



PRACTICE

PRESCOTT'S PERSPECTIVE ON TRANSITIONS

William P. Prescott, JD, EMBA

What "almost equal" equals; associate retreatment provisions

QUESTION: As an associate, I have been offered to buy into a busy, one-owner specialty practice with almost equal ownership. My concern is not having an equal vote in practice operations but yet paying the fair market value for my interest. How should I proceed?

WP: Slightly less than equal ownership and decision-making control is not unfair. Most associate buy-ins are internally financed, and why would you have an equal vote if you have not fully paid for your interest in the practice? Should you obtain outside financing, the practice and/or Dr. Senior would be required to guarantee your loan, which further indicates that slightly less than equal ownership is fair. More important, Dr. Senior will be providing substantial mentorship effort and time to get you up to speed as a specialist, both with clinical and management skills. Certain decisions, however, should be unanimous, such as hiring another specialist, relocating the specialty practice, expenditures over a threshold amount in any calendar year, or changes to your compensation and benefit package as an owner. And remember, once you buy out Dr. Senior, you will have the majority vote and the newly admitted owner will have a slightly less than equal vote, but will have the same safeguards

Editor's Note: In this bimonthly column, "Prescott's Perspective on Transitions," William P. Prescott, JD, EMBA, will address select questions around practice transitions, including partnerships. Submit a question by emailing wprescott@wickenslaw.com—names will not be published.



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in place as you had. Note that the same applies to general dentists.

One of the most difficult situations that happens all too often with equal ownership is that if an action is proposed and one owner 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 breakup. The partnership agreements should contain dispute resolution provisions. If they don't, discuss the options for dispute resolution with your legal counsel and authorize such provisions to be included in amended partnership agreements.

Irrespective of the percentage of ownership involved, dispute resolution mechanisms can and should be contained in all partnership agreements.

QUESTION: I've been presented with an associate employment agreement that contains a provision that I must reimburse the practice for any retreatment deemed necessary by the practice after I am no longer employed. Are such provisions common—and should I agree to it?

WP: Absolutely not! Retreatment provisions for associates are becoming more common than ever, especially with

corporate practices. However, the problem with a retreatment provision for you as an associate is that you are under the control and mentorship of the practice owner or management team (management), and any retreatment should be handled at the time the treatment is rendered by management signing off on it, not after you leave.

Retreatment after an associate leaves is a strong sign of a lack of supervision on the part of management. There have been numerous instances where treatment was deemed necessary by the practice after the associate left when such provisions are included, and the associate has disputed the need for the retreatment. Retreatment provisions in associate employment agreements can easily be abused due to "hard feelings" over an associate leaving—and you should not agree to them.

If, as an associate, you do agree to a retreatment provision after termination of employment, the provision should contain a dispute resolution mechanism whereby the parties agree to an arbitrator to decide the dispute. If the parties cannot agree on an arbitrator, the arbitrator should be the peer review committee of a specified local or state dental association. **DE**

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