

MEMORANDUM

TO: Dental Associates and Dental Practice Owners

FROM: Vince Nardone

RE: Employment Agreement Checklist

In anticipation of preparing the necessary employment agreement(s), please provide the information requested below that we have identified (i) for discussion purposes and (ii) to ultimately prepare a draft of an employment agreement for your review.

1. Define the Scope of the Relationship: Associate doctor versus independent contractor?

2. What is the term of the agreement?

- a. Specify the term of the employment agreement by stating the commencement date and expiration date of the term or the length of the term;

- b. State whether the term may be extended and, if so, the duration of the renewed or extended period;

- c. If the agreement term may be renewed or extended, state the procedure for exercise of the renewal or extension option; and

- d. If termination is not elsewhere addressed in the agreement, state that the agreement may be terminated by timely written notice given before the expiration date.

3. What are the terms of the associate doctor's direct compensation?

- a. Structure of Compensation. Describe structure of associate's compensation, including whether you will pay the associate based upon net production or net collections;

- b. Definition of Net Production or Collections. Provide a definition of net production or net collections for purpose of the structure of compensation;

- c. Adjustments. Discuss how lab fees, insurance and other adjustments, rework, etc. are handled and when they are subtracted from net production or collections for purpose of compensating the associate;

- d. Salary. Describe the base salary, note that it is subject to withholding for appropriate items, and state factors influencing salary increases and their timing; and

- e. Bonuses. Specify whether the bonus is discretionary or nondiscretionary; if nondiscretionary, state the amount of the bonus or the method of calculation and when and how the bonus is payable (e.g., "payable in lump sum on or before July 31 of each year"); if discretionary, disclaim any Practice obligation to pay a bonus.

4. Who is responsible for laboratory fees? Please provide details.

5. Who is responsible for supplies and materials used in connection with the dental services the associate provides to patients? Please provide details.

6. What are the associate doctor's duties and responsibilities under the agreement?

a. Describe the associate doctor's title, duties and responsibilities, including a "catchall" provision (e.g., "other duties as assigned");

b. State that the associate doctor's duties and responsibilities are subject to the Practice's control and approval, if any;

c. Where appropriate, specify the amount of time the associate doctor is expected to devote to the Practice (e.g., "entire time, attention and energies"; "best efforts");

d. Do you want to specify the schedule of the associate doctor?

e. Do you want to specify on-call responsibilities or emergency situation responsibilities?

f. Do you want to specify any administrative duty responsibilities, including supervising staff? and

g. Do you want to specify any responsibilities for marketing, business entertainment, or patient development?

7. Is the associate doctor entitled to any of the following fringe benefits?

a. Vacation. Specify time allowed any approval or notification requirements and whether unused vacation time may be carried over to subsequent years;

b. Disability. Specify the applicable definition of "disability," the amount or method of calculation of disability payments, the duration of disability payments and whether the Practice may terminate employment and disability payments if the disability continues beyond a stated period and the associate doctor remains unable to perform his or her job.

c. Death benefits. Specify the amount payable, the time period for payment and the death benefit beneficiary.

d. Health insurance benefits.

e. Benefits under a self-insured or uninsured medical reimbursement plan;

f. Pension or other retirement benefits.

g. Life insurance benefits.

h. Benefits elected under an employer-sponsored cafeteria plan (specify plan year and benefits available under it, referencing written plan documents);

i. Dependent care assistance benefits.

j. Statutory fringe benefits (including no-additional-cost services, qualified employee discounts, working condition fringes and de minimis fringe benefits); and

- k. Special fringe benefits (e.g., car or car allowance, expense accounts, country club or health club allowances, etc.).

8. Will the Practice cover malpractice insurance?

9. Will the Practice cover professional dues?

10. Will the Practice cover continuing education expenses? Also, will the Practice provide additional time off for attending continuing education in addition to any vacation leave?

11. Will the Practice allow for dental care for family members of the associate doctor? If so, what are the terms of that care as it relates to payment and reimbursement?

12. Is the associate doctor entitled to reimbursement for business expenses paid or incurred on the Practice's behalf?

a. Describe the types of business expenses subject to reimbursement and any limitations or caps on reimbursement (e.g., "ordinary and necessary business expenses up to and including \$ _____ per month," etc.).

b. Require that original receipts be submitted as well as other documentation necessary to establish the business purpose of the expense and the relevant mileage and destination, where appropriate; and

c. Describe the method and time frames for payment or reimbursement of business expenses.

13. Do you want to define who is responsible for billing and collection of services the Practice and the associate doctor provide to patients? Generally, we provide in our agreements that the associate doctor assigns all billing and collection rights and responsibilities to the Practice, including providing unlimited power of attorney to the Practice.

14. Do we want to define the responsibilities and obligations regarding patient assignment and records?

15. Provide the associate's full name, including middle initial, as well as contact information, including physical and email address and telephone number.

16. Under what circumstances may the Practice terminate the associate doctor's employment?

a. Is the associate doctor terminable at-will, i.e., terminable with or without cause and with or without notice?

b. If the associate doctor is terminable only for cause, define the term "cause" generally and by way of example, including:

i. Associate doctor's failure to satisfy specified performance standards.

ii. Theft, dishonesty or other unlawful conduct on the part of the associate doctor.

iii. The associate doctor's death or disability.

iv. Termination of the Practice's business due to bankruptcy or a lack of profitability.

v. A stock or asset sale of the Practice.

vi. The associate doctor's breach of restrictive covenants against competition or disclosure of confidential business information.

(a) If the associate doctor commits any form of crime against the Practice or any of the officers, directors, employees, patients, or agents of the Practice;

vii. The associate doctor commits any crime or any act involving fraud, dishonesty, or moral turpitude; and

viii. The associate doctor loses their license or credentials necessary to practice general dentistry, is suspended from practicing dentistry for a period of greater than 30 days, is no longer insurable for the full amounts required by the Practice, fails to continue their insurance, or otherwise becomes disqualified to practice dentistry.

c. State whether a termination for cause extinguishes the Practice's obligations under the agreement and specify the obligations not extinguished.

d. State whether severance benefits are payable on termination, the circumstances (if any) in which they are payable, and the nature and extent of any severance benefits available.

e. Specify that termination with or without cause does not terminate the associate doctor's obligations under the restrictive covenants set forth in the agreement; and

f. Miscellaneous provisions related to termination.

i. Salary continuation benefits;

ii. Extended health and/or life insurance benefits;

iii. Early retirements benefits;

iv. Does the agreement contain a confidentiality provision that precludes the associate doctor from discussing the surrounding facts or the terms of the agreement with anyone other than the associate doctor's attorney, accountant or members of the associate doctor's immediate family?

v. Does the agreement contain a nondisclosure clause prohibiting the unauthorized use and disclosure of trade secrets and other proprietary information?

vi. If a nondisclosure requirement is first being imposed upon termination, does the agreement recite additional consideration to support the duty not to disclose?

vii. Is the nondisclosure clause "reasonable," as defined by state law? and

viii. Does the agreement require the associate doctor to return all of the Practice's property immediately upon termination?

17. Is the associate doctor subject to restrictive covenants under the agreement? If so, specify:

a. Whether a noncompetition, nondisclosure, noninterference or antiraiding provision applies;

b. The nature of the conduct proscribed and the information sought to be protected;

c. Any geographic and temporal limitations applicable to the restrictive covenant, and an acknowledgment that any restrictive covenant referenced in the agreement is reasonable in scope;

d. That the nature of the confidential information or business interest sought to be protected is secret or unique and, therefore, that the Practice would suffer irreparable harm upon a breach of the restrictive covenant; and

- e. That the Practice would be entitled to damages as well as injunctive relief if any enforcement action were filed under the restrictive covenant.

- 18. Will there be a prohibition against transfer? Prohibition against transfer provides that the associate doctor cannot assign the associate's duties and responsibilities under the employment agreement to another. Without this provision, the associate can arguably assign the associate's nondisclosure/noncompetition promises to another.

- 19. Do you want to provide for indemnification and contribution? The indemnification generally protects the Practice against any claims, liabilities, judgments, losses or expenses caused by or result from the associate doctor's conduct.

- 20. Do we want to have a buy-sell agreement? We may consider a buy-sell agreement for the associate doctor in the event of death or permanent disability. Basically, the provision would simply provide that if you were to be permanently disabled or pass away the associate doctor is required to buy the Practice. There are a number of things that we would want to discuss here, including insurance being available to cover the funding mechanism subject to health, cost, availability, and how this would relate to the option to purchase.

Nardone Comment: We would encourage you to have an experienced Dental Attorney review and draft the employment agreement for you. Yes, I understand that this advice may sound self-serving. But, after many years of doing this work, it absolutely is not self-serving. What I have found over the years is that those dentists and specialists that have tried to save cost by doing things themselves—and not surrounding themselves with well-qualified-experienced professionals—always end up costing themselves more money than they tried to save in the first place. That is, rather than worrying about incurring expenses by having an employment agreement drafted by an experienced individual that is likely a thought leader in the dental space, that dentist or specialist should be focusing on performing clinical services, increasing their production per hour, spending time with their family, taking their kids to some activity, or some other worth wild activity. It is very clear that those dentists and specialists that try to cut corners and cut costs, ultimately cost themselves more in the long run. It is the old adage: penny wise and pound foolish. Do it the right way from the beginning and engage your professionals to do what they are good at, and then you do what you are good at. You will be happier and more profitable if you follow that simple advice. Surround yourselves with Who's rather than worrying about the How...And if you do not no what I mean by that then I strongly encourage you to pick up and read the book titled: Who Not How By Dan Sullivant and Benjamin Hardy.

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