



PART I

Avoiding disputes and dispute resolution in partnerships

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THE BEST WAY TO AVOID A DISPUTE AMONG PARTNERS is to never enter into a partnership. However, partnerships make sense when the elements for a successful partnership are present. The elements include character, effort, communication, and profits sufficient to distribute to all partners, although precautions should always be taken in the event a dispute arises.



PERSONAL CHARACTER

There are associates with personal characteristics who are worthy of being elevated to partnership and those who are not. To assess an associate's character, a longer rather than shorter associate employment term should be considered. Associate employment in dentistry and its specialties is almost always much shorter than in accounting or law firms. But after the associate is elevated to partnership, the existing owner (Dr. Senior) should retain the ability to disengage, if necessary, and the new partner (Dr. Junior) should have the ability to leave unscathed.

CONTINUED EFFORT

Effort on the part of all partners is crucial to maintaining sufficient practice profitability. If one or more partners do not put in consistent effort to maintain partnership status, the other partner(s) should retain the ability to terminate the non-producing owner's status as a partner, which should be provided under the buy-sell agreement(s). To some degree, however, disproportionate productivity can be minimized through a properly designed compensation formula.

COMMUNICATION

Problems are most effectively resolved with frequent communication. When communication is lacking and the partners do not hold regularly scheduled meetings to discuss partnership business, problems that should have been resolvable often become irreconcilable. There is no excuse for lack of communication in a partnership, and disputes will be minimized through regularly scheduled board, member, or partner meetings. And yes, partners communicate better with effective systems in place than without.

AVOIDING DISPUTES

PROFITABILITY

The most consistently profitable partnerships and happy partners have effective systems in place. In order to have effective systems, it is likely the practice engages the services of a practice management consultant or the partners have management training through a management or consulting firm on an ongoing basis. Any associate being elevated to partner should also work with the same management consultant and/or participate in the ongoing management training.

An associate analysis is beneficial before making a hire. If an associate can pay for him- or herself and contribute to existing fixed costs, the decision to hire is economically sound. In a short and quantifiable period of time, the associate should be able to cover his or her own costs, including compensation, benefits, insurances, and direct business expenses, as well as any chairside assistant or additional equipment.

In order to elevate an associate to ownership, the associate must consistently produce at a sufficient level in order to not incur a pay or benefit reduction and to pay for his or her own interest in the practice within a measured period of time, not to exceed seven years.¹

DECISION-MAKING CONTROL

Avoid equal ownership: With equal ownership, sooner or later partners will likely disagree on a major issue. For example, if one partner proposes an action and the other partner does not agree to proceed, the action is not taken. Often, any decision is better than no decision. Worse yet, equal owners often find themselves in a voting deadlock that can end up in an irreconcilable dispute and a practice break-up. The partnership agreements should contain dispute resolution provisions. If they do not, discuss the options for dispute resolution with legal counsel for the practice and authorize the provisions to be included in amended and restated partnership agreements.

Close corporation statutes: Sixteen states currently have close corporation statutes in place for those practices operating as an S- or C-corporation.² In

close corporation states, equal owners can allocate decision-making control by contract. For example, Ohio has a close corporate statute whereby Dr. Senior can own 50% of the practice as a shareholder with Dr. Junior, then later admit a third shareholder having a one-third interest in the practice. In such a case, Dr. Senior can retain the tie-breaking vote so long as he or she retains one share of stock. Exceptions would be agreed-upon decisions requiring unanimous consent. In those states without close corporation statutes, Dr. Senior must retain a majority interest, e.g., 51%, in order to retain the tie-breaking vote or issue a nonvoting class of stock. The problem is that few incoming shareholders would purchase nonvoting stock.

Unequal partnership interest: Slightly less than equal ownership and decision-making control is not unfair. Most associate buy-ins are internally financed, and why would an incoming partner have an equal vote if he or she has not fully paid for his or her interest in the practice? Should Dr. Junior obtain outside financing, the practice and/or Dr. Senior is usually required to guarantee Dr. Junior's loan, which further indicates that slightly less than equal ownership is not unfair. More importantly, Dr. Senior should be providing substantial mentorship effort and time to get Dr. Junior up to speed as to both clinical and management skills. Certain decisions, however, should be unanimous, such as hiring another dentist, relocating the dental practice, expenditures over a threshold amount in any calendar year, and changes to shareholder compensation and benefits. And remember, once Dr. Junior buys out Dr. Senior, Dr. Junior will have the majority vote, and any newly admitted shareholder will have the same safeguards as Dr. Junior had with Dr. Senior.

Minority interest discount: Partnership candidates often believe that unless control is equal, a minority interest discount is appropriate.³ What candidates sometimes miss is that the benefit of mentorship offsets any minority interest discount. So long as Dr. Junior's compensation cannot be changed and

additional dentists or specialists cannot be hired without unanimous consent, the control issue is minimal, and any minority interest discount should be irrelevant. Many dentists and specialists have walked away from otherwise tremendous opportunities because they do not perceive that the mentorship has any meaningful value.

SUMMARY AND THOUGHTS

Precautions should always be taken to safeguard against partner disputes. If the practice growth and profitability allow a partnership, properly vet and deal with only quality people. And yes, Dr. Senior should retain the tie-breaking vote. **DE**

REFERENCES

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