

PARTNERSHIP AGREEMENT — SAMPLE

THIS PARTNERSHIP AGREEMENT is dated day of 20..... and is made between the persons whose names and addresses are listed in columns A and B of Schedule 1, all being medical practitioners.

It is agreed as follows:

1. DEFINITIONS

"Commencement date"20.....

"A majority of the partners" a simple majority of the partners for the time being;

"The register" the register of medical practitioners maintained pursuant to the Medical Practitioners Act 1995;

"Year of partnership" the period commencing on the commencement date and ending on the date of **the** first set of annual accounts thereafter (whether or not such period is a full year) and each successive period of one year thereafter.

"The premises"
means the premises referred to in clause 4 hereof.

2. COMMENCEMENT

As and from the commencement date the partners shall practice in partnership as medical practitioners at the premises under the style of

3. TERM

3.1 The partnership shall continue for years from the commencement date **and** thereafter shall **continue** from year to year.

3.2 The death, retirement, removal from the register, expulsion or bankruptcy of a partner shall not determine the partnership contemplated by this Agreement as between the other partners but without prejudice to the generality of this clause the parties shall review the provisions of this agreement whenever the admission of a new partner into the partnership is being contemplated.

4. PREMISES

4.1 The partnership shall be carried on at the surgery and consulting rooms at.....

- 4.2 The partnership shall have the benefit of all of the said premises and shall bear all rents, rates and other outgoings thereof and the cost of equipping them with any necessary medical and surgical equipment and other fittings.

5. CAPITAL

- 5.1 The initial capital of the partnership of the sum of \$..... and any further capital to be contributed by the partners as they may from time to time agree shall be provided (except as the partners may otherwise agree) in the proportions in which the partners are for the time being entitled to share in the profits of the partnership.
- 5.2 The initial and any further capital shall carry interest at the rate of % p.a. to be payable half-yearly in arrears or at such other rate and payable at such other times as the partners may from time to time decide.
- 5.3 No partner may increase or withdraw his or her capital or any part thereof without the written consent of all the other partners.

6. PROFIT-SHARING

- 6.1 The shares of the partners in the profits and losses (if any) of the partnership shall be as specified in column C of Schedule 1 or such other proportions as the partners may from time to time agree.
- 6.2 The partners shall review and if they so decide revise the profit sharing ratios on each of the following occasions:
- (a) the admission, retirement, removal from the Register, expulsion or death of a partner; and
 - (b) when the accounts of the partnership for each year of the partnership have been prepared.

7. ACCOUNTS

- 7.1 The accounts of the partnership in respect of each year of the partnership shall be prepared on generally accepted accounting principles consistent (except for the first year of the partnership) with earlier periods, and on adoption of the accounts by the partnership they shall bind each partner.
- 7.2 When preparing the accounts the share of profits or losses shall be credited or debited (as the case may be) to each partner's current account together with the interest on capital account payable pursuant to clause 5.2.
- 7.3 Each partner may draw on account of his or her share of the profits to such extent and at such periods as may be mutually agreed having regard to the cash resources available.

8. OBLIGATIONS TO DEVOTE TIME TO THE PRACTICE

- 8.1 Each partner shall be faithful to the other partners in all transactions relating to the partnership and shall faithfully employ himself or herself on a whole time basis in the practice.
- 8.2 Each of the partners shall be entitled to be absent from the partnership for such period or periods on account of ill-health as the partners may consider reasonable and as are consistent with the proper performance of his or her duties under this agreement.
- 8.3 Each partner shall be entitled to weeks holiday in aggregate in each year of the partnership.
- 8.4 Each partner shall be entitled to weeks sabbatical leave on full normal drawings each years, the first such sabbatical leave to fall due years after admission to the partnership.
- 8.5 In addition to her entitlement to normal holidays and sabbaticals, a female partner shall be entitled to maternity leave for such continuous period not exceeding weeks commencing at or after (as she may decide) the beginning of the 11th week before the expected week of confinement PROVIDED THAT she shall not be entitled to share in partnership profits during the period of such leave and her drawings will accordingly be suspended until her return to the practice.
- 8.6 If any partner is for any reason absent or incapacitated by sickness or accident the other partners may employ a locum tenens at the expense of the partnership.

9. RESTRICTIONS ON PARTNERS' ACTIVITIES

No partner shall:

- (a) assign his or her share in the partnership or any part thereof or give to any person an interest therein;
- (b) without the prior consent of the partners engage or dismiss any employee;
- (c) without the prior consent of the partners practise in any department of the medical or surgical profession except for the benefit of the partnership.

10. CONTROL AND MANAGEMENT

- 10.1 The partners shall have the general direction, conduct, control and management of the partnership.
- 10.2 Every effort shall be made to consult all partners on all matters of importance but if owing to absence, ill health, or for any other reason it shall be impossible to consult any

partner or partners on any such matter the available partners may determine the course of action to be taken by the partnership thereon except where this agreement expressly provides that the consent of all the partners is required in respect of any such course of action or any part thereof in which event the absent partner shall be deemed to cast his or her vote so as to preserve the status quo.

- 10.3 A meeting of the partners may at any time be requisitioned by any partner by giving not less than 3 clear days notice in writing to the other partners such notice to indicate the nature of the business to be discussed.
- 10.4 Except as otherwise stated in this agreement where a matter requires the decision or consent of the partners the partners shall decide the same or agree to give or withhold their consent by vote of a majority of the partners.
- 10.5 Decisions on any of the following matters shall only be undertaken with the unanimous agreement of all the partners:
- (a) the admission of any new partner;
 - (b) any increase or reduction in capital;
 - (c) any change in the name of the partnership;
 - (d) any acquisition or disposal of premises for the partnership;
 - (e) any change in the allocation of profits and/or losses;
 - (f) any amendment to this agreement;
 - (g) any acquisition of the practice of another practitioner or firm.
 - (h) [Reserved].

11. EXPULSION

- 11.1 If any partner shall:-
- (a) as a consequence of disciplinary action under the Medical Practitioners Act 1995, have his or her name removed from the register or be suspended from practice for any period exceeding three (3) months; or
 - (b) act in breach of any of the provisions of this agreement where such breach (if capable of being remedied) is not remedied within a fortnight after service of a notice signed by the other partners specifying the breach; or
 - (c) be guilty of any conduct calculated to injure the business of the partnership; or
 - (d) become insolvent; or

- (e) absent himself or herself from the partnership business other than as provided by this agreement or with the consent of the other partners, for more than 14 consecutive days; or
- (f) become permanently incapacitated by mental disorder, ill health, accident or otherwise from attending to the partnership business;

then and in any such case all the other partners may by notice in writing to him or her determine the partnership so far as he or she may be concerned whereupon the partnership shall as regards such partner immediately determine.

11.2 The partner so expelled shall be entitled to receive from the partnership:-

- (a) his or her share of the profits of the partnership up to the time of the expulsion; and
- (b) a refund of his or her capital, after deduction of any sum owing by that partner to the partnership as at the date of expulsion, such refund to be paid in four (4) equal quarterly instalments, the first such instalment to be due three (3) calendar months after the date of the expulsion.

11.3 The partner so expelled shall not be entitled to receive any other payment from the partnership or the partners individually.

12. RETIREMENT

12.1 Any partner may retire from the partnership on giving not less than three (3) month's previous notice in writing of his or her intention to retire and on the expiry of such notice the partnership shall as regards such partner determine accordingly.

12.2 A retiring partner shall be entitled to receive from the partnership:-

- (a) his or her share of the profits of the partnership up to the date of his or her retirement;
- (b) a refund of his or her capital, less such sum (if any) as the retiring partner may owe to the partnership as at the date of his or her retirement, such refund to be paid in four (4) equal quarterly instalments, the first such instalment to be due three (3) calendar months after the date of the retirement;
- (c) [Reserved].

13. RESTRICTIONS ON ACTIVITIES OF OUTGOING PARTNER

Each of the partners hereby covenants with the others that he or she will not without the prior consent of all the other partners for the time being during the period of twenty-four (24) months from the date of his or her leaving the partnership for any reason whatever establish or directly or indirectly be concerned (whether on his or her own account or as a partner or employee) in

any general medical practice within a radius of kilometres from the surgery of the partnership as at the date of his or her leaving the partnership.

14. POST-TERMINATION ARRANGEMENTS

- 14.1 Unless on the expiration or determination of the partnership a majority of the partners continue in partnership then within six (6) months after such expiration or determination a full and general account shall be taken by the partners of all the moneys, debts and other assets then belonging or due to the partnership and of all liabilities of the partnership and a valuation shall be made of all the items included in such account which require and are capable of valuation.
- 14.2 Immediately after such account shall have been so taken and settled the partners shall make due provision for the payment of all moneys and debts then due by the partnership and for meeting all the liabilities thereof.
- 14.3 Subject to clause 14.2 all the moneys, debts and other assets then belonging or due to the partnership shall be divided between the partners according to their respective shares, rights and interests therein and each of the partners shall do all things (including executing documents) reasonably necessary to facilitate the getting in of the outstanding debts of the partnership and for indemnifying each other with regard to any of the aforesaid matters and for vesting the sole right and property in the said respective shares in the said moneys, debts and other assets in the partners to whom the same shall on such division belong and for releasing to each other all claims on account of the partnership according to the requirements of the circumstances, **PROVIDED THAT** in no event shall goodwill be treated as an asset or as having any value.

15. PROTECTION/DEFENCE MEMBERSHIP

- 15.1 Each partner shall join and while a partner maintains his or her membership of the Medical Protection Society.
- 15.2 The annual subscriptions for such membership shall in each case be paid by the partnership.

16. ARBITRATION

Whenever any difference or dispute arises as to the meaning or application of this agreement or as to the rights of any partner the matter in dispute shall be referred to the arbitration of a sole arbitrator to be nominated by the Chairperson for the time being of the New Zealand Medical Association. The arbitration shall be conducted pursuant to the provisions of the Arbitration Act 1996 and its amendments.

17. NOTICES

Any notice required to be given hereunder shall be deemed to have been duly served if handed to the partner or if sent by registered post to the last known place of address of the partner concerned.

IN WITNESS WHEREOF the parties have entered into this Agreement on the date first above written.

Signatures of Partners

.....
.....
.....

Witness to Partner's Signature:

Witnesses signature:

Witnesses occupation:

Witnesses address:

SCHEDULE 1

Column A	Column B	Column C
Name	Address	Share in profits and losses

COMMENTARY**LIST OF CLAUSES IN PARTNERSHIP AGREEMENT WHICH REQUIRE INSERTIONS TO SUIT THE REQUIREMENTS OF INDIVIDUAL FIRMS**

- Clause 1** "Commencement date" - self explanatory
- Clause 2** The name of the **firm** will be inserted, e.g. "Wellington North Medical Centre".
- Clause 3.1** The duration of the partnership to be inserted, e.g. "five (5) years".
- Clause 4.1** The address of the surgery to be inserted.
- Clause 5.1** The amount of capital to be inserted. The specific amount will depend on the sum which the initial partners assess as necessary to provide the working capital for the practice.
- Clause 5.2** The rate of interest, if any, to be paid on capital will be inserted.
- Clause 8.3, 8.4 and 8.5** The number of weeks annual leave, sabbatical leave (if any) and maternity leave (if any) to be specified respectively.
- Clause 13** This type of provision is known as a restraint of trade clause, which will be upheld by law only if it is reasonable both as to duration and as to proximity. The suggested duration of twenty-four (24) months would nowadays generally be accepted as reasonable. The question of what is a reasonable distance from the practice, within which the ex-partner can validly be prohibited from setting up his or her own practice, is one of some difficulty. It will depend on such factors as whether the practice is a city practice or a rural practice and from how far distant the majority of the practice's patients are drawn. The distance has therefore been left unstated in the draft but will need to be inserted.
- Schedule 1** Will be completed as contemplated by the Agreement.

In addition to the foregoing, Clause 12 should be specially mentioned. From 1 February 1999 it is unlawful to discriminate against anyone on the ground of age, and therefore no one can be asked to retire, even though the person whose age is in issue has qualified to receive national superannuation. It will, however, be permissible to fix reasonable terms in relation to a partner who, by reason of age or disability, has a restricted capacity to participate in the partnership or who requires special conditions if he or she is to participate in it. Accordingly, partners may wish to consider adding a term under Clause 12, which would require a partner to retire if he or she comes to lack capacity to participate, rather than a term which is based on age.