



Practice Managers as Partners

Partnerships between GPs and Practice Managers are for the first time legally recognised by the newGMS regulations. Daphne Robertson of DR Solicitors explains the legal implications for a Practice Manager considering an offer of partnership.

Since 1 April 2004, PCOs enter into a contract for medical services with the practice as a whole and not with individual Doctors. 'The practice' means at least one Doctor who must sign the PCO contract along with all the other partners in the partnership. For the first time, non-clinicians can enter into a contractual arrangement with the PCO in their capacity as partners.

With the additional responsibilities that the new GP contract imposes on practice managers in terms of data collection and financial management, practice managers are the obvious candidates to be offered partnership. If you accept a salaried partnership (see below) you will not be permitted to sign the PCO contract.

What do you need to be aware of when you are considering an offer of partnership?

Personal liability: there is no question of contracting with the PCO as a limited liability or as a limited liability partnership; it has to be a traditional, unlimited liability partnership that signs up to the PCO contract. This means that as a partner you assume unlimited liability for the debts and liabilities of the practice because you are an owner of the business. For those practices that have included a 'corporate partner' as part of the partnership for tax reasons, you may need to talk to your accountant and think again.

Practice insurance: whilst GPs currently secure 100% indemnity insurance in respect of clinical claims, you risk being sued if your responsibilities are not adequately documented. Since the PCO signs the PCO contract with the practice, it is forcing practices to consider the matter of taking out comprehensive practice insurance as well as individual clinical cover.

Tax: as a profit-sharing partner, you are self-employed so you pay your own tax and national insurance under Schedule D. Take accountancy advice on the tax ramifications of any change in status and have regard to your pension

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arrangements.

Employment rights: these do not apply to profit-sharing or equity partners because such partners are independent contractors and not employees. Partners are not automatically eligible for authorised leave such as parental, maternity and paternity leave or for the remedies for redundancy or unfair/constructive dismissal unless the Partnership deed says so.

Surgery premises: will you be required to buy in? If so, contact your mortgagee and any landlord (if applicable) to check for their consent and any additional requirements. The doctors are likely to want proof of your financial standing before you buy in because any threat of bankruptcy could result in the landlord terminating the surgery lease.

Partnership deed: do not agree to be a partner without signing a written Partnership deed and take independent legal advice on the deed before you sign it. Review the obligations clauses to ring-fence your exposure to, say, non-clinical responsibilities and insist on an indemnity from the other clinical partners in respect of all other third party claims. Ensure that the PCO contract is accurately recited in the partnership deed. Limit any voting rights you are given to non-clinical issues.

Areas of management: consider limiting your liability in the deed to certain areas such as finance, human resources, premises management, IM&T, new GP contract data collection and restricting your voting rights to these areas. For your own protection, ensure that you are not voting on clinical issues.

Salaried Partner: as an alternative to opting for a profit-sharing partnership, consider entering into a salaried partnership arrangement. This is essentially a promotion to partnership in name only for the purposes of prestige but you continue to be employed as a staff member and taxed under Schedule E. Therefore, whilst enjoying the status of partnership, you retain all your employment rights with none of the risks or responsibilities associated with unlimited liability. This arrangement is documented in a salaried partnership agreement which is separate from the profit-sharing partners' deed. You may be remunerated, in part, by reference to the practice's profits. For instance, you may receive (i) a bonus payment linked to the total practice profits or (ii) a payment linked to costs savings and related profitability directly attributed to your work. Again, take independent legal advice on this contract. If your name is added to the practice's notepaper you are liable only to those who advance credit to the practice in the belief that you are a partner. Make sure you are adequately indemnified in respect of this liability. As far as the PCO contract is concerned, you would not be permitted to sign this as a salaried partner.

Salaried Partner or Profit-sharing Partner? Is the salaried partnership agreement correctly drafted? If it is not, you risk being held out as a profit-sharing partner with all the consequential risks. There is no legal definition of a salaried partner and the distinction between an employee and a profit-sharing partner depends on the precise relationship between the individual and the practice.

Some of the tests to determine whether a person is a salaried partner or a profit-sharing partner include:-

A salaried partner should be assessed for tax under Schedule E;

A salaried partner should not have any financial, business or management burdens;

A salaried partner should not be able to hire and fire staff at his/her will;

A salaried partner should be told what to do, how to do it and with whom he/she should work;

A salaried partner's employer should determine the place of work;

A salaried partner's contract should state the hours of work and the length of paid leave for holidays, sickness and maternity/paternity.

Conclusion

If a GP practice is going to 'win' under the GMS2 regulations and achieve its target points, it needs a highly motivated practice manager who is rewarded for his/her efforts. Make sure this is you!

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