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For the * items we are indebted to Messrs Morris Crocker & Co Chartered Accountants

1. Retiring or Acquiring

Barely a day goes by without our being consulted either by practitioners who are looking at and disposing of practices before retirement or practices looking to expand, particularly by taking over from doctors who want to retire.

Many small practices feel under threat and are looking to economise and keep their practices out of the hands of PCTs and commercial providers by expanding or collaborating with other practices.

Our Commercial Team, headed by Andrew Lockhart-Mirams, is always available to provide advice on acquisitions and retirement issues and any of your other commercial needs. Contact either Andrew Lockhart-Mirams on alm@lockharts.co.uk or Alison Oliver on ao@lockharts.co.uk.

2. Will the GMC use online GP ratings?

This is a continuation of an article which appeared in our July 2008 newsletter titled iwantgreatcare.org. This website enables patients to post ratings about their GPs with comments. This site has been very well used with thousands of postings having been placed.

It has come to light, however, that this may be referred to by GMCs and possibly even used in fitness to practice hearings. The data may even be sold to PCTs to give them the ability to monitor the performance of GPs that have been rated. This is not confirmed and we will have to wait and see how the information on the website will be used.

This site could result in libel actions being brought, particularly by GPs that have very damaging comments posted about them.

Lockharts will be pleased to advise any GPs who have particular concerns about entries that are posted in their name. Please contact Michael Rourke at mbr@lockharts.co.uk.

3. Quickies

From time to time practice managers may have short questions they would like a quick answer to.

We can never know at the time whether there is a quick answer.

However, we are always happy to be e-mailed when we would either hope to get back to you within 24 hours with a short answer or an indication that the matter is a complex one which will require advice in accordance with our terms of business.

To record your enquiry please e-mail Victoria Wheeler at vw@lockharts.co.uk.

4. Chaperones

There has recently been an increase in complaints and accusations against doctors and clinicians regarding inappropriate behaviour during intimate searches. It is advised that when doctors carry out intimate examinations on patients that there be a chaperone present. In most cases this can be a practice nurse.

Whenever a chaperone is used this should be recorded in the medical notes, so there is a clear record of it. The information recorded should include the name of the chaperone. If a patient who has been offered a chaperone declines to have one present this should also be recorded in the medical notes. The chaperone should also ensure that they can see what is happening and not simply stand behind a curtain.

Most practices do not have chaperone policies in place, when in fact this should be a high priority. The policy should be updated and reviewed on a regular basis. The policy should include the fact that chaperones or doctors should explain the procedure to the patient in a manner which ensures that they understand the process. Anyone who acts as a chaperone should be provided with full training, which should include information on what to do if they have concerns about a particular doctor.

Having an effective policy in place will reduce the risk of litigation. This, in the long term, will save time and money and will also protect the reputation of both the doctor and the practice.

5. Medical Expert Witnesses – Simple Guidance

Doctors that act as expert witnesses must insure that their duty is always to the court. Their duty is never to the person that instructs them, so they must act independently of them. If a doctor is unsure about any of the instructions given to them they must ensure that these are clarified without delay so that when an opinion is given it answers the various issues raised.

All opinions given must be balanced and must include information on the facts and assumptions that they have been derived from. The information must be verified and include anything that is relevant, so there are no gaps in the opinion.

Doctors must not give opinions or evidence that go beyond their competence. Doctors must always ensure they keep up to date with all information and skills in their relevant field of expertise. All laws and codes of practice must be adhered to.

Doctors must be impartial and objective and therefore not be affected by any bias or prejudice that they may have. Confidentiality must always be maintained and there should never be a conflict of interest.

If any questions arise concerns should be addressed to the practitioners Medical Defence Organisation in the first place, alternatively Michael Rourke at mbr@lockharts.co.uk will be pleased to advise.

6. Company Secretaries

From 6th April 2008, in accordance with the Companies Act 2006, it has now become optional for private companies to appoint a company secretary.

Existing companies that wish to remove the secretary and which have provisions in their Articles that state that a company secretary must be appointed, must hold a general meeting to pass a special resolution or written resolution to remove this requirement from their Articles. If there is no express provision in the Articles then directors are free to resolve to remove the secretary.

If it has been decided that the secretary will be removed from the company, a Form 288b must be submitted to Companies House along with the special or written resolution and the Register of Secretaries must be amended accordingly.

If a new company decides that it does not want a secretary, or an existing company decides it no longer needs one, then

considerations must be made on how documents are to be executed.

This is particularly important where there is a sole director. The methods which can now be used to execute a document are:

1. By signing of a contract (not a deed) by an authorised signatory;
2. By executing a deed by a director in the presence of a witness who attests the signature (a **new** provision);
3. By executing a deed by authorised signatories (authorised signatories are the directors or secretary (if the company has a secretary); e.g. by two directors or director and secretary);
4. By affixing the common seal in the presence of two directors or director and secretary;
5. By signing a contract by an attorney; and
6. By executing a deed by an attorney in the presence of a witness who attests the signature.

Companies which decide to remove their secretary or new companies which think they will not require one must consider all the practical implications of this. The tasks that were carried out by the secretary must now be carried out by the directors. These include, but are not limited to, maintenance of the statutory registers, providing notice of minutes to all directors and members, sending copies of resolutions and agreements that have been passed and the filing of statutory information to Companies House and custody and use of the company seal (if there is one). It must be noted that in relation to matters that are a statutory requirement the company secretary would be held criminally liable for non compliance by the company.

Whilst directors will need to undertake new responsibilities of a company secretarial nature they will also have to consider the extent to which these could conflict with their duties as directors of the company. A conflict might also exist if the directors hold shares in

the company (either in their own right or on behalf of others). Given the very strict new rules that the Companies Act 2006 contains on conflicts of interest we recommend you seek specialist advice on these issues before forming your company. For further information please contact Michael Barrett at mb@lockharts.co.uk.

7. QOF

Hopefully by the end of September at the latest each practice should have received 70% of their QOF aspiration on a monthly basis. The balance of 30% is guaranteed to be paid by 30 June 2009. Practice managers should check that once the 70% payment has been received the underpayment from 60% to 70% from April 2008 is also paid.

Whilst the reduction of the achievement payment from 40% to 30% may not seem significant it does represent 25% in monetary terms so, for example, if your 2007/08 achievement payment was £100,000 you should plan for a reduction of £25,000 in the cash available to you when your 2008/09 achievement payment is received next year.

8. Global Sum and Correction Factors

As you will probably be aware it is expected that receipts for Global Sum and Correction Factors will change from 1 October 2008. The DDRB recommended that Global Sum payments should increase by 2.7%, but that at the same time Correction Factors should be reduced so that those practices receiving Correction Factor payments would have no change in their income from these combined income streams. Practices not receiving any Correction Factor payments would gain from the 2.7% uplift.

Although this change sounds fairly straight forward in principle it will require a major rewriting of the section of the Statement of Financial Entitlement (SFE) that deals with the MPIG. At present the SFE provides that the Correction Factor is a one-off calculation to determine the Correction Factor Monthly Payments and that these payments will change in future years by being uplifted in

line with increases to the Global Sum. We understand that the Department of Health is going through the necessary consultation process so that it can change the SFE. At this stage we have not seen the proposed amendment to the SFE and this may not be available until close to the implementation date. Due to the complexity of the calculation of the MPIG we will want to look at the revised SFE wording in detail to ensure that there are no unintended consequences.

When the payments change, practices will need to check the revised calculation of their Correction Factors.

9. Firm News

We are pleased to announce that the Partnership Team has been joined by Manjit Jagdev who will be working alongside Ros Parkin as a paralegal.

Previous Issues

If you would like to receive previous issues of the Lockharts Newsletter please contact Bhavika Shah at csd@lockharts.co.uk.

Distribution of our Newsletters

We prepare newsletters for practitioners at approximately monthly intervals and occasional newsletters for LMCs. LMCs are welcome to distribute these to their constituents in their entirety.

If LMCs or other persons or bodies wish to circulate only part of our newsletters, we are happy for them to do so provided that the following acknowledgement and disclaimer are printed immediately below the relevant extract:

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If you have any questions about this, please contact Andrew Lockhart-Miramis at alm@lockharts.co.uk.

Cessation

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'... Lockharts leap frogs the lower tiers to the top, following market recommendation... Having acted for over 1,500 GP practices, the firm was pivotal in the formation of and structure of GP contracts, and regularly advises medical committees in London and across the country ... a team that "definitely knows its onions."

Chambers UK, A Client's Guide to the Legal Profession 2008

Ranked in the 2008 Legal 500 Healthcare Section

"Under Andrew Lockhart-Miramis, Lockharts is an 'established leader in medical law' that acts for over 1,500 GP practices on a variety of corporate and commercial issues, including private APMS contracts with PCTs"

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