

PUTTING YOUR Legal House in Order

Take time now to review your dental practice and all the legal documents attached to it.

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BUSY PRACTITIONERS who are dedicated to the treatment of their patients often neglect their own professional needs. This can result in financial loss to their practice, and possible exposure to liability. By taking the time to perform a “legal checkup” of your practice, you may be able to avoid these problems and protect your interests without jeopardizing patient care.

Organization

Is your practice structured to minimize your legal exposure and maximize available tax benefits?

Do you have proper agreements in place to protect both yourself and your partners? Have agreements been updated to reflect changes in the law and/or in your practice?

Do you have proper agreements in place with your professional employees?

Practitioners often fail to give needed attention to the corporate structure of their dental practice. Depending upon your circumstances, a sole proprietorship, professional corporation, general partnership, limited liability partnership or limited liability company may not be right for you.

Close attention should be paid to the details of your relationship with your patients, but also with your partners or members. For example, agreements among partners or members need to thoroughly address, among other things, divisions of profits and losses, withdrawal of partners or members, death or disability, loss of professional license, responsibility for payment of debts to third-party creditors and lending institutions, and the retirement of a partner or member.

Additionally, a careful review of all other agreements with the practice should be conducted. Many practices employ other practi-

tioners to meet patient demand without admitting these practitioners as partners to the practice. Agreements with these outside parties should address not only employment issues like compensation, but also post-employment issues, including competition by the departed employee and similar concerns.

Financing

Have you taken advantage of the record low interest rates that are available now?

Unfortunately, many dentists are too busy to investigate what may be “once-in-a-generation” interest rates available to professional practices applying for working capital loans to cover office remodeling, equipment purchases, practice acquisitions or other real estate transactions. Dentists can save substantial sums in interest, debt service and other payments if they act now.

Real Estate

Are you thinking of buying a building, leasing new space or renewing your existing lease?

Are you sharing space with other practitioners?

Purchases of real estate to house a dental practice present peculiar issues that need to be adequately addressed—in writing. Particular attention needs to be applied to zoning issues and the lawful ability to use the building for the particular practice it is intended to house, as well as other concerns associated with the need to protect real estate assets from potential liabilities arising from the practice.

Dentists who lease office space need to be careful of lease clauses that allow building expenses to be passed through on top of the base rent. Particular care also needs to be paid to lease provisions that define the allowable use of the space to make certain they

accommodate the scope of the practice, as well as other provisions, which if not properly addressed, could have a materially adverse impact on your practice.

Space-sharing arrangements among practitioners are not uncommon, but they present potential issues that should be addressed in writing. These written agreements help diffuse potential disputes concerning the right to use and occupy space, responsibility for office expenses, responsibility and exposure to landlords, and other issues arising from what are usually informal arrangements.

Managed Care Contracts

Are you planning to renew or enter into a contract with a managed care organization?

Has this contract been drafted to balance the rights and obligations of both you and the MCO, while protecting the patient-dentist relationship?

Many managed care organizations have prepared "standard provider agreements" which contain contractual provisions that favor the MCO. These agreements are presented to dentists on a "take-it-or-leave-it" basis. Providers who are dependent upon the MCO for patients will often enter into these contracts without fully considering the consequences of doing so. A dentist should carefully review and understand any managed care contract he or she is considering signing. Provisions in the contract that are often glossed over at the time of signing may become troublesome for the dentist when a controversy arises that requires interpretation or clarification.

Corporate Compliance

Have you or your practice been audited by Medicare or a private insurance company?

Have you noticed an increasing number of your claims for reimbursement being denied or down-coded?

Have you recently entered into an agreement with a vendor, supplier or lessor?

Medicare, Medicaid and private insurance companies have begun to aggressively fight fraud and abuse in the health care industry. They are scrutinizing the billing of services, resulting in retrospective audits, demands for refunds and offsets to reimbursement.

Along with audits, the dentist must be aware of federal and state regulations that prevent certain types of financial arrangements. A violation of any one of these laws may result in severe civil or criminal liability.

By establishing a compliance program, and conducting self-audits on a regular basis, a dental practice can prevent these problems.

Practice Transactions

Are you thinking of buying a practice or selling your practice?

Are you taking the necessary steps now to maximize the value of your practice?

The purchase of a professional dental practice requires a significant amount of investigation as to the quality of the practice. It also necessitates the drafting of appropriate agreements to maximize the profitability of the acquisition and minimize exposure to existing liability associated with the practice.



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Among the issues that need to be addressed are the potential for "run-off" of existing patients, the ability of the seller to compete with you after the sale and exposure to the seller's liabilities.

The number-one concern of sellers of professional practices is getting paid on notes given by the purchaser of the practice to the seller to finance the purchase. Often there are no "hard assets," such as real estate, to secure the note. There are a number of other ways to secure those obligations for the benefit of sellers.

There may come a day when you choose to discontinue your practice. Non-assignable office space, non-transferable equipment financing or leases, financing requiring hefty pre-payment penalties and other agreements with third parties all present substantial obstacles to realizing maximum value for your practice.

Estate

Have you prepared a will?

Does your will need to be updated to address changes in your business and personal life?

Is your will drafted to minimize your tax exposure?

Having a will means that you sought to conserve your estate. Changes in your personal or professional life will require that your will be updated. You can reduce taxes and probate costs by designating what things will go where, and who will be responsible for handling the details. The cost savings that result from a carefully constructed estate plan mean that more of your estate can go to family members and other beneficiaries, and not to the government. ■

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