

## SCHEDULES

### SCHEDULE 21

Section 259

#### PROHIBITION OF SALE OF MEDICAL PRACTICES

##### *Prohibition, and certificate of the Secretary of State*

- 1 (1) Any person who sells or buys the goodwill of a medical practice which it is unlawful to sell by virtue of section 259 is guilty of an offence and liable on conviction on indictment to a fine not exceeding—
  - (a) such amount as will in the court's opinion secure that he derives no benefit from the offence, and
  - (b) the further amount of £500,or to imprisonment for a term not exceeding three months, or both.
- (2) Any person proposing to be a party to a transaction or series of transactions which he considers might amount to a sale of the goodwill of a medical practice in contravention of section 259 may ask the Secretary of State for a certificate under this paragraph.
- (3) The Secretary of State must—
  - (a) consider any such application, and
  - (b) if he is satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill of such a medical practice, issue to the applicant a certificate to that effect.
- (4) The certificate must—
  - (a) be in the prescribed form, and
  - (b) set out all material circumstances disclosed to the Secretary of State.
- (5) Where any person is charged with an offence under this paragraph in respect of any transaction or series of transactions, it is a defence to prove that the transaction or series of transactions was certified by the Secretary of State under sub-paragraph (3).
- (6) Any document purporting to be such a certificate is admissible in evidence and is deemed to be such a certificate unless the contrary is proved.
- (7) The court may disregard such a certificate if it appears to the court that the applicant for the certificate—
  - (a) failed to disclose to the Secretary of State all the material circumstances, or
  - (b) made any misrepresentation with respect to the material circumstances.
- (8) A prosecution for an offence under this paragraph may be instituted only by or with the consent of the Director of Public Prosecutions, and the Secretary of State must, at the request of the Director, furnish him with—
  - (a) a copy of any certificate issued by the Secretary of State under sub-paragraph (3), and

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- (b) copies of any documents produced to him in connection with the application for that certificate.

*Certain transactions deemed sale of goodwill*

- 2 (1) For the purposes of section 259 and paragraph 1, a disposal of premises previously used for the purposes of a medical practice is deemed to be a sale of the goodwill of a medical practice if—
  - (a) the person disposing of the premises did so knowing that another person (“A”) intended to use them for the purposes of A’s medical practice, and
  - (b) the consideration for the disposal substantially exceeded the consideration that might reasonably have been expected if the premises had not previously been used for the purposes of a medical practice.
- (2) If a person disposes of any premises together with any other property, the court must, for the purposes of sub-paragraph (1), make such apportionment of the consideration as it considers just.
- (3) For the purposes of sub-paragraphs (1) and (2)—
  - (a) “disposal” means any sale, letting or other form of disposal (whether by a single transaction or a series of transactions) and “disposes” and “disposing” must be read accordingly, and
  - (b) a person who procures the disposal of any premises must be treated as having disposed of them.
- (4) Where in pursuance of any partnership agreement—
  - (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 is deemed for the purposes of section 259 and paragraph 1 to have been a sale of goodwill as specified in sub-paragraph (5).
- (5) The sale of goodwill is the sale of the goodwill of the practice—
  - (a) of any partner to whom, or to whose personal representative, the consideration (or any part of it) is given or for whose benefit the services are performed,
  - (b) to the partner or each of the partners by or on whose behalf the consideration (or any part of it) was given or to the partner who performed the services.
- (6) The sale is deemed for the purposes of section 259 and paragraph 1 to have been effected—

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- (a) in a case to which sub-paragraph (4)(a) or (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 was given, or
  - (b) in a case to which sub-paragraph (4)(c) applies, at the time when the agreement was made.
- (7) Sub-paragraph (8) applies if a person (“the assistant”)—
- (a) performs services on behalf of a person who carries on a medical practice (or as an employee of a person employing a practitioner who carries on a medical practice),
  - (b) receives substantially less remuneration for performing those services than might reasonably have been expected, having regard to the circumstances at the time when the remuneration was fixed, and
  - (c) subsequently succeeds, whether as a result of a partnership agreement or otherwise, to that practice.
- (8) For the purposes of section 259 and paragraph 1, a sale of the goodwill of the practice is deemed to have taken place (at the time when the remuneration was fixed) unless it is proved that the remuneration was not fixed in contemplation of the assistant’s succeeding to the practice.
- (9) For the purposes of section 259 and paragraph 1, the goodwill of a medical practice is deemed to have been sold if sub-paragraph (10) or (11) applies.
- (10) This sub-paragraph applies where a person carrying on the practice (or employing a practitioner who carries on a medical practice) agrees, for valuable consideration—
- (a) to do or refrain from doing any act for the purpose of facilitating the succession of another to the practice, or
  - (b) to allow any act to be done for that purpose.
- (11) This sub-paragraph applies where a person—
- (a) gives valuable consideration to a person carrying on the practice (or employing a practitioner who carries on a medical practice), and
  - (b) succeeds, or has previously succeeded, to the practice.
- (12) Sub-paragraph (9) does not apply if it is proved that no part of the consideration was given in respect of the goodwill.
- (13) Sub-paragraph (9) does not apply to anything done—
- (a) in relation to the acquisition of premises for the purposes of a medical practice,
  - (b) in pursuance of a partnership agreement, or
  - (c) in the performance of medical services by one person as an assistant to another.

### *Consideration*

- 3 (1) In determining for the purposes of section 259 and this Schedule the consideration given in respect of any transaction, the court must—
- (a) have regard to any other transaction appearing to the court to be associated with the first transaction,
  - (b) estimate the total consideration given in respect of both or all the transactions, and

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- (c) apportion the total between the transactions in such manner as the court considers just.
- (2) For the purposes of section 259 and this Schedule consideration is deemed to be given to a person (“B”) if—
- (a) it is given to another person but with B’s knowledge and consent, and
  - (b) it appears to the court that B has derived, or will derive, a substantial benefit from the giving of the consideration.

#### *Carried-over goodwill*

- 4 The fact that a person’s medical practice was previously carried on by another person who at any time provided or performed services as specified in section 259 does not, by itself, make it unlawful under section 259 for the goodwill of his practice to be sold.

#### *Interpretation*

- 5 In section 259 and this Schedule, unless the context otherwise requires, references to a person include, in the case of an individual who has died, references to his personal representative.