

PART ONE

The dental associate contract

William P. Prescott, Esq., MBA—Executive Program

ALL ASSOCIATE CONTRACT PROVISIONS should be subject to discussion and understood by both the associate and practice owner.

RESTRICTIVE COVENANTS

While the practice owner and associate may think that the most important issue in the employment relationship is compensation and benefits, it is not. The most important issue is the restrictive covenant, which protects confidential information consisting of patients and referral source lists, noncompetition within a geographic radius or attached map, and, for a period of time (one to three years), non-solicitation of patients and/or referral sources, and non-solicitation of services of staff.

For those associates working in corporate practices, do not agree to geographic restrictions for multiple or future locations, especially if you are a specialist working at multiple facilities. In addition, associates should not agree to outrageous liquidated damage provisions.

If the associate grew up in the geographic area or resides where the practice is located, a buyout of the restrictive covenant is an effective tool. Otherwise, the associate will be reluctant or unwilling to agree to a meaningful restriction.

The associate will prefer a six-month exclusion before the restrictive covenant begins, although the non-solicitation of patients, referral sources, and staff should always be in effect immediately. I don't think it matters provided that the restrictive covenants are initially included in the employment agreement.

Those patients directly referred to the practice by the associate, as well as the associate's friends and family (collectively the "associate's patients"), should be excluded from the restrictive covenant provisions. The associate's patients are designated as a schedule to the employment

agreement on an ongoing basis and can be computer generated or handwritten. Should the associate's employment terminate, those charts and records of the associate's patients remain the former associate's property.

ASSOCIATE COMPENSATION

As to compensation, I suggest the greater of a dollar amount per month for full-time (or an hourly rate for part-time) or a percentage of adjusted production. The differential may be "trued-up" or calculated on a quarterly basis to reduce peaks and valleys of pay versus production. The "greater of" sum may last for a limited period of time (six months to one year). Adjusted production means the associate's production reduced by discounts, reduced fees, insurance and other write-offs, laboratory remakes, and uncollectable accounts. While compensation as a percentage of collections is common, I prefer adjusted production because the associate cannot control the collection policy of the practice. On the other hand, some specialists are paid a monthly base salary and not a percentage, often with bonuses.

Should the associate accept a draw that must be repaid against future compensation, the associate should not be required to repay this sum should the employment terminate. While there are wide swings in compensation and collection percentages, the most common that I see is 30% for general dentists, including hygiene examinations, and 35%-plus for specialists, in addition to benefits, direct business expenses, and insurances for full-time associates. These percentages exclude any reduction of dental laboratory costs in general practices. To the extent that there is a reduction, the percentage is increased and the formula should be adjusted production or collections, less the lab percentage, multiplied by the commission percentage.

If the employment terminates and the associate is paid on collections, include a provision that compensation will continue for some period of time, e.g., 120 days, to allow for fees to be collected, along with a monthly accounting.

DISCRETIONARY AND OTHER BONUSES

Bonuses are designated to economically reward work over and above the standards expected by the employer. In dental and dental specialty practices, bonuses usually take the form of a reward or incentive for exceeding a predetermined level of productivity or collections. Designing a bonus formula based only upon productivity or collections is one dimensional. The practice owner should consider designing discretionary bonuses to encourage quality of work, effort, attitude, and overall performance, yet consider the cash and financial position of the practice. The benefit from such a formula is that other important criteria,

in addition to productivity, e.g., quality of services, attitude and effort, are evaluated and, hopefully, discussed.

Other bonuses pertain to signing, relocation, and student loans, provided that the associate remains with the practice for a predetermined period of time to avoid repayment.

EXPENDITURE OF TIME

If the employment is full-time, the specific days and times should be designated as a schedule to the contract. If the employment is part-time, the days and times are still designated, but a provision may state, "Employee's workdays (as herein defined) shall be increased in accordance with Employer's need for an additional dentist/specialist in its dental/specialty practice."

BENEFITS, DIRECT BUSINESS EXPENSES, AND INSURANCES

For full-time associates, the approved benefits, direct business expenses, and insurances are

usually paid by the practice. For part-time associates, the approved costs may be reduced from the associate's pay.

LIABILITY INSURANCE

It is essential that any associate carry professional liability insurance with specified coverage limits. The question is, who pays the cost? For full-time associates, it is usually the practice. To the extent reasonably permitted by the carrier, the associate's policy should cover the practice as a "named" insured.

VACATIONS AND OTHER TIME OFF

The vacation and other time-off provisions provide for paid or unpaid time off for each 12 months of the employment term. The time off should be non-cumulative and forfeited if not taken within the applicable period. Further, the time off may not interfere with the practice owner's scheduled time off and adequate advance notice must be provided, typically 30 days.

In addition, either paid or unpaid educational time off may be part of the package, provided that the time off is approved in advance by the practice owner. Other time off is typically unpaid and includes maternity leave, illness, personal days, or emergencies.

INDEMNIFICATION

If the contract will include an indemnification or hold harmless provision, it should be mutual. The associate holds harmless (covers the cost) or indemnifies the practice for any act causing liability not covered by insurance and vice versa.

RETREATMENT

Retreatment provisions are very common in the complete sale and purchase of a practice. They are not common in associate contracts and should not be agreed to by the associate. The practice has the ability to review, modify, and/or redo the associate's work while employed. Retreatment after termination of employment shows lack of mentoring and control of work product. If the associate agrees to such an onerous and open-ended provision, a procedure for a third party tie-breaker needs to be in place to arbitrate any disputed necessity of retreatment. It is not uncommon for a corporate practice to require that accrued compensation following

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employment termination be reduced and offset by what it deems necessary retreatment. Both associate general dentists, and especially specialists, should think long and hard about agreeing to such a provision.

POST-TERMINATION PROMISES

Associates in a corporate practice should be careful to avoid a requirement to write a letter to all patients previously treated, recommending them to remain with the practice should the associate leave. This is particularly true for a specialist who is the only doctor of a particular specialty in the practice. In addition, associates should be cautious of any requirement to testify in any proceeding following employment termination not involving them. The associate should be sure to have records access if an attorney needs to defend the associate in a lawsuit or administrative proceeding at a "reasonable cost."

SURVIVAL PROVISIONS

Certain provisions should continue or survive following termination of the employment and the employment contract should say so. Examples of survival provisions include restrictive covenants and accrued commissions.

MISCELLANEOUS

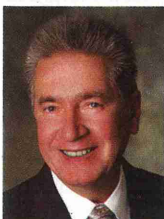
A miscellaneous section provides for the application of the laws of a particular state in the event of a dispute and provides the place where the dispute will be decided. For associates in a corporate practice, this provision is important because the provision will probably designate a state other than where the associate resides.

TERMINATION OF EMPLOYMENT

Should the employment relationship terminate, neither party should desire a lengthy notice period. For up to the first six months of the employment, consider a discretionary termination provision without notice by either party. Thereafter, there is usually a notice provision that I believe should be identical for both parties. If the practice owner does not want the associate to continue to render services during the notice period, the former associate continues to be paid based upon what the associate had previously earned. Termination of the associate employment "for cause," as a defined term, or a material breach by the practice, such as failure to pay compensation, provides for immediate termination. Immediate termination also occurs upon the associate's death, or at the practice owner's option for disability, as a defined term, or for loss of license.

SUMMARY AND THOUGHTS

Yes, all contracts are negotiable! **DE**



WILLIAM P. PRESCOTT, JD, MBA-EXECUTIVE PROGRAM, of WHP in Avon, Ohio, is a practice transition and tax attorney and former dental equipment and supply representative whose most recent book is titled *Joining and Leaving the Dental Practice*, second edition. For this and Mr. Prescott's other publications, see prescottdentallaw.com. Mr. Prescott can be contacted at (440) 695-8067 or wprescott@wickenslaw.com.

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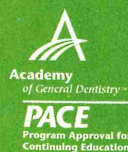
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