

Ask the Broker

NOVEMBER 2010

Q

I have a practice with an associate, a hygienist and several key employees. Should I have something in writing about their employment that would facilitate a sale or transition?

Fred J, DDS

Even though we have an attorney on staff,

we are not lawyers and you need to consult your attorney on these matters. The law in different states also varies. However, I will expound on a few issues as to how I understand the situation here in California.

California is an "at will" employment state, but most attorneys would advise their clients have an "at will" clause signed by their employees as a stand-alone agreement or as part of an office manual. Along with an "at will" clause of employment, some attorneys would recommend that some type of "proprietary information" protection language also be part of the employment agreement. If one were to lose a key employee that has built relationships with the patient base, it would be wise to have some type of agreement in place that makes it clear that all patient information is proprietary to the practice.

Your attorney could also draw up language that would specifically address any efforts by the employees to solicit patients away from the practice. I have seen language that also includes proprietary management systems that are in place. Most of us dentists in California understand that covenants "not to compete" for employees (including dental associates) are not defensible in California, but obviously the proprietary information special to any practice could possibly be protected.

The language may have to be crafted differently for each type of dental employee, but any agreement that would help protect the practice goodwill in this fashion would obviously be beneficial for any buyer with these concerns. After all, the goodwill of most practice transitions represents up to 80% of the value of the practice. Maintaining the continued probability of patient visits to the practice, even in the event of employee turnover, is paramount to the value of the practice.

Again, I want to reiterate that these legal Human Resource questions should be directed to your attorney. It might be wise to address these matters well in advance of any planned transition and have your plan reviewed by your attorney on a regular basis to see if there are any changes to the law regarding these matters.

Questions? E-mail wps@succeed.net

Timothy G. Giroux, DDS



is the Owner & Broker at Western Practice Sales and member of the nationally recognized dental organization, ADS Transitions.

A graduate of Creighton University School of Dentistry (1983), he and his wife, Mona Chang, DDS (LLUSD 1984) were in private practice together for 15 years in Scottsdale, AZ, before establishing their home in Northern California.

800.641.4179

visit us on the web
westernpracticesales.com

