

Navigating Associateship Contracts and Purchase Agreement

CONTRACTS. They can evoke as much tribulation in dentists at the start of their careers as the drill can instill in patients. Whether it is an associateship contract or a purchase agreement for an existing practice, dentists have good reason to get nervous when presented with either type of contract. One overlooked provision could severely limit dentists' career prospects, or expose them to unforeseen and costly liabilities.

As intimidating as contracts can be, however, dentists just starting out should not walk away from opportunities to join or acquire a practice because of the potential strings attached. There are good opportunities out there that a little investigating and negotiating could transform into great careers. Reach out to and consult with an attorney who has more experience catching loopholes. With a little guidance, dentists can be off and running in no time.

Associateship Contracts

Remember, most employers are watching out for their own interests when they offer a dentist an associateship contract. Do not overlook the fact that a big part of that interest involves employing the dental professional. Generally speaking, the heart of the contract protects the employing practice against the possibility of being left in a lurch in terms of staffing and vulnerable to unfair business practices by the associate. For dentists, an associateship contract promises stability in terms of employment and sets expectations for compensation.

First and foremost, dentists offered an associateship contract will want to make sure its terms and conditions are in line with industry standards for a particular geographic region. Dentists practicing in upstate areas may have different terms than dentists practicing in the New York City metro areas. Reach out to local mentors, colleagues and dental school classmates to get a better sense of what is normal for an area in terms of pay, benefits and restrictive clauses. Doing this preliminary research will help you prepare for the inevitable contract negotiation.

Once that preliminary research is done, talk to your attorney about the terms and conditions within the contract itself. An important feature of an associateship contract is its term or length of employment. The big question for the dentist is do you view this job as a pit stop, or are you looking to get on the partner track? If the former, a short, single-year term may be preferred. If the latter, then a multi-year term, with interim options that can be renewed annually, may better suit you.

Pay close attention to the part of the contract addressing these renewal and early termination concerns. There may be notification requirements (e.g., 60 days prior notice) and financial consequences associated with leaving a job before the contract expires. Even if the dentist considers the job a short-term position, he or she may want to consider a renewal option, just

in case the work is better than expected or other employment opportunities do not arise before the agreement expires.

Next, dentists will want to put the contract's restrictive covenants on their radar, particularly those pertaining to non-compete and non-solicitation clauses. A noncompete clause will prohibit an associate who leaves a practice from working for any competitors within a geographic range for a pre-determined period of time. In densely populated areas, such as in New York City, the covenant not to compete may cover a few city blocks. In less densely populated areas, such as in upstate communities, that prohibition could cover a few miles. A one-year, post-employment, non-compete period is common for the industry. Anything covering two years postemployment may be too long to hold up in court.

A non-solicitation covenant will prohibit associates from attempting to poach patients from their former employer. In the event you decide to leave the practice, your former employer's patients are off limits, permanently, unless those patients change practices under their own free will. The dentist should make sure the agreement recognizes there are some customers he or she brings into the practice, such as family members and friends, that remain the "property" of the associate. Dentists should make sure the non-solicitation clause is phrased in a way that ensures they can bring these preexisting patients to their next employer.

The bottom line is, associateship contracts aim to eliminate unpleasant surprises for both employers and employees. Employers offering an associate contract have likely crafted it in a way that reduces their risk to the lowest level possible. Dentists, however, may find an employer's attempts to protect his or her interests infringes too greatly on their own. Prospective associates should not be afraid to request modifications to the contract prior to signing. That's what negotiations are all about. Remember, the employer wants to hire the dentist, and the dentist is interested in being employed. An attorney could help both parties find their middle ground.

Purchasing a Practice

Much like my advice for prospective associates offered an employment agreement, my advice to dentists interested in buying a practice is simple: Get legal advice early on in the process. To this I add: Get an accountant on board as soon as possible as well. It should be a total team effort during the buying process.

Buying a practice can be exciting; and it is easy to take at face value a glowing appraisal. It is crucial for buyers, however, to independently conduct their due diligence. Have an accountant review the seller's books early on, going back multiple years, to develop an appropriate purchase offer.

If the practice comes with real property, the buyer will want to have a lawyer prepare and negotiate a purchase agreement, conduct a title search on the real property being sold, work with the purchaser's mortgage company and guide the purchaser through the eventual closing. If the seller rents his or her space, the buyer will want to carefully scrutinize the lease agreement. Because landlords are not commonly apt to renegotiate lease agreements mid-term after a new tenant purchases an existing business, the dentist must ensure that the existing lease terms are favorable.

Regardless of whether the seller is retiring, be sure to hold him or her to covenants not to compete and not to solicit the patients you are purchasing under the terms of the agreement. Buyers should also include language in the purchase agreement that gives them greater control over how the seller notifies customers about the change of ownership. Require the selling dentist to endorse you as the new dentist and to spend time at the new practice with the existing patients, even before the purchase goes through. The last thing a buyer wants is

for the outgoing dentist to steer his or her customers elsewhere, or to steal them away after selling the business.

Additionally, negotiate a long transition period with the outgoing dentist, even up to six months. While you may want to get going on your own, the selling dentist will continue working at the practice as a consultant on a limited basis, providing a useful guide for how the business is run and affording the new dentist time to get his or her feet on the ground. It is tough enough to practice dentistry. Running a business may be all new territory.

Prior to purchasing the practice, buyers should also take the time to meet the existing dental staff, making sure they are a good fit with the purchasing dentist and his or her style of dentistry. Carefully review any employment contracts that may exist after the sale goes through. Remember to take into account the financial ramifications of employee benefits, such as health care costs and paid vacations. The buyer should also be prepared to assume existing contracts with vendors, such as those that provide dental supplies and advertising services.

Limiting liability should also be a priority for buyers. You do not want the seller's pre-existing legal problems to haunt you. If there is any ongoing litigation involving the seller, carve it out of the purchase agreement so that the selling dentist is responsible for seeing any such cases through to conclusion. Language indemnifying each party should also be included in the contract. These provisions ensure that the seller is legally accountable for any malpractice complaints or other lawsuits stemming from the period when he or she owned the business, even if they come to light after the transaction is closed.

Another important factor to consider is forming a legal entity to protect the purchasing dentist from future liability. For example, work with your accountant and attorney to determine what type of business formation is right for you and your practice, whether it is an LLC or corporation. Engage your attorney early on to set up that business entity to ensure that you are protected as soon as you take over ownership. Spending the time and money early on to form this entity will save you a vast amount in the long run should a legal issue arise down the road.

The key to becoming an associate or purchasing a first practice revolves around balance—balancing the interests of all the parties and how best to protect them all without having the deal come unglued. It is never a good idea to sign a contract or enter into a purchase agreement without first getting legal advice on its contents. Dentists can always negotiate the terms beforehand to guard against potential pitfalls that could unnecessarily stunt career development or tie the dental practitioner to a job, an office or any other obligation for too long or at too great a cost.