

Goodwill and dispensing - GPC briefing

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Sale of goodwill is illegal if it relates to, or is claimed on, the purported sale of essential services, although enhanced services are exempt from this. However, there has been some confusion whether GPs can sell goodwill in terms of the dispensing element of their contracts or not. This was based on the fact that the dispensing part of a GP practice is classed as non-core NHS, and it was therefore thought that a value could be attached to goodwill of the income.

To clarify this issue, the GPC has taken legal advice to check whether goodwill rules apply to the sale of pharmacy/dispensing elements belonging to a practice.

Regulations

Although the NHS Act 2006 (the Act) does not explicitly refer to the sale of the goodwill of pharmacy/dispensing elements of a medical practice, the relevant sections of the Act are as follows:

- Section 259 of the Act refers to the sale of medical practices and states that "it is unlawful to sell the goodwill of the medical practice of a person" (s.259 (1)) unless the person "no longer provides or performs the services mentioned, and has never carried on the practice in a relevant area" (s.259 (1) (a) and (b)).
- Schedule 21 of the Act relates to the Prohibition of Sale of Medical Practices and paragraphs 1 (2) and (3) detail how a person who is unsure whether goodwill attaches to the sale of a medical practice can make an application to the Secretary of State who will consider the application and then issue a certificate setting out his ruling.

Therefore, if a GP is unsure as to whether or not a Goodwill element attaches to sale of any part of his business then they may apply directly to the Secretary of State for a ruling.

Conclusion

Where the dispensing rights have been granted to a GMS/PMS practice and form part of the NHS core services, they are intrinsically linked to the practice then the practice cannot sell goodwill – it would be illegal. **It is imperative that practices do not fall foul of the Goodwill rules because by doing so, a breach in the regulations could result in a criminal offence.**

However, there are some circumstances where a practice has set up a pharmacy as a separate business (which is sometimes run from practice premises), which is almost like owning and running a chemist. It is not linked to the GMS/PMS agreement and can therefore be sold independently. In such cases it is thought that the Goodwill rules most probably do not apply.

The GPC would always advice practices who are unsure whether the goodwill rules apply or not, to check this with the Secretary of State.