



Ask the Broker

Can a dental practice be sold without a “covenant not to compete”?

Great question! Yes it can, but the “covenant not to compete” is one of the most precious aspects of most practice transitions. We often sell completely furnished “facility only” practices that contain no patient charts or records, so there is no “covenant not to compete” in those circumstances. However, practices that do contain patient charts and records are usually valued primarily for the revenue that the patients have generated over the past 1-2 years.

Most dentists understand that a practice sells for certain “rules of thumb”, such as a percentage of collections or a multiple of NET profit. These “rules of thumb” vary from location to location, but the “covenant not to compete” is the promise or the security that assures the buyer that they will have the same *opportunity* to produce those numbers with the same patient base. Nobody can *guarantee* similar results of production because we are all different in our skill sets, clinically or communication-wise.

Amazingly, the sales price only varies approximately 10% between a practice that has all the bells, whistles, and newer equipment as compared to an outdated practice in the same neighborhood. This underscores that the value of most practice sales is in the patient base.

While the court system has placed a premium on the mileage component of the “covenant not to compete”, obviously the intent of the covenant is that the buyer has every expectation that the seller will not treat the patients who were “promised” to remain as part of the transaction. The reason for this is mostly practical. It would be very difficult to audit the patient base of any practice to prove a seller was violating the covenant if he was practicing nearby. It is much easier to place a mileage restriction that can be simple to enforce. This is why we see smaller mileage restrictions in congested urban areas compared to rural areas where people are accustomed to driving greater distances for services.

This is a particularly good question as there are more dentists and businessmen who are buying and selling dental practices. They need to be aware that buyers are rightfully concerned about the future plans of the seller. In addition, most dental lenders also have some minimum expectations when financing dental practice transitions.

Bottom Line: There is always an expectation that a “covenant not to compete” will be part of any transition that involves patients.

Questions? E-mail wps@succeed.net



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