

Chapter 4

HIRING & BECOMING THE ASSOCIATE

Why would you hire an associate? Because you need someone to ease the burden of your extremely busy life; to take the pressure off you and someone to buy you out when you leave practice. Will you make money off the associate? You should, but you may not. The market trend is to overpay associates and your practice productivity, as well as its profitability, may not be where it should to both pay the associate and earn an appropriate administrative profit of 5% to 15%. On top of this, your facility may not be the right square footage to accommodate you, your hygienist and an associate. Additionally, you have to take time from your patients in a "one and one-half doctor" practice to mentor and train the associate/apprentice doctor.

Why would you want to be an associate? Because you may not have the ability to establish your own practice and have your schedule filled for some significant period of time. You may lack confidence and need the mentorship of a seasoned doctor to show you what professional practice is like.

Do associate arrangements work? Yes. They can and should. The practice owner needs relief from stress with an associate who can truly help ease the burden of a busy practice with potential for growth. The practice owner would typically be pleased to train his or her successor knowing who will treat patients of the practice upon retirement. The practice owner also would like to know that he or she will be welcome to treat patients after "official" retirement on a limited basis, unless retirement will be complete and not partial.

Personality Profiling

From each doctor's perspective, compatibility will be a key to a successful long term relationship. In this regard, personality testing and profiling is available to assess personality types and compatibility. These testing procedures and tools are effective, inexpensive and easy to use. They are a starting point for accessing compatibility over the long term. It is tried and tested that certain personality types work well with one another and others do not. Staff personalities also are significant to determine whether the associate will be successful in the practice, given the personality of other staff members.

At a minimum, personality profiling can be a tool whereby the practice owner and associate can discuss their working relationship, philosophical values, personality types and philosophies about work; like work ethic, hours of work, personal goals and interests outside of work which affect the number of hours worked.

Spouse in the Practice

The non-doctor spouse can greatly influence practice operations; the activities of the doctor(s), the practice and non-doctor staff members.

The relationship between the incoming doctor, the incoming doctor's spouse, the practice owner and the practice owner's spouse is crucial, especially if the doctor's spouse is the office

manager or works in the practice. The doctor's spouse working in the practice is very common, yet the dialog between the doctors often excludes the role of the non-doctor spouse in the practice.

Length of Association

How long should the association last? Some associates will work on a part or full-time basis indefinitely and do not desire to own a practice. Others do desire to make their presence in the practice permanent as owners. For a specialist, the association typically lasts between one and three years. For general dentists, two to four years, with exceptions. First, the associate and practice owner must desire to practice together on a permanent basis. Further, the associate's productivity must be consistently high enough to both earn an appropriate living for the period when the practice or practice interest is being paid for and meet the financial obligations of paying for the practice or practice interest.

Timing the Hiring Process

When is the associate hired? At the time you have determined that your practice is operating effectively and efficiently, when your management systems are in place and when your practice can support you and the associate. A key mistake by practice owners is hiring an associate when you can't keep the associate busy. Your practice must have sufficient work and pent up demand so that you will not be reluctant to transfer patients to the new doctor. The demand can also arise from your cutting back your schedule sufficient to allow the associate to produce at a level which you and the associate agree upon in advance and continually monitor.

Associate Compensation

Associate compensation can and should be determined in advance of the hiring process through an analysis of what the practice can afford to pay with the owner(s) making a 5% to 15% administrative profit, in light of market conditions whereby quality candidates are difficult to locate. Market conditions currently provide for relatively high compensation to both general dentists and specialists. Why? There is a shortage of incoming doctors, particularly specialty practitioners.

Let's say that the incoming doctor is overpaid, paid at a relatively high rate. Assume that the practice owner earns 40% of gross revenues as owner compensation and in all forms and agrees to pay the associate the rate of 35% of production, less 35% of the corresponding laboratory costs. The associate further receives credit for hygiene examinations but not hygiene services performed by the hygienist(s) of the practice. Assume further that the practice pays the associate's malpractice insurance, one-half of individual health insurance premiums and \$1,000.00 toward the cost of continuing education for each consecutive twelve months of the associateship. This seems like a fairly good compensation package for the associate. But how does the associate become an owner? The associate will not want to take a cut in pay to become an owner and there is not a sufficient spread between owner compensation in all forms and the associate's compensation to allow ownership. Further, the practice owner earns little, if any, administrative profit during the term of the associateship. What if the associate earns 25% of production? Then the practice owner earns an administrative profit on the associate and sufficient profit is available

to allow the associate to be elevated to ownership, pay for the ownership interest and not take a cut in pay. This assumes that the ownership interest is paid for within an agreed upon and measured period of time, e.g. 5 years.

There is also a shortage of new doctors who choose to work full-time and own practices, which means a pool of associate doctors who will acquire your practice, in part or in whole, is shrinking. This will result in declining practice values and relatively high associate compensation in both and general and specialty practices, not to mention tremendous difficulty recruiting new doctors in rural and undesirable geographic areas.

How do you resolve the associate compensation problem? By doing the analysis of what your practice can afford to pay, given anticipated associate revenues, your 5% to 15% administrative profit, overhead costs with the associate in place including the variable costs of the laboratory and supplies. In short, what your practice can afford to pay an associate needs to be within your operational budget. If your practice cannot afford the market rate for an associate, get your management systems in order to maximize profitability, review your fees which are probably too low and hire the associate later, at a compensation package which your practice can afford to pay. Don't be fooled into thinking that a high paid associate who takes your time to train and mentor will pay you a fair value for all or a portion of your practice in the future.

If you really do need an associate based upon the demand for services, the associate can do very well at a compensation rate which the practice can afford to pay as the associate's schedule will be filled. As practice owner, you just need to be sufficiently organized to allow the associate to be productive and grow. It is common for associate relationships to fail where the practice does not have adequate management systems in place.

What is an appropriate rate of compensation? For a general dentist, 20% to 30% of production or collections and for a specialist, 25% to 35% of production or collections may be an appropriate percentage.¹

A mechanism which may be helpful to attract a new doctor without overpayment over the entire associate period is to pay the greater of: (i) x dollars; or (ii) x percentage of production or collections for each consecutive month of the employment term. The base compensation during the early months of the associateship will exceed the percentage paid and the percentage paid will hopefully exceed the base compensation within six (6) months. If the percentage is appropriate, the practice does not overpay the associate once productivity increases to a predetermined level. Here, the associate knows there is a compensation base to initially rely upon. My recommendation is not to use the base compensation as a "draw" to be repaid once the associate exceeds the base. The rationale is that the associate feels like the reward is taken away once productivity goals are attained if the base is subtracted as a draw. There are, of course, practices which do subtract the draw from future percentage compensation.

If you are the associate and you agree to a draw, make sure that you do not have to repay it should you leave the practice. Similarly, if you are paid on collections, make sure the

¹ Valuing Your Practice, Associateships and Partnerships, 2-9 Pride Institute, 1992.

employment agreement provides the manner in which you will be paid for collections and for how long in the event that you leave the practice.

For specialty practices, the recruitment process is clearly regional if not national. Associate compensation packages for specialists in all cases, except prosthodontics, are high, but high associate productivity is also anticipated. A typical associate package for a specialist in today's marketplace can be 25% to 35% of production, but also a common compensation package would be \$8,000.00 to \$12,000.00 per month, plus business expenses and benefits, including family health insurance premiums, malpractice insurance, continuing education, professional dues and retirement plan contributions. The compensation is often increased each year incrementally during the associate period. There may also be a discretionary or productivity based bonus provision. Hopefully, such a package will equate to 25% to 35% of production. If not, it will be difficult to elevate the associate to owner.

Compensation, bonuses, benefits and payment of business expenses should be specifically defined in the associate employment agreement. For example, in a general practice, the methodology for payment of laboratory expenses can be handled in two ways as indicated in Figures 4-1-A and B. Each method generates a different result. Further, it may be helpful to include any bonus provision calculation as an example in a schedule to the employment agreement, unless all parties are sure of how the laboratory expense is allocated.

In certain circumstances it may be appropriate to reduce the associate compensation by any expenses and benefits paid on behalf of the associate. This ensures that the percentage of productivity or collections remains at a quantified rate.

Bonuses are designed to economically reward work over and above the standards expected by the employer. In dental practices, bonuses usually take the form of a reward for exceeding a predetermined level of collection or productivity.

Designing a bonus formula only based upon collections or productivity is one dimensional. Consider designing associate bonuses to encourage quality of work, effort, attitude, overall performance, yet consider the cash and financial position of the practice. In short, bonuses should be discretionary for associates.

The associate should benefit from such a formula in that other important criteria, e.g., quality of services, are evaluated in addition to productivity levels.

Because the associate period is a time of mutual evaluation for both parties, the associate can assess the fairness of the practice owner, who is often more generous than necessary, although not always. If you are the associate and you don't like the bonuses or think that the practice owner is being fair, you should leave. You don't want to be an owner with this doctor. Practice owners should evaluate much more than productivity and inadequate performance can take many forms. Therefore, if more than production or collections will be evaluated, design an evaluation format to work from in light of the cash flow and financial position of the practice.

Proposal For Employment

Prior to the preparation of the associate employment agreement, the key terms of the employment relationship in any discussions of future ownership can and should be set forth in a "Proposal for Employment" letter. An example of such a letter is contained in Figure 4-2.

Key Employment Agreement Provisions

Associate employment agreements alter any at-will employment relationship with the practice, whereby an employee can be fired for any reason, with or without cause. Many states have modified the employment at-will doctrine, giving employees remedies for inappropriate employer conduct.

Associate doctor relationships modify any at-will employment relationship to the extent of an associate employment agreement. So why have an associate employment agreement? Primarily, to protect the practice from dilution of value due to competition by a former associate doctor and to ensure that all parties understand their contractual obligations.

Below are the significant associate employment agreement provisions. These provisions are identical for both general dentists and specialists, except that specialists generally earn more in compensation and benefits than do general dentists and specialists are usually prohibited from soliciting both patients and referral sources. Additionally, specialists tend to become owners earlier than do general dentists.

Employment

The employment agreement should provide for the practice to offer employment and for the associate to accept the employment under the terms and conditions of the employment agreement.

The employment agreement should provide that the entire employment relationship is covered by the employment agreement itself and that in the event of a dispute, no other verbal or written evidence may be admitted to trial other than the terms of the employment agreement. This provision was a key factor in a case which was successfully litigated by my partner, Richard D. Panza, Esq., in *Wall v. Firelands Radiology, Inc.* [1995], 106 Ohio App.3d 313. This case involved a restrictive covenant provision, among other issues, whereby an associate physician was precluded from admitting evidence regarding the employment relationship which was not covered in the employment agreement itself.

The agreement needs to survive its term so that the restrictive covenants/nondisclosure provisions are in effect should the associate leave the practice.

The associate should promise that the associate is not currently a party to any prior employment agreements. In the event that the associate would be violating a restrictive covenant provision by joining your practice, your practice and/or you could be arguably liable to the other practice which the associate left for intentional interference with contract.

Employment Term

The employment agreement would commence on a certain date, provided that the associate is licensed to practice in the particular state. The employment term would continue until the earlier of a specified date or as provided in the employment termination provisions.

Employee's Compensation

This section provides for and defines the payment of compensation and any bonuses. The obligation of the practice to pay the associate the compensation and any bonuses should be conditioned upon the associate adhering to the associate's duties and responsibilities, particularly the non-competition/non-disclosure provisions contained in the employment agreement.

There may be a signing or annual non-competition bonus, particularly if the employment term commenced prior to the associate signing the employment agreement. The signing or non-competition bonus provides for the associate's later promise not to compete as contracts need consideration on both sides. If the employment agreement is signed before the new doctor starts working, compensation and bonuses are the consideration for the non-competition/non-disclosure promises made.

Employee's Duties And Responsibilities

This section defines the associate's work schedule, full or part-time, on-call time and the authority and responsibility of the practice owner for the activities of the associate/doctor.

Employee's Non-Disclosure Promises

This section specifically defines "confidential information" such as patient lists/referral source lists, as well as practice forms, business and development plans and computer information. The associate may not retain or disclose this information which is owned by the practice to any outside party during the term of the employment or for an agreed period of time thereafter. The associate should be required to return any confidential information to the practice in the event that the employment terminates for any reason.

Employee's Non-Competition Promises

This section provides that the associate may not compete with the practice during the term of employment or for a specified period of time thereafter within a specific geographic area. Further, the associate may not, directly or indirectly, solicit patients and/or referral sources of the practice and may not hire employees of the practice for a specified period of time after the employment terminates for any reason.

In those states where permitted, this section also grants a court authority to redefine the restrictive covenant provisions in the event that the court considers the restrictions too broad.

Vacation and Time-Off

This section provides for a vacation time-off, with or without compensation, for each consecutive calendar year or twelve months of the employment term. The time-off may also be non-cumulative and forfeited if not taken within the applicable twelve monthly period. Further, the time-off may not interfere with the time-off anticipated by the practice owner.

Educational time-off may be granted by the employer, with or without compensation, for the associate's attendance at meetings, conventions, seminars, and/or post-graduate courses reasonably related to the associate's duties and obligations under the employment agreement, provided that the time-off is approved, in advance, by the practice.

Other time-off may be granted and paid or unpaid. Other time-off would include military reserve duty, pregnancy leave, time to study for board certifications, moving or relocation time-off, specified holidays, illness or sick days, jury duty or sabbatical time-off.

Fringe Benefits and Expenses

This section provides for any fringe benefits and/or expenses either paid by the practice or the associate during each consecutive twelve month period or calendar year of the employment term. In certain circumstances, the associate's compensation may be reduced by some portion or all of the cost of the benefit, provided that federal tax laws are complied with.

Prohibition Against Transfer

This section provides that the associate cannot assign the associate's duties and responsibilities under the employment agreement to another. Without these provisions, the associate could arguably assign the associate's non-disclosure/non-competition promises to another.

Termination of Employment

Termination by notice allows either the practice or associate to terminate the employment relationship with advance notice, e.g. 30, 60 or 90 days. However, if the practice terminates the employment term and does not desire for the associate to continue to render professional services, the employment agreement may provide that the associate will not be permitted to continue work, subject to patient abandonment concerns, and will be paid at a predetermined rate with benefits during any notice period. If the associate is compensated as a percentage of production or collections, the notice period compensation may equal the average monthly compensation for the three succeeding months prior to the month of termination of employment. This compensation, and any benefits, for the notice period should be specifically defined in the employment agreement.

In the event of the associate's death or disability, the practice should retain the option to terminate the employment term. Disability would mean any physical or mental condition resulting from accident or illness which prevents, as determined by the practice in its sole discretion, the

associate from performing the associate's then-existing duties and obligations under the employment agreement.

Breach by the associate-employee is a "for cause" termination and should grant the practice with the option to terminate the employment term without notice. Such a provision may read as follows: "notwithstanding any other provision of this Agreement, Employer may immediately terminate the Employment Term at any time and without prior demand or notice if: (i) Employee fails to perform, for any reason, any of Employee's obligations, duties, promises or representations in Section 5, Section 6 or Section 9 [the non-disclosure/non-competition provisions and prohibition against transfer provisions]; or (ii) Employee commits a crime against Employer, or any of the Officers, Directors, employees, patients or agents of Employer; or (iii) Employee commits any other crime, except a minor traffic violation, or any act involving fraud, dishonesty or moral turpitude." The point here is, for cause termination should be defined and negotiated by the parties to the employment agreement being signed.

In the event that the practice breaches its promises to the associate, the associate should also have the ability to terminate the employment term without notice.

The practice would also retain the ability to terminate the employment term without notice in the event of the associate being suspended from practicing dentistry or the associate's specialty or otherwise becomes disqualified to practice dentistry or the associate's specialty in a particular state.

Finally, the practice may retain a discretionary termination option which would terminate the employment term without prior demand or notice in the sole discretion of the practice. Such a provision is typically in effect for the first 90 or 180 days of the employment term.

Indemnification and Contribution

In the associate's employment agreement, the indemnification provision may read as follows: "Employee hereby indemnifies and saves Employer harmless from and against all claims, liabilities, judgments, decrees, fines, penalties, fees, amounts paid in settlement or any other costs, losses, expenses (including, but not limited to, attorneys' fees and court costs) directly or indirectly arising or resulting from or in connection or association with any threatened or pending action, suit or proceedings by third-party (whether civil, criminal, administrative, investigatory or otherwise and whether valid or not) and any appeals related thereto, under which the employee is a party or participant because of Employee's negligence or any other actions or admissions by Employee (other than willful misconduct) resulting from Employee's duties and obligations under this Agreement."

Miscellaneous

This 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.

Equity Purchase Provision

This section may be included to provide that upon a specified date or earlier if invited by the practice, the associate would have the option to acquire an interest in the practice, assuming that the associate remains employed at such time. This section may provide for defined performance and quality goals to be attained by the associate prior to ownership being offered. The purchase price or appraisal prices, terms of payment and structure of transaction may be specifically set forth. Finally, the equity provisions where co-ownership is offered should be contingent upon the associate entering into a mutually agreeable: (i) owner employment agreement; (ii) close corporation, shareholder or operating agreement defining decision making control or "founder's rights" in the event of a voting deadlock or dispute; and (iii) buy-sell agreement, providing for the obligation or option of the other owner(s) or practice to acquire the interest of the departing owner in the event of death, permanent disability, retirement, dispute or other termination of employment. The equity provision may also take the form of a freestanding option agreement with the corresponding practice agreements as schedules. Finally, the equity provision may be in the form of a letter of understanding, which outlines the key provisions of the contemplated ownership.

Additional Benefits

This optional section usually provides for the continued payment, if any, of compensation and coverage of benefits for some period of time in the event of death or permanent disability, typically until the disability income replacement insurance is in effect. In certain circumstances, there may be a period of severance pay which is often conditioned upon certain events, e.g., the departing specialist practicing in California not competing with the practice.

Anticipating Ownership

When is ownership discussed? The earlier the better. To the extent that the parties discuss the fair market value of the practice and the date it is calculated, the interest being acquired — a complete or partial interest in the practice, the payment terms, the structure of the transaction, the future obligation or option to buy-out any existing owner(s), the less chance there is for future misunderstanding on these complex matters. This process should be weighed against the economic cost of preceding earlier, rather than at a later predetermined date after the associate relationship has commenced.

Independent Contractor

Most associates do not qualify under either applicable state or federal laws independent contractors. The criteria to determine independent contractor status was set forth in Revenue Ruling 87-41 and is contained in Figure 4.3. In reading through the twenty criteria to determine independent contractor status, you may find that any associate which you have classified as an independent contractor is in reality an employee. This means that the associate should be classified and paid as an employee with applicable taxes taken out of compensation. Some practices have attempted to pay associate doctors as independent contractors to avoid the employer's portion of payroll taxes. This conduct can pose a significant risk to the practice. If

you are going to err on worker classification status, err on the side of classifying the doctor as an employee.

An example of an independent contractor may be an orthodontist rendering professional services in a pediatric dentists practice two days or a week or an endodontist providing professional services in a general practice on certain days and times.

The doctor who sells his or her practice and then provides services on behalf of the purchasing doctor probably may or may not qualify as an independent contractor. The specific relationship should be reviewed to determine proper worker classification as there is no generalization here.

Associate doctors should be concerned of indemnifying or holding harmless the senior doctor's practice in the event that the associate is classified as an independent contractor. Many independent contractor agreements, similar to associate employment agreements, provide that the associate would hold harmless or indemnify the practice for any costs or penalties relative to the practice's misclassification of the associate as a worker. The bottom line is that most associate doctors are employees, not independent contractors. One method of justifying an independent contractor relationship is whereby the associate doctor charges the patients for treatment and pays the practice an agreed amount for use of the premises.

Practice owners should note that the enforcement of non-competition provisions may be difficult where the associate is classified as an independent contractor rather than as an employee. If you, as practice owner, are concerned with the associate competing in the event that the associate leaves your practice, classify the associate as an employee and not an independent contractor.

Buy-Sell Agreements

As practice owner, you may consider a buy-sell agreement for your associate in the event of your death or permanent disability. In short, if you die or become permanently disabled, the associate buys your practice. Insurance should be considered as a funding mechanism, subject to health, costs and availability. In the event of a catastrophe, you or your family members won't have to negotiate the sale of your practice under adverse circumstances.

From the associate's prospective, you know that you will have the deceased or permanently disabled doctor's practice and it won't be sold out from under you.

Associate To Owner

Assuming that the association is successful, the associate will (i) acquire the entire practice of the retiring or departing owner; (ii) enter into a solo group arrangement with the practice owner; (iii) be elevated to co-ownership; or (iv) remain a permanent non-owner associate. Except for a permanent non-owner associate, the practice owner's succession plan is carried out.

Where the associate remains the permanent non-owner, the owner should recognize that it is more difficult, although not impossible, to sell the practice later in this mode than without an

associate. It becomes more difficult if the associate is not restricted by a non-competition provision contained in the associate employment agreement, which should be assignable to a new owner.

In the event that the association is unsuccessful, the associate leaves and he starts over. From the associate's perspective, confidence and time are lost. Both the practice owner and the associate have much to lose by the associateship not working. Therefore, it is in everyone's interest to do all possible to ensure the long term success of the working relationship.

Figure 4-1-A

Payment of Laboratory Costs — Example 1

Monthly Production of Associate	\$ 10,000
Less: 1/2 laboratory costs attributable to associate (12% x .5 = \$1,200 x .5 = \$600)	< \$ 600 >
	\$ 9,400
Compensation Percentage	x 30%
Monthly Associate Compensation	\$ 2,820
Less: Health insurance premiums	< \$ 350 >
Monthly Associate Compensation	\$ 2,470

Figure 4-1-B

Payment of Laboratory Costs — Example 2

Monthly Production of Associate	\$ 10,000
Compensation Percentage	x 30%
Subtotal — Associate Compensation	\$ 3,000
Less 1/2 Laboratory Costs	< \$ 600 >
Subtotal — Associate Compensation	\$ 2,400
Less: Health Insurance Premiums	< \$ 350 >
Monthly Associate Compensation	\$ 2,050

Figure 4-2

PROPOSAL FOR EMPLOYMENT

DRS. SMITH & JONES, INC.

[Insert Address]

December 1, _____

Dr. Thomas R. Roberts

[Insert Address]

RE: Proposal for Employment

Dear Tom:

Dr. Smith and I would be very pleased to have you join Drs. Smith & Jones, Inc. (the "Corporation") as a full-time periodontist on or approximately January 1, _____, pursuant to the proposal described herein.

I. Term of Employment. Your employment as an associate periodontist with the Corporation would be for a term of two (2) years, the "Agreement Term". During such time, the Corporation, its shareholders and you would have the opportunity to mutually evaluate our working relationship and the prospect of working together as joint owners of the Corporation over the long term.

II. Ownership Interest. After completion of the two (2) year Agreement Term, you would be provided the opportunity to purchase a number of shares of the Corporation's issued and outstanding common stock equal to that of any other shareholder, presumably one-third (1/3) of the issued and outstanding shares. The purchase of your shares in the Corporation would be subject to the preparation of documents mutually acceptable to you and the Corporation.

III. Compensation as an Employee/Periodontist. You would be paid compensation as follows:

- (a) For the first year of the Agreement Term, you would be paid a salary of \$120,000.00; and
- (b) For the second year of the Agreement Term, you would be paid a salary of \$110,000.00.

IV. Benefits Paid on your Behalf. In addition to your salary, the Corporation would pay the reasonable cost of benefits on your behalf, which would be substantially similar to those of its current periodontist/employees, dependent upon economic and market conditions. Such benefits presently include the payment of:

- (a) Liability insurance premiums;

- (b) Family hospitalization insurance premiums;
- (c) Disability insurance premiums;
- (d) Continuing education costs and associated travel expenses, approved in advance by the Corporation;
- (e) Entertainment expenses;
- (f) Dues and membership fees; and
- (g) Retirement plan contributions (in accordance with the eligibility provisions of the Corporation's profit-sharing plan).

V. Time Off. You would receive two (2) weeks of vacation for each year of the Agreement Term. Additionally, you would receive holidays off and receive certain days off for attendance at continuing education courses.

VI. Expenditure of Time. The position which the Corporation is offering to you requires your full-time efforts. You would be expected to work on a full-time basis in accordance with the Corporation's usual scheduling policies. However, there would be times which you would be expected (during the day, evenings and weekends) to develop referring relationships with general dentists through various non-clinical marketing activities.

VII. Employment Agreement. Provided that you accept the terms of the proposed employment with the Corporation as outlined herein, you would be asked to sign an employment agreement. The employment agreement would be presented to you in the near future for your and your legal counsel's review. The employment agreement would contain provisions relating to your compensation, fringe benefits, non-competition/non-disclosure, termination and responsibilities.

VIII. Termination of Employment. It is the intention of the Corporation's current shareholders that you become a shareholder in two (2) years. However, in the event that the working relationship between you and the Corporation would ever become unacceptable, either to you or the Corporation for any reason, a provision contained in your employment agreement would provide for termination by either party, upon the expiration of thirty (30) days written notice.

IX. Purchase Price. The purchase price for the shares in the Corporation which you would purchase would equal the fair market value of such shares as a percentage of all of the issued and outstanding common shares of the Corporation. Our recent appraisal indicates that the fair market value of the Corporation is \$630,000.00. Therefore, the purchase price for one-third (1/3) of the issued and outstanding shares would equal \$210,000.00 as of the date you become an owner of the Corporation (the "Buy-In").

X. Payment of the Purchase Price. The purchase price for the Buy-In would be paid as follows: (a) twenty-five percent (25%) of the purchase price would be paid pursuant to a cash down payment; and (b) the remaining seventy-five percent (75%) of the purchase price would be

financed by the Corporation and paid over five (5) years, at the prime rate of interest then charged by the Corporation's bank.

XI. Operational Control. As an owner of the Corporation, you would share a voice in its operation and control equal to that of any other shareholder.

XII. Non-Binding Proposal. This proposal is not intended to create or impose any legally binding obligations on the part of you, the Corporation or its shareholders. The consummation of the proposal contained herein is expressly conditioned upon and subject to the execution of definitive legal documents, which legal documents must be in form and substance satisfactory to you, the Corporation and our respective legal counsel.

Please carefully review the foregoing with your legal counsel and call me with any questions which you may have relative to this matter. Thereafter, if the terms and conditions described herein meet with your and your legal counsel's approvals, please sign and date below where indicated and return a signed copy of this letter to me in the pre-addressed, stamped envelope on or before December 15, _____. Upon my receipt of the signed copy of this letter, I will request that the Corporation's legal counsel commence preparation of your employment agreement in "draft" version.

Dr. Smith and I look forward to your joining the Corporation as an periodontist in the near future.

Sincerely yours,

DRS. SMITH & JONES, INC.

By: Dr. Joseph G. Jones, President

I have read this letter carefully and accept the terms and conditions stated herein.

Date

Dr. Thomas R. Roberts

Figure 4-3
Revenue Ruling 87-41

1. Instructions;
2. Training;
3. Integration;
4. Services Rendered Personally;
5. Hiring, Supervising and Paying Assistants;
6. Continuing Relationship;
7. Set Hours of Work;
8. Full Time Required;
9. Doing Work on Employer's Premises;
10. Order or Sequence Set;
11. Oral or Written Reports;
12. Payment by Hour, Week or Month;
13. Payment of Business and/or Traveling Expenses;
14. Furnishing Tools and Materials;
15. Significant Investment;
16. Realization of Profit or Loss;
17. Working for More than One Firm at a Time;
18. Making Services Available to General Public;
19. Right to Discharge; and
20. Right to Terminate.