



NATIONAL DENTAL LAW GROUP AT
MANDELBAUM BARRETT PC



Key Considerations for an Associate Buy-In

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Whether you are a seasoned dentist considering retirement or a young dental professional looking to join an established practice as a co-owner, such buy-in transitions require careful consideration. Our legal team of experienced dental attorneys will assist you in every aspect of the transaction, from determining how the acquisition should be structured and negotiating the transaction terms, to closing the deal. Associate buy-ins often require the parties to consider issues beyond selling equity in the business. By way of example, the parties may need to negotiate new employment agreements that reflect the new structure or define appropriate restrictive covenants. Similarly, the associate buying-in may want a right of first refusal or right of first offer in connection with the sale of the practice. Negotiating a new or updated operating or shareholders' agreement will also be necessary to define the rights and responsibilities of the new practice owners, as well as the existing owner. Below we have compiled several key considerations which will likely play a role in every associate buy-in regardless of whether you are the associate buyer or the seller. We have organized the issues in a way that should follow the natural progression of an associate buy-in transaction.

Conduct a Practice Valuation

Agreeing on the value of the practice for a buy-in is an important step in getting a transaction off the ground. It is essential to get a fair market independent appraisal of the practice at the outset to avoid protracted negotiations on the issue. If the parties disagree with the valuation, they can submit their reasoning and engage in further discussions. Both the seller and associate buying-in may consider having their own accountants weigh

in on the valuation. The following factors are generally considered in valuing a practice: location; the owner's goodwill; years in existence and stability; client demand; the quality of the staff; and the practice's revenue growth. After the parties have agreed upon the practice value, and the percentage of ownership interest that the associate will buy, the next issue to consider is the associate's financing options.

Understand the Financing Options

How an associate buy-in is financed is a key determinant of long-term cash flow, and ultimately, the success of the deal and of the practice. The buy-in is often financed by a specialized commercial lender or by the selling doctor. Since the dental industry's low default rate encourages lenders to pursue a business relationship with dentists, an associate buyer will likely receive the necessary financing from a lender for a transaction he or she wishes to pursue. However, a bank will require the associate to offer collateral for the loan, or require a first lien position on the assets of the practice. Most sellers do not like this arrangement because if the associate defaults, the bank can foreclose on the

entire practice, not just the associate's share. In essence, the bank will require the seller to "guarantee" the associate's promissory note. Another option for paying the purchase price is "seller financing." Under this scenario, the associate buyer will pay the purchase price over time to the seller and execute a note to evidence this debt. This is, however, less advantageous for a seller as payouts can often take years. On the other hand, when the seller finances the deal, he or she has more "skin in the game" since the seller wants the associate buyer to make payments, and does not want to lose money on the deal.

Negotiate a Letter of Intent

Rather than immediately incurring the expense of negotiating and drafting a contractual agreement, both parties should consider entering into a letter of intent (also known as an “LOI”). This is a preliminary document which sets out the key terms of a proposed transaction. An LOI is usually non-binding, which means the parties are not obligated to complete the proposed transaction. The purpose of an LOI is to ensure that the parties agree on important terms such as purchase price, payment terms, due

diligence, and closing contingencies before investing further resources negotiating the deal. Signing an LOI signals the parties’ willingness to negotiate exclusively for a set period as the parties work to finalize the deal. Further, attorneys can use the LOI as a basis to quickly and efficiently negotiate and draft legally binding documents. Because the parties have agreed in advance to certain key points, less is left open for negotiation, and the chances of the deal falling through are reduced.

Engage in Due Diligence

Before an associate buys in to a practice, thorough due diligence must be completed. During due diligence, the associate and their lender will carefully assess the benefits and liabilities of the proposed acquisition. This entails inquiring into all relevant aspects of the past, present and future business of the practice. In-depth due diligence occurs after an LOI is signed and may be limited to an agreed-upon period or may continue through the closing date. By way of example, due diligence often includes running lien and judgment searches on the practice, which can reveal unpaid taxes, debts, or legal judgments; financial due diligence, which includes a deep dive into the seller’s cash flow,

financial statements, and tax returns; and legal diligence, which includes an exhaustive review of seller’s contracts, governmental permits, professional licenses, insurance coverage, employee data, litigation, corporate formation documents, employee benefits, and equipment, along with a host of other items. Conducting a detailed due diligence process is in both parties’ best interests. An associate does not want to overpay for the practice or inherit an un-expected liability, and the seller does not want to indemnify the associate for violations in the representations and warranties the seller makes when selling the practice.

Identify the Necessary Agreements

Once the parties have agreed upon the business terms of the buy-in, the proper agreements will need to be drafted in order to effectuate the transaction. Typically, these include, but are not limited to, the

purchase agreement, an operating or shareholders’ agreement, and employment agreements. Each of these agreements is explained in further detail below.

Negotiate a Purchase Agreement

The type of purchase agreement that is drafted will depend on the legal entity structure of the practice. If the practice is a limited liability company (“LLC”), the agreement will be a membership interest purchase agreement. If the practice is a corporation, the controlling agreement will be a stock purchase agreement. Regardless of the type of purchase agreement in place, such agreement will need to include the purchase price, payment

terms, the representations and warranties of the seller and the buyer, a list of other documents and information to be delivered at the closing, as well as other key terms such as representations of the selling dentist about the pre-closing operation of the practice, restrictive covenants, transition obligations, closing contingencies, and indemnification obligations.

Negotiate an Operating or Shareholders’ Agreement

The parties also need to agree upon the terms of their “new partnership.” Depending on the legal entity structure of the practice, this agreement will either be an operating agreement, if the business entity is an LLC, or a shareholders’ agreement, if the entity is a corporation. Some of the key terms that should be addressed in either type of agreement include ownership and voting rights; management responsibilities; distributions; restrictions on transfer/sale; limitations on liability; indemnification; meetings of the partners, and dissolution.

The operating or shareholders’ agreement should also address exit strategy issues which are set forth in the buy-sell section of the agreement. The parties will need to establish under what circumstances an owner (or their estate, if deceased) would be forced to sell their ownership

interest, and on what terms. Upon the occurrence of certain triggering events, an owner should be required to sell or offer to sell their ownership interest to the remaining owners or the company. This is particularly relevant in the context of an associate buy-in because the operating or shareholders’ agreement may be structured so the associate buyer eventually has the right to purchase the remaining equity in the practice, which will allow a doctor wishing to retire the freedom to exit the practice entirely. To this end, the operating or shareholders’ agreement should also identify a formula to value the selling doctor’s ownership interest and provide for payment terms (e.g., use of life insurance proceeds, the length of time for payment, and the applicable interest rate).

Each of the doctors should have written employment agreements which describe how they will be compensated and what benefits they will receive. Having written employment agreements for all owners will ensure that all parties are being treated equally, and that the terms of employment align with the rights and responsibilities set forth in the operating or shareholders' agreement.

Further, a new employment agreement is needed as the associate's prior employment agreement may no longer apply once they become an owner. Finally, the employment agreements will set forth how each doctor can be terminated for "cause," (e.g., conviction of any felony, suspension, or termination of the doctor's professional license, etc.) which in turn will likely trigger a sale of ownership interest under the operating or shareholders' agreement.

Restrictive Covenants

Operating and shareholders' agreements and employment agreements also serve the important function of establishing the restrictive covenants (e.g., non-competition, non-solicitation, and confidentiality) that each doctor must comply with for an agreed upon period of time (e.g., three to five years) and in the event their employment with the practice is terminated. It is very important for all parties to understand their partners' future plans. This is especially relevant when a younger associate is buying in to a practice owned by an older doctor. Will the doctor be retiring in the near

future? Does the doctor intend to enter into a new business venture upon retirement from the practice? How long can the associate expect their partner to stay employed at the practice? Knowing these details can help both parties negotiate a reasonable and enforceable restrictive covenant, but, more importantly, it can prevent the parties from making a mistake about the status of the business and the seller's intentions for the future. These are the types of misunderstandings that lead to disputes and litigation.

Conclusion

Clearly, there are many factors that need to be considered in an associate buy-in transaction. The issues delineated above are not all-encompassing. Further, all parties, practices, and transactions are different, so the parties should expect different issues to arise during their

process. The key is to engage the right legal team that will guide you through this important process. Our dental law attorneys have the experience necessary to help you navigate the associate buy-in process and will work to ensure a successful transaction.

Assemble *your team*

It takes an entire team of dental industry professionals to ensure the success and growth of a dental practice no matter where you are in your professional journey. Each advisor serves a unique role in providing proper guidance to dental professionals as they navigate the successes and challenges of practice ownership.

There are six essential roles every dentist and dental specialist should consider when building an advisory team:

- **Accountant** – Understands dental practice economics and ensures accurate financials, tax planning, and practice valuations.
- **Practice Consultant** – Offers operational insight to reduce costs, improve efficiency and growth, and strengthen overall business operations.
- **Attorney** – Protects your interests by providing advocacy and legal guidance on contracts, compliance, risk management, and transition planning.
- **Financial Advisor** – Helps structure personal and practice finances for long-term stability by offering guidance on investments, retirement planning, taxes, etc.
- **Specialty Lender** – Evaluates practice cash flow and growth potential and can often offer one hundred percent financing and working capital in a dental acquisition.
- **Broker** – Assists in valuing and marketing a practice, finding opportunities to acquire and grow, and serves as a resource in helping parties reach a fair deal.

It is crucial that each of these professionals have experience working specifically with dental and dental specialty practices. Often, one trusted advisor will recommend other qualified professionals to help you complete your team.

Taking the time to build this team will provide you with the advice and perspective needed to make informed decisions throughout your career.

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focused on *results*.



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