the Health Board.

Andy Drane is a Partner at Davidson Chalmers Commercial Lawyers, Edinburgh

New Partners Buying Surgery Shares

Kevin Stillwell

In over two decades of advising GP practices I have never known such a spate of partnership retirements and admissions as currently.

Inevitably with a great many practices this will involve transfers of shares in surgery freeholds. Historically these have not generally proved to be problematic in that finance from banks and other lending institutions was readily available often on an interest only basis and of course one could expect notional rent to cover the interest. I am finding an increasing number of practices who are discovering that this is
not always such an easy process as it was.

Whilst notional rent might be expected to cover interest payments, increasingly there is now a requirement for regular capital repayments too which incoming partners may struggle to afford. Continuing partners may be tempted to admit replacement partners on terms that they are not required to purchase shares of the freehold, and although this is a tempting solution to recruitment impediments, a practice should think carefully whether this might be the start of a slippery slope to longer term difficulties. Even in the short term there are obviously disadvantages for continuing partners where the additional borrowing they need to buy out a former partner is on an interest and capital repayment basis, but even in circumstances where their additional borrowing is on an interest only basis, I suggest there is quite a likelihood in the future that when further borrowing is required upon the next retirement capital repayment borrowing is a distinct possibility. With this in mind, I recommend that practices resist the temptation to accommodate partners who are not prepared to purchase a share of the freehold surgery. It will be interesting to see whether lenders start to take a greater interest in a customer’s partnership structures to ensure that when one of their borrowers retires he has a ready made buyer for his freehold interest in the form of fellow partner freeholders committed to acquiring.

It is often the case that with significant equity in surgery premises, incoming partners requiring freehold shares will struggle to raise the necessary finance without recourse to the surgery freehold itself as security. There may well be existing borrowings from Bank A secured on the surgery and the incoming partner is considering rates from Banks A, B and C. Incoming partners need to be made aware that marginally more favourable terms or rates offered by Bank B may be offset by added complications of two or more lenders having security over the surgery, not only with deeds of priority adding expense and complication at the time of the new partner’s initial borrowing but also on an ongoing basis when there are other subsequent partnership changes. At an early stage all partners need to made aware that where an incoming partner is using the surgery as security for his/her borrowings, the asset of which they are part owners is at risk (albeit that the risk may be considered small). Where partners formerly ignorant of this become aware at a relatively late stage (after a new partner has successfully completed a mutual assessment period and gone to the trouble and expense of arranging finance) obvious complications arise if the existing freehold owners are unwilling to sign security documentation for the benefit of their new colleague. It is always best therefore to make all partners aware of the basic principles at an early stage and of course make sure they have the comfort of an appropriate indemnity from their new colleagues in respect of surgery secured personal borrowings in their partnership deeds.

Kevin Stillwell is the Senior Partner at Payne Marsh Stillwell, Southampton and the Treasurer of NASSAD

_______________________________________________________

Contacting NASSAD

All enquiries regarding NASSAD should be directed, in the first instance, to our Executive Officer, Margaret Adams. Her details are as follows:
Tel: 0207 383 7111
ma@lockharts.co.uk

Alternatively, you may wish to submit an email enquiry via the ‘Email Us’ icon on www.nassad.co.uk.