Contract considerations

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When a doctor in a group dental practice decides to sell his part of the practice, problems can develop. In most situations, the departing doctor receives, for his part of the practice, a certain price. In most cases, the new doctor replacing him will pay the departing doctor or the group the same price that the departing doctor receives. The problem that develops is that the new doctor is not sure that all the patients of the departing doctor will stay with him. The new doctor’s fear is that some of the patients will see another doctor in the group that they might have had contact with in the past. This could occur if someone was seen as an emergency patient or a patient that another doctor in the group did an exam on when the departing doctor was out of the office. The departing doctor also might have referred some patients to other doctors in the group for specific procedures. Because of this fear, the new doctor may be unwilling to pay the asking price for the practice. I am aware of situations where remaining doctors in the group have encouraged patients of the departing doctor to come see them. This is unfair to the buying doctor, because he may not receive the value that he thought he was buying.

To deal with this situation, many groups have written into their doctor-employment agreements what is referred to as the 85/15 or 90/10 rule. This rule states that if any patient of the departing dentist sees another doctor in the group before that patient has seen the buying doctor, the doctor that they see must pay the buying doctor 15 percent of the gross production on those patients for a two- or three-year period. What this accomplishes is that the buying doctor receives compensation for all patients lost to other doctors in the group. He, therefore, feels more comfortable paying the full price for the practice, thus assuring the selling doctor the best price possible. In like manner, the other doctors in the group are discouraged from encouraging patients of the departing doctor to see them for their future dental needs. If other doctors in the group are already busy seeing their own patients, why would they want to see and do work on patients that they are going to have to pay the buying doctor a percentage of the production? In most cases, other doctors in the group are not going to want to see the patients under those terms and they then will make every effort to encourage the patient to see the new doctor. In some situations, rather than using the 85/15 rule, the group may elect to use the 90/10 rule. The rule is the same except the payout is over four to five years.

Many considerations need to be incorporated into group contracts dealing with employment issues or ownership issues. How will termination take place? How will the value of the practice of the departing doctor be arrived at under different situations — death, disability, retirement, moving out of the area, staying in the area, etc.? The best advice is to obtain competent help before you join a group practice, before you start a group practice, or before you depart from a group practice, so that you can make sure that all matters are covered in the agreements you sign.

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