GP partnerships – avoid 'a sting in the tail'

GPs should be aware of the possibility of being held responsible for negligent acts of departed or deceased partners, writes Eamonn Harrington

PARTNERSHIP LIFE CARRIES many benefits but also significant obligations. When business or professional partners fall out there is often deep disagreement, where partners can grow to dislike, distrust, and even hate one another.

However, there is an additional potential 'sting' to partnership life that is not commonly recognised or understood, but has the potential to be devastating in its consequences for partners. This sting is the concept under the law of "joint and several" liability.

Joint and several liability

While you are not your brother's (or sister's) keeper, once you are a partner (or even deemed in law to be a partner), you are potentially exposed to being jointly and severally liable for any wrong caused by your partner during the course of the partnership.

Section 10 of the Partnership Act 1890, effectively makes all partners liable for any negligence committed by other partners in the course of acting in the medical partnership:

"Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act."[1]

Most GP practices currently operate as unlimited liability partnerships. This means partners are "jointly and severally" liable in the case of any financial problems. Creditors and other litigants are free to sue all the partners in the partnership to recover their losses, regardless of who caused the problem. Indeed, each partner is liable up to the value of the whole of the debt.

This means that creditors are able to look to the personal assets of all of the partners until the debt is settled in full or there are no personal assets left. Although your partnership deed will specify how you share profits and losses between you, your creditors will have no regard to this and will typically simply look to find 'the deepest pockets'.

Although unlimited joint and several liability can be a frightening concept, historically it has not been a major concern for general practices, since the clinical negligence risks are mostly insured against. As we will see below, this is not always straightforward, especially in instances where a partner has ceased to practise or has died.

Any doctors who practise in partnership with other doctors need to take careful steps to ensure that they have a proper partnership agreement and, critically, that they have adequate insurance to cover all the risks that can occur.

Can it apply to me if there is no partnership agreement?

Not all partnerships have written partnership agreements. Sometimes, professionals practise together but can be deemed in law to be partners.

There are also risks for doctors who do not regard themselves as partners but who in law are deemed to be partners. The legal definition (Section 14, Partnership Act 1890) is: *"Everyone who by words spoken or written or by conduct represents himself, or who knowingly suffered himself to be represented, as a partner in a particular firm, is liable as a partner to one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by the knowledge of the apparent partner making the representation or suffering it to be made."* [2]

Accordingly, a huge risk for professionals who are deemed to be partners is that they are jointly and severally liable for a number of matters, including the negligent acts of another partner. Therefore, it is critical to have insurance in place and to make prompt notifications to insurers/indemnity organisations.

Exposure for negligence of a departed or deceased partner

More worryingly, a partner can be liable for the acts of a departed or deceased partner. The start and end of a partner's liability is generally expressed as follows:

- A partner is not liable for obligations incurred by the partnership before they became a partner
- A partner is liable for obligations incurred by the partnership while they were a partner.

The general rule that a partner remains liable for obligations incurred while they were a partner is equally applicable to the estate of deceased partners. Thus, a partner who ceased to be a partner of the practice by reason of their death will remain liable for obligations incurred while they were a partner. This also has the potential to leave a deceased doctor's estate exposed to a claim.

The case study below relates to a GP partner who had died and the statute of limitation against their estate had expired. However, it is important to note that similar issues would arise in circumstances where a GP partner who had claims-made professional indemnity cover retires or leaves employment without taking out sufficient tail or run-off cover.

Case study

A number of doctors were in practice together for a number of years. Sadly, one of the doctors ('deceased doctor') died. Three years after that death, a former patient of the deceased

doctor brought negligence proceedings relating to their treatment by the deceased doctor. The relevant treatment occurred two years prior to the death of the doctor.

The patient's legal team did not issue proceedings against the deceased doctor or their estate, because such a claim was by then effectively statute barred.

Instead, proceedings were brought against the other doctors in the practice, who had never provided any treatment to the former patient. The basis of the claim against the other doctors was an allegation that they had a partnership liability in respect the deceased doctor's negligence, which negligence had allegedly occurred five years previously.

Outcome of case

The precise relationship between the doctors needed to be investigated but it was concluded that they did fall within the definition of partners under the Partnership Act.

By simple operation of law, the doctors who had never treated the patient, and had no knowledge or involvement in relation to the impugned treatment, were required to pick up the tab and pay damages to the former patient. Thankfully, their professional indemnity insurance covered the situation.

Nonetheless, they had the trauma of being sued with the attendant risks of adverse publicity. If their insurance had not been effective, they would have been personally exposed for a substantial sum.

What can a doctor do?

It can be traumatic to be sued for professional negligence. Thankfully, professionals should be insured against such claims.

It is important to understand that a professional can be sued for the professional negligence of one of their former partners and they can be personally on the hook, unless their insurance covers such a claim.

We advise many doctors who put in place good business arrangements and have taken professional advice from lawyers and accountants. However, we often encounter poorly drafted partnership agreements, inadequate insurance arrangements, and doctors who became their own legal advisers.

The starting point is to take sound advice in relation to legal, accountancy and in particular insurance matters. Doctors also should ensure the scope of their professional indemnity sufficiently covers such a scenario.

It is also important to promptly notify any possible claim to your indemnity organisation as soon as possible. Even if you believe you had no role or involvement in relation to the impugned treatment, it is critical that your indemnity organisation is notified without delay.

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