

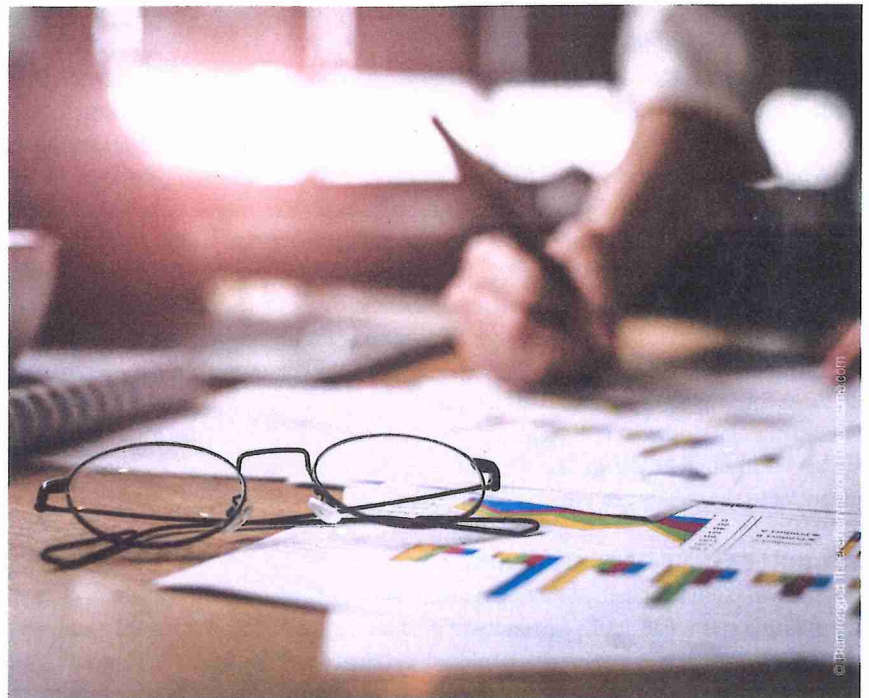
New associate's potential ownership; building production as a part-time associate

QUESTION: As a specialist hiring a full-time associate, what steps should I take if I do not want to initially offer the associate/candidate future ownership? Do I risk losing quality associate/candidates by not doing so?

WP: First, decide whether you really want a candidate as a permanent associate or someone who wants future ownership. Then, authorize your attorney to prepare a proposal for employment by delineating the key associate employment terms. Next, conduct a candidate search and schedule interviews. Last, authorize your attorney to prepare the associate employment agreement.

Some specialists may not initially be interested in future ownership and are willing to enter into an employment relationship that is fair and reasonable to both parties. Irrespective of anticipated future ownership or a permanent associateship, a fair and reasonable employment relationship includes compensation (including insurances, benefits and expenses), restrictive covenant provisions, termination provisions, work schedule (exclusive or nonexclusive employment), unpaid vacation, and other time off (continuing education, maternity leave, illness, emergencies, and/or personal days).

Unless the candidate wants a permanent associateship, you do run the risk of losing excellent candidates who want a future, including ownership. Specialty



and general practices often lose candidates who determine that future ownership is not available.

A candidate who desires future ownership should request a current practice valuation, be willing to sign a confidentiality letter to obtain confidential information, sign an associate employment agreement, understand the date when the valuation will be updated for the future ownership, and be provided with a detailed letter of understanding for the possible ownership.

In fact, it's also very beneficial to prepare the partnership agreements in advance so there are no misunderstandings about either party's future obligations. For example, the obligation to buy out the second half of the practice upon your retirement after a specified notice period and attaining a specified age are factors not to be overlooked.

Some specialists and general dentists say that if the candidate does not work out, they do not want to incur the cost of agreement preparation up front. However, if your succession plan is the right one for you, it should not change if a particular candidate doesn't work out. If it does, you have not properly planned your exit strategy.

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In this new bimonthly column, William 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.

NEW ASSOCIATE'S POTENTIAL OWNERSHIP

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In summary, the better you plan, the better your chances to recruit the “right” candidate with a limited pool of specialists at any given time.

QUESTION: I have been offered a position as a part-time associate and am expected to build production into a two-dentist practice. What points should I consider?

WP: Building a practice into a two-doctor practice from typically a one-and-a-half doctor practice requires significant marketing skills, which you probably will not have early in your career. Unless the practice has a definitive marketing plan and a skilled practice management consultant, building up the patient list will not happen quickly, unless unprofitable reduced fees are accepted.

If you accept the part-time position, you should be paid the greater of an hourly rate

or a percentage of adjusted production or collections as an associate. Generally, the practice owner takes all of the profitable production, and you get what’s left over and maybe the hygiene. Especially with part-time employment, ensure that the restrictive covenant is not overly burdensome if the relationship doesn’t work out.

If you expect to eventually purchase the practice, which may be a satellite location, make sure that a plan is in place to specifically define how and when the practice, or location, will be valued, as well as the details of future ownership or partnership. You won’t be happy being asked to pay for what you think are increased collections due to your efforts.

If you accept a part-time position, you will probably need a second job to earn a living and pay school debt. If you work at a second practice, often corporate, make sure that the restrictive covenants are reasonable and apply only to the location where you

primarily work. Include a provision in the employment agreement whereby you can reduce your time at the second practice as you help build the first practice. Also be careful of lengthy notice periods for termination of employment at the second or first practice.

Be advised, however, that part-time positions generally do not work out. Unless you are being hired as a permanent associate, only accept a part-time position if better opportunities are unavailable where you want to practice. **DE**

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