

## **Report of the Legal Committee on Medical Partnerships.**

### **Contributors**

Great Britain. Legal Committee on Medical Partnerships.  
Great Britain. Ministry of Health.

### **Publication/Creation**

London : H.M.S.O., [1948]

### **Persistent URL**

<https://wellcomecollection.org/works/vxw57hsf>

### **License and attribution**

This work has been identified as being free of known restrictions under copyright law, including all related and neighbouring rights and is being made available under the Creative Commons, Public Domain Mark.

You can copy, modify, distribute and perform the work, even for commercial purposes, without asking permission.



Wellcome Collection  
183 Euston Road  
London NW1 2BE UK  
T +44 (0)20 7611 8722  
E [library@wellcomecollection.org](mailto:library@wellcomecollection.org)  
<https://wellcomecollection.org>

610.001.007

WELLCOME INSTITUTE LIBRARY	
Coll.	welMomec
Call	pam
No.	W89
	1948
	G78r



MINISTRY OF HEALTH

# Report of the Legal Committee on Medical Partnerships

*Presented by the Minister of Health to Parliament  
by Command of His Majesty  
November 1948*



LONDON  
HIS MAJESTY'S STATIONERY OFFICE

SIXPENCE NET

Cmd. 7565

616.001.007

37 883026

### MEMBERS

HON. SIR GERALD SLADE (Chairman)

SIR CYRIL RADCLIFFE, G.B.E., K.C.

J. R. PHILIP, ESQ., O.B.E., K.C.

COLIN H. PEARSON, ESQ., C.B.E.

J. H. STAMP, ESQ.

S. D. MUSSON, ESQ., M.B.E. (Secretary)

WELLCOME INSTITUTE LIBRARY	
Coll.	welMOrnec
Call	pam
No.	w89
	1948
	G78.n

Note.—The estimated cost of this Report is £239 7s. 0d. of which £65 15s. 0d. represents the cost of printing and publishing.



22501996917



# LEGAL COMMITTEE ON MEDICAL PARTNERSHIPS

## Report

The Rt. Hon. Aneurin Bevan, M.P.,  
Minister of Health.

SIR,

We have the honour to submit to you herewith the Report of our proceedings.

### INTRODUCTION

1. We were appointed on the 20th April, 1948, to consider whether, in the application of the principles set out below to partnerships existing at the appointed day, it is desirable, in order to secure an equitable result as between partners, to amend Sections 35 and 36 of the National Health Service Act, 1946, either by clarification of the provisions thereof or by the extension of the powers thereby conferred or in some other way, and to make recommendations accordingly.

The principles above referred to are—

(1) The general prohibition of the sale or purchase of the goodwill or any part of the goodwill of the medical practice of a medical practitioner whose name is on the appointed day or at any time thereafter entered on a list prepared under Section 33 (2) of the Act is to be maintained.

(2) Compensation is to be paid on the lines set out in Section 36 to practitioners whose names are on the appointed day entered on any such list, and, subject to the provisions of Section 37, to such practitioners only.

(3) Practice in partnership is to be encouraged, and, except for the purpose of securing an equitable result, there should be as little interference as possible with the continued operation of existing partnerships.

(4) Within the general principle of the prohibition of sale and purchase of goodwill, exceptions in relation to sale or purchase in pursuance of a partnership agreement existing at the appointed day are permissible, if they appear necessary to secure the equitable working of these principles in relation to doctors practising in partnership.

(5) The possibility of legislation to make some addition to the sum of £66 millions, for which provision is made in Section 36, in order to meet cases which might arise if doctors whose names were entered on a list at the appointed day were required, in pursuance of a partnership agreement existing at this date, to buy the goodwill of doctors whose names were not so entered, is not excluded if such an addition appears to be necessary in order to secure an equitable distribution of the £66 millions between doctors whose names are entered on a list at the appointed day.

2. We have in all held fifteen meetings at five of which we received oral evidence.



3. After our appointment we invited the General Medical Council, the British Medical Association,\* the Medical Defence Union,\* the Medical Protection Society,\* The Medical Practitioners' Union,\* and Messrs. Hempsons, Solicitors,\* to submit memoranda to assist us in discharging our terms of reference. The bodies marked with an asterisk responded to our invitation and submitted memoranda. Witnesses representing those bodies attended before us and gave evidence. Appendix I contains a list of their names and shows on whose behalf they gave evidence.

4. We also issued a notice to the press setting out the terms of reference and requesting any organisation or person directly interested to submit memoranda. The persons referred to in Appendix II submitted memoranda in response to this request.

5. To all those who have assisted us in the course of our Inquiry by furnishing information and suggestions we desire to record our indebtedness. Without their help it would have been difficult for us satisfactorily to accomplish the task entrusted to us.

#### INTERPRETATION

6. In this Report for the sake of convenience we have assigned to the following expressions the meanings hereafter set out—

(a) "The Act" means the National Health Service Act, 1946;

(b) "The Compensation Regulations" mean the National Health Service (Medical Practices Compensation) Regulations, 1948 [S.I. 1948 No. 1506];

(c) "The appointed day" means, the 5th July, 1948, and "the deferred appointed day" has the meaning assigned to it in paragraph 36;

(d) "Existing partnership" means, subject to our recommendations in paragraph 17, a partnership existing both on and immediately before the appointed day between medical practitioners one at least of whose names is entered on that day on a list of medical practitioners undertaking to provide General Medical Services;

(e) "Goodwill" includes a share of the profits of an existing partnership except when the partnership agreement distinguishes between participation in profits and participation in goodwill;

(f) "Inside partner" means a member of an existing partnership whose name is on the appointed day entered on a list of medical practitioners undertaking to provide General Medical Services;

(g) "Outside partner" means such a member whose name is not so entered.

(h) "Service partnership" means an existing partnership of which all the partners are inside partners;

(i) "Mixed partnership" means an existing partnership of which at least one member is an inside partner and at least one member is an outside partner;

(j) "Interim transfer" means the transfer by a continuing partner of a share of the goodwill of an existing partnership to any other partner or partners;



(k) "Terminal transfer" means the transfer by an outgoing partner or personal representative of a deceased partner of the whole or any part of that partner's share of the goodwill of an existing partnership to any other partner or partners;

(l) "The compensation fund" means the aggregate amount of compensation provided under section 36 of the Act for medical practitioners in England and Wales; and

(m) "The proposed supplementary compensation fund" means moneys additional to the compensation fund which in accordance with principle (5) of our terms of reference we recommend should be made available by Parliament.

7. For easy reference by those reading this report we have included in Appendix III the main provisions of Sections 34-36 of the Act relevant to our Inquiry, and in Appendix IV the provisions of the Compensation Regulations to which we refer hereafter.

## RECOMMENDATIONS

### PARTNERSHIPS GENERALLY

#### *Preservation of Existing Obligations and Options*

8. As there is room for difference of opinion as to the effect of sections 35 to 37 of the Act upon obligations and options contained in existing partnership agreements, it should be made clear that nothing in these sections is to render unlawful the due fulfilment of such obligations or the due exercise of such options. At the same time we are of opinion that certain modifications of these obligations and options are necessary to secure an equitable result in the case of existing partnership agreements which do not themselves make express provision for the manner in which statutory compensation is to be dealt with among the partners.

9. We therefore recommend:—

that it should be declared that nothing in sections 35 to 37 of the Act shall be deemed to render unlawful the due fulfilment of obligations or due exercise of options in existing partnership agreements; but, further, that, in the case of agreements which do not make express provision for the manner in which statutory compensation is to be dealt with among the partners, such obligations and options shall be modified as hereinafter provided.

#### *Apportionment of Compensation Between Partners Entered on a Medical List*

10. The Compensation Regulations provide for ascertaining the annual value of the goodwill of each practitioner in respect of whom a claim for compensation is made (such annual value being therein referred to as "the annual loss"), and for distributing the aggregate amount of compensation amongst persons deemed to have suffered loss proportionately to the amount of their "annual loss". (Regulations 7 and 12.) Special provision is made for calculating the "annual loss" of a practitioner engaged in partnership practice on the appointed day (cf. particularly Regulation 7 (2) (b)). But Regulation 4 provides that the succeeding regulations shall be subject, so far as they affect practitioners practising in partnership, to any provisions



made thereafter by further regulations or an amending Act; and Regulation 12 (2) (b) provides that the amount of compensation payable to a practitioner practising in partnership who is entitled to compensation shall be such sum as may be determined by such further regulations or an amending Act.

11. In these circumstances, we recommend:—

that, notwithstanding that an existing partnership agreement provides for transfers of goodwill amongst the partners, the compensation payable to each of those partners who are entitled to compensation shall be ascertained and attributed to him once and for all as at the appointed day by reference to his "annual loss" as computed under regulation 7 of the Compensation Regulations. This provision, however, is not to prejudice the assignability of rights in regard to compensation.

#### *Transfer of Goodwill to Operate as Retirement Pro Tanto*

12. By Regulation 13 (1) of the Compensation Regulations, the compensation to which a practitioner is entitled is generally payable only on his retirement from practice or death (cf. also Section 36 (3) (c) of the Act). Regulation 13 (3) defines "retirement" as meaning "retirement from practice as a medical practitioner providing general medical services under Part IV of the Act or under Part IV of the National Health Service (Scotland) Act, 1947". We are of opinion, for the reasons more fully set out in paragraph 19 hereafter, that the definition should be amended so far as it relates to inside partners and that, where an inside partner transfers his share or part of his share of an existing partnership, he should be deemed to have "retired" in respect of the share or part of the share so transferred.

13. We therefore recommend:—

that, where in pursuance of an existing partnership agreement the share of an inside partner or any part thereof is transferred to another partner or other partners, the first named partner shall, for the purposes of Section 36 (3) (c) of the Act and Regulation 13 of the Compensation Regulations, be deemed to have retired from practice as regards that share or part of a share and the compensation attributable thereto shall become immediately payable.

#### *Preservation of Restrictive Covenant and Other Ancillary Terms*

14. As partnership agreements often contain restrictive covenants, provisions dealing with houses and other property and other ancillary terms coming into effect upon the sale of a share of the goodwill of the partnership practice we consider that it is desirable that such clauses should not be affected by the proposed modifications of the "sale" provisions contained in a partnership agreement.

15. We therefore recommend:—

that, where in pursuance of our recommendations a sale of goodwill is converted into a free transfer, any such free transfer shall be deemed to be a sale for the purposes of any existing partnership agreement.



### *Continuance of partnership notwithstanding modification*

16. It is, in our view, necessary to safeguard the goodwill provisions of an existing partnership agreement in the event of the agreement being modified, since, otherwise, any modification of the agreement might be regarded as bringing the goodwill provisions to an end.

17. We therefore recommend:—

that, where a partnership practice, carried on at the appointed day under an agreement containing options or obligations to purchase a share of goodwill, is thereafter carried on continuously by a partnership which includes not less than two of the persons who were members of the partnership on the appointed day, the provisions of the Act as modified by any amending Act shall, in respect of the options and obligations of purchase of goodwill contained in that agreement or options and obligations in the like terms contained in any substitute agreement, apply as between the members for the time being of the partnership who were members on the appointed day notwithstanding that in the meantime any partners may have been admitted thereto or may have retired therefrom or died and notwithstanding any modification in other respects by agreement, arbitration, statute or otherwise in the terms of the agreement under which the partnership is for the time being carried on.

18. Our next recommendations, in paragraphs 19 to 31, involve the separate consideration of service partnerships and mixed partnerships; and it may be convenient, at this stage, to indicate the sub-divisions to be discussed under each head.

Under service partnerships, we consider:—

- (i) Interim transfer.
- (ii) Terminal transfer.

Under mixed partnerships, we consider:—

(1) Transfers from inside partners—

(a) To other inside partners only:

- (i) Interim transfer.
- (ii) Terminal transfer.

(b) To outside partners only:

- (i) Interim transfer.
- (ii) Terminal transfer.

(c) To both inside and outside partners:

(2) Transfers from outside partners—

(a) To inside partners only:

- (i) Interim transfer.
- (ii) Terminal transfer.

(b) To both inside and outside partners.



## SERVICE PARTNERSHIPS

### (i) *Interim Transfer*

19. Where one inside partner, in pursuance of an existing partnership agreement, acquires part of the share of another inside partner, he no doubt receives an increased share of profit during his continuance in partnership practice, but he is prohibited from selling the goodwill which he has acquired. It would therefore be manifestly unfair that he should still be required to pay the full contract price. Two alternative proposals were considered by us. The first was that the contract price should be regarded as satisfied by the credit to the vendor of the proportion of the compensation corresponding to the part to be transferred and the payment of interest thereon. The second was that the contract price should be regarded as satisfied *pro tanto* by the credit to the vendor of the proportion of the compensation corresponding to the part to be transferred and the payment of interest thereon, and that the purchaser should be liable to pay the balance if any. While, in strict theory, the second of these proposals has much to recommend it, we prefer the first for its merit of greater simplicity. It was the one preferred by the witnesses who gave evidence before us, and it also avoids the inconsistency which would arise under the second proposal in a case where the compensation happened to exceed the contract price. As the vendor is parting finally with part of his share in the partnership we think that, since the statutory compensation is to take the place of the contract price which would have been payable at the date of the transfer of the share, the compensation attributable to the share transferred should equally become payable to the vendor at that date.

### (ii) *Terminal Transfer*

20. The argument for treating the contract price as satisfied by the corresponding compensation is stronger when the transfer is terminal and not interim, for, in a terminal transfer, not merely is the purchaser debarred from selling the goodwill which he has acquired, but, if he is already fully employed as is probably the case, he is also unlikely to derive much direct benefit from the share transferred. We therefore consider *a fortiori* that a terminal transfer should be treated in the same manner as an interim transfer.

21. We recommend accordingly:—

(i) that, where an inside partner, in fulfilment of an obligation or in the exercise of an option in an existing partnership agreement, purchases the share or part of the share of another inside partner, the contract price of the goodwill purchased shall be deemed to have been satisfied by the credit to the vendor or his estate of the compensation in respect of that share, or the proportion of the compensation corresponding to the part thereof sold, and by the payment of interest thereon; and

(ii) that, on the sale of a share or part of a share in a service partnership, the vendor shall, for the purposes of section 36 (3) (c) of the Act and Regulation 13 of the Compensation Regulations, be deemed to have retired from practice as regards that share or part of a share, and the compensation attributable thereto shall become immediately payable.



## MIXED PARTNERSHIPS

### (1) TRANSFERS FROM INSIDE PARTNERS

#### (a) Where the transfer is to other inside partners only—

- (i) *Interim transfer.*
- (ii) *Terminal transfer.*

22. In each of these cases, we repeat the recommendations in paragraph 21.

#### (b) Where the transfer is to outside partners only—

##### (i) *Interim Transfer*

23. The outside partner who, in pursuance of an existing partnership agreement, acquires part of the share of an inside partner may be getting less than he contracted for. He would still receive an increased share of the profit during his continuance in partnership practice. But if he should become the last survivor of the partners, then the value to him of the acquired goodwill would depend on whether he could lawfully sell to a third party both so much of it as is attached to the State practice and so much as is attached to the private practice. It is not clear whether section 35 (1) of the Act prohibits the sale to a third party of the goodwill of an inside partner after it has lawfully passed to an outside partner. On this point the Act requires to be clarified. Moreover, there would seem to be no reason why an outside partner, if the last survivor, should not be free to sell the whole goodwill of the partnership practice, or so much of it as vests in him, however acquired by him. But, here again, the Act needs clarification. Even if these two points are clarified as we suggest, it remains the fact that the value to an outside partner on an interim transfer from an inside partner is less than he contracted for, since, if he should become the last survivor, he could not transfer to a purchaser any right to the state patients of the practice. In these circumstances it would be unfair to uphold the obligation upon the outside partner to purchase the inside partner's share, and we are of opinion that, when the effect of an existing partnership agreement is to impose an obligation on an outside partner to purchase part of the share of an inside partner, this obligation should be converted into an option to be exercised by notice in writing at any time within three months after the date when the obligation imposed on the outside partner would have otherwise become effective.

24. It has to be kept in view that an inside partner who makes a transfer to an outside partner in these cases will already have compensation credited to him in respect of the share transferred. If the transfer is only to come about through the voluntary exercise of the option by the outside partner, there seems to us to be no reason why the money paid for the share transferred should not be found by the outside partner and the compensation credited to the inside partner be released to the State. We think, therefore, that on the exercise of the option in any of these cases such a release should take place, the inside partner retaining any interest that has been paid to him down to the date of the exercise of the option. The effect of this will be to reduce *pro tanto* the claim upon the compensation fund, but in view of our recommendations as to a supplementary compensation fund (see paragraphs 28 to 31) a credit so released can be transferred in aid of this fund.

##### (ii) *Terminal Transfer*

25. The argument for converting obligations to purchase into options is even stronger in relation to terminal than in relation to interim transfer, since in the case of terminal transfer the purchaser could not derive any benefit from the state patients of the vendor. We therefore consider *a fortiori* that



a terminal transfer should be treated in the same manner as an interim transfer, and that, where an option is exercised, the inside partner should take the purchase price in lieu of compensation.

26. Upon consideration of the cases of interim and terminal transfers from inside to outside partners we recommend:—

(i) that, where the effect of an existing partnership agreement is to confer an option on an outside partner to acquire a share of goodwill, it shall remain of full force and effect according to its terms, but that, where the effect of such an agreement is to impose an obligation and not to confer an option, this obligation shall be converted into an option.

(ii) that, if the option is exercised, the vendor shall take the contract price as from the date of the exercise of the option in lieu of the compensation attributed to the share purchased, the vendor retaining any interest that has accrued to him down to the date of the exercise of the option and the compensation credited to the vendor being released to the State.

(iii) that it should be declared that the provisions of the Act prohibiting the sale of goodwill shall not apply to an outside partner or the personal representative of an outside partner in relation to the goodwill of the partnership so far as the goodwill is vested in such partner or his personal representative.

(c) Where the transfer is to both inside and outside Partners.

27. To meet this case, we recommend:—

that, where the effect of an existing partnership agreement is to impose an obligation or to confer an option on both inside and outside partners to purchase a share of another inside partner, then the obligation or option as the case may be shall be treated as an obligation or option to each of the partners concerned to purchase only his proportion (as hereinafter defined) of the share for his proportion (as so defined) of the contract price: provided that (i) in the case of any inside partner, his proportion of the contract price payable by him shall be deemed to have been satisfied in the manner indicated in paragraph 21; and (ii) in the case of an outside partner, any obligation to purchase shall be converted into an option and be dealt with accordingly as indicated in our recommendation in paragraph 26. The "proportions" of the respective purchasing partners shall be the proportions in which the share to be purchased would, upon the transfer thereof in accordance with the terms of the existing partnership agreement, have been added to the respective shares of such purchasing partners.

## (2) TRANSFER FROM OUTSIDE PARTNERS

(a) Where the transfer is to inside partners only.

### (i) *Interim Transfer*

28. In our view, two principles should govern this case. The first is that the outside partner should not be prejudiced because he has not accepted service under the Act, and his position should remain as far as possible unaffected by sections 35 and 36. Accordingly, when an inside partner, in pursuance of an existing partnership agreement, acquires part of an outside partner's share, the inside partner should remain liable to pay to the outside



partner the contract price. The second principle is that, as in the inside partner's hands the part acquired loses value through the unsaleability of the goodwill, the inside partner should be compensated for this loss. The compensation fund is, however, not available to provide compensation in this case, which is one of those contemplated in principle (5) of our terms of reference. The necessary compensation should therefore be found out of additional moneys provided by Parliament. The question then arises as to the measure of the compensation. The inside partner who acquires part of an outside partner's share, although unable to re-sell the goodwill, nevertheless derives a substantial benefit from the transaction. We have carefully considered what compensation would be reasonable and we have reached the conclusion that it should not exceed a sum calculated on substantially the same basis as would have applied if compensation had been originally payable in respect of the share. We think further that such compensation should be paid at the time of the transfer. We have not thought it right to call for an addition that would provide greater compensation in respect of such shares than they would have carried if they had been originally within the compensation provisions of the Act.

#### (ii) *Terminal Transfer*

29. The same general principles apply here as in the case of interim transfer. We appreciate that there is some difference between the two cases, inasmuch as the value to the purchaser of the share of goodwill which is acquired may be less in the case of a terminal transfer than in the case of an interim transfer. But having regard to the basis upon which we think the compensation should be assessed in these cases, we see no practical way of making any distinction between the two cases in respect of the measure of compensation to be paid.

30. We therefore recommend:—

(i) that, where an inside partner, in fulfilment of an obligation or in exercise of an option in an existing partnership agreement, purchases the share or part of the share of an outside partner, the purchaser shall remain bound to pay to the vendor the contract price, but the purchaser shall become entitled at the time of payment of the contract price or as soon thereafter as the compensation can be assessed to be paid compensation out of the proposed supplementary compensation fund, and

(ii) that such compensation shall be calculated by reference to the amount of the compensation allocated to the share in the goodwill of the same partnership that under the Act carried a right to compensation, and shall bear the same proportion to that amount as the purchased share bears to the share carrying such right, except that, if the sum so calculated exceeds the amount of the contract price, the purchaser shall receive a sum equal to the contract price and no more.

(b) *Where the transfer is to both inside and outside partners.*

31. To meet this case, we recommend:—

(i) that, where both an inside and an outside partner, in fulfilment of an obligation or in exercise of an option in an existing partnership agreement, purchase a share of an outside partner, the purchasers shall be deemed to have acquired the share in the proportions in which the share to be purchased would, upon the transfer thereof, be added to the share of such purchasing partners; and



(ii) that any purchaser who is an inside partner shall be entitled to be paid out of the proposed supplementary compensation fund compensation in the same manner as we recommended in the last preceding paragraph.

#### SPECIAL HARDSHIPS

##### *Arbitration*

32. The foregoing recommendations will, we believe, in general enable an equitable result to be secured as between the members of existing partnerships; but, as the application of the principal Act and any amending act may, in certain cases, produce special hardships which it is not possible to foresee, some provision should be made for dealing with these hardships if and when they arise.

33. To achieve this result we recommend:—

(i) that every existing partnership agreement shall be deemed to contain a clause providing that, where any member of any such partnership claims that he has suffered or is liable to suffer hardship from the effect of the Act, or the proposed amending Act or any regulations made thereunder, upon the partnership agreement, he shall have the right to proceed to arbitration to have it determined whether he has in fact suffered or is liable to suffer such hardship, and, if so, to decide what relief shall be afforded to him for the purpose of removing or preventing such hardship;

(ii) that such arbitration shall, if the parties so agree, take the form of a reference to a single arbitrator to be nominated by or and on behalf of the partners, or, if the parties do not so agree, the arbitration shall take the form of a reference to a Committee of Arbitration consisting of three persons, one of whom shall possess legal qualifications and shall be chairman of the Committee, another of whom shall be a "qualified accountant" as defined in the Compensation Regulations, and the third of whom shall be a medical practitioner who is or has been in general medical practice. The first two members shall be nominated by the Minister of Health and the third by the President of the British Medical Association.

(iii) that the agreed arbitrator and the Committee of Arbitration shall each have power to modify the terms of an existing partnership agreement and to modify the application thereto of the Act or the proposed amending Act, or any regulations made thereunder, in any manner in which he or they may think equitable for removing or preventing the hardship, including the power to direct the payment or repayment of money: Provided always that no such modification shall operate to increase or diminish the aggregate amount of compensation which is attributable to the partners in accordance with the terms of the partnership agreement as they existed at the appointed day;

(iv) that the agreed arbitrator and the Committee of Arbitration shall each be given power to recommend that an existing partnership should be dissolved, and that in any proceedings by a partner for dissolution of the partnership instituted within a limited period (say three months) after the publication of the award such recommendation, if made by an agreed arbitrator, shall be *prima facie* evidence, and, if made by the Committee of Arbitration, shall be conclusive evidence, that a dissolution of the partnership is just and equitable; and



- (v) that the costs of the Committee of Arbitration shall be borne by the State but that the costs of the parties shall as between the parties be within the discretion of the Committee.

### *Dissolution by the Court*

34. We think that our recommendations in paragraph 33 will afford sufficient protection to any member of an existing partnership who claims to have suffered or to be liable to suffer hardship by reason of the Act or the proposed amending Act, or any regulations made thereunder.

35. We accordingly recommend:—

that, except in pursuance of a recommendation made by an agreed arbitrator or the Committee of Arbitration in accordance with our recommendations in paragraph 33 there should be no right to rely upon any such hardship as a ground for dissolution by the Court under Section 35 (f) of the Partnership Act, 1890.

### *Extension of time in the case of Member of a Partnership for Application under section 34 (1) of the Act*

36. Although it is not strictly within our terms of reference we think, having regard to all the circumstances, including the doubts which arose as to the construction of the Act, it would be fair that every member of a partnership existing on the appointed day should be allowed a short period after the coming into operation of any amending Act during which he may, after reconsidering his position in the light of its terms, still apply to be included in a list as if he had done so before the appointed day. We hereinafter refer to the last day of the suggested period as "the deferred appointed day". We therefore suggest that, subject to the provisions of Part IV of the Act relating to the disqualification of practitioners, every member of a partnership in existence on the appointed day who wishes to provide General Medical Services and who makes application within the period and in the manner specified in the amending Act to the Executive Council for any area in which he practises to be included in the list of medical practitioners undertaking to provide General Medical Services for persons in that area shall, for the purposes of sections 34 to 36 of the Act, be deemed to have made such application before the appointed day, and to be and always to have been an inside partner.

### GENERAL

#### *Assistants*

38. As our terms of reference are limited to medical partnerships we have refrained from dealing with a matter which may require consideration elsewhere, namely the position of assistants who, under contracts of service with medical practitioners in force on the appointed day (whether members of a partnership or not), are under a contractual obligation, or have an option, to purchase the whole or some part of the goodwill of their employers. We think that their relationship seems to be analogous to that of partners and it would seem that the Act may cause considerable hardship to such assistants if no protection is afforded.



### *Transitional provisions*

39. We have considered the position where after the appointed day but before the coming into operation of the proposed amending Act, or, if our suggestion in paragraph 36 be accepted, the deferred appointed day, any event has taken place giving rise under the terms of any partnership agreement to a right or obligation to purchase or pay for a share of goodwill.

40. To meet this case we recommend:—

that every such right or obligation shall take effect in accordance with the terms of the partnership agreement without the modifications provided for by the amending Act but all compensation attributable to the same share under the Act shall be paid and applied at such time and in such manner as will, so far as the amount thereof will permit, place all parties in the same position as they would have been in if the proposed amending Act had been in force as from the appointed day, and the rights and obligations arising upon such event had been modified by and in accordance with its provisions.

### CHANGES OF STATUS AFTER THE DEFERRED APPOINTED DAY

#### *Outside partners whose names are included in a medical list*

41. In this and the next following paragraph we use the expression “new listed partner” to mean an outside partner whose name is for the first time entered on a list of medical practitioners undertaking to provide General Medical Services after the deferred appointed day.

There are six cases to consider—

- (a) transfer from new listed partner to inside partner;
- (b) transfer from new listed partner to outside partner;
- (c) transfer from new listed partner to new listed partner;
- (d) transfer from new listed partner to partners in different categories;
- (e) transfer from inside partner to new listed partner; and
- (f) transfer from outside partner to new listed partner.

42. We recommend:—

(i) As to (a) above that, where an inside partner has an obligation or option to purchase the share or part of the share of a new listed partner, the contractual provision should remain in full force between the parties subject only to this modification, that the amount of the purchase price should be either a sum equal to the appropriate compensation payable out of the supplementary compensation fund or the contract price whichever is the less.

(ii) As to (b), that, where an outside partner has an obligation to purchase the share or part of the share of a new listed partner, the obligation should be converted into an option; but where there is an option to the same effect, that should remain unaffected; if the option is exercised, the contract price shall be payable.



(iii) As to (c), that, where a new listed partner has an obligation to purchase the share or part of a share of another new listed partner, the obligation should be converted into an option, and as in recommendation (ii) above, if the option is exercised, the contract price shall be payable.

(iv) As to (d), that, where partners in different categories (inside, outside, or new listed) have an obligation or option to purchase the share of a new listed partner there shall be an apportionment in the manner indicated by our recommendation in paragraph 27 and the principles indicated in recommendations (i), (ii) and (iii) above shall be followed.

(v) As to (e), that, where a new listed partner has an obligation or option to purchase the share or part of the share of an inside partner, the principle indicated in our recommendations in paragraph 21 shall be followed and the new listed partner shall receive a free transfer of the share or part of the share.

(vi) As to (f), that, where a new listed partner has an obligation or option to purchase the share or part of the share of an outside partner, the contract should remain in full force and effect.

*An inside partner whose name ceases to be included in a medical list*

43. To meet this case we recommend :—

that the position of an inside partner whose name ceases to be included in a list of medical practitioners providing General Medical Services shall remain the same in relation to any obligation or option to sell or purchase a share of goodwill contained in an existing partnership agreement as if his name were still included in such a list, except that after his name ceases to be so included he shall not become entitled to compensation out of the supplementary compensation fund.

*Partnerships other than service or mixed partnerships*

44. There remains for consideration the case of a partnership existing both on and immediately before the appointed day none of whose members was on that date or on the deferred appointed day on a list of medical practitioners providing General Medical Services but one of whose names is included in such a list after the deferred appointed day.

45. We recommend in this case :—

that the provisions of the partnership agreement shall remain in full force except that any obligation to purchase the share or part of a share of a partner whose name is included in such a list shall be converted into an option.

46. Finally, the problem presented to us has been one of considerable difficulty and complexity. We can hardly venture to hope that we have foreseen all the questions that may arise from the impact of the Act upon the multifarious provisions to be met with in medical partnership agreements. We hope, however, that it will be possible for any unforeseen question to be resolved under the procedure provided for in paragraphs 32 and 33.



47. We desire to place on record our deep sense of gratitude to our Secretary, Mr. S. D. Musson, for the invaluable assistance he has given in the preparation and compilation of our Report.

GERALD O. SLADE (Chairman)

CYRIL RADCLIFFE

J. R. PHILIP

COLIN H. PEARSON

J. H. STAMP.

S. D. MUSSON (Secretary).

8th November, 1948.



## APPENDIX I

### List of witnesses who gave oral evidence in supplement of memoranda

#### British Medical Association

Dr. H. Guy Dain, M.B., F.R.C.S.  
Dr. E. A. Gregg, L.R.C.P.I., L.R.C.S.I.  
Dr. S. Wand, M.B., Ch.B.  
Dr. W. Jope, M.B., Ch.B.  
Dr. Charles Hill, M.A., M.D., D.P.H.  
Dr. D. P. Stevenson, M.R.C.S., L.R.C.P.

#### Medical Defence Union

Dr. Robert Forbes, M.B., Ch.B.  
Dr. E. S. Phillips, M.R.C.S., L.R.C.P.

#### Medical Protection Society

Dr. R. W. Durand, M.R.C.S., L.R.C.P.  
Mr. C. W. S. Broadbent (Le Brasseur & Oakley, Solicitors).

#### Medical Practitioners' Union

Dr. Bruce Cardew, L.M.S.S.A.  
Mr. S. G. Davis (Bulcraig & Davis, Solicitors).

#### Hempsons, Solicitors

Mr. N. Leigh Taylor.

## APPENDIX II

### List of persons who submitted written evidence

Dr. L. K. Crow, M.B., Ch.B.(N.Z.).  
Dr. D. F. Craig, M.B., Ch.B.  
Dr. R. Dwyer-Joyce, L.R.C.P.I., L.R.C.S.I.  
Dr. H. W. Loftus Dale, M.B., B.Ch., B.A.O.  
Dr. J. H. Eastern, M.D., M.R.C.P.  
Dr. H. M. Harris, M.R.C.S., L.R.C.P., B.A.(Oxon.).  
Dr. P. M. Garry, M.B., B.Ch., B.A., B.A.O.(Dub.).  
Dr. A. E. Herman, F.R.C.S.E.  
Dr. C. J. St. Cin, M.R.C.S., L.R.C.P.  
Dr. G. M. Ward, M.R.C.S., L.R.C.P.



## APPENDIX III

### Main provisions of National Health Service Act 1946(a) relevant to the inquiry

Distribution of medical practitioners providing services.

34.—(1) Subject to the provisions of this Part of this Act relating to the disqualification of practitioners, every medical practitioner engaged in medical practice (otherwise than as a paid assistant) who wishes to provide general medical services shall be entitled, on making an application at any time before the appointed day in the prescribed manner to the Executive Council for any area in which he is practising, to be included in the list of medical practitioners undertaking to provide general medical services for persons in that area.

(2) With a view to securing that the number of medical practitioners undertaking to provide general medical services in the areas of different Executive Councils or in different parts of those areas is adequate, the Minister shall constitute a committee, to be called the Medical Practices Committee, for the purpose of considering and determining applications—

(a) made before the appointed day by a medical practitioner who is not entitled under the last foregoing subsection to be included in the list of an Executive Council, for inclusion in that list; and

(b) made on or after the appointed day for inclusion in any such list kept by an Executive Council for any area;

and all such applications made in the prescribed manner to an Executive Council shall be referred by that Council to the said Committee, and any medical practitioner whose application is granted by the said Committee shall, subject to the provisions of this Part of this Act relating to the disqualification of practitioners, be entitled to be included in the list.

Prohibition of sale of medical practices.

35.—(1) Where the name of any medical practitioner is, on the appointed day or at any time thereafter, entered on any list of medical practitioners undertaking to provide general medical services, it shall be unlawful subsequently to sell the goodwill or any part of the goodwill of the medical practice of that medical practitioner:

(4) Where in pursuance of any partnership agreement between medical practitioners—

(a) any valuable consideration, other than the performance of services in the partnership business, is given by a partner or proposed partner as consideration for his being taken into partnership;

(b) any valuable consideration is given to a partner, on or in contemplation of his retirement or of his acceptance of a reduced share of the partnership profits, or to the personal representative of a partner on his death, not being a payment in respect of that partner's share in past earnings of the partnership or in any partnership assets or any other payment required to be made to him as the result of the final settlement of accounts, as between him and the other partners, in respect of past transactions of the partnership; or

(c) services are performed by any partner for a consideration substantially less than those services might reasonably have been expected to be worth having regard to the circumstances at the time when the agreement was made;

there shall be deemed for the purposes of this section to have been a sale of the goodwill or part of the goodwill of the practice of any partner to whom or to whose personal representative the consideration or any part thereof is given or, as the case may be, for whose benefit the services are

(a) 9 & 10 Geo. 6. c. 81.



performed, to the partner or each of the partners by or on whose behalf the consideration or any part thereof was given or, as the case may be, the partner who performed the services, and the said sale shall be deemed for the purposes of this section to have been effected—

(i) in a case to which paragraph (a) or paragraph (b) applies, at the time when the consideration was given or, if the consideration was not all given at the same time, at the time when the first part thereof was given; or

(ii) in a case to which paragraph (c) applies, at the time when the agreement was made.

(12) For the purposes of this and the next two following sections, references to the goodwill of a medical practice shall, in relation to a medical practitioner practising in partnership, be construed as referring to his share of the goodwill of the partnership practice.

36.—(1) Every medical practitioner whose name is entered on the appointed day on any list of medical practitioners undertaking to provide general medical services shall be entitled to be paid out of moneys provided by Parliament compensation in accordance with this section in respect of any loss suffered by him by reason that he is or will be unable to sell the goodwill or any part of the goodwill of his practice by virtue of the last foregoing section.

Compensation  
for loss of  
right to sell a  
medical  
practice.

(2) The aggregate amount of the compensation to be paid under this section shall be the appropriate proportion of sixty-six million pounds, exclusive of any sums paid by way of interest:

Provided that, if the aggregate number of medical practitioners included on the appointed day in lists of medical practitioners providing general medical services, or lists of medical practitioners providing services under any provisions in force in Scotland corresponding with the foregoing provisions of this Part of this Act, falls short of seventeen thousand seven hundred, the said sum of sixty-six million pounds shall be reduced by an amount calculated by multiplying the number by which the said aggregate number falls short as aforesaid by one seventeen thousand nine hundredth part of sixty-six million pounds.

(3) Regulations shall—

(a) prescribe the manner in which and the time within which claims for compensation are to be made, and provide for determining whether any claimant has suffered loss by reason of the matters referred to in subsection (1) of this section and, if so, the extent of that loss;

(b) provide for the distribution of the said aggregate amount among the persons who have suffered such loss as aforesaid, having regard to the extent of their respective losses;

(c) prescribe the manner in which and the times at which the compensation is to be paid, and secure that, except in such circumstances as may be prescribed, it shall not be paid until the retirement or death of the medical practitioner concerned, whichever first occurs; and

(d) provide for paying out of moneys provided by Parliament interest at two and three-quarter per cent. per annum on the amount of the compensation payable to any medical practitioner, in respect of the period from the appointed day until the time when the compensation is paid;

and before making any regulations under this subsection the Minister shall consult such organisations as may be recognised by him as representing the medical profession.



## APPENDIX IV

### Provisions of the National Health Service (Medical Practices Compensation) Regulations, 1948(b), referred to in the Report

Medical practitioners in partnership.

4. The provisions of the succeeding regulations shall be subject, so far as they affect medical practitioners practising in partnership, to any provisions made hereafter either by further regulations under section 36 of the Act or by or under any Act amending the Act.

Annual loss.

7.—(1) There shall be ascertained the annual value of the goodwill of the practice of each practitioner who has claimed compensation or in respect of whom and of whose practice a claim for compensation has been made. Such annual value is hereinafter referred to as "the annual loss".

(2) For the purpose of these regulations "the annual loss" means:—

(a) in respect of the practice (not being a partnership practice) in which the practitioner was engaged on the appointed day, the average gross yearly receipts of that practice, as certified by a qualified accountant, calculated by reference to the last two accounting years immediately preceding the appointed day;

(b) in respect of a partnership practice in which the practitioner was engaged on the appointed day, such proportion of the average gross yearly receipts of that practice, as certified by a qualified accountant, calculated by reference to the last two accounting years immediately preceding the appointed day, as the share of the goodwill of the partnership practice held by him on that day bears to the whole goodwill of the partnership practice;

(c) in respect of a practice to which section 37 of the Act applies, the average gross yearly receipts of that practice, as certified by a qualified accountant, calculated by reference to the last two accounting years immediately preceding the date of the retirement from practice or death of the practitioner.

Provided that:—(i) in the case of the goodwill of a practice acquired by purchase after the beginning of the first of the two accounting years by reference to which the average gross yearly receipts of the practice are, under the preceding provisions of this regulation, to be calculated, the annual loss means the average gross yearly receipts of the practice as estimated for the purpose of the purchase;

(ii) in the case of any claim referred to the Committee appointed under the next succeeding regulation the Committee shall fix as the annual loss in respect of the practice such sum as they estimate fairly to represent the average gross yearly receipts of the practice."

Distribution of aggregate amount of compensation.

12.—(1) For the purpose of calculating the distribution of the aggregate amount of compensation among persons who under these regulations are deemed to have suffered loss by reason of the matters referred to in regulation 3 there shall be calculated the aggregate of all annual losses determined in accordance with these regulations. The aggregate of such losses is hereinafter referred to as the aggregate annual loss.

(2) Subject as is otherwise provided in these regulations, there shall be payable out of the aggregate amount of compensation by way of compensation—

(a) to a practitioner practising otherwise than in partnership, or the estate of such a practitioner, who is entitled to compensation, such proportion of the aggregate amount of compensation as the annual loss determined to have been suffered by him or his estate on the appointed day bears to the aggregate annual loss;

(b) S.I. 1948 No. 1506.



(b) to a practitioner practising in partnership, or the estate of such a practitioner, who is entitled to compensation, such sum as may be determined by or under regulations made hereafter under section 36 of the Act or by or under any Act amending the Act.

(3) A practitioner or the personal representative of a practitioner to whom compensation has become payable under the last preceding paragraph shall be notified by the Minister of the amount of compensation so payable.

13.—(1) Subject as hereinafter provided, the compensation payable to a practitioner or the estate of a practitioner under the last preceding regulation shall be paid to the practitioner or his personal representative—

Payment of  
compensation.

(a) in the case of a practitioner to whom and to whose practice section 37 of the Act applies as soon as may be after the amount of compensation so payable has been ascertained;

(b) in any other case, on the retirement from practice or death of the practitioner concerned, whichever shall first occur: Provided that if the amount of compensation payable has not then been ascertained payment shall be made as soon as may be after the amount due has been ascertained.

(3) For the purpose of paragraphs (1) (b) and (2) (b) and (c) of this regulation retirement from practice means retirement from practice as a medical practitioner providing general medical services under Part IV of the Act or under Part IV of the National Health Service (Scotland) Act, 1947(c).

(c) 10 & 11 Geo. 6. c. 27.



LONDON  
PRINTED AND PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE

To be purchased directly from H.M. Stationery Office at the following addresses:

York House, Kingsway, London, W.C.2 ; 13a Castle Street, Edinburgh, 2 ;

39-41 King Street, Manchester, 2 ; 1 St. Andrew's Crescent, Cardiff ;

Tower Lane, Bristol, 1 ; 80 Chichester Street, Belfast

OR THROUGH ANY BOOKSELLER

1948

Price 6d. net

