Many solo dentists hire associates for a variety of reasons, including the ability to enjoy more personal freedom and produce a higher income. Having an additional dentist in the office has numerous advantages. If the associate is a recent graduate, he or she may help attract a younger patient base. If the associate has a different cultural background, this may also attract patients from a different demographic base. Of course, there are certain drawbacks and pitfalls that should be considered and avoided. At the outset, it is vital to ensure that the arrangement is appropriately structured and documented to deal with all of the possible consequences.

**Economics**
The first question to ask is whether the practice can support two dentists. Is the facility big enough and is the dentist willing and able to expand the location and purchase or lease additional equipment? Is the patient base large enough to keep the new associate busy — either on a full or part time-basis? If the owner truly desires to work less, this may be less of an issue. A thorough analysis of the practice’s financial information and tax returns over the previous couple of years is essential in determining whether hiring an associate makes good economic.

**Personalities**
Aside from the economic decision, it is also helpful to try to determine whether the personalities of the dentists are compatible. The owner will benefit from getting to know the candidate. Although the associate may have been the top of his or her class, how will he or she interact with the staff? Will the patients of the practice want to be seen by the associate? Does the candidate fit the culture and “feel” of the practice? How will patients, staff, and referrers react to the “new kid on the block?” Does he or she have the personality and the desire to grow the practice by getting involved in the community?

**Write it down**
The associate arrangement should be memorialized in a clear written agreement that delineates all aspects of the understanding and addresses all foreseeable scenarios. There is no one-size-fits-all associate agreement template that a dentist can download from the Internet or buy from a full-service dental company. The documents must be customized
in order to work for each situation. A standard employment agreement that may be helpful in a different industry or jurisdiction may, in fact, be counterproductive if it is not customized for each particular practice.

Hiring an attorney to prepare and negotiate the agreement is certainly not inexpensive, but like preventative dentistry, it is a very good investment.

**Employee or independent contractor**
While hiring the associate as an independent contractor may save the practice a few dollars, it rarely stands up to scrutiny by the IRS or the applicable state taxing authority. Without going into all of the factors, hiring a dentist as an independent contractor will typically violate both federal and state regulations (there are exceptions, so be sure to seek the advice of a tax professional and employment expert). As a general proposition, play it safe — treat the associate as an employee.

**Compensation**
The results of a thorough analysis of the financials and tax returns also will be greatly useful in establishing a compensation package for the associate. Of course, for a variety of reasons, it is possible that the owner may be ready to overpay the associate — especially if the associate is a component of the owner’s overall exit strategy. While the new associate may be expected to do his or her share of marketing in the community, it may take a year or more to have enough patients to fill the new dentist’s schedule.

Some associates are paid based upon their profitability (e.g., a percentage of profits), and others are paid on a per diem basis or some combination of the two. If the associate is paid based upon profitability, the agreement should clearly state whether the compensation is based upon production levels or actual collections. For a variety of reasons, it is more common for an associate to be paid based upon actual collections instead of production amounts. In addition, bonuses that are triggered by specific production/collection thresholds may also provide the associate with an incentive to grow the practice. Lastly, if the associate is paid based upon the practice’s collections, the agreement should clearly specify whether the associate will be paid following the end of the term if there are outstanding receivables arising from the associate’s services.

**Services**
To avoid misunderstandings, it is crucial for the associate agreement to clearly delineate the associate’s duties and responsibilities. For example, it is preferable for the associate agreement to specifically describe:

- *the requisite days per week in the office*
- *the requisite number of clinical hours per day, in addition to administrative responsibilities*
- *weekend on-call obligations*
- *marketing/community development obligations*
• minimum production/collection goals

False expectations
It is very common for associates to be hired with the expectation of a future buy-in or purchase of the practice. Unless the owner is ready to make that commitment, however, the associate agreement should not include a guaranteed purchase. Of course, if structured and documented the right way, hiring an associate can be an excellent low-risk method for determining whether the dentists are compatible enough to be partners. At the end of the term, the parties may — and frequently do — agree to negotiate a purchase of all or part of the practice.

Malpractice insurance and other benefits
Who will pay for the malpractice insurance? Even if the associate is required to pay for his or her coverage, it is helpful for the practice to pay for the coverage and require the associate to reimburse the practice. That way, the practice is assured that the correct coverage is in effect (and stays in effect).

Will the practice provide other benefits? If so, will the cost of those benefits be deducted from the associate’s compensation? The associate agreement should describe these benefits, as well as the number of vacation days the associate will have. In addition, many associates also are eligible to receive additional days off for attendance at continuing-education classes.

Term/termination
The associate agreement must have a term limit— it cannot continue forever. Since the parties may discover within the first few months of the relationship whether the associate is a match, it is always helpful to provide both parties with the right to terminate the agreement by providing reasonable notice. Of course, the practice should also have the ability to terminate the associate if the associate fails to satisfy his or her obligations, or in other situations which would make the relationship untenable. In addition, the agreement might provide the associate with a notice and cure period, whereby the associate will be given the chance to cure certain breaches before being terminated.

Noncompete/nonsolicitation
Ultimately, a dentist’s goodwill is his or her most important asset to be protected. As a result, a dentist’s goodwill should be protected legally by including well-crafted non-competition and nonsolicitation provisions in the associate. As a result, if a dentist decides to leave a dental practice, safeguards will be in place well in advance to prevent the departing dentist from taking advantage of the practice’s goodwill and “stealing” patients, referrers of patients, and/or employees. These agreements are difficult to enforce unless they are narrowly crafted to protect the practice’s goodwill, without unduly restricting the options available to the departing associate. Not all states allow non-competition restrictions in the context of a departing employee. It is certainly more challenging to protect one’s goodwill in these states, but equally important to do so.
Structure your agreement carefully
Upon determining that hiring an associate makes good economic sense for the practice, it is crucial to structure the associateship in the right way — from a business perspective and a legal perspective. With proper forethought and planning, an associate can reduce the owner’s stress, help the practice to earn higher revenues, and, ultimately, grow the practice.

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