Don’t Sell Your Practice, Pass it on!

As we work with federating practices, a number of small practices with one principal GP or two partners are deciding to retire rather than face implementing new changes.

Closing a practice is not easily done. There are contracts to terminate, in particular with respect to employees and the surgery premises. These can leave you with a large amount to pay and you no longer have the on-going business out of which to pay rent and to fund redundancies. However, by careful planning, you may be able to avoid all or some of these costs.

There is no question of retiring and walking off into the sunset until you have dealt with these matters. The alternative to closing is finding a way for the practice to continue so that someone else takes over the responsibilities.

The two options for continuing the practice are to find another GP to join as a partner, or find another practice which will take your practice over. Your practice may be of particular interest to a federation of practices, as it could give them the base from which the organisation is able to build.

What can you expect to receive in return for handing over your GMS or PMS contract and patient list? In addition to all your employees being taken over on the same terms and conditions as at present and to transfer the lease of your premises (if you lease them), you should be paid for all the physical assets of the practice, such as the surgery premises (if you own them) and the furniture and equipment which belong to you. Please remember that some equipment may belong to the NHS having been paid for by the PCT.

The bad news is that, if you have a patient registered list, you cannot be paid for the practice itself, as the Primary Medical Services (Sale of Goodwill and Restrictions on Subcontracting) Regulations 2004 prohibit the sale of goodwill. Goodwill is an intangible asset which is the value of the business over and above the physical assets and this is deemed to belong to the NHS to the extent that it relates to, or is connected with, the patient list, so the fact that you have looked after your patients well for many years and kept the surgery up to date is a value you cannot sell.

Below, I set out five key points to take account of when you are selling your practice.

1. Don’t close your practice. If you close down your practice, you may be left with a number of continuing liabilities which are no longer paid for by NHS England because you have ceased to provide the service, such as the rent on your premises and making staff redundancy payments.
2. Don’t sell your practice. Firstly, you may lose its most valuable asset, the contract with NHS England and secondly, it is illegal to sell the non-tangible assets of your practice, the “goodwill”.

3. Form a partnership. Firstly, by going into partnership with your “buyer” and putting the “buyer” on the NHS contract, the contract becomes the property of both partners so, when you retire, the contract continues with the remaining “buying” partner. Secondly, as the practice continues, the staff continue to be employed by the practice and therefore there is no redundancy situation. By a similar mechanism, the GP federation could take on your practice.

4. Property - if you own the practice premises, decide if you are going to sell the premises or let them (grant a lease) to the “buyer”. Make sure that the NHS Property Services Limited has sanctioned the purchase price or the rent you want, because the “buyer” will want to ensure that the notional rent or the market rent is reimbursed before committing to take on the property. If it is not approved by NHS Property Services Limited (which will instruct the District Valuer), then the “buyer” may decide to find alternative premises, which could leave you with an empty building with outgoings to pay.

5. Make sure all of the business contracts transfer to the “buyer”, otherwise you might end up with contracts you have to break at great expense; photocopier, cleaning and of course, employment contracts are expensive to break (and it may lead to an unfair dismissal claim in the case of an employment contract).

Plan well ahead, at least 12 months ahead and seek professional, legal and accountancy advice beforehand. Any issues can then be resolved before you find a “buyer” and then the transaction will proceed smoothly and within your timetable.

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