# Medico-Legal

## BUSINESS RELATIONS BETWEEN DOCTORS*

### PARTNERSHIPS

If partners are well matched and work together, their combined strength is a great deal more than the sum of their individual resources. If partners are ill matched, they had far better separate. Many partnerships are wrecked by jealousy, but perhaps more of them founder because the partners never were at any time temperamentally fitted to work together. The bed-rock of a partnership is mutual good will, and intending partners should consider most seriously and at some length whether they will probably get on well enough with each other to work together for many years. If they have any doubt they should not start. Possible causes of disagreement should be frankly faced, discussed, and guarded against. Experience shows that most of the difficulties of working in partnership can be overcome if partners behave in the right way from the start. The best advice that can be given to an intending partner is to consult the secretary of his defence society or of the B.M.A. These officers are experts in medical business relationships, and can also recommend solicitors and accountants in whom the doctor can place every confidence.

A fruitful source of later discord is the discovery by the new partner that his share is not worth what he thought it was. His disappointment is very likely to lead him to express doubts of his partner's good faith, and a breach thus caused may easily widen into a rupture. The purchase of a share is governed by the same considerations as the purchase of a whole practice, which will be dealt with fully in a later section. The chief safeguards are thorough investigation of the accounts by an accountant who is expert in medical work, and careful local inquiry by an experienced medical agent.

When the intending partners have decided that they can exclude every likely cause of disagreement, they should approach a firm of solicitors with experience in medical work and have the agreement properly drawn up. They should not attempt to work together until this has been done. Sometimes partners let years go by before drafting, let alone signing, the agreement. If any disagreement arises the position is very complicated and disastrous litigation may develop.

The following experience[1] shows how badly a medical man may fare through beginning to work in partnership before the legal agreement is drawn up and signed.

There were two partners, A and B. B retired and X, another practitioner, agreed to buy, subject to certain conditions to which A agreed. No mention was made of any preliminary assistantship, and X understood that A had accepted him as a partner. B was about to undergo an operation, and was to arrange his affairs before he left the town, so X paid up the bulk of the purchase money and signed an agreement to take over B's house. X started work with A as a partner and worked for five weeks. He was introduced to A's patients as A's partner. He went on to the panel and his name was substituted for B's on the cards. A and X opened a common banking account, and steps were taken for X to take over B's share of the lease of a common surgery. After discussion with A, X caused to be printed 2,000 copies of a new joint account form, and A bought and paid for X's plate with both names on. X called on all the doctors in the town as A's new partner.

After five weeks, with A's consent, X went to London to make arrangements for moving his furniture in, and paid a locumtenent during his absence. On arrival in London he received a letter from A saying that he thought it would be a mistake to proceed further with the partnership, and that B had acted hurriedly. At the same time X learned that B was dangerously ill after the operation. X recovered his purchase money from B, but had to look elsewhere for a practice. He had to tell all his friends that the arrangement with A had fallen through; he had received a number of introductions to people in A's town, and he felt that he had suffered considerable moral damage, apart from out-of-pocket expenses and loss.

It is not at all improbable, however, that a court of equity would consider that A, by his conduct, had induced X to regard himself as A's partner, and that he would be liable for any damage to X caused by his subsequent withdrawal.

#### THE PARTNERSHIP AGREEMENT

Although the drafting of the partnership articles should be entrusted to a solicitor with special experience in medical work, it is desirable that intending partners should have a good idea of what the articles should contain. Many of the conditions of a properly drafted agreement are, at first sight, unnecessary and even unintelligible; to appreciate them the doctor must know their history and the results of omitting them in the past. Barnard and Stocker's specimen form of articles, with notes, are the best if not the only published source of this information. Briefly,[2] the agreement should define: the duration; the terms on which the in-coming partner shall acquire and increase his share; the mutual rights and duties of the partnership (the division of labour); the partnership property and expenses; the fees to be charged; the terms of dissolution and the restrictive covenants by which an outgoing partner shall bind himself not to compete with the remaining partners; and the mechanism for settling disputes. Provision should be made for the keeping of accounts, the division of profits, holidays, and the absence or incapacity of a partner.

Partnerships nearly always originate in the purchase by a junior of a share in the practice of a senior practitioner. The premium is usually paid in a lump sum, before the partners start to work together. There are good reasons for this custom. If the junior agrees to pay instalments and fails to pay them regularly, the senior will naturally be discontented and friction will arise. If he does pay them regularly, he may have so little money left that he cannot keep up a proper appearance or meet his tradesmen's bills, and the credit of the practice will suffer. As he gets no share of the money owing by patients at the time the partnership begins, he will not receive his full share of the profits for a considerable time. The same objection applies to admitting a partner who has borrowed money to pay his premium, unless he has borrowed it from a recognized society under its scheme for assisting young practitioners to start in practice.

#### DURATION OF PARTNERSHIP

In fixing the duration of the partnership the partners have to remember that the fundamental object of all their business arrangements with each other must be to preserve the goodwill and connexion of the practice, so that when the partnership is dissolved by death or some other cause, each partner shall be able to realize the proper value of his share. The risk of partners quarrelling and being unable to carry on together is always present, and it is essential that if this happens any partner shall be able to withdraw with as little damage to the practice as possible. One method is to give either partner the option of dissolving at certain fixed dates, such as the seventh, fourteenth, and twenty-first years, and to allow both to continue to practise in the district. The disadvantage of this method is that it holds out an obvious inducement to each partner to compete with the other to get as many of the patients as possible into his own hands, in order that when the next date comes round he shall find it worth his while to dissolve. Moreover, as each partner will be faced with a competitor on dissolution, his interest will not be worth nearly its proper value.

The agreement recommended by Barnard and Stocker is therefore that the partnership should continue for the joint lives of the partners, but that either shall be free to sell his interest at any time after the first few years, on giving six months' notice, the other binding himself to purchase it. Exactly how many years shall be allowed before either is free to sell will depend on the nature of the practice. The object is to give the junior a good chance of establishing himself. The outgoing partner covenants to give every possible assistance in the way of introducing his ex-partner to his patients and obtaining for him the appointments which he is relinquishing.

* The first of these articles, by a legal correspondent, appeared in the *British Medical Journal* of June 9th, 1934 (p. 1053).

[1] *Lancet*, 1926, ii, 150.

[2] *The Conduct of Medical Practice*, p. 50.

For details of this form of agreement readers are recommended to consult these authors' valuable textbook. Some authorities suggest that the remaining partner shall have the option of refusing to purchase, but this arrangement gives him such a stranglehold over the practice that a junior will be well advised not to consent to it. The position has, in practice, caused endless trouble.

### MONEY MATTERS

The newcomer often agrees to pay a sum fixed by a competent valuer for his share of the surgery furniture, drugs, and appliances. This clause is another fruitful source of trouble, because the newcomer is apt to assume, not unnaturally, that the surgery furniture includes everything he saw in the surgery when he was first shown over it, while the senior may consider that many of the most desirable pictures, chairs, and rugs are his own property and remove them before valuation. The partners should agree on a schedule of furniture for the use of the valuer. Each partner usually provides his own motor car, but if the junior is only purchasing a small share the expense might be too much for him, and it would be better for him to contribute a fixed amount to the upkeep of the senior's cars in return for their use. It is usual for each to have his own surgical instruments.

The agreement will provide that the working expenses of the partnership, such as rent, repairs, supplies, and service, shall be paid out of the receipts, possibly from a joint banking account. The shares of the partners are defined, and each agrees to employ himself diligently in the practice and to do no other work, except, perhaps, look after a resident patient, and to accept or resign no appointment without the consent of the other partner. Although it may, at first sight, seem fair that if the senior is already a medical officer of health or a coroner he should keep the salary for himself, yet he is doing the work in partnership time, during which his junior partner is working to make profits for both.

If the junior partner comes in with a smaller share than half, he will probably want to reserve the right of buying up to one-half as soon as possible. The senior will usually want to put off the increase as long as he can, and can justly argue that the junior will not be earning half the profits for a considerable time. Barnard and Stocker suggest that the junior should be given the option of increasing his share to one-half at any time after the number of years demanded by the senior, and sooner if, at the end of any year, the accounts show that he has earned in it as much as the senior. The purchase price should be based on the original valuation and not upon the receipts immediately before the purchase, for any increase in the receipts may well be due to the exertions of the junior as much as of the senior. Each partner usually agrees to provide a competent substitute if he absents himself or is incapacitated from doing his work.

### DISSOLVING THE PARTNERSHIP

Power should be given to either partner to dissolve if the other is incapacitated for a stated time, or becomes lunatic, or breaks the agreement, or damages the interests of the partnership by misconduct, or is removed from the *Medical Register*. If a partner dissolves on any of these grounds, or the partnership is terminated by a partner allowing his share to be charged with debt or being bankrupt, the defaulting partner should be considered, for the purposes of the agreement, to have died on the date of dissolution. If the partnership is ended by misconduct or breach of agreement, the other partner is generally released from any obligation to buy the offender's share, but it is better to make some sort of positive arrangement as well. The ordinary form of articles does not provide for the senior partner losing patience with the partnership, throwing over the agreement altogether, reverting as much as possible to the state of things which existed before the junior man came, and defying him to do what he likes. Such things have been known to happen. The junior can then either dissolve the partnership, in which case the senior becomes a competitor and the junior's interest in the practice is almost worthless ; or he can buy the senior out, which means that he will have to pay a large sum (which he may not be able to raise) for a practice to which he has not been properly introduced. Neither remedy is at all attractive. One possible safeguard is to frame the covenant in restraint of future practice (about which more will be said in a later article, and the object of which is to prevent a partner from selling his share and then continuing to practise next door) so that if the partnership is ended by misconduct or breach of agreement the offender shall not be able to remain in competition with his former partner. A better precaution, and one advised by the solicitors to a large defence society, is to provide that the aggrieved partner may buy the share of the offender for half the sum which he would have had to pay if his partner had died.

The agreement should lay down the price at which the survivor shall or may buy the share of a partner who dies, at various stated times after the beginning of the partnership. The authors advise that the survivor should be bound to buy. He should have easy terms of payment, but the representatives of the deceased must have adequate security, and if he can neither pay nor give good security, he must take another partner who will provide the necessary capital. If he is given the option of buying or not, he is in a position to cause the representatives of his late partner considerable trouble by obstructing the sale of their interest without actually refusing a new partner. The agreement should also provide for the taking of the final general account, and contain a clause restricting an outgoing partner from practising within a stated number of miles from the place of the partnership. It may end with a provision that any dispute shall be referred for decision to an arbitrator.

# Obituary

## HENRY WATSON SMITH, O.B.E., M.D.

Medical Director, Lebanon Hospital for Mental Diseases

By the sudden death in England, on June 12th, of Dr. H. Watson Smith the Near East has lost one of its very few mental specialists and the Lebanese Republic an outstanding personality. In his twenty-five years as medical director he had built up the Lebanon Hospital for Mental Diseases at Asfuriyeh, near Beirut, and at the recent annual meeting of subscribers in London the Syrian head master of a large school near Jerusalem expressed the opinion that this voluntary international hospital was one of the two institutions in Syria and Palestine which stood head and shoulders above all others. So great has been its prestige under Dr. Watson Smith's direction that sufferers from mental diseases travel from Egypt, Iraq, Turkey, and Persia to be under his care. In the absence of any system of certification, cases are received in the early stages, and the results of treatment have been remarkable.

Henry Watson Smith was born near Aberdeen on February 6th, 1879, of Scottish parents. Having entered as a medical student at the University of Aberdeen he won several bursaries and gold medals, and graduated M.B., Ch.B. with honours in 1901. After holding house appointments at Aberdeen he was house-surgeon at the West Suffolk General Hospital, Bury St. Edmunds, for two years, then for eighteen months at Peckham House, London, and for the following three years second assistant medical officer at the Durham County Mental Hospital. It was on the strong recommendation of the last-named body that the London Committee chose him as the future head of its hospital on Mount Lebanon, and he took up his official duties in February, 1909, having first obtained the Turkish medical degree at Constantinople, since Syria was at that time under the Turks. Subsequently he added to his knowledge of French a thorough working knowledge of Arabic. His thesis on the aetiology and pathology of general paralysis of the insane gained him the M.D.Aberd. in 1912, but beyond