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SCHEDULES

SCHEDULE 9

Section 35.

ADDITIONAL PROVISIONS AS TO PROHIBITION OF SALE OF MEDICAL PRACTICES

Prohibition, and certificate of Practices Committee

- 1 (1) Any person who sells or buys the goodwill, or any part of the goodwill, of a medical practice which it is unlawful to sell by virtue of section 35(1) is guilty of an offence and liable on conviction on indictment to a fine ^{F1} or to imprisonment for a term not exceeding 3 months, or to both such fine and such imprisonment.
- (2) Any medical practitioner or his personal representative may apply to the Medical Practices Committee for their opinion whether a proposed transaction or series of transactions involves the sale of the goodwill, or any part of the goodwill, of a medical practice which it is unlawful to sell by virtue of section 35(1).
- (3) The Committee shall consider any such application, and, if they are satisfied that the transaction or series of transactions does not involve the giving of valuable consideration in respect of the goodwill, or any part of the goodwill, of such a medical practice, they shall issue to the applicant a certificate to that effect, which shall be in the prescribed form and shall set out all material circumstances disclosed to the Committee.
- (4) Where any person is charged with an offence under this paragraph in respect of any transaction or series of transactions, it shall be a defence to the charge to prove that the transaction or series of transactions was certified by the Medical Practices Committee under sub-paragraph (3).
- (5) Any document purporting to be such a certificate shall be admissible in evidence and shall be deemed to be such a certificate unless the contrary is proved.
- (6) If it appears to the court that the applicant for any such certificate failed to disclose to the Committee all the material circumstances, or made any misrepresentation with respect thereto, the court may disregard the certificate, and sub-paragraph (4) shall not apply thereto.
- (7) The Medical Practices Committee shall, at the request of the Lord Advocate, furnish him with a copy of any certificate issued by them under sub-paragraph (3), and with copies of any documents produced to them in connection with the application for that certificate.
- (8) For the purposes of this paragraph (and paragraph 2) 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.

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Textual Amendments

F1 Sch. 9 para. 1(1)(a)(b) and words repealed by [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [Sch. 16](#)

Modifications etc. (not altering text)

C1 Sch. 9 para. 1(3) modified (31.3.1995) by [S.I. 1995/416, reg. 18](#), [Sch. 8](#)

Certain transactions deemed sale of goodwill

2 (1) Where—

- (a) any medical practitioner or his personal representative knowingly sells or lets premises previously used by that practitioner for the purposes of his practice to another medical practitioner, or in any other way disposes or procures the disposition of the premises, whether by a single transaction or a series of transactions, with a view to enabling another practitioner to use the premises for the purposes of his practice, and
- (b) the consideration for the sale, letting or other disposition is substantially in excess of the consideration which might reasonably have been expected to be paid by a medical practitioner for the premises as such irrespective of goodwill,

the sale, letting or other disposition of the premises shall be deemed for the purposes of section 35(1) and paragraph 1 to be a sale by the first medical practitioner or his personal representative of the goodwill, or part of the goodwill, of the practice of that practitioner to that other practitioner.

Where a medical practitioner or his personal representative sells, lets or disposes or procures the disposition of any premises together with any other property, the court shall, for the purposes of this sub-paragraph, make such apportionment of the consideration as it thinks just.

(2) 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 section 35(1) and paragraph 1 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 performed, to the partner or each of the partners by or on whose behalf the consideration or any part thereof

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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 section 35(1) and paragraph 1 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.

(3) Where any medical practitioner—

- (a) performs services as an assistant to another medical practitioner for a remuneration substantially less than those services might reasonably have been expected to be worth, having regard to the circumstances at the time when the remuneration was fixed, and
- (b) subsequently succeeds, whether as the result of a partnership agreement or otherwise, to the practice or any part of the practice of the second practitioner,

there shall be deemed for the purposes of section 35(1) and paragraph 1 to have been a sale (effected at the time when the remuneration was fixed) of the goodwill, or part of the goodwill, of that practice by the second practitioner to the first practitioner, unless it is shown that the said remuneration of the first practitioner was not fixed in contemplation of his succeeding to the practice, or any part of it.

(4) For the purposes of section 35(1) and paragraph 1—

- (a) if a medical practitioner or the personal representative of a medical practitioner agrees, for valuable consideration, to do or refrain from doing any act, or to allow any act to be done, for the purpose of facilitating the succession of another medical practitioner to the practice, or any part of the practice, of the first practitioner, the transaction shall be deemed to be a sale of the goodwill, or part of the goodwill, of that practice by the first practitioner or his personal representative to the second practitioner; and
- (b) if any medical practitioner, or any person acting on his behalf, gives any valuable consideration to another medical practitioner, or the personal representative of another medical practitioner, and the first medical practitioner succeeds, or has succeeded, whether before or after the transaction aforesaid, to the practice, or any part of the practice, of the second practitioner, the transaction shall be deemed to be a sale of the goodwill, or part of the goodwill, of the practice of the second practitioner by him or by his personal representative to the first practitioner, unless it is shown that no part of the consideration was given in respect of the said goodwill or part of it.

(5) Sub-paragraph (4) shall not apply to anything done in relation to the acquisition of premises for the purposes of a medical practice, or in pursuance of a partnership agreement, or to the performance of services as an assistant to a medical practitioner.

(6) In determining for the purposes of section 35(1) and this Schedule the consideration given in respect of any transaction, the court shall have regard to any other transaction appearing to the court to be associated with the first transaction, and shall estimate the total consideration given in respect of both or all the transactions, and shall apportion it between those transactions in such manner as it thinks just.

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- (7) Where any consideration is, with the knowledge and consent of a medical practitioner or his personal representative, given to any other person, and it appears to the court that the medical practitioner or, if he has died, his estate or some person beneficially interested in his estate derives a substantial benefit from the giving of the consideration, the consideration shall be deemed for the purposes of section 35(1) and this Schedule to have been given to the medical practitioner or his personal representative, as the case may be.

VALID FROM 01/04/1998

[^{F2} Carried-over goodwill]

Textual Amendments

- F2** Sch. 9 para 3 and crossheading inserted (1.4.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 59(10); S.I. 1998/631, art. 2(1)(b), Sch. 2 (with arts. 3, 5)

^{F3}

The fact that a person's medical practice was previously carried on by another person who at any time provided general medical services or personal medical services does not, by itself, make it unlawful under section 35(1) for the goodwill of his practice to be sold.

Textual Amendments

- F3** Sch. 3 and heading inserted (1.4.1998) by 1997 c. 46, s. 41(10), Sch. 2 Pt. I para. 59(10); S.I. 1998/631, art. 2(1)(b), Sch. 2 (with arts. 3, 5)

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