



Buying or selling a pharmacy? Mind the rules!

The pharmacy sector operates in a heavily regulated arena. This article raises some important issues that a prudent pharmacy owner will want to consider either as a purchaser or seller

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THE WORKFORCE ARE a key part of any business, particularly in a local community pharmacy where the patients are comfortable with familiar faces. Key employees may be considered an important part of the pharmacy and its associated goodwill, especially when maintaining a good rapport with patients and local GPs.

As an employer there is no strict legal requirement to provide an employee with a full contract of employment. However, as an employer you are required to provide each employee with a statement of certain specified terms within two months of the start of their employment, known as a Section 1 Statement. Such terms include the names of the employer and employee; the date on which the employment (and continuous employment) starts; pay; hours of work; holiday entitlements (and holiday pay); job title; job description and place of work. It is common for these to be included in an offer letter.

Our advice would be to ensure that each employee has a signed written contract. This can often complement an employee handbook which sets out the standard operating procedures of the pharmacy, including dealing with health and safety and employee grievances or disputes. This gives both parties greater certainty and clarifies your intentions should a problem arise in the future. Ultimately this could save you significant time and costs.

It is equally important to keep any changes to an employee's terms of employment recorded in writing, for example, where you agree a change in working hours or where a pay rise has been agreed.

Given the regulated nature of the pharmacy industry it is vital to ensure that your employees are sufficiently qualified and such qualifications are up to date. CPD is also a significant aspect of any pharmacist's training and is important that this is kept up to date.

Confidentiality agreements

Confidentiality is of paramount concern for patients and should also be a priority for any pharmacy given the nature of its business. A pharmacy and its employees will all be subject to the Data Protection Act 1998. Patient medical records are extremely sensitive information and it is important that pharmacies implement appropriate operating procedures to ensure the utmost discretion at all times. In today's 'big brother' society, privacy is a common headline topic and it is important that a pharmacy complies with its obligations here.

Firstly, any pharmacy should be registered with the Information Commissioner's Office at www.ico.org.uk. Registration is straightforward and too often we find that smaller community pharmacies are not registered. Failure to comply with the Data Protection legislation could result in prosecution which can include a significant fine.

Whether a pharmacy is registered or not, it will be responsible for ensuring the personal data that it holds is protected and secure. This can be achieved by using a combination of technical and practical measures.

Technical measures may include installing firewalls and appropriate antivirus and anti-spyware software; ensuring that this software is maintained and up to date; encrypting the most sensitive information; and backing the computer system up on a regular basis and storing this offsite.

Practical measures may include limiting access to information to certain individuals; having passwords; securely removing all sensitive information before any old equipment is disposed of; removing sensitive information once it is no longer required; shredding confidential waste; keeping staff trained; and having a suitable data protection policy.

Contracts, contracts, contracts

Contracts are an important part of any business, not least because a pharmacy is often based on a single significant contract with the NHS. However, a pharmacy could have a number of other commercial agreements including contracts with suppliers, surgeries and care homes, and for services such as utilities, broadband, N3, CCTV and waste disposal.

It is important for any business to ensure that they keep a record of all of the contracts that they are a party to and to ensure that they are in writing and ideally signed and dated by both contracting parties. Retaining full and complete copies of these contracts (including terms and conditions) will save you time and effort in the long run, particularly if you need to refer to them when selling the business.

It is also important that a pharmacy keeps on top of its contractual relationships ensuring that they are renewed appropriately. Long term relationships or high volume contracts can often benefit from discounts or rebates and managers should ensure that any such promises are expressly set out in the contract.

Insurance cover

A pharmacy, like other businesses, has a requirement to have certain insurances in place such as employers' liability insurance, property insurance and insurance for any vehicles used. In our experience there are two key points to check with any insurance policy. These are:

- Checking that all of the insurances are up to date and the premiums have been paid; and
- Ensuring that the insurances are in the correct name.

A pharmacy which does not keep a close eye on its insurance policies could find itself breaching statutory requirements or being open to substantial liabilities should a claim be made against it in circumstances where the pharmacy turns out to be uninsured. Any prudent buyer will want to see that insurance has been continuous and all of the premiums are paid up to date with a reputable insurance company. Diarising renewal dates is a simple but effective way to keep on top of this.

Secondly, it is important to ensure that all of the insurance policies are in the correct name. Pharmacists who have traded over a long period of time and who originally started out as a sole trader may have since incorporated their business into a limited company (or other type of entity such as a partnership). It is not uncommon for a policy, which was originally in the name of the sole trader, to have been forgotten about and not updated. We have, on a number of occasions come across policies in an individual's name when actually the pharmacy became a limited company some years earlier. This could have consequences in terms of validity.

Whilst some providers (in our experience) have not made an issue of this and have been prepared to confirm the insurance cover, others may take a different view.

Are you able to occupy your premises?

As with insurance, we have come across pharmacies who occupy premises under a lease which is in its owner's personal name rather than their company's name. This is often as a result of a sole trader



incorporating the business and the lease not being assigned at the time (quite often to save costs).

A number of problems could arise. First, the landlord could view the lease as having been breached and may forfeit the lease leaving the business without any premises. This could also lead to a landlord effectively holding a tenant to ransom in certain situations. Second, any costs saved by not dealing with the assignment properly in the first place are likely to be short-lived. Most banks will take security over leasehold premises and if they find out the property has been unlawfully assigned (without their consent) or if the business decides to refinance, the bank will expect the position to be rectified to protect their security interest. You will also be breaching your covenants to the bank.

Auto enrolment is the new workplace pension scheme introduced by law. Every employer, regardless of how many employees they have, now has additional duties in relation to pensions which include setting up a workplace pension scheme and contributing to it. Every employer will receive a 'staging date' by which time they must assess their workforce, choose a scheme and implement it. Employees and employers can visit www.thepensionsregulator.gov.uk for further information. ●

Further information

The pharmacy team at Ansons Solicitors is made up of a number of commercial property and corporate lawyers who have a wealth of experience having dealt with over 40 separate pharmacy transactions in the last 12 months with an aggregate value of around £30 million.

If you would like advice in relation to buying or selling a pharmacy, refinancing or relocating a pharmacy, renewing your lease or preparing your pharmacy for sale, please contact Jamie Gill, on 01543 431185 or by email at jgill@ansonsllp.com.