

Partnership

Questions and answers

The following are some common questions that are asked about partnership and should be borne in mind if you are contemplating entering into a medical partnership.

1. Q. *What is the relationship of partnership ?*
A. Partnership is the relationship between persons carrying on business in common with a view to profit.
2. Q. *In what circumstances will one partner in the practice be able to bind the other partner(s) to commitments with third parties (eg. leases, equipment purchases, the hiring of staff)?*
A. The act of every partner, within the ordinary scope of the business, binds the co-partners, whether they have sanctioned it or not.
3. Q. *Are all the partners equally entitled to participate in decisions concerning the practice ?*
A. Yes, unless otherwise agreed between them.
4. Q. *To what extent may the partner be liable for the debts of the partnership ?*
A. To the whole extent of his or her property.
5. Q. *Will a new partner be liable for the existing debts of the partnership ?*
A. Not unless he or she willingly agrees to take on the existing liabilities.
6. Q. *Will a retiring partner cease to be liable for partnership debts incurred before his or her retirement ?*
A. No, unless there is an agreement between him or her and both the other partners and the creditors of the firm.
7. Q. *Can a partner be expelled ?*
A. Only if there is a power to expel in the partnership agreement.
8. Q. *Must the names of the partners be included in the name (or style) of the firm ?*
A. No. The style of the firm need not and often does not refer to the name of any actual member. It could, for example, be known as 'the Wellington North Medical Centre'.
9. Q. *Must there be equal sharing of profits and losses ?*
A. The usual principle is that all partners share equally in profits and losses, but this principle can be (and often is) altered by agreement.

10. Q. *What arrangements should the partners make for payment of capital ?*
A. The amount of capital that may be necessary will vary from practice to practice. In fixing the amount of capital that each partner will be asked to contribute, the partners need to bear in mind that they will have to finance the running of their firm through some other means (eg. bank overdraft facility) to the extent that the capital which they put up themselves is inadequate to meet the firm's expenses.
11. Q. *Is a 'salaried partner' a partner in the legal sense ?*
A. It will depend on the particular arrangements between the other partners and the so called salaried partner whether that person is a partner in the legal sense or merely an employee. The wisest course is to ensure that the partnership agreement clarifies the true status of any salaried partner. The consequences of lack of clarity can be very important. For example, if the status of the individual turns out to be that of employee, he or she will be entitled to the benefits of industrial law (for instance, paid annual leave, paid public holidays, and access to the various remedies and procedures available to employees under the Employment Contracts Act 1991). Conversely, a partner will be liable to contribute to any losses that the firm makes whereas there will be no such liability on an employee. Different tax regimes will apply depending on the true status of a 'salaried' partner.
12. Q. *Is a partner entitled to parental leave ?*
A. Not as of right. The Parental Leave Act 1987 applies only to employees. But many partnership agreements provide for parental leave.
13. Q. *Can a partner be required to retire on the ground of his or her age ?*
A. This question needs to be answered in two parts:
- (a) Up until 31 January 1999 it is permissible under the Human Rights Act 1993 to require a partner to retire on or after (but not before) the age at which the partner qualifies to receive national superannuation.
- (b) From 1 February 1999 it is now unlawful to retire any partner on the ground of age, even though the person whose age is in issue has qualified to receive national superannuation. It will, however, be permissible to fix reasonable terms in relation to a partner who, by reason of age or disability, has a restricted capacity to participate in the partnership or who requires special conditions if he or she is to participate in it.
14. Q. *If two or more medical practitioners are contemplating going into partnership should they enter into a partnership agreement ?*
A. It is certainly advisable to have a partnership agreement (often referred to as "articles of partnership") prepared. The very exercise of discussing the proposed terms is likely to focus the intending partners' minds on important elements in their proposed business relationship, and may even give an insight into whether their association is likely to

prove compatible. The partnership agreement should address all or most of the above topics (although issues such as parental leave and salaried partnership status may be inapplicable to particular situations). It should also cover how departures from the partnership are to be dealt with [eg. Is there to be a restraint of trade clause? What will be the period of notice? How are assets to be valued and either bought out by the remaining partners or split between the remaining partners and the departee? Are any disputes to be arbitrated? Matters relating to departures can give rise to protracted and expensive disputes if not covered in advance by a clearly written agreement.

Need more help?

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