

## **ASSOCIATE AGREEMENTS FROM THE ASSOCIATE'S PERSPECTIVE**

**BY DAVID E. ROSENTHAL, B.A., LL.B.**

In volumes 78 and 79 of *The Professional Advisory* I wrote about associate agreements from the principal's perspective. This article focuses on associate agreements from the associate's perspective.

An associate agreement is the legal contract that details the arrangements between the dentist who owns the practice (Principal) and the associate dentist (Associate) hired to work at the practice. For most new graduates, the associate agreement will be the first legal agreement they enter into as a practicing dentist. There are a number of issues to consider when becoming an Associate and signing an associate agreement (Agreement).

**Relationship** - In most cases the Associate is an independent self-employed individual. The Agreement governs the relationship between the Principal and Associate and details the terms on which the Associate agrees to provide his or her services to patients in the Principal's office but as an independent practitioner.

Associates can be either individual dentists or dentistry professional corporations. This article does not deal with dentistry professional corporations. As there may be many potential tax benefits in doing so, it is always worthwhile to contact with your tax advisors to determine whether to use a professional corporation as the Associate.

As an independent practitioner the Associate is operating his or her own separate business and is self employed. The Principal pays the Associate a gross amount and the Associate must then remit from that gross amount the required taxes and other remittances to Canada Revenue Agency. The Agreement needs to clearly specify the independent contractor relationship between Principal and Associate. As an independent practitioner the Associate is typically responsible to pay for his or her own license fees, memberships, insurance, continuing education courses, seminars, and other expenses applicable to the Associate. Review the Agreement carefully to see what the Principal requires the Associate to pay for.

The Agreement should detail all of the services and facilities the Principal will provide to the Associate, including the use of the premises, equipment, dental supplies, staff and services. Staff and services might include the use of receptionists, chairside assistants, dental hygienists, management, administrative, bookkeeping and collection services. If specific equipment or staff is required (such as a designated operator which is set up for a 'left handed' dentist or designated chairside assistant or hygienist) this should be detailed in the Agreement. Often the Agreement stipulates the Principal will provide certain standard equipment and routine dental supplies and it is the Associate's cost if the Associate requires further specialized items.

**Remuneration** - The Associate is typically paid based on a percentage of the Associate's collected billings. The current standard going rate for general dentistry is 40 per cent of collected billings. A specialty practice Associate may command a higher percentage. The Associate is usually paid monthly as third party laboratory invoices are typically received by the Principal on a monthly basis.

The definition of collected billings in the Agreement is critical. Collected billings typically means the gross billings for dental services rendered by the Associate to patients of the dental practice for which payment has been received by the Principal, after deducting laboratory fees. The definition of collective billings should also specify the Associate's gross billings includes the dentist examination fee for dental hygiene services where the examination has been performed by the Associate. The vast majority of associate agreements do not include Associate entitlement to any x-ray exam fee where the x-ray has been taken by the hygienist and read by the Associate.

Review the definition of collected billings to determine if there are other deductions (in addition to deducting laboratory fees) from the Associate's gross billings. For example, patients often pay for dental services by credit card. Credit card companies charge approximately two per cent as a processing fee. It is becoming more common in recent years that other deductions from the Associate's gross billings include credit card processing fees and any other collection costs incurred by the Principal to collect payments from patients.

Note the definition refers to collected billings. If a patient does not pay an account, then it is not included in the calculation of collected billings. The Associate is not paid the percentage until the invoice is actually paid by the patient. If a bad debt is incurred for a fee previously included in the Associate's gross billings and paid to the Associate (such as a patient's cheque not being honoured at the bank), the Agreement will typically specify that such amount is deducted from the amount then owing to the Associate, or the Associate must repay the amount to the Principal.

Part 2 of this article continues in the next volume of *The Professional Advisory* and will address non-solicitation and non-competition covenants and termination of the Agreement.

David Rosenthal is a senior lawyer with *Spiegel Rosenthal Professional Corporation* whose practice is devoted to corporate, commercial and business law, with special emphasis on advising dentists. He can be reached at (416) 865-0736 or e-mail to david@drlaw.ca.