

Contents:

1. Chambers Directory 2009
2. Nurses Outnumbering GPs in Polyclinics
3. Criminal Records Bureau – Guide to Routine Checks
4. Whistleblowing
5. Dispensing Doctors – Consultation Document on Pharmacy in England
6. Playing Music at Work Requires a Licence
7. Lockharts Company Secretarial Services

1. Chambers Directory 2009

We are delighted that we are again ranked as joint number one for medical partnership law in the Chambers & Partners Law Directory for 2009.

Over one hundred researchers at Chambers carry out an independent and objective survey of every firm listed. The researchers interview clients and fellow peers to gauge an insight into the firm and the work it carries out. There are many factors that are taken into account when assessing rankings including technical ability, client service, commercial astuteness, diligence, commitment, and other qualities most valued by the clients.

Lockharts' entry reads as follows:

Two redoubtable practitioners form the bedrock of Lockharts' ever-growing success within this arena. Senior partner **Andrew Lockhart-Mirams'** combination of *"extensive knowledge of the NHS and a comprehensive partnership background"* makes him *"the key choice for medical partnership matters."* Instrumental in the formation and structure of the most recent

GP contracts, he is described as a valuable "consultant to the health department."

Also popular with general practitioners, and *"very easy to get on with,"* is partnership head **Rosalind Parkin**, who debuts in the tables this year. Clients value her responsiveness and aptitude for *"speaking in plain English, rather than using legal jargon,"* while peers endorse her knowledge of partnership deeds and LLP work.

Working as a unit, the two are considered excellent on every medical partnership matter: particular praise is given to their work on merging practices and amending agreements, as well as skill at acting as arbitrators in disputes. Offering a *"much wider breadth of knowledge and expertise"* than many of its competitors, the firm comes highly recommended and gives clients *"very little reason to shop around."*

2. Nurses Outnumbering GPs in Polyclinics

With the move towards polyclinics/GP led centres the Department of Health (the DH) has recommended that each polyclinic should employ three GPs, nine nurses, one healthcare assistant and associated administrative support. It seems that the PCTs are following the recommendations when commissioning.

The DH has said that this will not damage the quality of care to patients. However, many see this as questionable. Many believe that this will lead to inadequate care especially as nurses are never going to be able to do everything a GP can and are not qualified to the standard that GPs are. For example, even though the number of nurses that are able to prescribe is increasing not all nurses at the moment can prescribe and this could be a problem for many patients.

Dr Chaand Nagpaul, GPC negotiator, believes the proposed ratio of nurses to GPs makes a mockery of the term GP-led healthcentre. Some believe that this move will lead to

abuses from the private sector who will employ fewer and fewer GPs in order to reduce costs.

Set against this is the major problem that has been pointed out by the RCGP Chairman Professor Steve Field; that there is a shortage of nurses and that there needs to be an appropriate skill mix of nurses. To increase the number will take a considerable amount of time.

There are many in favour of a greater ratio of nurses and generally this is the way the profession is moving any way. Nurses are already running many parts of a practice including chronic disease clinics and vaccinations services. This will ease the pressure off GPs so that they can concentrate on more serious cases.

Clearly however the competing views require a delicate balancing act.

For further information contact Andrew Lockhart-Mirams on alm@lockharts.co.uk.

3. Criminal Records Bureau – Guide to Routine Checks

GPs, dentists and veterinary surgeons may be approached by schools or other institutions and asked to take on individuals for work experience placements.

If this is the case there may be the possibility that a Criminal Records Bureau (CRB) check may be required.

What is the CRB?

This is a Home Office Executive Agency which provides access to criminal records. The CRB allows organisations in the public, private and voluntary sectors to identify individuals who may be unsuitable for particular types of work.

The service is delivered through partnerships with the police, the Department of Health and the Department for Children, Schools and Families (DCSF).

There are **two levels** of CRB check:

1. Standard Disclosure – this shows current and spent convictions, cautions, reprimands and warnings held on the Police National Computer. The Protection of Children Act List may also be checked, as could information held by DCSF under section 142 of the Education Act 2002. The check takes about two weeks to complete.
2. Enhanced Disclosure – this is the same as standard disclosure but also includes any relevant information held by local police forces. It is the highest level of check. The check takes about one month to complete.

The check has no lasting validity as it is only true at the point at which it is carried out.

Do I require a check?

The school or institution will be responsible for deciding whether you meet the criteria for a CRB check. Eligibility is governed by law and you will be eligible if the duties of your position include 'regularly caring for training, supervision, or being in sole charge of a child.' This includes acting as a work placement provider.

Other factors that can be taken into account when deciding whether a check is required are, whether you already carry out other voluntary work or, whether members of staff from the school or institution know you personally and would be able to act as a referee.

Do other staff in the practice need a check?

Not all staff will need to be checked even if they are coming into contact with the child. The school or institution will decide which members of staff meet the criteria and therefore require a check. Try to ensure all staff are willing to do the check so you are sure that you have done all you can to avoid subsequent problems. The person checked is normally the one that will have the designated day to day responsibility for the child.

If work placements are a regular feature of the practice it may be sensible to incorporate a standard term in the employees' contracts

of employments setting out that checks may be made when required.

How do I apply for a check?

You cannot apply for checks on yourself and you should therefore ask the person who wants you to apply to provide you with an application form. There is no charge as you are offering your services voluntarily.

How is the information about me used?

The results of the check will be sent to the school or institution and you will receive a copy.

There is a Code of Practice in place to ensure that all personal information is handled and stored appropriately and is kept no longer than necessary. You will also be protected under the Data Protection Act 1998.

Can I refuse a check?

You can refuse, however be aware that this could mean that the school will no longer be able to accept you as a work experience placement provider.

I have a criminal record

It will be the school or institution that will make a decision from the results. This decision will be based on the school and government policies on employing convicted criminals. Just because you have a criminal record this does not mean that you will automatically be ruled out.

If you have any concerns about the results you can contact the National Association for the Care and Resettlement of Offenders, which is a crime reduction charity.

What if there is an error in the results?

If this occurs you should contact the CRB within three months from the date of issue.

4. Whistleblowing

Whistleblowing is becoming more and more widespread. This is 'used when someone who works in or for an organisation raises a

concern about a possible fraud, crime, danger or other serious risk that could threaten customers, colleagues, shareholders, the public or the organisations own reputation' (Whistleblowing Arrangements Code of Practice – British Standards Institution).

Workers are in the heart of any organisation and are normally the first to know about any concerns that should be raised; so a whistleblowing policy is advisable. This will give employees confidence in knowing that they will be safeguarded if they were to use the process. The policy should inform all members of staff who they should contact internally and in the PCT with their concern.

It should be noted that under the Public Interest Disclosure Act 1998, employees and former employees who have been dismissed or have claimed constructive dismissal due to whistleblowing, can bring a claim for unfair dismissal. This can be very serious for an organisation as no qualifying period is needed to bring a claim and there is no cap on the amount of compensation that can be recovered.

Many employers will obviously not want to proceed to the litigation stage as it will be their reputation at risk, or at least the reputation of someone with influential powers within the organisation.

Although employers should be aware of this Act, they should not be overly alarmed. Employers should bear in mind that the Act only protects 'protected disclosures'.

The meaning of this term is very complicated, however it can be said that the disclosure by the employee must be a 'relevant wrongdoing,' of which there are six types. The six wrongdoings are; a criminal offence, the breach of a legal obligation, a miscarriage of justice, a danger to the health and safety of any individual, damage to the environment or deliberate concealment of information tending to show any of the other five matters.

An example of a 'relevant wrongdoing' in relation to putting the health and safety of an individual in danger is when an employee notices that a nurse is not sterilising equipment properly.

For further information please contact on csd@lockharts.co.uk.

5. Dispensing Doctors – Consultation Document on Pharmacy in England

On 29 August this year the Department of Health published a consultation document on the future of pharmaceutical services in England & Wales. The consultation underway is extremely comprehensive and covers all aspects of pharmacy in England.

The Department has identified what it believes to be *"a number of shortcomings with the current arrangements"*. The Department, in the consultation are proposing a new legislative basis for determining whether or not a pharmacy contractor provides NHS services to replace the "necessary or desirable" test (the control of entry). There is a proposal to replace this test with one based on local Pharmaceutical Needs Assessments ('PNA'). The revised test proposed in the consultation is :

"First, a PCT would be obliged to grant an application where it is satisfied that to do so will secure or will help secure the overall adequacy of pharmaceutical service provision in its area judged against the PNA. Second, a PCT would grant the application if it considers that, judged against the PNA, it would secure these improvements in or improved access to the provision of pharmaceutical services for that area when considered against these range of factors".

The Department has indicated that this new test may be introduced gradually to allow it to be evaluated before it becomes the standard.

Of principal interest to Dispensing Doctors will be the proposals in Chapter 4 of the consultation which deals specifically with GP dispensing.

The Department have reiterated that the need for a cross-subsidy from dispensing income to support the provision of medical services is "ultimately, anti-competitive" and should be "exceptional". Those practices who have taken advice on the "prejudice test", or received decisions from their PCT and/or

NHSLA regarding this test, will be aware of the difficulties of invoking this test to protect a dispensing practice in the event of a pharmacy making an application in the neighbourhood.

The consultation highlights the anomalies that can arise under the present regulatory arrangements, such as where patients who live in close proximity to one another being treated differently and that a pharmacy may be very close to a practice but the practice may retain dispensing rights.

The Department has conducted a Financial Impact Assessment and has determined that the costs of GP dispensing are higher than where a GP prescribes and a pharmacy dispenses.

The Impact Assessment associated with Chapter 4 sets out that the option to abolish all dispensing doctors has been eliminated from the consultation and has left four options to be considered. These are:

Option 1 is no change. This is the option supported by the Dispensing Doctors Association.

Option 2 is that whilst continuing with current arrangements where GP dispensing applies in controlled localities, the existing specific distance criteria would be removed. This would allow PCTs to determine the rural localities where GP dispensing is appropriate on the basis of their PNA.

Option 3 would mean that, instead of the distance between the patient's home and the pharmacy, the determining factor should be a distance between the dispensing surgery and the nearest community pharmacy. Such a distance could be put at less than the current 1.6 km, for example, at 500 m or at 1000 m.

Option 4 is a variation of Option 3. It would mean that a GP would not dispense where there is a pharmacy within, for example, 500 m or 1000 m of the GP practice and a second pharmacy within 1500 m. Those who are permitted to dispense may do so to all their registered patients regardless of the distance between their home and the surgery or pharmacy.

It is inappropriate for solicitors to advocate in favour of any of the proposals, however, the above changes, dependent on which is selected, may impact, whether adversely or otherwise, on dispensing practices. Lockharts is experienced in healthcare, regulatory and relevant pharmacy law and can advise practices on how the law, and these changes may affect dispensing practice.

Where it is appropriate, Lockharts can also advise about practices forming pharmacy companies and making applications to get on the Pharmaceutical List. This option is increasing being explored by dispensing practices to protect their future income against applications by pharmacy companies in their area.

Until any changes in the law are enacted Lockharts will continue to act for practices seeking to challenge pharmacy applications under the present Regulations. For further information please contact Andrew Lockhart-Miramis at alm@lockharts.co.uk or Michael Rourke at mbr@lockharts.co.uk

6. Playing Music at Work Requires a Licence

Many GP surgeries play music in their waiting rooms to help relax patients and to provide a pleasant environment. However, most surgeries do not know that by law if copyright music is played in public, which means playing it anywhere outside of the home, permission must be obtained from every writer or composer whose music is played. This includes any form of recorded music be it from the radio, a CD, a jukebox or from the television.

There are organisations in place that can provide licences for this type of music use. The main organisation is The Performing Right Society (PRS). They are a not-for-profit organisation which collects fees for the licences and passes the royalties to the relevant people around the world.

PRS charge an annual fee. This fee is calculated by reference to the form of music you play, e.g. whether it is from the radio or a CD, and the number of seats in the waiting room.

If you play copyright music without a licence and the composer, writer, or some other relevant person decides to bring legal action you may have to pay costs or damages to them.

For further information please visit www.prs.co.uk.

7. Lockharts Company Secretarial Services

As advised in a previous newsletter, private limited companies are no longer required to have a company secretary. In the absence of a company secretary, the directors must fulfil company secretarial functions. Failure to comply with statutory filing requirements can carry serious (and, in some cases, criminal) penalties.

Whether or not you are considering having a company secretary, our service is designed to relieve you of the administrative burden of meeting statutory deadlines and complying with filing requirements. This leaves you to concentrate on the business of providing health care services, as your primary aim.

We have software specially designed to carry out the function that a secretary would carry out. The software provides Lockharts with a direct link to Companies House. We can prepare and file board minutes, resolutions and statutory forms for your company.

To meet your differing needs we offer:

1. The Standard Compliance Package; and
2. The Enhanced Compliance Package.

For further details and any questions you may have about the services we can provide for your company please contact Michael Barrett on mb@lockharts.co.uk or Neha Shah on ns@lockharts.co.uk.

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:

This article originally appeared in the Lockharts Solicitors' Newsletter dated [insert date] and is reproduced with their permission. The content of this article is only intended as information and should not be considered to be legal advice. Lockharts cannot be held liable for any loss caused by any act or omission as a result of information in this article.

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

Cessation

If at any stage you decide that you no longer wish to receive the Lockharts Newsletter, please inform Bhavika Shah by post or email at csd@lockharts.co.uk.

Disclaimer

The content of this newsletter is only intended as information and should not be considered to be legal advice. Lockharts cannot be held liable for any loss caused by any act or omission as a result of the information in this newsletter.

Contacting Lockharts

Lockharts Solicitors
Tavistock House South
Tavistock Square
London
WC1H 9LS

Tel: +44 (0)20 7383 7111

Fax: +44(0)20 7383 7117

Email: csd@lockharts.co.uk

Web: www.lockharts.co.uk



"...Offering a 'much wider breadth of knowledge and expertise' than many of its competitors, the firm comes highly recommended and gives clients 'very little reason to shop around.'"



"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"

Although Lockharts usually only produce ten issues of the newsletter in every year, due to the large number of matters of interest at the present time, we are pleased to say that an additional issue of the Newsletter will be brought out in December.

www.lockharts.co.uk