

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

Hillary Harms Becchetti, J.D.

Pine Lake Dental Law & Transitions

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.

Legal Disclaimer



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?

Team

- Google/Internet Search
- Referrals from dental friends/other dental professionals
- District or State Meetings' Exhibit Halls
- MDA Website

Practices

- Local/National Transition Company's Website
- MDA Website
- Word of Mouth/Other Dental Professionals
- Send Letters to Dentists in Your Area



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

Business Entity Comparison Chart

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



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.

Minnesota Professional Firms Act

Minn. Stat. Section 319B

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)

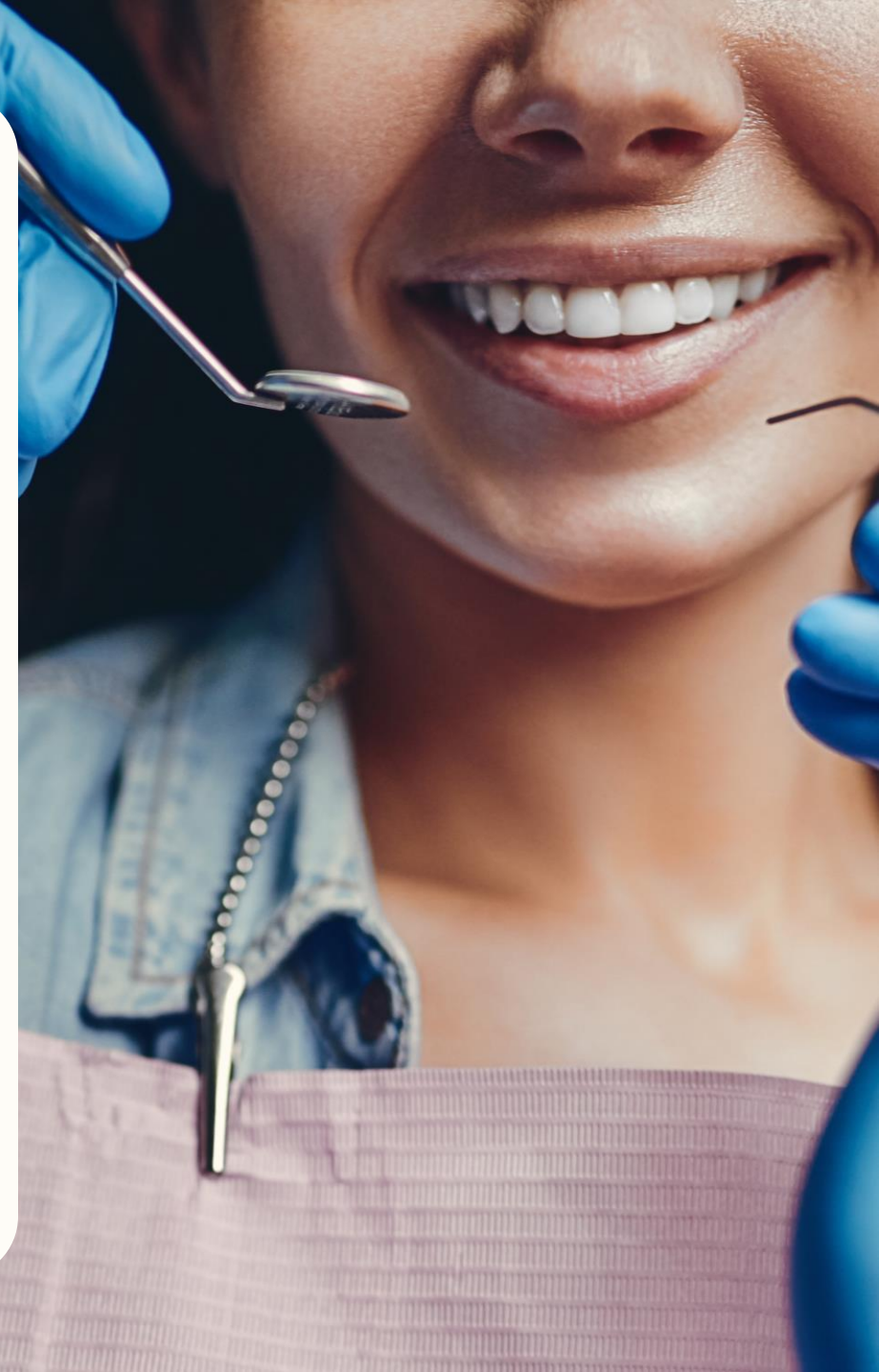


Non-Competition Agreements

- 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.



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

Solo Practice

Associate Buy-In

LOI (maybe)

Purchase or Buy/Sell
Agreement (Asset, Stock,
Membership Interest)

Business Formation (Asset,
Seller Sole Proprietor)


Shareholder/Employment
Agreement/Bylaws or
Operating Agreement

Lease (if Seller owns
Building)

Deferred Compensation
Agreement/Promissory
Note/Pledge
Agreement/Bill of Sale

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



pine lake

LAW FIRM PLLC

Hillary Becchetti, J.D.

Pine Lake Dental Law & Transitions

310 4th Avenue, Suite 5010

Minneapolis, MN 55415

Office: 612-206-3731

Direct/Cell: 651-428-2253

hillarybecchetti@pinelakelawfirm.com

pinelakelaw.com