

ASSOCIATE AGREEMENTS FROM THE ASSOCIATE'S PERSPECTIVE – PART 2

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In volumes 80 of *The Professional Advisory* I wrote about associate agreements from the associate's perspective. This article continues to explore those issues from the associate's perspective. An associate agreement (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.

Professional Dental Goodwill - The most valuable asset a Principal owns is the professional dental goodwill of the dental practice. That goodwill includes the patient lists, custody and control of all patient records and files (including patient billing records and treatment plans), patient charts, x-rays and models, and use of any dental practice names. When a dental practice is valued, typically the goodwill is valued at approximately 75 to 80 per cent of the total practice value. Given such value of goodwill, it is no surprise that the Principal will take appropriate measures to protect that asset.

An associate can expect the following provisions to be contained in the Agreement:

Staff - The staff of the dental practice are the Principal's responsibility and the Principal makes all decisions regarding staff. Typically the Agreement will state that the Associate has the use of a chairside assistant as reasonably required but as the Principal deems appropriate. However, if the Associate has very specific staff requirements, then such specifics should be detailed in the Agreement.

The Agreement will contain a non-solicitation covenant whereby the Associate agrees not to solicit staff of the practice, meaning the Associate will not offer employment or entice the staff away from the Principal for a certain time period. The time period is typically one or two years after the Agreement is terminated.

Non-Solicitation of Patients - It is the patient's right to choose their dentist or to change dentists and move their patient charts. The Agreement cannot restrict patients' rights to choose their dentist or limit the access of patients to their dental charts or records. However, the Agreement can provide that the Associate agrees not to solicit patients of the practice for a certain time period. The time period is typically one or two years after the Agreement is terminated. Solicitation means the Associate does something proactively to try to get the patients to move their business and charts somewhere else. It is not solicitation if a patient of their own choice decides to choose another dentist.

Even in the case of a verbal associate agreement, the Regulations under the Ontario Dentistry Act specifically state the Associate shall not solicit or cause or permit the solicitation of the Principal's patients.

The Regulations require the Principal to provide to any patient who requests it the business address and telephone number of the Associate, provided the Principal has or could reasonably obtain such information.

Non-Competition - The Agreement will very likely include a non-competition covenant whereby the Associate agrees not to compete with the Principal within a specified geographic radius for a specific time period time after the Associate stops working at the practice. The comments below are intended only for general practitioners since there are different rules that may apply for specialists.

A non-competition covenant will only be enforced if it is reasonable both in geographic scope and time limit. That may be only a few kilometres in a densely urban practice or 10 kilometres or more in a rural setting. The amount of time the clause remains in effect is also important. A new Associate will be little or no threat to the Principal if the Associate left the practice within a trial period of three months, and generally only a minor threat if they leave within one year. From an Associate's viewpoint a "phased-in" non-competition clause is reasonable. It could provide that the non-competition restriction:

- (i) does not apply to the Associate for the first three months of the association;
- (ii) applies for a period of one year after termination if the Associate departs within one year;
- (iii) applies for a period of two years after termination if the Associate leaves after one year.

Termination of Agreement - If the arrangement is not working for whatever reason the Associate must be able to terminate the arrangement promptly, typically upon one to three months prior written notice.

In summary, the Associate should review the Agreement carefully and consult with his or her own professional advisors to ensure the Associate understands the Agreement and all rights and obligations before signing it.

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