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The End of the Affair

Amanda Bryan, Medical Journal of Australia

It's a scenario that occurs regularly in Australia's medical practices: a doctor announces her intention to leave the practice, and her remaining partners are furious. The practice has no partnership agreement and the lawyers are called in.

Mr. Terry McMaster, a solicitor with McMasters' Accountants, Solicitors, Financial Planners, a Melbourne firm that specialises in advising doctors, says as practices get bigger, breaking up is becoming an inevitable part of the professional landscape.

"Though some liken a business break-up to divorce, it's actually very different. It's a commercial relationship and they're not meant to be forever", he says.

"Doctors don't need to get all emotional and personal when partnerships end, as they are designed to last for a finite period."

He estimates the average stay in a practice is about 10 years, so in a four-partner practice that could mean a change in partnership every two and a half years.

The reasons for leaving are diverse. Doctors may want to move back to the city or opt for a sea- or tree-change, or foreign-trained doctors may have finished their mandatory rural obligations.

A split may result from personal differences regarding money, control or vision. But the scenario that causes the most disruption among partners is termination.

"There can be a lot of emotion, lots of baggage and you have to clear through that clutter — but the saving grace in medicine is that the departing doctor can be working in another practice virtually immediately, maintaining their income and their ability to support the family", Mr McMaster says.

"You've just got to be commercial and practical about it and realise it's in everyone's interest for the change to be smooth."

He says the ideal scenario is when practices have a well drafted co-ownership agreement to fall back on that stipulates the terms and procedures surrounding the departure of a partner (see box).

Here are some of the key areas that practices also need to consider when a partner leaves:

Patient care

When a partnership dissolves, thought needs to be given to informing the partner's patients, maintaining continuity of care and managing patient records. MIGA claims department manager Ms Cheryl McDonald says doctors often assume they

own their patients' medical records, but this depends on how the working relationship was set up.



"Generally, the records belong to the partnership or corporate entity, not the doctor, unless that was the specific arrangement", she says.

However, she notes that, at the end of the day, it's up to the patient. "Patients don't belong to one doctor or another. They make a decision every time they turn up about who they want to see and they have a right to see somebody else when a partnership dissolves", she says. "If the patient has a specific directive about what happens to their records, that needs to be abided by."

The problem can be especially tricky when two solo GPs amalgamate their practice but the partnership doesn't work out, Mr. McMaster says.

In this scenario, each doctor would probably take the patients they started with, although ultimately this decision is up to individual patients.

He says departing partners also need to be mindful about clinical continuity for their patients, so they need to give remaining partners plenty of time to find a replacement. In rural and remote areas longer notice periods would be needed.

A minimum notice period should be included in your co-ownership agreement, he says. However, this notice period can be varied, by agreement, when a partner decides to leave.

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Financial entitlements

When relationships end, squabbles often centre on the leaving partner's entitlements.

Many practices operate on word-of-mouth agreements but when you have nothing in writing; the Partnership Act determines the entitlements of departing partners, and the law says profits should be distributed equally.

For this reason, it helps to develop a plan that everyone agrees on ahead of time and to formalise this in a co-ownership agreement. Again, this can be varied by agreement on a case-by-case basis at the time of the break-up, Mr. McMaster says.

He also notes that valuing assets is simplified by the fact that very few medical practices have significant goodwill (the dollar value placed on intangible assets like people, processes and techniques).

"The bikkies are small. Be mindful you are not playing for sheep stations. Shrug your shoulders and get on with life."

Restrictive covenants

Restrictive covenants that limit where exiting doctors can set up a new practice (eg, not within 5 km of the existing practice) are worthwhile and enforceable, Mr. McMaster says.

"They are an essential part of a co-ownership agreement. When a new doctor comes into the group, in order to build their profitability, you'll pass new patients over to build their list, so you need the protection of a restrictive covenant.

"I've seen doctors leave and threaten to steal patients away and I work hard to hose them down. I suggest they instead start their new practice 6 km away, where they'll be just as busy but with no risk of legal action or a tarnished reputation."

Calling the lawyers

Even though he is a solicitor, Mr. McMaster recommends avoiding seeking legal advice during a partnership split if possible.

Instead, he suggests that doctors try to remain amicable and put themselves in each other's shoes in the first instance.

Each partner can trade the things that are important to them, such as restrictive covenants or notice periods, to help smooth the path, he suggests. Contact a lawyer only when all else has failed or when the other side has done so.

"But when you do, it is important to instruct the solicitor to settle the matter ASAP and to not turn it into a never-ending saga. We have some cases that have dragged on for years because of the solicitors, which should have been settled in days", he says.

"Legal costs will often outweigh any benefit, and we have seen cases where each side's legal costs have exceeded the goodwill value in dispute. This is not uncommon."

A co-ownership agreements

A co-ownership agreement — the generic name for a partnership agreement, an associate agreement, a shareholders' agreement or a unit holders' agreement — is a legally binding document that governs the relationship between the owners of a practice and reduces the scope for dispute.

It could run from two to 50 pages, and can be varied by agreement so owners are not locked in.

A well drafted co-ownership agreement can, among other things, spell out what should happen when a doctor leaves the practice. This may include a set notice period (eg, 3 months), which can be shortened by consent, a valuation process for calculating entitlements, and a process for replacing the departing doctor. It should include any restrictive covenants such as exclusion zones and other restrictions to practice when the partnership ends. It can also cover decision-making processes and expulsion of owners.

If you have a healthy partnership, now is the best time to put a new co-ownership agreement in place, according to experts.

A well executed exit

When Victorian GP Dr Neville Steer recently decided to move out of the area to practice in Mornington, it meant an end to the 23-year partnership he'd had with five other doctors in Traralgon.

"My wife and I decided that we would move when our youngest child finished at the local high school," Dr Steer says.

The transition went smoothly because his practice had a written agreement on the process to follow when someone decided to leave.

"This made it much easier as the agreement recorded the notice period, how the practice assets would be divided including calculation of goodwill as well as a time schedule for purchasing my share", he says.

"Succession planning is something we had been addressing when bringing in new GPs. I was able to give a lot of advance notice ?— 5 years. This allowed us to bring in another GP about a year before I finished. I started advising patients 12 months ahead."

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