

ASSOCIATION AGREEMENTS

Basically, in an Association, medical practitioners enter into an agreement to share certain / common facilities and services but each practice would work for its own account and no sharing of profit and loss takes place. The facilities may include the suite of consulting rooms, office equipment, the reception and accounting facilities and sometimes staff and specialised medical equipment.

Some of the constraints which lead to room-sharing arrangements are:

- The unavailability of suitable numbers of rooms in prime locations;
- High rentals;
- The high costs of receptionists and administrative staff; and
- The fact that staff and space are often under-utilised in a one-man practice.

A major advantage is the ease with which arrangements can be made for medical cover when one of the "associates" are away.

DRAWING UP AN ASSOCIATION CONTRACT

Association practice arrangements work best when the parties have taken the trouble to have the details of their arrangement recorded in a contract drawn up by an attorney. When drafting the contract the following aspects should be borne in mind: It is usual to record that each of the parties forming the association intends to share certain facilities for the sake of convenience.

The duration of the contract is usually dealt with specifically, if only to say that it will endure for an indefinite period subject to a specified period of notice which can be given by either party. Obviously the period need not be indefinite, and may in fact be limited by the duration of, for example, the lease of the rooms.

The facilities to be shared should be very clearly described, preferably with the aid of attached plans of the floor space of the rooms and attached inventories of the furniture, equipment, etc. Care should be taken to record which of the assets are owned separately, which are jointly owned, and by whom the lease of the premises and/ or equipment was entered into. The rights of the parties to the use of the shared facilities should be recorded, e.g. the times of access to certain equipment, if necessary. If not specified, this may well be a source of conflict. At the same time, it is usual to write in some limitations on the use of equipment or facilities, e.g. that they are only to be used for the purpose of and in the normal course of practice, and that neither party should permit the use of the equipment by anyone except the parties and their staff.

The contract usually also records the basis on which the acquisition of further equipment or improvements to be shared facilities will be effected.

WORKING FOR EACH OTHER

A room sharing contract may contain a mutual undertaking by the parties to provide emergency services and possibly even normal services for each other's patients during absence from the rooms. This again entails recording a leave and sick leave arrangement in the contract as well as making provision for the reimbursement of the active party for services rendered

HOW TO DISSOLVE AN ASSOCIATION

An association practice contract should include a comprehensive agreement for the potential dissolution of the association. It is usual to allow the injured party to terminate the contract after giving notice in the event of the other party having breached any material terms of the contract, being guilty of serious misconduct, unprofessional or improper conduct, or having become insolvent.

Other factors resulting in termination of the contract are expiry of the period for which it is to run, the death of a party or retirement for whatever reason. Provision should be made for the retention of the facilities or shared assets by one of the parties or the division thereof. The injured or remaining party is often given the right to purchase the defaulting, deceased or retiring party's interest in the shared facilities for a price determined according to an agreed formula. Consideration should also be given to the inclusion of a restraint clause.

In the normal course of events the ownership of patients' medical records would not pose any difficulty, but to avoid disputes in this connection, it would be advisable to include a clause covering this aspect. On termination of the contract a dispute could arise as to which of the parties is the owner of the records of a patient who has consulted and was treated by both of them. When a party is deceased or has retired, the normal situation will be to hand all the records over to the remaining party. If one of the parties is leaving to commence his own practice in the vicinity of the old practice, a suitable arrangement must be made to let the one party have access to the records of a patient who is consulting him or her regardless of whether or not the patient was a 'joint' patient previously.