

PART TWO

The dental associate contract

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WHILE THE PROVISIONS of any associate contract are important, it is crucial to consider other factors before the contract is drafted.

FOR PRACTICE OWNERS

Determine why you believe an associate is needed for your practice. Is it to locate your successor, to resolve demand, or both? If you plan to hire for succession purposes, first determine your best exit choice and how an associate fits in, if at all.

FOR ASSOCIATES

Don't be afraid to dream about your ideal practice. Develop your vision so you can ultimately get to where you want to go. As an associate, should you choose private or corporate? Full time or part time? Future ownership or permanent association? What do you want in light of the opportunities available in the geographic area you choose?

Even if you accept a less-than-ideal position due to limited opportunities, never lose sight of your vision. Otherwise, you will not be happy in your profession.

Once the decision is made to proceed, here are the areas to consider prior to the employment contract.

ASSOCIATE NEEDS ANALYSIS

Practice owners should consider completing an associate needs analysis with the help of a CPA or other advisor to determine whether the practice can afford an associate. Questions to be answered include the following: What is the percentage of collections available for the associate's compensation? Can the existing facility support the associate to allow more than one doctor to work comfortably and effectively? What impact will hiring an associate have on the practice owner's productivity?

An associate needs analysis also delineates the collections required by the associate to break even, inclusive of

a 10%–15% administrative profit. If all variable costs are covered and the associate contributes to fixed costs that the practice will incur with or without the associate, it is economically sound to make the hire.

FULL TIME VERSUS PART TIME

While there are always exceptions, I have never been a proponent of part-time employment for dentists, specialists, or even professionals outside of dentistry. In my experience, part-time relationships rarely succeed.

A common mistake is hiring an associate for one or two days per week, thinking that the associate will build a practice within the owner's practice. It won't happen! Even if the associate does grow the practice, he or she will not easily agree to purchase the goodwill attributable to the growth, absent a clear understanding and written agreement to do so at the commencement of associate employment.

An exception to full time is when an associate is attempting to locate his or her ideal practice while working in a less-than-ideal situation. In such cases, the associate should negotiate the ability to reduce time in the existing practice if he or she plans to work elsewhere or establish a practice. My observation of young dentists who establish practices is that they often do so after being frustrated with about three failed associate positions.

ASSOCIATE INTERVIEW QUESTIONS

Quality long-term working relationships are not attained by accident; they are designed. By asking the appropriate questions, the risk of a failed relationship is minimized. I typically use 20 categories of interview questions that are designed to assist both the owner and associate to discuss and assess whether the associateship will work. It is beneficial for interview questions to be prepared in advance.

Editor's note:

This is part two of a two-part series. Part one appeared in May, 2017.

PERSONALITY PROFILING

Compatibility is key to a successful working relationship. Certain personality types work well with one another, and others do not. Personality testing and profiling tools are effective, inexpensive, and easy to use to assist the practice owner in assessing compatibility. If personality testing and profiling tools are utilized, they need to be understood by those using them.

SPOUSES WITH FAMILY MEMBERS IN THE PRACTICE

A spouse or other family member working in the practice can greatly influence operations, including scheduling, patient assignment, administration, and supervision of staff. A spouse or other family member working in a practice is common and usually positive, but the associate should be aware of what everyone's specific role is in light of any future ownership.

LENGTH OF ASSOCIATION

Some associates will not be owners, working on a part-time or full-time basis indefinitely. Others will be owners—and more should be. For specialists, the association typically lasts one to two years. For general dentists, associations generally last two to four years. There are always exceptions. The associate's productivity must grow to a consistent level. This allows the associate to avoid a pay reduction as an owner and pay for the practice interest, which means that economically the future ownership is based upon consistent productivity and not time.

WORKER CLASSIFICATION

The associate is an employee, not an independent contractor, unless the associate works part time and other factors are present.¹ Worker classification is determined by the IRS and individual states on a case-by-case analysis. It is not simply a "check the box" choice by the practice owner or associate. If the practice pays the associate, schedules the

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associate, requires the associate to follow practice policies, and subjects the associate to a restrictive covenant, the associate is an employee.² Keep in mind that states, the IRS, and now the Department of Labor³ greatly dislike independent contractor relationships and lose significant revenue from misclassification.

Worker misclassification is an expensive proposition for all concerned. The associate should not agree to a provision in an independent contractor agreement holding the practice harmless or indemnifying the practice from misclassification. If the practice owner and associate really think that the associate can be properly classified as an independent contractor, the associate should practice through an S-corporation as a separate entity, not as an individual or a single member limited liability company that is treated as a sole proprietorship.²

ANTICIPATING OWNERSHIP

If the associate position will lead to ownership, the associate should request and expect that the practice owner has already determined his or her exit choice. The associate should expect the owner to present a confidentiality letter, employment agreement, practice valuation, detailed letter of understanding outlining the specific terms of future ownership, and ownership agreements. The future ownership will be in the form of co-ownership, complete ownership at a later

date, or a solo group arrangement. While the practice value for future ownership in some form may be recalculated after a year or on a mutually agreeable date after the associate-ship begins, it is important to have a baseline value at commencement of the associate's employment or shortly thereafter.

The associate's lawyer and CPA should review the items prepared by the practice owner's lawyer. The advance preparation of co-ownership or other ownership items and agreements is essential—the date of value, business and tax structure, and agreement terms are extremely difficult to agree upon a year or two after the associate's employment begins.

FINAL THOUGHTS

It is not enough to agree upon the associate contract provisions. The important considerations preceding the associate contract are crucial to a successful long-term relationship—and hopefully future associate ownership and owner retirement. **DE**

REFERENCES

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