Smooth Transitions: What to Expect When You Buy a Dental Practice (and other Legal Stuff)

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Although your presenter today is a licensed attorney, nothing in this presentation should be taken as legal advice for a specific case, but purely general information regarding the dental practice transition process. If you have a specific legal need, please consult an attorney or other professional that is licensed in your state.
Build Your A-Team

- Attorney
- Accountant
- Banker
- Insurance Broker/Agent
- Real Estate/Lease Broker
- Practice Management Consultant
- Transitions Broker
- Equipment/Technology Representatives
- Marketing Specialists
- Financial Planners
- Architects/Contractors
Mergers & Acquisitions
Business Law
Contracts
Real Estate/Landlord Tenant
Employee Law
Health Care Law

Dental Practice Transition Attorneys

Jack of all trades, master of one.
Where do I find my team & practices?

<table>
<thead>
<tr>
<th>Team</th>
<th>Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td>– Google/Internet Search</td>
<td>– Local/National Transition Company’s Website</td>
</tr>
<tr>
<td>– Referrals from dental friends/other dental professionals</td>
<td>– MDA Website</td>
</tr>
<tr>
<td>– District or State Meetings’ Exhibit Halls</td>
<td>– Word of Mouth/Other Dental Professionals</td>
</tr>
<tr>
<td>– MDA Website</td>
<td>– Send Letters to Dentists in Your Area</td>
</tr>
</tbody>
</table>
What to look for in a dental practice?

- Location
  - *Don’t overlook practices in outer ring suburbs and greater MN!*
- Strong Hygiene (beating heart of a practice)
- Collections
- Active Patient Count
- Overhead (50-70%)
- Discretionary Expenses
- Percentage of referrals (ie pedo, perio, endo, ortho, etc)
- Ways for you to grow the practice
Journey to Practice Ownership

- Start-Up
- Solo Practice
- Associate Buy-In
Business Formations

- Sole-Proprietor
- Partnership
- Corporation (C-Corp or S-Corp)
- Limited Liability Company
- Professional Firms Act
<table>
<thead>
<tr>
<th></th>
<th>Sole Proprietorship</th>
<th>Partnership</th>
<th>C Corporation</th>
<th>S Corporation</th>
<th>LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal Status</strong></td>
<td>same entity as owner</td>
<td>same entity as owner</td>
<td>separate entity from owner</td>
<td>separate entity from owner</td>
<td>separate entity from owner</td>
</tr>
<tr>
<td><strong>Separate Taxable Entity from Owner</strong></td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Depends on tax status as sole proprietorship, partnership, or corporation</td>
</tr>
<tr>
<td><strong>Ease of Formation</strong></td>
<td>Very easy</td>
<td>Very easy; Partnership agreement is helpful</td>
<td>Articles of incorporation generally required</td>
<td>Articles of incorporation generally required</td>
<td>Articles of organization generally required</td>
</tr>
<tr>
<td><strong>How to Form</strong></td>
<td>No state filing required, unless doing business under an assumed name.</td>
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<td>State filing required.</td>
<td>State filing required; Subchapter S election typically must be made within 60 days of formation</td>
<td>State filing required.</td>
</tr>
<tr>
<td><strong>Owner Liability</strong></td>
<td>Owners have unlimited liability</td>
<td>Owners have unlimited liability</td>
<td>Shareholders are typically not personally liable for corporate debts.</td>
<td>Shareholders are typically not personally liable for corporate debts.</td>
<td>Members are not typically liable for the debts of the LLC.</td>
</tr>
<tr>
<td><strong>Formalities and Record-Keeping</strong></td>
<td>Relatively few legal requirements.</td>
<td>Relatively few legal requirements.</td>
<td>Formal board and shareholder meetings and minutes are required, and annual state reports required.</td>
<td>Formal board and shareholder meetings and minutes are required, and annual state reports required.</td>
<td>Formal meetings and minutes are not required; however annual state reports are required.</td>
</tr>
<tr>
<td><strong>Recommended for</strong></td>
<td>Owners wanting minimal formalities, maximum flexibility, and not worried about personal liability.</td>
<td>Owners wanting minimal formalities, maximum flexibility, and not worried about personal liability.</td>
<td>Owners needing maximum tax and ownership flexibility, combined with liability protection.</td>
<td>Owners wanting the liability protection of a corporation, with the simplicity of passthrough taxation of income</td>
<td>Owners wanting the liability protection of a corporation with less corporate formalities, and the simplicity of pass-through taxation of income.</td>
</tr>
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</table>
Dental practices in MN must be 100% owned by licensed dentists.

Keeps the actual business entity itself accountable to MN Board of Dentistry. Also allows dentists to hold onto the power of profession and keep dental practices in their hands.

Does not allow transfer of interest in dental practice to spouse or child, unless they are a dentist (ie divorce, death). Upon death of dentist, beneficiary has one year to sell.
Assumed Names ("DBA")

- Assumed Names are normally reserved for sole proprietors, but are sometimes used by entities. For example, you want the legal name for your practice to be “Jon Snow Dental Group, PLLC,” but you want the practice to be called “Direwolf Dental.”
- Requires an additional filing with the Secretary of State and publication in local newspaper for two cycles.
- If you have an assumed name, don’t forget to renew with the SOS every year along with your legal entity.
Non-Competition Agreements
Non-Competition Agreements

– No statutes, rely on case law & industry standards
– Case by case basis
– Population density (how many dentists can population hold? General dentists will be different than specialist.)
– Courts weigh rights of business and person’s ability to find another job
– “Reasonable” Standard
– Patient Rights to see health care provider of their choice (solicitation clauses)
Non-Competition Agreements

– Restricted Area and Period of Time
  – *Population density and “reasonable” standard*
  – *This will be different for general dentists vs. specialists*

– Solicitation of Patients
  – *Does not include general advertisements (ie websites, tv commercials, etc.)*
  – *Cannot prevent patient from seeing restricted dentist outside restricted area (ie “employee cannot interfere with business relationship of employer’s patients”=unenforceable)*

– Solicitation of Employees
  – *Cannot restrict non-solicited employees if they come of their own free will*
Legal Documents

- General Legal Documents for a start up, buying a solo practice or an associate buy-in
- Every transition process is different and will require a combination of these documents or even new/different documents
- Think outside the box!
Start Up

LEASE/PURCHASE AGREEMENT FOR BUILDING

BUSINESS FORMATION DOCUMENTS

CONTRACTS WITH VENDORS, INSURANCE COMPANY, EMPLOYEE HANDBOOK, ETC.
Solo Practice

- Letter of Intent (LOI)
- Business Formation Docs (if Asset purchase sale)
- Purchase Agreement (Assets or Stock)
- Employment Agreement/Non-Compete
- Lease/Purchase Agreement of Building
- Bill of Sale
## Associate Buy-In

<table>
<thead>
<tr>
<th>LOI (maybe)</th>
<th>Purchase or Buy/Sell Agreement (Asset, Stock, Membership Interest)</th>
<th>Business Formation (Asset, Seller Sole Proprietor)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shareholder/Employment Agreement/Bylaws or Operating Agreement</td>
<td>Lease (if Seller owns Building)</td>
<td>Deferred Compensation Agreement/Promissory Note/Pledge Agreement/Bill of Sale</td>
</tr>
</tbody>
</table>
Maintaining Your Legal Entity

- Annual Written Actions/Meeting Minutes
  - Renew with Secretary of State & MN Board of Dentistry each year
  - Keep proper records
  - Keep corporate documents and accounts separate from personal
  - “Piercing Corporate Veil” or “Liability Shield”
    - Can go after personal assets if the owner is siphoning funds/insolvent, non-functioning board/managers, company is façade for individual dealings, absence of corporate records and failure to observe formalities (formalities not as important for sole member LLCs)
“Success is doing the basics well, most of the time”

Mark Leblanc
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