

Exit Strategies — The Rat Race Is Over And The Rats Didn't Win!

William P. Prescott, E.M.B.A., J.D.

Wickens, Herzer, Panza, Cook & Batista Co.

35765 Chester Road • Avon, OH 44011-1262

Direct Dial 440/695-8067 • Fax 440/695-8098 • Cell 440/320-8984

Email: WPrescott@WickensLaw.com

Website: www.PrescottDentalLaw.com

**THIS PROGRAM IS NOT INTENDED TO PROVIDE
SPECIFIC LEGAL OR ACCOUNTING ADVICE**

This Program is not intended to provide the participant with specific legal or accounting advice. For solutions to legal and accounting questions, consult your attorney and/or certified public accountant.

The sequence and Figure numbers for this program correspond to the Chapters in **Joining And Leaving The Dental Practice**, Second Edition, and **Business, Legal And Tax Planning For the Dental Practice**, Third Edition.

Table of Contents

	<u>Page</u>
I. Succession Planning Issues.....	1
II. Practice Succession Options	2
• Figure 2-1 — Complete Sale	3
• Figure 2-2 — Hire Associate With Later Sale.....	4
• Figure 2-3 — Co-Ownership	5
• Figure 2-4 — Solo Group Arrangement	6
• Figure 2-5 — Merger.....	7
• Figure 2-6 — Walk Away Analysis	8
III. The Importance Of The Practice Valuation.....	9
• Figure 4-1 — Requested Information for Valuation Purposes	10
IV. Calculating Practice Value in a Real Strange Market.....	12
• Example-1 — Asset Summation.....	13
• Example-2 — Considerations.....	14
• Figure 5-1 — Summation of Practice Assets.....	15
• Figure 5-2 — Practice Profile Factors for Selection of Capitalization and Goodwill Rates.....	16
• Figure 5-3 — Verification Analysis	18
• Figure 5-4 — Earnings Approach — Another Way of Looking at This!.....	20
• Figure 5-5 — Multiple of Gross Revenue	21
• Figure 5-6 — Recap of Practice Values	22
• Figure 5-7 — Capitalization of Earnings.....	23
V. Negotiating The Win-Win Practice Sale & Acquisition.....	24
• Figure 6-1 — Lessons Learned From the Howard Case and Its Appeal	26
• Figure 6-2 — Representations and Warranties.....	27
• Figure 6-3 — Letter of Intent Acquisition of Stock or Assets.....	32
• Figure 6-3 — Schedule 2 Purchase Price Allocation	37
• Figure 6-3 — Schedule 3 Excluded Assets	38
• Figure 6-3 — Schedule 11 Restrictive Covenant Map.....	39
• Figure 6-3 — Schedule 12 Work Days Seller	40
• Figure 6-4 — Practice Document Matrix	41
VI. The Importance of Due Diligence — What to Ask / What You Will Be Asked	42
VII. Corporate Practices — Selling To Or Working For Them — They're Back!	43
VIII. Hiring The Associate	44
• Example-1 — Associate Needs Analysis	45
IX. Using Restrictive Covenants For The Associate And Departing Owner.....	46
X. Negotiating Your Facility Lease.....	47
XI. Owning, Acquiring And Selling Your Practice Facility	48
XII. Dissolving Your Practice Entity	49
• Figure 16-3.....	50

	• Figure 16-4.....	51
XIII.	Designing And Relocating Your Practice Facility	52
	• Figure 21-1 — Paying Relocation or Expansion Costs	53
XIV.	Summary and Thoughts.....	54

I. SUCCESSION PLANNING ISSUES

- A. Can You Afford to Retire?
- B. What Will You Do With Your Time?
- C. Prepare Your Personal Financial Plan.
- D. Adjust the Financial Plan to Reflect Life Changes
- E. Determine Whether Your Retirement is Complete or Partial
- F. **Assess Health Care Availability and Cost**
- G. Authorize Preparation of the Practice Valuation
- H. Maximize System Effectiveness and Practice Profitability
- I. Maintain the Practice, But Do Not Overspend
- J. Prepare Your Succession Plan
- K. How Do You Locate Your Successor?
- L. Review and Update Estate Plans / Terminate Retirement Plan / Dissolve Practice Entity at Appropriate Times

II. PRACTICE SUCCESSION OPTIONS

- A. Complete Sale
- B. Hire Associate with Later Sale
- C. Co-Ownership
- D. Solo Group Arrangement
- E. Merger
- F. Walk Away

Assemble Advisory Team Early and Understand How Advisors Are Paid

How Do I Locate My Successor?

- Figure 2-1 — Complete Sale
- Figure 2-2 — Hire Associate With Later Sale
- Figure 2-3 — Co-Ownership
- Figure 2-4 — Solo Group Arrangement
- Figure 2-5 — Merger
- Figure 2-6 — Walk Away Analysis

Figure 2-1
—
Complete Sale

- A. Prepare Practice For Sale — How?
- B. Sell It When You're Ready
- C. What Will You Do With Your Time?
- D. Can You Afford to Do This?

Figure 2-2

Hire Associate With Later Sale

- A. Locate Associate — What Comes First?
- B. Seller Due Diligence
- C. Authorize Preparation of Valuation Report
 - 1. Valuation Date — One Year Out?
 - 2. Mutually Agreed Equipment and Technology Formula
- D. Earnest Money Deposit In the Form of a Promissory Note
- E. Letter of Understanding
- F. Authorize Preparation of Purchase and Sale Agreements
- G. Importance of Restrictive Covenant
 - 1. Buy-Out Provision?
- H. Payment Terms
- I. Continued Employment of Seller
 - 1. If You Need to Continue to Work, Maybe You're Not Ready To Sell?
 - 2. Advantageous for Large and "Leader" Oriented Practices
- J. Some Specialty Practices
- K. Lease
- L. Real Estate — Option / Modified Right of First Refusal / Obligation to Purchase

Figure 2-3
—
Co-Ownership

- A. The Buy-In
 - 1. Will or Should Dr. Junior Incur a Pay Reduction?
 - 2. Financing?
- B. The Buy-Out
 - 1. Mandatory or Optional?
 - 2. Financing?
- C. Operations
 - 1. Decision Making Control
 - 2. Allocation of Compensation
 - a. Practice Pays Overhead
 - b. Pro Rata Payment of Overhead
 - c. Equal Compensation and/or Distributions Based Upon Ownership
 - 3. Employment of Family Members As Dentists and/or Staff
- D. Three Business and Tax Structures, Two of Which Can Have Tax Problems

Figure 2-4
—
Solo Group Arrangement

- A. Two Practices in One Facility
- B. Great Alternative to Co-Ownership Because No Mandatory Retirement Buy-Out
- C. Resolves Tax Issues, Except For Family Members, For Practices Formed Prior to August 10, 1993
- D. Applicability to Specialists and Multi-Specialties.
- E. Dentists Who Provide Unique Treatment, e.g., Sleep Apnea or Sedation.

Figure 2-5
—
Merger

- A. Always Look
 - 1. How and Through Who?
- B. Merge a Practice Into Your Facility or Vice-Versa
- C. Helps the Dentist With Low Annual Revenue and Low Value
- D. May Allow the Seller to Continue to Work for a measured Period of Time
- E. Contingent Sales
 - 1. Tangible Asset Purchase
 - 2. Goodwill
 - 3. Down Payment
 - 4. One Year Measurement Period

Figure 2-6
Walk Away Analysis

1.	Revenue.....	\$	800,000
2.	Owner Profit of 40%		320,000
3.	Work Two Years.....		<u> x 2</u>
4.	Estimated Two Years' Income	\$	640,000
5.	Work Less?	Estimated \$	500,000
6.	Sell Practice at 65% of Revenue.....	\$	520,000

Which Alternative Looks Better?

III. THE IMPORTANCE OF THE PRACTICE VALUATION

- A. Increasing Versus Decreasing Practice Values
 - B. Destination Locations
 - C. Importance of Practice Profitability and Collections
 - D. Impact of Reduced Fee and Managed Care Plans
 - E. Relocation or Expansion
 - F. Post-Retirement Services by Seller
 - G. Accounts Receivable and Debt
 - H. Procedures You Don't Do!
 - I. High and Low Revenue Practices
 - J. Satellite Offices
- Figure 4-1 — Requested Information for Valuation Purposes

Figure 4-1

Requested Information for Valuation Purposes

A. Compatibility of Purchaser and Seller

1. Contrast seller'(s) practice mission and philosophy to yours;
2. Contrast seller'(s) personal values and work ethic to yours; and
3. Assess seller'(s) reason for departure from active practice.

B. Financial Information

1. Federal income tax returns of the practice for the lesser of the last five fiscal years or the number of years in practice;
2. Financial statements and balance sheets (assuming that they are prepared for the practice) for the lesser of the last five fiscal years or the number of years in practice and the current fiscal year to date; and
3. An aged trial balance of all practice accounts receivable and the historical practice collection records for the lesser of the last five fiscal years or the number of years in practice and the current fiscal year to date.

C. Practice Facility

1. A floor plan of the practice facility;
2. An itemized list and the fair market value of all dental equipment being acquired by treatment room, plus darkroom, utility room, sterilization area, x-ray area and laboratory;
3. An itemized list and the fair market value of all office equipment and furniture being acquired;
4. An itemized list and the fair market value of all tangible assets, personal and other items located in the practice facility not being acquired;
5. An itemized list and the fair market value of all tangible assets (dental equipment, office equipment, and furniture) leased by the practice or located in the practice facility to which the practice does not hold clear title; and
6. Maintenance records for all dental and office equipment from the date of purchase through the current date.

D. Lease and Real Estate

1. A copy of the current lease, any renewal amendments and any document evidencing recording of the lease; and
2. Copies of any deed, documents and/or agreements relating to the practice owner's (or family members') ownership of the practice real estate.

E. Operations

1. The number of active patients (patients treated in the past twenty-four consecutive months), as well as inactive patients (those patients not having any dental services rendered within the last twenty-four consecutive months);
2. A summary of the number of new patients in each consecutive month for the lesser of the last five fiscal years or the number of years in practice and the current fiscal year to date;
3. A summary of the current number of patients (and percentage of the practice) in recall, if applicable;
4. A current fee schedule and a summary of fee increases for the lesser of the last five fiscal years or the number of years in practice and the current fiscal year to date;
5. A specific list of those procedures performed by the practice and those referred to specialists, if applicable; and
6. Provide your written evaluation of the area demand and potential for economic growth for a dentist/specialist in the geographical area where you intend to practice.

F. Employment Relations and Benefits

1. Census of all employees of the practice, the hours worked, compensation levels, positions, responsibilities and dates of hire (including former employees) for the lesser of the last five fiscal years or the number of years in practice and the current fiscal year to date; and
2. Provide copies of any employee handbooks, job descriptions and/or other publications distributed to employees of the practice.

IV. CALCULATING PRACTICE VALUE IN A REAL STRANGE MARKET

A. Summation of Assets

1. Dental Equipment, Office Equipment, Furniture and Technology
 - a. Book Value, Plus 1/3 Accumulated Depreciation
 - b. 10 year Straight Line Depreciation, With 20% Salvage Value
2. Dental Supplies
 - a. 3 - 4 Months on Hand
3. Dental Instruments
 - a. ½ of 1% of Most Recent Year Collections
4. Goodwill – 30 Factors, But Most Recent Year Collections and Profit Most Significant
 - a. ADA Publication
 - i. .2 - .5 of Most Recent Year Collections
 - ii. 1.0 - 1.5 of Most Recent Yearly Owner Profit in All Forms
 - b. Goodwill Registry, 2015 - 47% of Most Recent Year Collections – Slightly Higher for Specialists

B. Capitalization of Earnings

C. Multiple of Gross Revenue / Similar Practices

- Example-1 — Asset Summation
- Example-2 — Capitalization of Earnings
- Example-3 — Considerations
- Example-4 — Multiple of Gross Revenue / Similar Practices
- Figure 5-1 — Summation of Practice Assets
- Figure 5-2 — Practice Profile Factors for Selection of Capitalization and Goodwill Rates
- Figure 5-3 — Verification Analysis
- Figure 5-4 — Capitalization of Earnings and Verification Analysis — Another Way of Looking at This!
- Figure 5-5 — Multiple of Gross Revenue
- Figure 5-6 — Recap of Practice Values
- Figure 5-7 — Paying Relocation or Expansion Costs

Example-1
—
Asset Summation

A.	Dental Equipment, Office Equipment, Furniture and Technology	
B.	Dental Supplies	
C.	Dental Instruments	
D.	Collective Subtotal.....	\$ 150,000
E.	Agreed Goodwill Value	<u>\$ 500,000</u>
F.	Estimated FMV of the Practice.....	\$ 650,000

Example-2

—

Considerations

- A. New Owner Compensation at 27.5%, Includes Hygiene in a General Practice — Higher in a Specialty Practice.
- B. Two Doctors May Be Required for this Level of Collections.
- C. Analysis Did Not Include Capital Expenditures or Operating Expenses if A/R Not Purchased — Right Hand, Left Hand Treatment Rooms Still a Problem, as Well as Very Old Equipment.
- D. How Transferrable is the Goodwill and What is the Effect of a Reduction in Collections Following the Purchase and Sale?
- E. What are the Unique Procedures Performed by the Existing Owner, e.g., Orthodontics?

Figure 5-1
—
Summation of Practice Assets

I. <u>Estimated Fair Market Value ("FMV") of Tangible Assets of the Practice</u>	
A.	FMV of Dental Equipment, Office Equipment, Furniture and Technology
1.	Balance Sheet Approach — Book Value, Plus 1/3 Accumulated Depreciation
2.	Tangible Asset Appraisal by Dental Equipment Supply Company, but must include office equipment, technology and furniture
3.	15 years straight line depreciation
4.	12 years straight line depreciation with de minimis salvage value
5.	Estimated FMV of Dental Equipment, Office Equipment, Furniture and Technology \$ 130,000
B.	Leasehold Improvements — Not Owned by Seller
C.	Dental Supplies
1.	Dental Supplies @ 6% of \$1,000,000..... \$ 60,000
2.	Divided by 12 Months $\div 12$
3.	Monthly Cost of Dental Supplies..... \$ 5,000
4.	Three Month Multiple..... $\times 3$
5.	Estimated FMV of Dental Supplies \$ 15,000
D.	Dental Instruments @ 1/2% of \$1,000,000..... \$ 5,000
1.	Estimated FMV of Dental Instruments \$ 5,000
E.	Recap of Tangible Asset Categories
1.	Dental Equipment, Office Equipment, Furniture and Technology \$ 130,000
2.	Leasehold Improvements N/A
3.	Dental Supplies \$ 15,000
4.	Dental Instruments \$ 5,000
5.	Estimated FMV of Tangible Assets of the Practice..... \$ 150,000
II. Agreed Intangible Asset Value of the Practice and/or Personal Goodwill of Selling Owner at 50% of Practice Revenue of \$1,000,000..... \$ <u>500,000</u>	
III. Estimated FMV of the Practice and/or Personal Goodwill of Selling Owner..... \$ 650,000	

Figure 5-2
—
**Practice Profile Factors for
Selection of Capitalization and Goodwill Rates**

1. Annual owner compensation in all forms
2. Annual gross revenues of the practice
3. Operating expenses as a percentage of gross revenues
4. Ability of the seller(s) to transfer the patients and/or referral sources of the practice
5. Number of active patients/referral sources in the practice
6. Number of new patients per month and degree of patient turnover/The number of referral sources in the practice
7. Stability of the practice and surrounding community
8. Competition
9. Fee structure
10. Practice location
11. Demographic characteristics of patients, location, age and income
12. Likelihood that staff, including any associate doctor(s), will remain with the practice after it is sold
13. Availability of lender or seller financing
14. Facility design and square footage
15. Number of treatment rooms, age and condition of dental equipment (right or left handed)
16. Overall appearance, aesthetics and condition of practice facility — Do I need to relocate?
17. Reputation of the practice
18. The number of hours and days worked per year
19. The percentage of patients covered by insurance/managed care/medicaid/other
20. Assignability and term of lease/availability of practice facility, land and building, for purchase

21. Ability to expand the practice facility
22. Patient and/or referral source demographics
23. Percentage of collections to gross revenues and age
24. Willingness of seller to assist the purchaser in practice transition
25. Parking and of public transportation availability
26. Effectiveness of recall system
27. Quality of patient records and clinical work performed
28. Quality and experience of staff and degree of turnover
29. Effectiveness of management systems
30. Entity form/completeness of accounting and legal records, as well as any owner agreements, e.g., buy-sell agreement

Figure 5-3
—
Verification Analysis

	<u>No Revenue Decrease</u>	<u>Revenue Decrease of 10%</u>
1. Practice Revenue:	\$1,000,000	\$900,000
2. Proposed Selling Price of the Practice at 65% of Revenue: (Practice Assets, \$150,000; Goodwill, \$500,000 or 50% of One Year's Gross Revenue):	\$650,000	\$650,000
3. Less: Payment of Debt Service for Practice (Yearly Payment of Selling Price Over Seven Years @ 5%):	<\$110,244>	<\$110,244>
4. Less: Working Capital — Assumes Account Receivables Not Purchased (Yearly Payment of \$60,000, Payable Over Seven Years @ 5%):	<\$10,176>	<\$10,176>
5. Less: Remodeling and Equipment Replacement Costs (Yearly Payment of \$50,000, Payable Over Seven Years @ 5%):	<\$8,480>	<\$9,654> <\$8,480>
6. Practice Operating Expenses @ 60% of Revenue/10% Lab; 6% Supplies:	\$600,000	\$584,000
7. Adjusted Yearly Owner Compensation @ 40% of Revenue/Reduced Revenues: (Owner's net profit from Federal income tax return, plus: (a) automobile expense; (b) existing equipment lease paid off by the selling doctor; (c) retirement plan contribution for the doctor(s); (d) continuing education; (e) travel expense; (f) entertainment expense, less: (a) rental increase after acquisition; (b) wages, part-time employee)	\$400,000	\$316,000
8. Less: Total of Items 3, 4 & 5:	<\$128,900>	<\$128,900>
9. Yearly Available Compensation for Purchaser:	\$271,100	\$187,100
10. Ratio of Compensation for Purchaser to Average Revenue where Initial Remodeling, Equipment Costs and Working Capital are Considered ($\$271,100/\$187,100 \div \$1,000,000/\$900,000 = 27.11\%/20.78\%$) (Includes Hygiene):	27.11%	20.78%

11. Ratio of Compensation for Purchaser to Average Revenue where Initial Remodeling, Equipment, and Working Capital Are Not Considered
 (\$400,000/\$316,000, Less: Yearly Payment of the Selling Price of \$110,244 = \$287,750/\$205,756)
 (\$289,756/\$205,756 ÷ \$1,000,000/\$900,000 = 28.98%/22.86%) 28.98% 22.86%

Considerations

1. Can you maintain yearly revenues of \$1,000,000/\$900,000?
2. To what extent will the seller work post-closing and how will this affect your cash flow?
3. Is this an associate buy-in and how is this different from a complete purchase and sale?
4. What is the effect of an increased repayment term for 5 or 7 to 10 or 15 years?
5. Is the anticipated compensation packaged fair, while paying for the practice or practice interest in light of what you can earn as an associate non-owner?
6. Should you acquire another practice in light of your available choices?
7. Should you start your own practice in light of your available choices and given area demographics?
8. Revenue increases — are you selling or acquiring potential?
9. What if revenues, patients and/or referral sources decrease — how does this analysis change?
10. What is the tax and business structure of this complete sale or associate buy-in and what are the implications to you?
11. Is this a fee for service practice? To what extent does the practice participate in reduced fee plans?
12. What procedures are performed in this practice and what procedures are referred to specialists? — What unique services does this practice provide that you do not do, e.g., orthodontics, TMJ, cosmetic services, endodontics, etc.?
13. How much of the goodwill of the practice is corporate and how much is personal to the selling owner?
14. The \$500,000 question: How much of the goodwill is transferable?
15. Is the practice located in a "destination" area?

Figure 5-4
Earnings Approach —
Another Way of Looking at This!

	<u>No Revenue Decrease</u>		<u>Revenue Decrease of 10%</u>
1. Revenue:.....	\$1,000,000		\$900,000
2. Operating Expenses:.....	<\$ 600,000>		<\$584,000>
3. Less Working Capital Needs (Yearly Payment of \$60,000, Payable Over Seven Years @ 5%:.....	<\$ 10,176>		<\$10,176>
4. Less: Remodeling and Equipment Replacement Costs (Yearly Payment of \$50,000, Payable Over Seven Years at 5%)	<u><\$ 8,480></u>		<u><\$8,480></u>
5. Subtotal: Operating Expenses, Remodeling and Equipment Replacement Costs and Working Capital Needs:	<u><\$ 618,656></u>		<u><\$ 602,656></u>
6. Yearly Available Owner Compensation in All Forms:	\$ 381,344		\$ 297,344
7. Less, Compensation Requirements for Purchaser @ 25% of PracticeRevenue*:.....	<u><\$ 250,000></u>		<u><\$ 225,000></u>
8. Yearly Available Sum to Pay Purchaser Price Exclusive of Interest:.....	\$ 131,344		\$ 72,344
9. Above Sum, Multiplied by Five Years, Exclusive of Interest**:	\$ 656,720		\$ 361,720
10. Above Sum, Multiplied by Seven Years Exclusive of Interest:.....	\$ 919,408		\$ 506,408
11. Purchase Price as a Percentage of Gross Revenue — Five Years:	<u>\$ 656,720</u> =65.67%		<u>\$ 361,720</u> =40.19%
	\$1,000,000		\$ 900,000
12. Purchase Price as a Percentage of Gross Revenue — Seven Years:	<u>\$ 919,408</u> =91.94%		<u>\$ 506,408</u> =56.27%
	\$1,000,000		\$ 900,000

* Should compensation be a percentage of revenues or the associate's current yearly compensation, e.g., \$120,000? Answer — A percentage because it may require an additional dentist or specialist to produce at this level. Note that the 25% includes hygiene revenue.

** Should interest be included or excluded as the time value of money? If interest is excluded, to what extent will the repayment period be increased?

Figure 5-5
Multiple of Gross Revenue

1.	Gross Revenue	\$ 1,000,000
2.	Gross Revenue Multiplier	64%
3.	Practice Value	\$ 640,000

Figure 5-6
Recap of Practice Values

1.	Summation of Assets	\$	650,000
2.	Capitalization of Earnings.....	\$	643,810
3.	Multiple Gross Revenue	<u>\$</u>	<u>640,000</u>
4.	Subtotal	\$	1,933,810
5.	Averaged	<u> </u>	<u>÷ 3</u>
6.	Estimated FMV of the Practice.....	\$	644,603

Figure 5-7
Capitalization of Earnings

Most Recent Year Collections	\$1,000,000	\$1,000,000	\$1,000,000
Owner Profit Percentage	<u>x 38%</u>	<u>x 40%</u>	<u>x 42%</u>
Available Profit	\$380,000	\$400,000	\$420,000
New Owner Compensation at 27.5%	<u><\$270,500></u>	<u><\$270,500></u>	<u><\$270,500></u>
Available Profit to Capitalize at 20% Rate	\$109,500	\$129,500	\$149,500
20% Capitalization Rate	<u>÷ .2</u>	<u>÷ .2</u>	<u>÷ .2</u>
Estimated FMV of the Practice	\$547,500	\$647,500	\$747,500

Small Increases in Profitability Have Significant Effects Upon Practice Value

V. NEGOTIATING THE WIN-WIN PRACTICE SALE & ACQUISITION

- A. Asset Sale
 - 1. Reporting Requirements — What's This Form 8594?
 - 2. Contingent Liabilities
 - 3. Like-Kind Exchanges — How Often Is This Done?
 - 4. Goodwill — Corporate?
 - 5. Personal Goodwill — Well, it Really Is Better, But Better Be Able to Prove it!
 - a. Kennedy Case.
 - 6. The Howard Case, its Appeal and Lessons Learned
 - a. Plan for the Sale
 - b. Consider Converting to an S-Corporation
 - c. Authorize an Appraisal of Your Personal Goodwill Versus Any Corporate Goodwill
 - d. Expect Increased Audits of Personal Goodwill
 - e. Personal Goodwill in Co-Ownership Buy-Outs is Another Matter
 - 7. Applicability of Cases Since Howard.
- B. Sale to Family Members — Treat Like a Third Party
- C. Representations and Warranties
- D. Mutual Indemnification/Mutual Due Diligence
- E. Retreatment and Unique Procedures — Orthodontics, Implants, Cosmetic Cases.
- F. The Letter of Intent
- G. Obtaining Financing — How Long Does This Take?
- H. Seller Assisted Financing — It's Okay If You Get Paid! Are You Second In Line?
- I. Contingent Transactions

- J. Practice Mergers
- K. Covenants Not To Compete
- L. Continued Employment/Engagement of Seller
 - 1. Within the Purchaser's Discretion
 - 2. Seller Must Work Agreed Time Period as Needed by Purchaser
 - a. When Do You Tell the Staff?
 - b. How Do You Tell Your Patients?
- M. Employment of Staff
 - 1. Existing Compensation
 - 2. Benefits
 - 3. Hours Worked

- Figure 6-1 — Representations and Warranties
- Figure 6-2 — Letter of Intent Sale and Purchase of Assets

Figure 6-1

Lessons Learned From the Howard Case and Its Appeal

Howard Case	Howard Appeal
1. Plan for the sale.	1. Court acknowledged that patient relationships may be personal.
2. Consider converting to an S-corporation.	2. No corporate goodwill where no covenant not to compete with your corporation is at least an argument.
3. Authorize an appraisal of the personal goodwill, versus any corporate goodwill.	3. Your covenant not to compete should be between you and the purchaser's practice entity, not your corporation.
4. Expect increased audits on the sale of personal goodwill.	4. There should not be an independent contractor agreement between your corporation and the purchaser's practice entity.
5. Personal goodwill in co-ownership is a problem due to restrictive covenants.	5. If you have a covenant not to compete with your corporation, it should be terminated.

Figure 6-2

Representations and Warranties

1. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Purchaser as follows:

1.1 **Organization.** The Practice is a professional corporation duly organized, validly existing and in good standing under the laws of the State of _____, has full corporate power and authority to own all of its property and assets and to carry on its dental practice as it is now being conducted.

1.2 **Authorized Agreement.** All corporate action by the Practice necessary for the authorization and consummation of the transactions contemplated hereby has been taken.

1.3 **Valid and Binding Agreement.** This Agreement has been validly executed and delivered by and constitutes a valid and binding obligation of Seller enforceable in accordance with its terms.

1.4 **Ownership of the Practice.** Seller owns beneficially and of record one hundred percent (100%) of the shares of the Practice's issued and outstanding capital stock, free and clear of all liens, claims, encumbrances or restrictions of any kind, which constitutes the "Shares". Each of the Shares has been duly authorized and validly issued and is fully paid and nonassessable. The Practice has outstanding no other equity securities, or any securities options, warranties or rights of any kind convertible into equity securities of the Practice.

1.5 **Financial Statements.** Seller has delivered to Purchaser copies of the Practice's financial statements for the fiscal year ended _____ (herein called the "Financial Statement Date"), and for the fiscal year ended on _____, of each of the years _____ and _____ and notes thereto and the Practice's "Interim Financial Statements" for the period _____ through and including _____ (all of which statements are herein collectively called the "Financial Statements"). The Financial Statements have been prepared on a compilation basis and are true, complete and correct, have been prepared, from the books and records of the Practice on a comprehensive basis of accounting, consistently applied for the periods indicated, and which present fairly the financial position and results of operations of the Practice as of the dates thereof and for the periods covered thereby. There are no facts known to Seller which would materially alter the information contained in the Financial Statements.

1.6 **Inventory.** The Practice's dental supply inventory and dental instruments are merchantable, suitable and usable in the ordinary course of the Practice's business and operations. The Practice's assets include a sufficient (but not an excessive) quantity of each type of such dental supplies and instruments in order to meet the normal requirements of the Practice's business and operations.

1.7 **Accounts Receivable.** All accounts receivable of the Practice are valid and enforceable. To the best of Seller's knowledge, the accounts receivable are fully collectible.

1.8 Liabilities. Except as disclosed in the Financial Statements or on Schedule 1.8 (attached hereto and incorporated herein by reference), the Practice has no debts, liabilities or obligations of any nature whatsoever, whether accrued, absolute, contingent, or otherwise. All deposits, accounts and notes payable, and other liabilities of the Practice are current and not in default.

1.9 Tax Matters. The Practice has timely and duly filed with the appropriate governmental agencies all tax reports and returns required to be filed by it. All of such reports and returns are true, correct and complete for the periods covered thereby. The Practice has timely and duly paid all taxes required to be paid by it in respect of the periods covered by such returns. All deposits required by law to be made by the Practice with respect to employees' withholding taxes have been duly and timely made. True and complete copies of all federal income tax returns on Form 1120 for the tax years ending _____; _____; and _____ as filed with the Internal Revenue Service have been delivered to Purchaser, together with all supporting schedules thereto. There are no federal, state or local tax liens upon any property or assets of the Practice. The Practice has not requested any extension of time within which to file any tax returns which have not since been filed, and no deficiencies for any tax, assessment or governmental charge have been claimed, proposed or assessed by any taxing authority and there is no basis for any such deficiency or claim. As used herein, the term "tax" includes (but is not limited to) all federal, state, and local income, sales, employees' income withholding, social security, franchise, property, and all other governmental taxes, fees and charges.

1.10 Title to and Condition of Property. The Practice has good and marketable title to and rightful possession of all assets it owns, except assets sold or otherwise disposed of in the ordinary course of the Practice's business and operations, free and clear of all liens, security interest, encumbrances, and restrictions, except: (i) liens for current taxes not yet due and payable; and (ii) liens or encumbrances described in Schedule 1.10 (attached hereto and incorporated herein by reference). Purchaser acknowledges that Seller is making no representation or warranty with regard to the condition or use of the assets of the Practice, except as expressly set forth in this Agreement.

1.11 Compliance with Law. The Practice has been and is being conducted in compliance with all applicable federal, state and/or local laws, rules, regulations and orders, non-compliance with which would have a material and adverse affect on the Practice, its business and operations, or its assets.

1.12 Insurance. Schedule 1.12 (attached hereto and incorporated herein by reference) lists all insurance policies maintained by the Practice, showing the types of coverage, policy expiration dates, policy numbers and policy limits as to each such policy. All such policies pursuant to which coverage exists are in full force and effect and have been issued under valid policies for the benefit of the Practice by insurance carriers licensed to do business in _____. The consummation of the transactions contemplated hereunder shall not cause the termination or cancellation of any such insurance policy.

1.13 Contracts and Leases. Except as disclosed on Schedule 1.13 (attached hereto and incorporated herein by reference), the Practice is not a party to any written or oral contract, lease or commitment. All agreements listed in Schedule 1.13, to the extent that the same grants rights to the Practice, are enforceable by the Practice and the Practice has not received notice of any claim to the contrary. Each agreement listed in Schedule 1.13 is in full force and effect, constitutes a legal, valid and binding obligation of the respective parties thereto, enforceable in accordance with its terms, except as indicated in Schedule 1.13. Complete and correct copies of all written items listed in Schedule 1.13 have been made available to Purchaser prior to the execution of this Agreement.

1.14 Defaults. Except as listed in Schedule 1.14 (attached hereto and incorporated herein by reference), all parties obligated under the agreements listed on Schedule 1.13 are in compliance in all material respects with the terms thereof and there has been no notice of default or termination.

1.15 Transactions with Seller. Except as disclosed on Schedule 1.15 (attached hereto and incorporated herein by reference), the Practice does not owe any amount to, or have any contract with or commitment to, Seller (other than compensation for current services not yet due and payable and reimbursement of expenses arising in the ordinary course of business), and Seller does not owe any amount to the Practice.

1.16 Employee Benefit Plans. Except as disclosed on Schedule 1.16 (attached hereto and incorporated herein by reference), the Practice has not and does not sponsor, maintain or contribute to any employee pension benefit plans within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974 ("ERISA") or any other program or arrangement under which the Practice has any obligations in respect of, or which otherwise cover, any of the current or former employees of the Practice, or their beneficiaries. Each terminated qualified retirement plan (within the meaning of Section 401(a) of the Internal Revenue Code), herein called the "Terminated Plan," (a) has received a favorable determination letter from the Internal Revenue Service with respect to its termination; and (b) was terminated in accordance with all applicable federal, state and local laws, rules and regulations. In addition to and no in limitation of the indemnification provisions contained in Section _____ hereof, Seller hereby agrees to indemnify and forever hold harmless Purchaser, individually and jointly, from and against any and all actions, causes of action, liabilities, damages, penalties, costs and expenses (including, but not limited to, attorneys' fees) directly or indirectly arising from or related to the Terminated Plan.

1.17 Other Employee Matters. Except as disclosed in Schedule 1.17 (attached hereto and incorporated herein by reference), the Practice has no plans and/or policies with respect to vacation pay, holiday and/or sick pay, pension and profit-sharing contributions, health, medical or any other type of employee welfare benefit plan within the meaning of Section 3(1) or ERISA to which the Practice presently contributes or is required to contribute, nor is the Practice indebted to any employee other than for wages and benefits earned during the current payroll period which are not yet due and payable. Except as set forth on Schedule 1.17, there are no controversies pending between the Practice and any of its employees, which controversies have affected or may affect materially and adversely the business, operations, assets, prospects or condition (financial or otherwise) of the Practice.

1.18 Absence of Certain Changes. Except as set forth in Schedule 1.18 (attached hereto and incorporated herein by reference), during the period from the Financial Statement Date to the Closing Date, the Practice has not and will not have:

- (a) Experienced any change in its business, financial condition or operations which may have any material adverse effect on the Practice, its financial condition, its operational results or patients; or
- (b) Incurred any obligation or liability, except current (liabilities incurred in the ordinary course of business and consistent with its prior practice;
- (c) Failed to replenish its inventory of dental supplies and instruments in a normal and customary manner consistent with its prior practice;
- (d) Created or suffered to exist any lien, claim or encumbrance with respect to its assets;
- (e) Sold, transferred or otherwise disposed of any assets or properties of the Practice other than in the ordinary course of its business;
- (f) Forgiven or cancelled any debts or claims, or waived any contractual or other rights; or
- (g) Otherwise conducted its business or entered into any transaction, except in the usual and ordinary manner and in the ordinary course of its business.

1.19 Litigation. No litigation or other judicial, administrative or investigative proceeding is pending or threatened against or affect the Seller, the Practice or its assets.

1.20 Consents. To the best of Seller's knowledge, no consents or approvals of any third party are required or will be required in order to permit the consummation of the transactions contemplated by this Agreement.

1.21 Permits and Licenses. Schedule 1.21 (attached hereto and incorporated herein by reference) sets forth all licenses and permits issued by applicable governmental authorities presently held by the Practice with respect to the operation of its business. Seller has not received notice of any violations with respect to any of such license or permits.

1.22 Bank Accounts. Set forth in Schedule 1.22 (attached hereto and incorporated herein by reference) is an accurate and complete list, disclosing the name and address of each bank in which the Practice has an account or safe deposit box, the number of any such account or any such box and the names of all persons authorized to draw thereon or to have access thereto.

1.23 No Guaranties. None of the obligations or liabilities of the Practice are guaranteed by any other person or entity, nor has the Practice guaranteed the obligations or liabilities of any other person or entity.

1.24 Title to the Shares. Seller has valid and unencumbered title to the Shares, free and clear of all restrictions, liens and encumbrances, and has full legal right, power and authority to enter into this Agreement, to sell, assign, transfer, and deliver the Shares hereunder, and to perform his other obligations under this Agreement. Upon delivery of and payment for the Shares, Purchaser shall acquire title thereto, free and clear of all liens, restrictions or encumbrances.

1.25 Correctness of Representations and Warranties. The representations and warranties made by Seller herein or in any certificate to be furnished to Purchaser or Purchaser's counsel pursuant hereto, or in connection with the transactions contemplated hereby, do not contain and, at the Closing, shall not contain any untrue statement of a material fact and do not omit and shall not omit to state all material facts necessary to make the statement or facts contained therein not misleading. All statements made and data presented by Seller in this Agreement and in any certificate or schedule provided to Purchaser by Seller pursuant hereto shall be deemed to be representations and warranties under this Agreement to Purchaser by Seller.

Figure 6-3
—
Letter of Intent
Acquisition of Stock or Assets

[FIRM NAME]

[Insert Date]

[Insert Name, Esq.]
[Insert Address]

RE: Letter of Intent For Sale and Acquisition of Dental Practice xx[and Real Estate]xx

Dear [Insert Name]:

Our Firm is counsel to _____, P.A. ("Seller") and _____, D.D.S. ("Dr. [Seller]"). As such, this letter is intended to serve as a letter of intent for: (a) the purchase and sale of Seller's assets and personal goodwill by _____, P.A. ("Purchaser"); xx[and (b) the purchase and sale of real estate leased by Seller from _____, LLC ("Real Estate, LLC") by _____, D.D.S. ("Dr. [Purchaser]") or an entity wholly owned by Dr. [Purchaser] and/or his/her spouse ("Real Estate Purchaser").

1. **Acquisition.** Purchaser will acquire the assets (the "Assets") of Seller and the personal goodwill (the "Personal Goodwill") from Dr. [Seller].
2. **Purchase Price, Payment and Purchase Price Allocation.** The collective purchase price for the Assets and the Personal Goodwill shall equal _____ Dollars (\$_____) (collectively the "Purchase Price") and shall be payable at Closing (as herein defined) by bank or certified check, reduced by the Earnest Money Deposit, Liens and Brokerage Fees (as herein collectively defined). The Purchase Price allocation shall be as designated in Schedule 2 (attached hereto and incorporated herein by reference).
3. **Excluded Assets.** The Purchase Price excludes Seller's accounts receivable, cash, cash equivalents and Seller's debt (unless specifically assumed by Purchaser) and personal items of Dr. [Seller] as designated in Schedule 3 (attached hereto and incorporated herein by reference).
4. **Accounts Receivable.** Seller's accounts receivable will be collected by Purchaser for a period of six (6) months following Closing, less an administrative fee of five percent (5%). At such time, the unpaid list of accounts receivable shall be turned over to Seller with no further responsibility for collection by Purchaser. Seller's accounts receivable shall be collected by Purchaser on a first-in, first-out basis, except for third-party provider, dental insurance and/or payments relating to specific dental treatment provided by Purchaser through Dr. [Purchaser].

5. **Assets Free and Clear of Liens and Encumbrances.** At Closing, the Assets shall be free and clear of all liens and encumbrances (collectively the "Liens"), unless specifically assumed by Purchaser as a schedule to the Agreements (as herein defined).
6. **Brokerage Fees.** Any and all brokerage fees (the "Brokerage Fees") shall be the sole responsibility of Seller.
7. **Earnest Money Deposit.** As the date of this letter, Purchaser shall deliver to Seller an Earnest Money Deposit (the "Earnest Money Deposit") in the amount of _____ Dollars (\$ _____) xx[in the form of a promissory note]xx in the sum of _____ Dollars (\$ _____). In exchange for the Earnest Money Deposit, Seller shall not sell its dental practice to any other individual or entity, other than Purchaser, until Closing, except as described herein. The Earnest Money Deposit shall be retained by Seller as liquidated damages and not as a penalty if Closing does not occur for any reason, except as described in Sections 17, 18, 19, 20 or 21 herein. Upon the occurrence of a Contingency (the "Contingencies"), your firm will notify us, in writing, and Seller shall promptly return the Earnest Money Deposit to your office for return to Purchaser or Dr. [Purchaser's] guardian or estate, as the case may be.
8. **Confidentiality.** During negotiations regarding Purchaser's proposed acquisition of the Assets and Personal Goodwill, Purchaser will have access to and will be requesting certain of the following information regarding Seller and its patients xx[and referral sources]xx (all of which information is herein collectively called the "Confidential Information"): patient xx[and referral source]xx lists, records and other information regarding Seller's patients xx[and referral sources]xx (whether or not evidenced in writing); patient fee schedules and fee policies, financial plans, records, ledgers and information; employment records, data and policies; business and practice methods and operations; business and practice forms, correspondence, memorandums and other records; and any other confidential information which Purchaser encounters during Purchaser's review of the transactions contemplated by this letter. In consideration of the release by Seller of the Confidential Information to Purchaser, Purchaser agrees that: (a) the Confidential Information shall (at all times) be and remain the exclusive property of Seller; and (b) Purchaser shall hold the Confidential Information as a trustee and fiduciary for Seller; and (c) Purchaser shall not directly or indirectly use for any purpose, copy, retain or disclose or convey to any third-party, except Purchaser's advisers, any Confidential Information without the prior written approval of Seller. If negotiations for the transactions contemplated by this letter terminate for any reason, Purchaser shall promptly return all Confidential Information to Seller.
9. **Closing.** Closing for Purchaser's acquisition of the Assets and Personal Goodwill shall occur on or before the commencement of business on _____, 20____, unless otherwise agreed to by Purchaser and Seller in writing.

10. **Representations and Warranties.** Seller shall provide Purchaser with representations and warranties suitable to Purchaser that will be contained in the purchase and sale agreements (collectively, the "Agreements").
- xx[11. **Non-Competition/Non-Solicitation.** Seller shall provide Purchaser with a restrictive covenant and non-solicitation provisions contained in the Agreements for employees of the practice, patients and xx[referral sources]xx of the Practice, irrespective of the geographic radius of the restrictive covenant. The restrictive covenant shall be for a period of _____ (__) years after the date that Dr. [Seller] is no longer employed by xx[engaged as independent contractor in]xx xx[Purchaser's dental practice and]xx the radius shall be _____ (__) miles in all directions from the premises of Seller located in _____, _____, _____ (the "Premises") in the area described in the map as delineated in Schedule 11 (attached hereto and incorporated herein by reference).]xx
12. **Post-Closing Employment of Dr. [Seller].** At Purchaser's discretion, Dr. [Seller] shall be employed by Purchaser's dental practice for a period of one (1) year and by mutual agreement thereafter. Dr. [Seller's] compensation shall equal the greater of: (a) thirty-five percent (35%) of collections attributable to professional dental services rendered by Dr. [Seller] to former patients of Seller and to patients of Purchaser's dental practice, including hygiene examination fees and excluding hygiene services and x-rays performed by Purchaser's hygienist(s); or (b) \$_____ per "Work Day". For purposes of this agreement, a Work Day means Dr. [Seller] being available to render professional dental services on the Premises during Purchaser's usual hours of operation. Seller and Purchaser acknowledge and agree that Dr. [Seller] shall be scheduled for _____ Work Days per week as designated in Schedule 12 (attached hereto and incorporated herein by reference). Seller and Purchaser further acknowledge and agree that a substantial portion of Dr. [Seller's] services will be to transfer Dr. [Seller's] goodwill, patients, and xx[referral sources]xx to Purchaser and to the extent that Purchaser no longer needs Dr. [Seller's] services, Purchaser may terminate Dr. [Seller's] employment xx[engagement]xx with Purchaser's dental practice with thirty (30) days written notice.

Why Not A Contractor?

13. **Retreatment.** Seller and Purchaser acknowledge and agree that Purchaser shall not be responsible for any defective professional dental treatment rendered by Dr. [Seller] to Seller's patients for the twelve (12) month period immediately preceding Closing.
- xx[14. **Orthodontic Cases.** Seller and Purchaser acknowledge and agree that Purchaser shall not be responsible for the continued treatment of orthodontic cases previously started by Dr. [Seller] on behalf of Seller. Such orthodontic cases shall be considered Work in Process (as herein defined).]xx
15. **Work in Process.** Seller and Purchaser acknowledge and agree that Dr. [Seller] shall be permitted to finish those cases started, but uncompleted, prior to Closing

as described by a Schedule to the Agreements (the "Work in Process"). Seller shall be entitled to all fees for the Work in Process and responsible for the payment of any dental supplies and laboratory fees and the use of any chairside assistant employed by Purchaser. Seller's use of the Premises shall be limited to those days and times described in Schedule 12.

16. **Mutual Indemnification.** Seller shall indemnify and hold harmless Purchaser and Dr. [Purchaser] for all aspects of Seller's operation of its dental practice prior to Closing and Purchaser shall indemnify and hold harmless Seller and Dr. [Seller] for all aspects of Purchaser's operations of its dental practice following Closing.
17. **Due Diligence.** For a period of _____ (_____) days following the date that this letter is signed by Seller and Purchaser (the "Due Diligence Period"), Purchaser shall review and confirm the Confidential Information to Purchaser's satisfaction. If Purchaser is not satisfied with Purchaser's due diligence investigation within the Due Diligence Period, the terms of this letter shall be null, void and without effect.
18. **Financing.** Purchaser's acquisition of the Assets and Personal Goodwill is expressly contingent upon Purchaser obtaining "reasonable" financing for the Purchase Price on or before Closing.
19. **Lease Assignmentxx[/Lease/Real Estate Option/Modified Right of First Refusal]xx.** Purchaser's acquisition of the Assets and Personal Goodwill is expressly contingent upon Purchaser obtaining a "reasonable" lease assignment or lease for the Premises on or before Closing. **Consider real estate provisions.**
20. **Death or Permanent Disability.** If Dr. [Purchaser] dies or becomes permanently disabled (as herein defined), this letter shall be null, void and without effect. For purposes of this Agreement, permanent disability means any physical or mental condition that could reasonably be expected to prevent Dr. [Purchaser] from practicing dentistry for more than one year as determined by a physician selected by Dr. [Purchaser] or Dr. [Purchaser's] guardian, as the case may be.
21. **Definitive Legal Agreements.** This letter and the acquisition and sale of the Assets and Personal Goodwill hereunder is expressly subject to the preparation of legal documents in form and substance satisfactory to this Firm on behalf of Purchaser and Dr. [Purchaser], and your office on behalf of Seller and Dr. [Seller].

If this letter is acceptable, please ask Dr. [Purchaser] to sign and date where indicated on behalf of Purchaser and return a signed and dated copy of signed letter to our office. Upon receipt of the signed letter, I will ask Dr. [Seller] to sign this letter on behalf of Seller and will return a fully-signed copy of this letter to you. Thereafter, I will promptly commence preparation of the sale and acquisition agreements.

Thank you again for your help and assistance in this matter.

Sincerely yours,

[FIRM NAME]

By: [Name]

cc: Dr. [Seller]
Local Counsel
Accountant

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

*Purchaser's practice entity is not yet formed.

Date: _____

Dr. [Purchaser]

- Purchaser -

SELLER, D.D.S., P.C.

Date: _____

By: _____
Dr. [Seller], President

-Seller -

Figure 6-3

—

Schedule 2

Purchase Price Allocation

[To Be Attached Prior to Signing]

Figure 6-3

—

Schedule 3

Excluded Assets

[To Be Attached Prior to Signing]

Figure 6-3
—
Schedule 11

Restrictive Covenant Map

[To Be Attached Prior to Signing]

Figure 6-3
—
Schedule 12

Work Days Seller

Day(s)	Time(s)
Monday	_____
Tuesday	_____
Wednesday	_____
Thursday	_____
Friday	_____
Saturday	_____

Figure 6-4
—
Practice Document Matrix

Establish Practice	Sell/Acquire Practice	Sell/Acquire Portion of Practice/Practice Merger	Associateship	Solo Group Arrangement
<ol style="list-style-type: none"> 1. Lease for Practice Facility 2. Form Operating Entity (Corporate or Non-Corporate Form) 	<ol style="list-style-type: none"> 1. Non-Binding/Binding Letter Of Intent 2. Asset or Stock Purchase Agreement 3. Assignment or Sale of Personal Goodwill Agreement 4. Promissory Note 5. Pledge and Security Agreement 6. Bill of Sale 7. Restrictive Covenant Agreement 8. Employment Agreement for Former Owner, if Applicable 9. Consulting Services Agreement for Former Owner, if Applicable 10. Deferred Compensation Agreement-Already in Effect 11. Lease Agreement 12. Memorandum of Lease/ For Recording Purposes 	<ol style="list-style-type: none"> 1. Share or Asset Purchase Agreement 2. Owner Employment Agreements 3. Buy-Sell Agreement 4. Deferred Compensation Agreements, if Applicable 5. Close Corporation, Shareholder or Operating Agreement 6. Owner Employment Agreements 7. Merger Agreements, if Applicable 	<ol style="list-style-type: none"> 1. Associate Employment Agreement 2. Non-Binding Letter Agreement Outlining Key Terms of Potential Practice Ownership or 3. Share Option Agreement and Co-Ownership Agreements as Schedules 	<ol style="list-style-type: none"> 1. Associate Employment Agreement 2. Asset Purchase Agreement 3. Operating Agreement/Facility Sharing Agreement 4. Buy-Sell Agreement 5. Lease Agreement, if Applicable 6. Form Operating Entity (Corporate or Non-Corporate Form)

VI. THE IMPORTANCE OF DUE DILIGENCE — WHAT TO ASK / WHAT YOU WILL BE ASKED

- A. Compatibility of Purchaser and Seller
- B. Financial Information
- C. Practice Facility
- D. Lease and Real Estate
- E. Operations
- F. Employment Relations and Benefits
- G. Litigation — Pending / Threatened
- H. Organizational Matters

VII. CORPORATE PRACTICES — SELLING TO OR WORKING FOR THEM — THEY'RE BACK!

- A. The Economics
- B. Getting Paid
- C. Unwinding the Transaction
- D. How They Will Affect You
- E. What You Can Do To Protect and Grow Your Practice!
- F. State Dental Board and Legislative Issues

VIII. HIRING THE ASSOCIATE

- A. Locating an Associate — How?
- B. The Associate Interview Process
- C. Spouse in the Practice
- D. Length of Association, 1-3 Years, Then What?
- E. When Will You Relocate or Expand?
- F. Proposal for Employment
- G. Worker Classification
- H. Key Employment Agreement Provisions
 - 1. Compensation
 - a. Collections
 - b. Adjusted Production
 - c. Base Salary vs. Draw
 - d. Benefits, Insurances and Direct Business Expenses
 - e. Bonuses, Based on Production or Discretionary?
 - 2. Restrictive Covenant
 - a. When Does it Start?
 - b. A Buy-Out?
 - c. Associate's Patients
 - 3. Termination Provisions
 - a. Notice
 - b. Cause — Cure Period?
 - c. Death, Disability
 - d. Loss of License
- I. Associate to Ownership
 - Example-1 — Associate Needs Analysis

Example-1

Associate Needs Analysis

A. Assumptions

1. Associate Will Work Full-Time — 32 Hours Per Week and Will Earn the Greater of \$120,000 (Includes Payroll Taxes and Benefits) Per Year or 30% of Adjusted Production, Including Hygiene Exam Fees, But Not X-Rays or Hygiene Services.
2. Assistant Will Cost \$35,000 Per Year, Inclusive of Compensation, Payroll Taxes and Benefits.
3. Additional Equipment, Remodeling, Supply and Laboratory Costs, Payable Over 7 Years, Inclusive of Interest of \$10,000.
4. Marketing and Advertising Costs of \$10,000

B. Costs and Required Collections

1. Associate	\$ 120,000
2. Assistant.....	\$ 35,000
3. Capital Expenditures, Supplies and Lab:	\$ 10,000
4. Marketing and Advertising Costs	\$ 10,000
5. Estimated Yearly Associate Cost.....	\$ 175,000
6. Divided by 12 Months	<u> </u> ÷ 12
7. Minimum Monthly Collections Before Administrative Profit	\$ 14,583

C. Analysis

1. Practice Should Earn a 10 - 15% Administrative Profit On the Associate.
2. Consider Mentorship Time, New Patient Flow, Facility Use, Practice Systems, Reduction of Practice Owner's Collections.
3. How Many Active Patients Are There in the Practice?
4. Why is the Associate Being Hired?
5. Note, \$120,000 is 30% of \$400,000.
6. **Business Rule — If Variable Costs are Covered and Associate Contributes to Fixed Costs, the Decision to Hire is Economically Sound.**

IX. USING RESTRICTIVE COVENANTS FOR THE ASSOCIATE AND DEPARTING OWNER

- A. Enforcement
- B. Associate Employment
- C. Sale and Acquisition
- D. Associate Buy-Ins and Owner Buy-Outs
- E. Non-Competition
 - 1. Time
 - 2. Radius
 - 3. Non-Solicitation
 - a. Patients
 - b. Referral Sources
 - c. Staff
- F. Confidential Information
- G. Liquidated Damage Provisions
- H. Reverse Restrictive Covenant
- I. Buy-Out of Restrictive Covenant — Maintain a Separate Patient Base
- J. Ability to Transfer to Successors and Assigns

X. NEGOTIATING YOUR FACILITY LEASE

- A. Choice of Locations Gives You Bargaining Position
- B. Measure the Facility
- C. Leasehold Improvement Costs — Pay Landlord Increased Rent or Tenant Pays / Cost Segregation Study
- D. Lease Considerations
 - 1. Security Deposit
 - 2. Term
 - 3. Renewal Options
 - 4. Rental Increases
 - 5. Assignment and Subletting — Especially When You Want to Retire.
 - 6. Option to Terminate Upon Death or Disability
 - 7. Ability to Expand
 - 8. Maintenance and HVAC Costs
 - 9. Improvements — Consent Required?
 - 10. Adequate Parking
 - 11. Cure Period for Default

XI. OWNING, ACQUIRING AND SELLING YOUR PRACTICE FACILITY

- A. New, Existing or Multi-Tenant?
- B. Condominium Suite?
- C. Cost Segregation Analysis
- D. Options/Modified Versus Rights of First Refusal
- E. Appraisal, Appraiser Selection and Appraisal Methodology
- F. Environmental Considerations
- G. Negotiating the Sale or Purchase of Real Estate at This Time
- H. Financing the Real Estate
- I. Determining Rent

XII. DISSOLVING YOUR PRACTICE ENTITY

- A. Your Practice Versus Real Estate
- B. Corporate Maintenance
- C. Entity Dissolution

What About Termination of Your Retirement Plan?

- Figure 16-3 — Annual Shareholder Meeting Minutes
- Figure 16-4 — Annual Director Meeting Minutes

Figure 16-3

JOHN SMITH, D.D.S., P.A.

ACTION BY SHAREHOLDER
IN WRITING
WITHOUT A MEETING

The undersigned, being the sole Shareholder of JOHN SMITH, D.D.S., P.A. (herein called the "Corporation"), does hereby take and adopt the following actions, in writing and without a meeting, pursuant to the authority of Section 607.0704 of the Florida Business Corporation Act:

RESOLVED that these Minutes are hereby deemed to constitute the Annual Meeting of the Shareholder for the year 20__.

RESOLVED, FURTHER, that the following persons are hereby elected as Directors of Corporation to serve until their successors are elected at the next Annual Shareholder's Meeting, or until their earlier resignation, disqualification, removal from office or death:

John Smith, D.D.S.
Susan A. Smith

RESOLVED, FURTHER, that the Shareholder hereby approves Corporation's Financial Statements from and since the last Annual Shareholder's Meeting, which Financial Statements satisfy the requirements of Section 607.1620 of the Florida Business Corporation Act.

RESOLVED, FURTHER, that all acts, transactions and business of the Directors and Officers from and since the last Annual Shareholder's Meeting hereby are fully ratified, approved and confirmed.

John Smith, D.D.S.

December 8, 20__

Figure 16-4

JOHN SMITH, D.D.S., P.A.

ACTION BY DIRECTORS
IN WRITING
WITHOUT A MEETING

The undersigned, being all of the Directors of JOHN SMITH, D.D.S., P.A. (herein called the "Corporation"), do hereby take and adopt the following actions, unanimously in writing and without a meeting, pursuant to the authority of Section 607.0821 of the Florida Business Corporation Act:

RESOLVED that these Minutes are hereby deemed to constitute the Annual Meeting of the Directors for the year 20__.

RESOLVED, FURTHER, that the following persons are hereby elected as Officers of Corporation to serve until the next Annual Directors' Meeting immediately following the Annual Shareholder's Meeting and until their successors are elected thereat, or until their earlier resignation, disqualification, removal from office or death:

President/Treasurer - John Smith, D.D.S.
Secretary - Susan A. Smith

RESOLVED, FURTHER, that the Directors hereby approve Corporation's Financial Statements from and since the last Annual Directors' Meeting, which Financial Statements satisfy the requirements of Section 607.1620 of the Florida Business Corporation Act.

RESOLVED, FURTHER, that all acts, transactions and business of the Directors and Officers from and since the last Annual Directors' Meeting hereby are fully ratified, approved and confirmed.

John Smith, D.D.S.

Susan A. Smith

December 8, 20__

XIII. DESIGNING AND RELOCATING YOUR PRACTICE FACILITY

- A. Prepare Personal Budget and Financial Statement Which Will Delineate Income Requirements — Monthly / Yearly
- B. Determine Practice Costs
- C. Complete Demographic Analysis
- D. Revenue Projection — Patients and Patient Charges
- E. Determine Lending Requirements / Availability
- F. Determine Entity Selection for Practice and Real Estate, If Applicable
- G. Prepare Strategic Plan — Prepare 5-Year Budget — First 2 Years By Month; Then 10, 15, 20 Years. This Shows Necessity for Mission and Vision Statements
- H. Determine Additional Income Requirements
- I. Project Analysis and Completion Dates — Sign Lease / Form Entity / Obtain Financing. What Else Do I Need To Do? Hire Staff?
- J. Opening — Systems In Place!

Figure 21-1

Paying Relocation or Expansion Costs

<u>CATEGORY</u>	<u>AMOUNT</u>	<u>PERCENTAGE</u>
A. Collections:	\$ 1,000,000	100%
Operating Expenses:	< \$ 600,000 >	60%
Owner and Associate Compensation:	\$ 400,000	40%
Yearly Relocation/Expansion Costs Over 10 Years	\$ 60,804	
B. Collections:	\$ 1,000,000	100%
Operating Expenses:	< \$ 600,000 >	
Additional Costs:	< \$ 60,804 >	
Total Expenses:	< \$ 660,804 >	66.1%
Revised Owner & Associate Compensation:	\$ 339,136	33.9%
C. Maintain 40% Profit		
Additional Costs:	\$ 60,804	
Additional Required Collections, Inclusive of 40%	$\frac{\$ 60,804}{.6} = \$ 101,340$	
Owner & Associate Profit:	\$ 101,340	
Prior Collections:	\$ 1,000,000	
Revised Collections/40% Profit:	\$ 1,101,340	
Revised Collections:	\$ 1,101,340	100%
Total Expenses:	< \$ 660,804 >	60%
Owner & Associate Compensation/40% Profit:	\$ 440,536	40%
D. Cover Costs — No Additional Profit		
Prior Collections:	\$ 1,000,000	
Additional Collections Covering Costs:	\$ 60,804	
Revised Collections/No Additional Profit:	\$ 1,060,804	
Revised Collections:	\$ 1,060,804	
Total Expenses:	< \$ 606,804 >	
Owner & Associate Compensation/ No Additional Profit:	\$ 400,000	

To What Extent Will Revenues Increase if I Relocate or Expand?

XIV. SUMMARY AND THOUGHTS

Leave When You're Ready — Your Way!