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Pharmacy Insights

The value of a pharmacy partnership or shareholder agreement

Many pharmacists go into business with trusted friends or colleagues, and with a strong common vision for their business. In many cases, the pharmacy will run smoothly and the owners will simply agree on the many decisions that need to be made in the day to day running of the business.

Despite this, we always recommend that pharmacists going into business with each other bear in mind that their business relationship will inevitably come to an end one day.

We highly recommend that intended business partners discuss and document what they would like to happen during the life of the business (for example, monthly meetings and an annual business plan), how much time is required to be devoted by each partner to the pharmacy, and what is to happen if a partner defaults on their obligations or if circumstances change suddenly, for example, if a pharmacy partner has their registration suspended or cancelled, or becomes ill and unable to work, or suddenly wishes to retire.

A well drafted agreement should deal with the voting rights of each partner, and whether certain business decisions must be made unanimously (such as the termination or appointment of staff, or extending lines of credit) notwithstanding any differing voting rights/ownership share.

It should contain rules about a partner’s ability to transfer his or her business interest to a third party, and whether that partner must first offer the business interest to the continuing partner.

It may define what would be considered to be a default on the part of a partner (breach of the agreement, acquiring an interest in a competitor business, insolvency, certain criminal offences, loss of registration as a pharmacist), and may contain provisions giving a non-defaulting partner an option to buy out the business interests of the defaulting partner and exit them from the business.

It should contain rules for what is to happen if a partner wishes to retire, or becomes totally and permanently disabled, or dies. Does an ongoing partner wish to have the right to buy out the exiting pharmacist’s interest in the business?

The agreement should also contain an agreed valuation methodology to be used where an exiting partner’s interest is to be purchased by an ongoing partner.

Partners may also wish to include a clause which restrains the parties from being interested in a competitive business during the life of the business and/or for a period of time after a partner exits the business.

A good agreement should also contain a dispute resolution mechanism, ideally requiring that in the event of a dispute, a party must refer it to mediation before commencing legal proceedings against the other.

When a pharmacist consults us regarding a brewing business dispute, our first question will always be whether there is a signed partnership or shareholders agreement in place, which may provide a useful framework for resolving the problem.

It is never too late to negotiate and enter into a binding partnership or shareholder agreement, although we recommend that it is done prior to acquiring the pharmacy interest so that there is a shared understanding and agreement about these issues from the outset of your joint venture.

This article was written by Principal, Georgina Odell and Principal, Mark Fitzgerald. If you have any questions regarding pharmacy partnership or shareholder agreements please contact Georgina Odell or Mark Fitzgerald.

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