



LEGAL

Business Services Agreements with DSOs: What a Dentist Should Know

I. Introduction

A. Goals

The American Dental Association (ADA) provides many resources for dentists to assist them in navigating various contracting matters throughout their careers. One such contract may be a business services agreement with a dental support organization (“DSO”). This guide is intended to serve as a resource for dentists as they review a business services agreement with their attorneys. As is clear throughout the guide, there are many different kinds of business services agreements along a spectrum, and entering into such an arrangement should be done with careful consideration for the terms. While this guide provides a good background on business services agreements with DSOs, these materials cannot replace the guidance of an experienced healthcare attorney. Therefore, there is information about selecting an attorney at the end of this guide, and the ADA expects that this guide will help dentists prepare to be fully informed when discussing a potential DSO relationship with their attorneys.

B. DSOs

The first question really is what is a “dental support organization” or “DSO”? According to the Association of Dental Support Organizations, a DSO “contract[s] with dental practices to provide critical business management and support including non-clinical operations.”¹ While entities and dentists that utilize a DSO for such administrative services are still well in the minority,² it may be appealing to some dental providers to allow a business entity to handle certain non-clinical services.

C. Regulatory Limitations on DSO Scope of Activity

Some states prohibit the practice of dentistry by DSOs. These states have a public policy of limiting the practice of dentistry to licensed individuals and restricting entities owned by non-licensed principals or non-licensed persons themselves from practicing dentistry or employing licensed individuals to practice dentistry. In essence, what these states are trying to limit is the unauthorized practice of dentistry by persons who do not have licenses, or by entities that cannot be licensed. So in states that have this prohibition, an unlicensed person or entity cannot employ licensed professionals or get involved in the clinical aspects of the profession.

Therefore, when evaluating a business services agreement with a DSO, it is important to consider what services can and cannot be performed by a DSO under applicable law. Due to certain restrictions, and depending on state law, a dental practice may need to be owned by a professional entity, such as a Professional Corporation (PC) or Professional Limited Liability Company (PLLC) that is in turn owned by licensed dentists. DSOs may be owned by a business corporation or other non-licensed professionals, but in some states certain services can be provided by only a clinical entity, so not every part of a practice’s business and operations could be turned over to a DSO. It is important to engage counsel in making these determinations because state laws, court cases and regulatory opinions on DSO restrictions vary from state-to-state, with some states imposing significant restrictions on what a DSO can provide to a dental practice.

¹ Association of Dental Support Organizations, <https://www.theadso.org/about-dsos/>.

² See ADA Health Policy Institute, “Structure of Dental Practices in the U.S.” (PDF), based on 2016 data, https://www.ada.org/en/~media/ADA/Science_and_Research/HPI/Files/HPIgraphic_1117_7. Also, see ADA policies about dental services, including Ownership of Dental Practices (Trans. 2000:462), Regulating Non-Dentist Owners of Dental Practices (Trans. 2011:491), and Dentistry (Trans. 1997:687; 2015:254), <https://www.ada.org/en/advocacy/current-policies>.

II. Business Services Agreements

For the purpose of these materials, a “business services agreement” is an agreement in which a DSO agrees to provide certain administrative services to a dental practice. The nature and extent of the services provided under a business services agreement may vary widely. On one end of the continuum, a DSO may provide only a limited, discrete set of services. Moving along the continuum, the relationship between a DSO and a dentist may become increasingly integrated, leading to a fully affiliated and closely aligned arrangement in which the DSO provides (and is in control over) all non-clinical aspects of the dentist's practice.

A. Different Types of DSO Arrangements

i. Limited Services

The most basic and minimal arrangement between a DSO and a dentist involves the DSO providing assistance with certain discrete administrative services on an *a la carte* basis. For example, the DSO may provide services such as marketing assistance, IT infrastructure, accounting, human resources management, billing, contracting assistance, procurement of supplies and equipment, and/or regulatory compliance services.

Under this type of arrangement, the business services agreement will be relatively limited, as the services to be provided are limited and distinct. Nevertheless, a dentist should be aware of key provisions, especially those governing (a) the term, or length, of the agreement, (b) how the agreement may be terminated³ (and the potential cost and other consequences of doing so), and (c) how the DSO's fee will be calculated. For example, in some agreements, it is difficult to terminate the arrangement without payment of significant sums in liquidated damages, or other payment(s), to the DSO.

ii. Bundled Administrative Services

Moving along the continuum, a DSO may agree to provide a more comprehensive group of bundled services to the dentist. Under this type of business services agreement, the DSO provides most or all of the administrative, non-clinical services to the practice. This model does not involve the sale of the dentist's practice, though it may substantially constrain the dentist's control of the practice's business, depending on the extent of the DSO's services. However, the DSO may provide, or assist in providing, a wide range of non-clinical services, including, for example, some or all of the following: human resources management; payroll and benefits; negotiating contracts with vendors and payers; billing and coding; procurement of supplies and equipment⁴; leasing, locating, and maintaining the office; IT; budgeting; tax preparation; and accounting. In short, under this type of arrangement, the DSO provides something approximating the full range of administrative services.

In some instances, the DSO may even employ the dentist's non-clinical staff in conjunction with entering into the business services agreement. Doing so creates a significant level of interconnectedness between the parties and raises additional issues that the dentist should

³ See “Contracts 101: Before You Get In, Know How to Get Out” (Podcast), <https://success.ada.org/en/career/beyond-the-mouth-podcast/007-contracts-101>.

⁴ This is an area to watch, as the dentist will likely want to see contract language that assures that supplies and equipment to be supplied will meet the needs (and perhaps even the preferences) of the dentist.

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carefully consider. For example, the dentist must ensure that the DSO does not have any decision-making authority over clinical matters.

In addition, a dentist's ability to terminate these types of arrangements can be even more restricted, and they may be subject to liquidated damages provisions if the agreement is terminated early in this kind of relationship, as well as in the more limited-services scenario set forth above. The business services agreement may also include non-solicitation provisions that restrict the dentist's ability to solicit and employ certain personnel during the arrangement with the DSO, or even after the arrangement is terminated.

Further, if the dentist is looking to terminate because they desire to sell the practice, the business services agreement could include some kind of right of first refusal in which the DSO has the first opportunity to purchase the practice. This could be very disruptive to the dentist's plans. Given the potential severity of these consequences, a dentist considering entering into such an agreement should carefully review a proposed DSO affiliation with counsel.

iii. Closely Aligned Relationships

At the far end of the continuum, the DSO and dentist become closely aligned (e.g., the dentist may find it virtually impossible to terminate the relationship, even should the dentist be dissatisfied with the relationship). These arrangements often involve the sale of the dentist's practice to another professional entity (e.g., a PC or PLLC) that has an existing relationship with the DSO. Arrangements involving such a sale are generally irrevocable—there is no going back.

Typically, the professional entity will purchase the selling dentist's clinical assets (which are limited) and the DSO will purchase the dentist's non-clinical assets, including goodwill. The selling dentist will enter into an employment agreement and become a salaried employee of the acquiring professional entity. The selling dentist's continuing (at least for a transitional period) relationship with the business through employment is often crucial to ensure the ongoing value of the purchased business, so the employment agreement will be negotiated in conjunction with the purchase agreement.

However, under this type of arrangement, the selling dentist cedes control over their practice to the new owner, which typically is closely aligned with the DSO. Then, the ongoing relationship for the selling dentist will be solely employment (as a "mere" employee) with the professional entity, which is a new role in which some dentists may not be comfortable.

A variation on this type of arrangement may arise if the DSO has not identified another professional entity to acquire the selling dentist's clinical assets. The DSO may ask the dentist to form a new professional entity to acquire the clinical assets, with the dentist agreeing to own the new entity (albeit with limited control over the practice) and grow the practice. This model creates another level of affiliation and integration between the dentist and the DSO. As a result, the dentist may face additional risk and potential liability, and should carefully consider these issues, among others (e.g., malpractice insurance, state dental practice act issues), with legal counsel.

iv. Continuum Conclusions

In considering a potential relationship with a DSO, a dentist has a variety of options regarding the nature of that relationship. As discussed above, it can be a continuum. Along that continuum, there comes a point at which the bulk of the control over non-clinical aspects of a dentist's

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practice shifts to the DSO. Regardless of the nature of the relationship between the dentist and the DSO, however, the dentist must maintain control over clinical matters, including the provision of professional services and control of clinical staff.

v. An Additional Note on Structure – Transfer of Practice Ownership

As discussed above, the relationship between a dentist and a DSO will fall along a continuum, from an arrangement in which the DSO provides a very limited, discrete set of administrative services all the way to a closely aligned relationship in which the DSO handles all of the non-clinical aspects of the dentist's practice. The issues for a dentist to consider will thus differ depending on the nature of the arrangement. For example, if a dentist chooses to sell their practice and affiliate with a DSO and the professional entity to which the DSO provides services, then the issues that arise will be quite different than if the dentist simply contracts for a more narrow arrangement in which a DSO agrees to provide only a limited set of administrative services.

As one might expect, the sale of a dental practice will require more than just a business services agreement. In conjunction with the practice sale process, the DSO and purchasing practice will likely conduct due diligence to investigate the finances, operations, regulatory compliance, and a variety of other matters regarding the selling practice. The parties will also need to address the dentist's ongoing employment arrangement for professional services provided going forward and negotiate a purchase price. Many of these issues are addressed by other ADA resources and publications regarding the sale of a dental practice.⁵

What if the selling dentist will serve as the owner of the new professional entity acquiring the practice (rather than as just an employee)? In that case, there will be many documents to work through with counsel. For example, assuming a new professional entity will be created as part of the transaction, documents related to the formation and governance of that entity, such as a shareholders' agreement and bylaws, will be required. The DSO and the new professional entity will also enter into a business services agreement, which will spell out the respective obligations of the DSO and the dentist/owner of the new practice, including the administrative services to be provided by the DSO, how clinical and non-clinical staff⁶ and equipment will be handled, and so on. A selling dentist should be aware that, if they will not serve as the owner but will solely be an employee of the new practice, they would likely not be party to, or have access to, the business services agreement, as that would be between the new practice entity and the DSO, or other formation and governance documents related to the practice.

Another document that a dentist may be asked to enter into as the owner of the new practice entity is a securities transfer risk agreement or similar document to address succession planning for the new practice. Further, the DSO may request that the dentist enter into a clinical director agreement, pursuant to which the dentist provides consulting services for the DSO with respect to the practice. In addition, the dentist may also need to enter into an employment agreement to provide professional services to the new entity.

⁵ See the ADA's "Dentist Employment Agreements: A Guide to Key Legal Provisions," <https://success.ada.org/en/regulatory-legal/employment-agreements-the-devils-in-the-details>.

⁶ If non-clinical staff previously employed by the dentist is transferred over to management under the business services agreement, the dentist may wish to consider whether the agreement provides any commitment to keep them at the same salary, hours or benefits they had before the transfer.

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The key issue to consider, however, if a dentist will be the owner of a practice entity closely aligned with a DSO, is potential liability. The dentist should likely seek robust indemnification (including an obligation to defend) of the dentist by the DSO (and potentially the practice entity) in connection with their ownership of the practice entity, apart from limited circumstances involving the dentist's own fraud, professional malpractice, willful misconduct, gross negligence, or other illegal acts. Thus, while a dentist should not expect to receive indemnification if, say, the dentist embezzles money from the practice entity, a dentist should likely expect to be indemnified if they experience negative tax consequences due to the ownership. It is critical to engage with counsel on this element of the transaction process.

B. Considerations Before Negotiating a Business Services Agreement

There are a number of important issues for a dentist to consider before even beginning to negotiate a business services agreement or other relationship with a DSO. Indeed, business services agreements may be one of the most important contracts an independent dentist enters into in their professional life. Depending on where the arrangement falls along the continuum discussed in [Section II \(A\)](#), a business service agreement may, effectively, give control over a dentist's non-clinical business to a third party, and the dentist needs to be careful to ensure that the DSO does not get dangerously close to influencing clinical matters.

For a variety of reasons, dentists should ensure that they understand and are comfortable with the business services agreement and the reputation, history and financial stability of the DSO. For example, services provided by a DSO that exceed applicable corporate practice of dentistry limitations could put the dentist's own license at risk. In addition, if the DSO were to seek bankruptcy protection, a dentist could be left with liability to vendors, responsibilities to their patients, and face the prospect of replacing the services that had been provided by the DSO unexpectedly. In short, a dentist should carefully review any business services agreement with counsel and, ultimately, be comfortable with and confident in the DSO with which they affiliate.

i. Decide What the Goals Are

Before negotiating a business services agreement or any agreement with a DSO, a dentist should first decide what their goals are. For example, does the dentist want to continue to practice dentistry but simply be relieved of some of the administrative burdens associated with that practice? If so, does the dentist want help with a few, specific administrative matters, or are they prepared to relinquish the majority of the practice's administrative obligations? Does the dentist want to continue practicing for a significant period of time and maintain control of their business? If it is a sale, does the dentist intend to fully retire from the practice of dentistry, or does the dentist desire not to be foreclosed from pursuing other opportunities to practice (e.g., as an employee elsewhere, or perhaps on a locum-tenens basis) after any employment or other transition obligations are met?

ii. Decide Where to Fall on the Continuum

Based on the goals that the dentist identifies, a dentist can decide where along the continuum to land. If the intent is to continue to control the practice and simply obtain assistance with certain, specific administrative services, then the DSO partner options, and the type of business services agreement/relationship with the DSO that will be applicable, will be of the "limited services" variety.

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Alternatively, if the intent is to sell the practice and cede both ownership and administrative control, then the arrangement will involve a due diligence process and negotiation of a variety of transaction and related documents (which may or may not involve a business services agreement).

iii. Maximize the Value of the Practice

In particular, if the dentist's intent is to sell their practice to a DSO and related professional entity, then it may make sense to try to maximize the value of the practice before the sale. The ADA has numerous resources that can assist in this effort, including:

- a) "Sell Your Dental Practice in the Most Tax Efficient Way" (Video)
- b) ADA BIG Idea 2019: Transitions Conference Resources

iv. Do Due Diligence on the DSO

Once a dentist decides to enter into a relationship with a DSO, the dentist should do their own due diligence into the particular DSO. Counsel can assist with this process, but a few considerations include: Does the dentist, or does the DSO, have contacts or references a dentist can consult with? If so, the dentist should contact them (while remaining cognizant of and scrupulously avoiding discussion of anything that might violate antitrust laws, or any non-disclosure agreement to which a party is bound) to try get an unvarnished view of those references' relationships with the DSO, as well as the history and reputation of the DSO.

The dentist should also ask the references questions about the particular services they intend to engage the DSO to provide. For example, are there issues with collection timing? How responsive is the DSO if there are problems⁷? What is the process to follow if the dentist has any complaints or issues? If the dentist is contemplating the sale of their practice, then asking whether the DSO has continued to make needed capital improvements? A dentist evaluating a DSO should also try to obtain information, to the extent possible, regarding the DSO's financial situation and any previous litigation history of the DSO, and any potential outstanding litigation.

⁷ For example, if the laboratory services are to be provided under some type of additional contractual relationship that the DSO has with another entity, what if the lab work is not of acceptable quality to the dentist?

III. Business Services Agreement Terms – General Considerations

A. State Law

This guide does not address or analyze specific state laws that may apply to business services agreements and affiliations with DSOs. State dental practice acts and regulations differ, and inclusion of a particular provision in this guide does not mean that such a provision is legally acceptable under the laws of any particular state. Dentists should consult with their state dental associations and legal counsel to determine whether a particular provision in a business services agreement is acceptable under applicable state law.

B. Business Services Agreements are Not All the Same

While employment agreements typically have similar types of provisions, with some variation in language or inclusion of specific terms applicable to a particular individual or circumstance, there can be a wide variety among provisions and language in business services agreements. This is due, in part to the difference in a dentist's relationship with a DSO (a business services relationship versus an employment relationship), but also to the wide variety of services that a DSO may provide under a given arrangement. Because the types and extent of services may vary significantly from relationship to relationship, then there is a lot of difference in what the terms of a business services agreement may include.

C. Business Associate Agreements Likely Necessary

To the extent that the DSO may have access to any patient protected health information in connection with providing services, the business services agreement should include a business associate agreement⁸ to comply with requirements under the Health Insurance Portability and Accountability Act (HIPAA). Therefore, the dentist can expect to see a business associate agreement as an attachment to its business services agreement and should inquire to the extent that one is not included. The DSO will then likely enter into business associate subcontractor agreements with any of the DSO's vendors that will have access to the practice's protected health information when the DSO subcontracts with such vendor, such as with respect to certain information technology, electronic dental records and other services.

D. Consider the Interplay Among Documents in a Sale

Finally, if a dentist is selling their practice as part of the arrangement with a DSO, then it is important to consider all of the terms of the various agreements together, as well as how the terms of those agreements relate to one another. There will be the purchase documents and, potentially, the employment agreement. Further, as set forth in [Section II \(A\)\(v\)](#), if the dentist will act as the owner of a practice entity that is closely aligned with a DSO, then it is important to ensure that the indemnification from one document flows through the other documents appropriately for more complete protection for the dentist.

⁸ See "FAQ on HIPAA Business Associates," <https://success.ada.org/en/regulatory-legal/hipaa/faqs-on-hipaa-business-associates>.

IV. Business Services Agreement – Financial and Other Controls

This Section sets forth some of the services that a DSO may offer on an *a la carte* or bundled basis. For practices that partner with a DSO in a closely aligned relationship, it would be typical for the DSO to provide all of the services set forth below. While this is by no means an exhaustive list, the list below offers examples of typical services as well as what the legal language in a business services agreement may look like and issues to keep top of mind.

A. Level of Control Exercised by the DSO

i. What Does This Mean?

The level of control that a DSO has over a practice's finances and non-clinical operations will depend on where along the continuum the arrangement falls. If the arrangement is one in which the DSO provides only limited services, there is unlikely to be significant involvement by the DSO in the practice's finances (unless that is what the DSO is engaged to do). In a more closely aligned arrangement between a DSO and a practice, the DSO will likely have more significant control.

ii. What Might This Look Like?

The extent of the DSO's control will run through all of the provisions in a business services agreement. For example, in an arrangement with more DSO control, there will typically be a much longer business services agreement term with long renewal terms. A relationship with less control may have a short term, perhaps three to five years.

iii. What Should a Dentist Consider?

A practice that enters into a closely aligned arrangement with a DSO will surrender control over significant aspects of the practice's finances and non-clinical operations, and a dentist should understand both the nature of that control and the respective rights and obligations of the DSO and the practice. In a limited service or bundled administrative service arrangement in particular, a dentist should weigh concerns regarding the relative control a DSO may exercise over the practice against the DSO's expertise, experience, and resources. A DSO may provide services to many dental practices and may be able to bring valuable industry knowledge and best practices, as well as resources to achieve economies of scale that may not be available to a practice otherwise. However, as the trade-off is likely giving up some control over various elements of the business, it is important to consider whether the dentist is comfortable doing so and what an unwinding of the relationship would entail.

B. Bank Accounts and Accounting

i. What Does This Mean?

It is not uncommon for a DSO to provide banking and accounting services as part of its administrative package. In a limited services arrangement, the DSO may simply provide accounting services if the dentist has contracted for that service. In a bundled services arrangement, the DSO may help set up bank accounts, may be a signatory for purposes of depositing collections, etc. In closely aligned arrangements, the practice's non-government receivables may flow directly into a DSO bank account. Government anti-assignment rules

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require that government receivables (e.g. from Medicare or Medicaid) flow into a practice bank account, although after being deposited in the practice account, the DSO will generally sweep government receivables to the DSO account. The practice must retain control over the government receivables account.

ii. What Might This Look Like?

A less restrictive billing provision that would be relatively typical in a limited service or bundled administrative services arrangement may look something like this: *“All billing and collections pursuant to this Agreement shall be performed subject to the billing and collections policies adopted by the Practice in its sole discretion. Service Company shall deposit all collections directly into a bank account held in the Practice’s name at a banking institution mutually selected by Service Company and the Practice. Service Company, with the Practice’s signature, shall have the right to make withdrawals from such account to pay all costs and expenses incurred in the operation of the Practice, [including payment of the compensation and any reimbursement due to Service Company pursuant to this Agreement], and to fulfill all other terms of this Agreement; provided the Practice may withdraw such authority at any time. Notwithstanding the foregoing, the Practice shall retain ultimate control over all accounts into which collected funds in the Practice’s name are deposited.”* To the extent that the arrangement is a closely aligned relationship, the provision regarding bank accounts and finances would give more control to the DSO and would generally involve a sweep of bank accounts to the extent that the account needs to be entirely maintained by the practice.

iii. What Should the Dentist Consider?

The more power that the DSO has over the practice’s finances renders it more difficult to unwind in the event of termination. Upon termination of a DSO relationship, it may be necessary, for example, for the practice to enter into new bank accounts, which may mean alerting payers to this change. Further, a practice that enters into a closely aligned arrangement with a DSO will likely surrender practical control of the practice’s banking and accounting functions, and a dentist considering such affiliation should carefully review the relevant provisions of the business services agreement and confirm that they are comfortable surrendering that level of control to the DSO.

C. Billing Practices and Collection

i. What Does This Mean?

DSOs will commonly offer and provide billing and collection support, utilizing the practice’s payer agreements.

ii. What Might This Look Like?

In a limited or bundled services arrangement, a billing services provision may read as follows: *“Service Company shall have the primary authority and duty to bill in the Practice’s name and on the Practice’s behalf, all charges and reimbursements for all goods and services provided to patients for whom the Practice would otherwise bill.”* All liability and obligation for providing the clinical information necessary will typically remain with the clinical practice entity.

iii. What Should the Dentist Consider?

A practice considering a limited relationship with a DSO for billing and collection services should review what exactly its clinicians must provide in order for the DSO to perform billing and collections. Will that be a problem⁹? What is the timing for providing the information? Does the DSO have any obligation to flag issues in connection with the clinician's coding? A practice considering a closely aligned arrangement with a DSO should expect that, while the general grant of power will be similar to that of a more limited services relationship, the practice would be essentially handing these functions over to the DSO. The benefit of allowing the DSO to handle billing and collections, regardless of the extent of the relationship involved, is that the DSO may bring experience, expertise, and economies of scale to billing and collections that a single practice cannot match.

D. Payer and Other Vendor Contracting

i. What Does This Mean?

A DSO may also agree to assist the practice in negotiating provider agreements with payers, although all decisions as to which payers or dental plans to accept should remain with the practice.

ii. What Might This Look Like?

An example of what a provision regarding contracting may look like would be: *“To the extent permitted by applicable law, Service Company shall assist the Practice in evaluating and negotiating any contract with a third party; provided that (i) with respect to contractual relationships with third-party payers (collectively, the “Payer Contracts”), the Practice may delegate the negotiation and evaluation of the terms of the Payer Contracts to Service Company, provided, however, that the Practice shall have the ultimate authority to set the parameters under which the Practice will enter into Payer Contracts and to execute the Payer Contracts, and (ii) all decisions related to clinical equipment and supply contracts, clinical personnel agreements and other clinical arrangements shall remain in the control of the Practice, provided that the Practice remains within the budget. Notwithstanding anything contained herein, the Practice agrees to consult with Service Company prior to making any decision regarding the items listed in the previous sentence.”* In a closely aligned relationship, the DSO may also assist in administration of all contracts.

iii. What Should the Dentist Consider?

A practice should carefully consider whether, or to what extent, having the DSO take over responsibility for negotiating provider agreements may affect the practice's relationships with payers. Further, the practice should ensure that ultimate authority with respect to the plans in which to participate and other clinical matters remain with the practice. However, as with billing and collecting, DSOs may bring experience in negotiating payer and other agreements as well as industry knowledge that a solo practice may not have.

⁹ Note in particular a dentist's obligation to code/bill accurately, and that errors made by a service organization in this are a will likely be submitted under the dentist's name, which might raise legal/ethical challenges for the dentist.

E. Taxes

i. What Does This Mean?

While payment of taxes will remain the practice's obligation, the DSO can assist in preparing and filing tax returns and related documents.

ii. What Might This Look Like?

This kind of provision may read: *"With respect to all tax periods beginning on or after the Effective Date, Service Company will oversee the preparation of all appropriate tax returns and reports required of the Practice."* In some circumstances, the provision may also contemplate the practice paying for state sales and use taxes related to the administrative services.

iii. What Should the Dentist Consider?

If a dentist already has a good relationship with an accountant or other financial professional, these may not be services that the dentist requires in a limited or bundled service arrangement. In a closely aligned relationship, this is simply a service that the DSO is likely to provide. However, in any relationship, a dentist should understand potential liability as a result of errors or omissions by the DSO in handling tax matters. Per the business services agreement, what is the DSO's responsibility (e.g. indemnifying the dentist) in that instance?

F. Ownership of Equipment

i. What Does This Mean?

If the arrangement between the DSO and the practice covers only limited services, then there would be no change in ownership of the practice's equipment. However, in closely aligned arrangements, the DSO will generally own and maintain the equipment (unless prohibited by state law) and lease such equipment to the practice via the business services agreement.

ii. Example

Language in a business services agreement, which provides the practice with certain equipment, may read similarly to the following: *"Service Company may provide certain Equipment (defined herein) to the Practice pursuant to this Agreement. As reasonably determined to be necessary by Service Company, after consulting with the Practice, following the Effective Date, Service Company may, at the Practice's cost and expense, acquire or lease, or arrange for acquisition or leasing of Equipment. To the extent any Equipment is acquired or leased by Service Company, Service Company hereby grants the Practice a license to utilize the Equipment and the Practice agrees to so license the use of such Equipment from Service Company. To the extent applicable after the Effective Date and consistent with the foregoing, the Practice shall consult as needed with Service Company regarding the selection and potential acquisition of Equipment for the Practice by Service Company. Title to all Equipment and other capital assets acquired or leased for use at, or primarily in connection with, the operation of the Practice shall be acquired or leased by, and remain at all times, including during and after the term, the sole property of, Service Company and remain in the name of Service Company. Service Company shall be responsible for performing or arranging for all repairs, maintenance, and replacement of the Equipment."*

iii. What Should the Dentist Consider?

A dentist considering a closely aligned arrangement with a DSO should consult with counsel to evaluate applicable law regarding ownership and maintenance of equipment. In addition, a dentist should consider the extent to which they will have input into issues related to the acquisition, ownership, and maintenance of equipment. Moreover, the dentist should consider the consequences if the DSO arrangement is terminated. However, the DSO may bring experience, industry knowledge, and economies of scale that may allow them to acquire and maintain equipment more efficiently than a stand-alone practice.

G. Real Property

i. What This Might Look Like?

In closely aligned arrangements, the DSO will generally lease or own the real property where the practice's offices are located, and then lease or sublease that space to the practice, unless prohibited by state law. As with the equipment, this will be less common in limited or bundled service arrangements.

ii. Example

Language in a business services agreement may read similarly to the following: *“To the extent permitted by applicable law, Service Company will, at the Practice’s cost and expense, provide or otherwise arrange for the provision to the Practice of offices, for such days and times as mutually agreed upon by Service Company and the Practice, for the Practice’s use. The Practice shall use and occupy the offices, and shall cause dentists and other clinical staff to use and occupy the offices, solely in connection with the business of the Practice and the provision of clinical services during the Practice’s normal business hours as may be determined to be appropriate by the Practice and Service Company from time to time. Service Company shall also manage and maintain the offices, at the Practice’s cost and expense, during the term of this Agreement. In consultation with the Practice, Service Company shall oversee all management, maintenance and other decisions pertaining to the offices consistent with the terms of this Agreement. Service Company shall maintain the offices in good condition and repair, reasonable wear and tear expected, and shall provide all utilities required in connection with the operation of the offices. Service Company shall provide such additional and/or replacement facilities as it deems necessary, in consultation with the Practice, from time to time.”*

iii. What Should the Dentist Consider?

A dentist should consult with counsel to evaluate existing real property arrangements in order to avoid potential conflicts that may arise by having the DSO take over responsibility for real property matters, as well as the potential effect of applicable state laws on such an arrangement and the consequences if the DSO arrangement is terminated. Note that the DSO controlling the premises would make it all the more difficult for the dentist to terminate the relationship, should the dentist so desire at some point in the future.

H. Information Technology (IT) Infrastructure

i. What This Might Look Like?

Typically, a DSO in a closely aligned relationship with a practice, will be responsible for acquiring, maintaining, and upgrading the IT infrastructure for the practice. However, this can be a limited service that a practice seeks to obtain from a DSO, and it may also be a service provided as part of a bundled services package.

ii. Example

If a DSO will provide information technology to a contracted practice, the provision in the business services agreement may read as follows: *“Service Company shall license to the Practice and the Practice shall use all software, hardware and any other components of any data or information systems (collectively, the “Service Company IT”) provided by Service Company in accordance with and subject to all of the terms and conditions of any license or sublicense agreements, leases or any other agreements that such Service Company IT are subject to, and the Practice shall not allow or permit any person to use the Service Company IT or any portion thereof in violation of any such license, sublicense, agreements, lease or any other agreements.”*

iii. What Should the Dentist Consider?

A dentist considering a closely aligned arrangement with a DSO should evaluate the practice’s existing IT infrastructure and determine the extent to which it is compatible with the systems to be used by the DSO. In addition, a dentist should consider the extent to which they will have input into IT issues and related matters. DSOs may be able to bring expertise, industry knowledge, and economies of scale to IT matters that a single practice would not typically possess. Moreover, the dentist should evaluate the respective obligations for HIPAA compliance and the privacy and security of protected health information, such as whether the dental practice or the DSO is responsible for security safeguards, risk analysis, breach notification, and training.

I. Marketing

i. What Does This Mean?

One of the administrative services that a DSO will commonly offer to dental practices is marketing services. This applies to relationships along the entire DSO/practice relationship continuum. A DSO may have the personnel and resources to assist a practice with respect to marketing, public relations and advertising, including with the practice’s social media presence.

ii. Example

A provision pursuant to which a DSO will provide marketing services may be something like: *“To the extent permitted by and consistent with applicable law, Service Company shall from time to time, at the request and direction of the Practice, furnish the Practice with the following marketing services, in such a manner, frequency and intensity as Service Company determines is reasonable and appropriate to achieve a public awareness of the trade name, nature and location of Practice: (a) advertising in various media, (b) maintenance of a Practice website, (c) maintenance of a social media presence, and (d) assisting the Practice with area and targeted outreach.”*

iii. What Should the Dentist Consider?

First and foremost, it is not uncommon for state dental statutes and regulations to limit the marketing services (or means of compensating the DSO) that a DSO or other third party can provide on behalf of a dental practice. Therefore, it is important to understand what those limitations are and to ensure that they are addressed both in the business services agreement as well as when the services are actually carried out by the DSO. The practice likely should maintain a strong voice in any marketing activities, and evaluate which party is responsible for compliance with laws that may apply to marketing, such as federal and state advertising and privacy laws.

J. Electronic Records

i. What Does This Mean?

The DSO may have a preferred electronic dental records vendor, and it may be able to obtain economies of scale in pricing that will be helpful to a dental practice. This, again, is the type of service that may be offered in any of the relationships along the DSO/practice continuum.

ii. Example

A business services agreement clause pursuant to which the DSO may provide electronic health records systems may read as follows: *“Service Company will provide or arrange for information technology services for the Practice, including technology for patient scheduling and the storage and maintenance of files and records relating to the operation of the Practice.”*

iii. What Should the Dentist Consider?

As a threshold matter, the practice should ensure that it retains ownership of the dental records, which is often a requirement under state law. Further, a dentist should review how the DSO proposes to handle electronic health records and evaluate whether it would be compatible with existing systems and/or how any necessary transition would be accomplished. This is particularly important if the DSO will not otherwise be providing information technology hardware or software. In addition, a dentist should understand the extent to which they will have input into decisions regarding the use of and access to electronic dental records and which party is responsible for compliance with HIPAA and applicable state data privacy, security and breach notification laws. If the practice or the dentist will not own the dental records (in case state law allows for non-dentist ownership of the records), the agreement should provide for access by the dentist or the practice during the term of the agreement and following termination or expiration.

V. Business Services Agreement – Practice of Dentistry

As previously noted, a DSO cannot be involved in clinical matters or matters involving professional judgment. The professional practice of dentistry must remain with licensed individuals. This extends to final approval of fee schedules, setting the number of patients to see each day, and the assignment of which dentist will treat which patient. Bills still need to come from the practice, and payments need to be made to the practice, even if those payments are deposited into an account over which a DSO has some control. Dental professionals should decide what diagnostic tests are appropriate for a particular condition and should determine the need for referrals to, or consultation with, another healthcare provider.

With respect to human resource matters, the DSO may provide payroll services and, depending on the type of relationship, may handle benefits. In more closely aligned arrangements, the practice's non-clinical personnel may be employed by the DSO and provided to the practice to perform certain non-clinical services, such as reception, management, and billing and collections. The practice would pay for those individuals' services as part of the business services agreement fee. However, the selection, hiring, compensation, evaluation and firing of clinical personnel need to remain with the practice, as these are a clinical matter. A DSO can provide assistance and recommendations, sometimes specifically at the practice's request, but cannot take charge of such matters.

VI. Employment of the Dentist

With respect to dentist employment agreements generally, refer to the ADA's [Dentist Employment Agreement](#)¹⁰ manual and related materials. The following sets forth considerations of the employment arrangement that a dentist may enter into with a professional entity that is closely aligned with a DSO, which will commonly occur in conjunction with a sale of a dentist's practice to such an entity.

A. Standard Terms

The employment agreement with a professional entity that is closely aligned with a DSO will encompass the terms and conditions that one would expect in any dental employment agreement. Below are standard terms to be included in a dentist's employment agreement with the new practice, along with some relevant questions and related concerns.

i. Insurance

To the extent that the dentist previously maintained a claims-made professional liability policy, the new employer practice may require the dentist to obtain a tail policy upon closing of the sale transaction. For going-forward periods, the practice should agree to provide appropriate malpractice insurance coverage for the employee-dentist. However, the dentist should pay close attention to the following:

- a) What are the required policy limits? Will they be adequate?
- b) Pursuant to the terms of the employment agreement, and to the extent that the new malpractice policy is a claims-made policy, are there instances in which the practice will not pay for the dentist's tail coverage upon termination or expiration of the employment agreement? Ideally, the dentist will simply receive the tail policy, but it is very common for the dentist to be on the hook to obtain the tail coverage if the dentist was a truly bad (e.g. fraudulent) actor.

ii. Indemnification

The indemnification provision of a dentist's employment agreement will generally state that the practice agrees to indemnify the dentist-employee for any damages that result from the practice's breach of the agreement, and vice versa. In an employment scenario, however, the obligations that the employer-practice has under the agreement are relatively limited, so the dentist is more likely to end up in breach. Further, this indemnification is different from what one would see in a practice purchase agreement or in the other agreements that a dentist may enter into as the owner of a practice that has close alignment with a DSO (as discussed in [Section II\(A\)\(v\)](#)).

iii. Term and Duration of Employment

When a dentist is evaluating an employment arrangement with a practice that is closely aligned with a DSO, there are a number of issues to consider with regard to the term and duration of employment. For example:

¹⁰ "Employment Agreements: The Devil's in the Details," <https://success.ada.org/en/regulatory-legal/employment-agreements-the-devils-in-the-details>

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- a) What is the length of the term? It is not uncommon for an agreement with a DSO-aligned practice to have a longer term. This is particularly true in situations where the dentist is receiving equity in the DSO.
- b) What the employment requires (e.g. what constitutes a work day (e.g. number of hours) or a work week)?
- c) Does the agreement automatically renew? Or is there any expiration? To the extent that the dental practice is in-network with government payers, like Medicaid or TRICARE, it may be advisable to include an automatic, or evergreen, renewal for healthcare regulatory purposes.
- d) Does either party have any ability to terminate the agreement voluntarily? While the practice may have a without cause termination right, an initial draft of the employment agreement may not include a reciprocal right for the dentist. Again, if the dentist is receiving equity in the DSO, the practice may not want the dentist to have an easy way to terminate the relationship. However, this is an area to negotiate, even if the dentist's voluntary termination right is exercisable only after a particular length of time.
- e) What are the other termination events? The employer-practice will generally seek maximum flexibility in termination ability. The dentist-employee may seek to push back on certain of the provisions and may seek reciprocal provisions with respect to their for-cause termination rights against the practice-employer.
- f) Is there any ability for either party to terminate prior to the end of the initial term? This often is tied to an early without cause termination right. If the dentist desires stability, then they may negotiate for no termination, at least not without cause, during the initial term.

iv. Non-Competition and Non-Solicitation

If the relationship does not work out or if the dentist desires to pursue other opportunities, it is imperative to understand what limitations exist with respect to the dentist's actions after they leave the practice. In many such instances, the dentist's contractual rights to practice may be severely constricted. For example:

- a) What is the geographic scope of the restriction? Particularly in situations where the employer-practice is closely aligned with a DSO, the geographic scope of a non-competition prohibition proposed in the employment agreement may be extensive. A dentist can certainly seek to limit the scope.
- b) How long does the restriction last? This duration should be thought out and negotiated depending on the dentist's individual goals and interests.
- c) What are the limitations on solicitation of patients or personnel? Are there any limitations that apply to vendors? The non-solicitation with respect to patients should have, at a minimum, a carve-out for general, non-targeted solicitations and advertisements. A non-solicitation with respect to personnel may include a look-back, so the individual cannot have worked for the practice for six months prior to hire by the dentist. Further, keep in mind that a non-solicitation and non-competition provision in an employment agreement with a DSO-aligned practice will commonly extend to other practices with which the DSO has a business services relationship. This can extend its scope even more. Laws concerning non-competition agreements are not

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only state specific, but also legislation in many states have changed these laws in the recent past. An attorney should be able to provide guidance on this issue.

v. Financial Terms

The financial terms of the employment agreement are critically important and the dentist-employee should consider a variety of financial and compensation issues. For example:

- a) Compensation. Is the position salaried or per diem? If it is per diem, what power does the professional entity have over the dentist's schedule? Is it based on production or collection, or some combination of salary plus production/collection, perhaps? Is there any type of bonus program?
- b) Benefits. What are the benefits offered? For instance, health and welfare plans, retirement, continuing education, license costs (for a primary state or all states), ADA membership, professional liability insurance, and so on. Will those benefits start on day one of employment? What is the vacation policy?
- c) Equity. If this is a closely aligned relationship, is there any opportunity for the dentist-employee to receive equity in the DSO, if that is something that the dentist desires? As noted in various provisions above, this can lead to longer terms and less ability to terminate an employment arrangement.
- d) Relationship with Business Services Agreement. What, if any, relationship is there between the employment agreement and the business services agreement?

B. Additional Considerations for Employment with a DSO-Aligned Practice

There are additional matters to investigate and consider in conjunction with employment with a practice that has a closely aligned arrangement with a DSO, particularly where the dentist may function as the owner of the professional entity. As has been discussed, to comply with applicable law in most states, the dentist must retain control over clinical matters and exercise professional judgment accordingly. Therefore, a dentist-employee should discuss the following issues with any potential DSO partner and/or the closely aligned practice:

- i. Scheduling; time per patient; number of patients seen each day
- ii. Treatment planning
- iii. Treatment pricing; refund decisions.
- iv. Referral patterns
- v. Access to patient records or patient data
- vi. Selection of and arrangements with laboratories, suppliers, and equipment vendors
- vii. Communications with patients regarding clinical matters
- viii. Staffing decisions, including: selecting, hiring, and firing; compensating personnel; and disciplining staff

While there may be different treatment of certain of these issues depending on where along the continuum the arrangement falls, certain issues clearly constitute clinical matters that should be controlled only by dentists or other licensed staff. Ideally, by discussing these matters up front, the parties can clarify them in the documentation between the parties.

VII. Termination of the Relationship with the DSO

Once a dentist enters into a relationship, of any kind along the continuum of services, with a DSO, what happens if the arrangement does not work out? What are a dentist's rights and obligations? In general, as with most other matters, the contracts or agreements between the parties will govern.

Therefore, prior to entering into any business services agreement with a DSO (and ultimately any employment agreement with a DSO-aligned practice), a dentist should confirm with counsel what their options and obligations are in the event of: (A) a breach of the agreement by either party, (B) non-renewal of the agreement, (C) for-cause termination events, and (D) without-cause/for-convenience termination. A dentist should clearly understand what they could do that would end up putting them in breach of the applicable agreement. Further, is there ever a situation when the agreement would simply expire? When would that occur? What if the dentist wants to terminate the agreement after a couple of years? Does the agreement allow for that? What bad actions could the dentist or the DSO take that could put the arrangement at risk of termination for-cause?

Further, a dentist and their counsel should discuss the following in connection with future termination:

A. Are there liquidated damages for terminating early?

A dentist should work with counsel to negotiate these kinds of provisions out of a business services agreement (or, at least, seek to make some sort of significant compensatory arrangement for any early termination of the dentist by the DSO, perhaps even under certain "for cause" scenarios). In a closely aligned relationship, on the continuum, that may be more difficult than it is in a limited service or bundled service option.

B. Are there limits placed on the dentist through restrictive covenants, like non-solicitation and non-competition?

Separate and apart from any employment relationship, a business services agreement may also contain restrictive covenants like non-competition and non-solicitation restrictions with respect to the dentist's practice (as opposed to the dentist personally). Further, unlike in the employment context, a non-competition provision is likely to prohibit the dentist's practice from going out and offering administrative services like those provided by the DSO.

C. Is there any non-disparagement provision?

These provisions limit the dentists and, assuming the provision is mutual, the DSO's ability to make, for example, derogatory, disparaging, demeaning or belittling statements about the other party. A business services agreement may not default to having the provision be mutual, so a dentist should request that the DSO not be able to disparage them as well. Further, as these provisions typically apply both during the term of the business services agreement and for some period thereafter, ensure that the tail period is a reasonable length, generally not more than two years.

D. What obligation does the DSO have to transition the administrative services either to a third party or back to the dentist?

Particularly in limited service or bundled service arrangements, the business services agreement is likely to end at some point. Ideally, the business services agreement will specify what the DSO is required to do in order to transition the services that were provided by the DSO back to the dentist or to another service provider designated by the dentist. This is particularly important where the DSO was doing the practice's billing and collecting. In order to limit any disruption in collections, the DSO may need to continue that service for a short period after termination while the transition occurs.

E. Who holds (and will) retain custody of the dental records upon termination?

In a limited or bundled service relationship, both ownership *and* custody of the dental records likely remained with the dentist. However, in a more closely aligned relationship (separate from any practice sale), the DSO may have been appointed (in the business services agreement, or in a separate stand-alone agreement) as "record custodian" for the patient records. Will custodianship of these records transition back to the dentist? The dentist will likely wish to assure access to the dental records in case of a future patient claim.

F. What happens to the non-clinical staff if they became employees of the DSO?

While staff is unlikely to become employees of the DSO in a limited services arrangement, there are situations in which the DSO will hire them in bundled service arrangements and they generally always become employees of the DSO in a closely aligned relationship. When the business services agreement terminates, it should be clear what occurs with respect to the former practice staff.

The agreement should be very clear about what happens if any of the above events occur with respect to either the dentist or the DSO, and a dentist should understand them. Each party's obligations if the relationship terminates or expires must be clear to ensure a clean break, to the extent possible, in the relationship.

VIII. Special Matters with Respect to DSOs

There are, of course, risks and issues in connection with owning a dental practice. Various regulatory requirements apply to all dentists and dental practices, like the Health Insurance Portability and Accountability Act of 1996, or if there are government payers, the federal Anti-Kickback Statute. Various state laws, specifically including the state's dental practice act, also have broad applicability. However, there are additional matters to consider in connection with DSO relationships. As discussed in [Section I\(C\)](#), DSOs are limited in what they can do for and provide to dental practices because of state corporate practice of dentistry laws.

Ultimately, dental boards and other regulatory bodies can challenge the ownership structure or a dental professional's licensure, especially if the DSO over-exerts its authority or appears to be practicing dentistry. One prominent case involved Aspen Dental Management, Inc. (ADM) in New York back in 2015. In this case, the New York Attorney General accused ADM of, among numerous allegations, getting too involved in, and imposing too much control over, clinical matters that directly affected patient care and so had engaged in the unauthorized practice of dentistry and dental hygiene. ADM was required to pay \$450,000 in civil penalties, enter into a settlement agreement that dictated specific actions that had to be followed in connection with its future operations, and pay an independent monitor that to oversee the implementation of the settlement over a three-year period.

IX. Legal Matters – Why Retain an Attorney to Review Your Business Services Agreement and How to Select the Right Attorney

The material in this guide should make a dentist more knowledgeable about and better able to understand the issues found in a business services agreement. A lawyer drafted the business services agreement; thus, a lawyer should review it. These materials are not a substitute for review of the proposed agreement(s) by a lawyer to advise you. The business services agreement with a DSO is likely one of the more important agreements that a dentist will ever sign. Failing to retain counsel to review the agreement(s) would be penny wise and pound foolish. Therefore, dentists are urged to do so.

The ADA receives a number of inquiries each year with the question, “Can the ADA recommend a lawyer who can handle my legal matter?” As a national association, the ADA does not maintain a listing of lawyers in any area who are qualified and sufficiently experienced to handle your legal matter. The following material will provide some guidance for finding the right lawyer. If you are in a hurry, however, and do not have the time to read the material on selecting a lawyer presented below, here is some broad advice in a nutshell: Choose an attorney in somewhat the same manner that an attorney who is new in town should select their dentist. For those who do have the time for a more detailed discussion of how to select an attorney, keep reading.

A. What Type of Attorney Does a Dentist Need?

The threshold question is usually: Why do you need the attorney? Any situation involving your legal rights and obligations is a situation that you should consider consulting a lawyer. Examples of a few such situations include:

1. Purchase/sale of, or starting, a business (such as a dental practice)
2. Real estate transactions
3. Estate planning (wills, trusts)
4. Family matters (divorce, adoption)
5. Contractual matters (drafting, review of, disputes over)
6. Governmental agencies (investigations, inspections, citations)
7. Labor and employment matters
8. Litigation (you are being sued or threatened with a lawsuit)
9. Criminal matters (you have been arrested and/or accused of a crime)

Some attorneys practice more as generalists, while some practice in more specialized fields of law. An attorney who might be perfectly qualified to help defend an employee’s claim of retaliatory discharge would likely not be the best attorney to manage a dentist’s legal obligations in case of a breach of HIPAA protected patient health information. Just as you would not go to an urologist if you were having migraines, you would not go to an attorney specializing in patents to review your DSO business services agreement.

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Your business services agreement is of a more specialized nature than, say, closing on a house or drafting a basic will. While a competent, bright, reliable generalist attorney will likely do a fine job advising, this is a more specialized substantive area, where it would be to your benefit to retain someone experienced in at least the healthcare industry; even better if they have experience in the dental industry, and even better with DSO agreements.

B. Sources for Referrals

1. Personal and Professional Referrals: A simple way to start your search is to ask friends, relatives, coworkers, or other members of your community for recommendations of lawyers with whom they have worked. Professionals with whom you have a business relationship, such as an accountant, other healthcare professionals and businesspeople, and *especially* other dentists, may be able to provide a recommendation. Keep in mind that even if a recommended lawyer is not experienced in the dental industry or with DSO agreements, they might be able to direct you to other reputable lawyers who do. Be careful, however, not to make your decision based solely on another person's recommendation. The lawyer that is right for someone else might not be right for you.
2. Organizations:
 - a. Lawyer Referral Services: Your state or local bar association may have a lawyer referral service. The American Bar Association's directory of lawyer referral services can be found at <http://apps.americanbar.org/legalservices/lris/directory/>.
 - b. State Dental Association: Your state dental organization might be able to recommend an attorney. For example, the New York State Dental Association has an approved referral list of attorneys and law firms who specialize in dental matters, at <http://www.nysdental.org/membership/subpage.cfm?ID=14>.
3. Online: If you are unsuccessful in obtaining a personal or organizational recommendation for an attorney in your jurisdiction with experience in the dental industry, you may be able to locate such an attorney through an online search.

C. Due Diligence

Given the importance of this agreement, it will be worthwhile to spend the time to assure that you have selected the right attorney for the job. While the attorney who coaches your daughter's soccer team (or their law partner) will likely do just fine, as will the attorney with an office in the nearby strip mall, to do your house closing, this is a matter where it will in many cases behoove you to retain someone who understands the dental, or at least the healthcare, industry.

D. Interview

Meet and interview an attorney before engaging them. Also, interview more than one attorney. Most attorneys are willing to meet at no cost to discuss the possible engagement, but ensure that you have agreed in advance, on whether or not you will be charged for this initial meeting.

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1. Interview Considerations

- a) Fees: Be sure you know whether the attorney will be charging you on a flat fee basis or by the hour. You will want to have an estimate, in most cases, of how much the attorney's services will cost, and when you will be expected to pay before hiring them. You may wish to request a written engagement agreement with the attorney that details the engagement, including fees.
 - i. Be aware that some lawyers charge for an initial interview. As previously noted, you should know ahead of time whether there will be a charge for this initial visit and, if so, how much it will be. The initial meeting does not mean you have committed to hire the attorney.
 - ii. Types of fee structures:
 - a) Hourly rates: A fee calculation based on cost per hour for the attorney's services.
 - b) Fixed fee: A flat fee charged for a simple service, such as the review of an agreement (which may not include the cost of negotiating or reviewing revised drafts exchanged).
 - c) Contingent fee: A fee consisting of agreed-upon percentage of money the client receives from a settlement, plus all out-of-pocket costs or expenses incurred in the transaction or lawsuit (likely not applicable here).
 - d) Miscellaneous fees: Filing fees (physical and e-filing), photocopying, transcription, phone calls, messenger services, serving papers, witness fees, travel expenses, etc. Some lawyers also charge for work done by their paralegals/legal assistants.
- b) Practice Record: Though online reviews can be misleading, there are several ways to check an attorney's online reputation. One method is to check your state bar association's website, which may provide information as to whether any complaints, misconduct charges, or malpractice accusations have been filed against the attorney.
- c) Experience: Beyond anything listed on the attorney's website, you may wish to ask the prospective attorney to describe their experience and familiarity with similar matters.
- d) Communication: Legal matters require clear, consistent, and reliable communication between client and attorney, especially in an extremely important matters (such as where your dental practice is in play). You should choose an attorney who commits to respond to calls and e-mails in a timely manner. You might attempt to test this by sending an e-mail to the law office after an initial visit, detailing a few questions you might have. A delayed response might indicate that the attorney is too busy to give your matter the attention you would want.
- e) Personality: An attorney's personality may be important to you, since you should feel comfortable in their presence and working with them. You may need to openly share private information so that they can effectively represent you to achieve the best outcome. If you withhold information because you do not feel comfortable with your lawyer, that decision could negatively impact your results.

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2. Your Interview Preparation

- a) When you go to the meeting with the attorney, it may be helpful to bring the following:
 - i. A written summary of the issues. For example, this may consist of a summary of what you believe should be the terms of the agreement (what you have been orally promised), concerns that you have with the proposed agreement (e.g. with what is stated, or even omitted, from the proposed written agreement), and any other concerns related to the employment
 - ii. All documents related to the agreement. For example, if you own or lease the practice's premises, a copy of the lease or your deed might be relevant.
 - iii. Some lawyers might request that you send them the materials ahead of time so they can prepare to meet with you. Provide copies at the initial interview, not the originals.
- b) General note: Attorneys usually charge by the hour. The more focused and well organized you are (e.g. all documents supplied to the attorney and well organized), the less work for the attorney and the smaller your legal bill.

3. Interview Questions

You are essentially conducting a job interview. Consider questions such as the following:

- a) Are you experienced in this kind of matter? Describe your experience.
- b) Will you be the lawyer handling this matter, or will an associate be handling this?
- c) What do you see as the major issues in a matter like this?
- d) How long do you estimate it will take to turn around your review? Will I receive a written mark-up with your proposed revisions to the document?
- e) How much do you estimate your services will cost? What is your fee structure?

E. Your Attorney

1. Your Expectations

Once you have hired your lawyer, there are certain expectations for that relationship. You should expect your lawyer to:

- a) Prepare a written fee agreement, including information about what expenses you will be required to pay and the reasons behind those charges.
- b) Be straightforward and honest in giving you advice.
- c) Speak with you about the strengths and weaknesses of your position.
- d) Follow your instructions (as long as they are legal, ethical, and reasonable).

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- e) Protect your interests and consult you.
- f) Refrain from representing any other client with interests that conflict with yours during the time that they are representing you.
- g) Provide copies of all letters and documents related to your matter.
- h) Provide an itemized periodic bill of all work done and expenses related to your case.

2. Your Attorney's Expectations

- a) Be present and on time for all appointments and court dates (if applicable).
- b) Give the attorney reliable contact information for you and update them if your contact information changes.
- c) Be completely honest. Except in very special circumstances, your lawyer must keep any information you disclose confidential. It is important that they have as much information as possible that might help them to argue your position effectively.

3. Problems in the Relationship

If you have problems with your lawyer or are dissatisfied with the representation, first talk to them and see if the problems can be resolved in a mutually satisfactory manner. If you cannot resolve the problem, you have a right to fire the lawyer and hire a new one (though, depending on the matter, this may give rise to additional—and sometimes significant—costs).

Spending the time to carefully choose the right attorney to work with you to review (and, perhaps, to help negotiate) your business services agreement will protect your interests in this very important matter. Select carefully, and good luck!

The ADA designed these materials to assist our member dentists. We do not, in making these materials available to you, intend to give you legal or professional advice or opinions. To get appropriate legal or professional advice, you need to consult directly with a properly qualified attorney admitted to practice in your jurisdiction. To the extent ADA has included links to any third party website(s), we intend no endorsement of their content and imply no affiliation with the organizations that provide their content. Further we make no representations or warranties about the information provided on those sites, which we do not control in any way.

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