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## Hiring Necessary Professionals

By Vincent Nardone, Esq., LL.M

As dental attorneys, we are involved in many decisions made by our dental practice clients. A question that comes up frequently is whether the Practice should hire a third-party professional to assist with the completion of a particular task. When it comes to making that decision, we find that many Practices fail to recognize the value in hiring that third-party professional. When we are discussing this decision with our clients, we make the point that most Practices are not much different than our law firm when it comes to the aspect of operating a business. Although we perform legal services rather than dental services, we have to address many of the same issues and answer many of the same questions as a dental practice when it comes to business operations matters. Our firm has seen the value in and takes advantage of hiring the necessary third-party professionals to allow our practice to function more efficiently and to increase our bottom line.

So, what do we mean by third-party professionals? Whether your business is a dental practice, medical practice, or law practice, there are certain professionals that should be hired by such closely-held service businesses. Below is a list of the common professionals that you should consider hiring to become part of your dental practice team:

### 1. Bookkeeper

Hiring an outside bookkeeper at an hourly rate of \$25.00 to \$35.00 an hour is more cost effective than you performing your Practice's bookkeeping functions. Depending upon the Practice's hourly production on any given day, this may be in comparison to the \$300.00 to \$500.00 an hour you may generate performing dental services. There are a number of services a bookkeeper should be handling for you, including: (i) maintaining all expense documentation; (ii) entering all income and expenses into the Practice's software on a weekly basis; (iii) reconciling the Practice's bank statements on a monthly basis; and (iv) working with the Practice's accountants when it comes to preparing the Practice's financial statements and tax returns.

### 2. Payroll Service

Whether you are a 1-person dental practice or a 25-person dental practice, you should be utilizing a payroll company to perform payroll services. The tax laws alone, specifically the employment tax laws, are ever changing and it is difficult for any business to keep up on these laws.

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We encourage our clients to use an actual third-party payroll service, rather than a small accounting firm that performs payroll services. A third-party payroll company can handle all aspects of your pay, from fringe benefits and healthcare, to the day-to-day calculations of compensation. We have found that using a third-party payroll service results in significant savings for your dental practice.

### 3. HR Consultant/Employment Attorney

If you look at your most significant overhead expense, it is your employees. Yet, many dental practices fail to properly take care of their employees and related employment matters. This is not just in reference to a problem employee or a disgruntled former employee and how to deal with these situations. It is also in reference to handling the day-to-day employment matters including: (i) maintaining personnel files and other important employment records; (ii) addressing employee performance and misconduct issues; and (iii) the necessary hiring and sometimes firing of employees, if necessary. This is just another area where it is invaluable and cost effective to be able to consult with an outside third-party on such human resource and employment issues. It is important to keep up on these issues, especially maintaining good employees, because we find that losing a good employee takes a practice 12 to 18 months to recover, which includes the time it takes to hire and train a replacement employee after the loss of a good employee.

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## Hiring Necessary Professionals cont...

### 4. Practice Management Consultant

We cannot say enough about the practice management consultants. They assist with all aspects of managing your Practice and bring unprecedented value to your Practice. They assist with those issues that dental schools fail to teach you. If you find a good practice consultant, keep them. But, at the same time, do not jump into a long-term relationship with one either. Do your homework and ask the right questions to ensure it is a good fit.

### 5. Accountant

We have found that most Practices do hire an accountant to prepare their tax returns. But, the Practices fail to engage them and pay them to perform the necessary tax planning. Some Practices assume that if they are preparing the tax returns, the accountants should also handle all aspects of their tax and estate plan. That is simply not accurate or fair to the accountant. They need to be engaged and paid to (i) prepare the tax returns; and (ii) spend the necessary time to ensure you are in the most tax efficient position for individually and for your Practice.

### 6. Attorney

You do not know how many times we have heard: "I wish we would have discussed this with you" or "I wish we would have had you handle this." Case circumstances that illustrate this point are:

An owning doctor drafts an associate employment contract, including a

noncompete, and fails, among other things, to include a provision in the agreement indicating that it is assignable. Well, now the doctor wants to sell his Practice and the buying doctor cannot prevent the associate from competing, unless the associate agrees to it. The Practice lost all of its leverage with the associate. In this particular case, we were happy to be representing that associate versus the owning doctor.

The fact is, by hiring these third party professionals, you ultimately save money rather than spend more money. Those Practices that fail to recognize the necessity of hiring the third-party professional are simply not looking at the long-term cost savings in hiring those professionals.

### Conclusion

The fact is that those who say they prefer to handle it themselves, or say that they cannot afford it, are preventing themselves from growing and becoming more efficient. Do not be that business owner that spends their evenings or weekends preparing the books and records, processing the payroll, writing an employment contract, negotiating the lease, etc. The fact is that you cannot do it as well, or as efficiently, as the third-party professional can. Now, we are not saying you should not be involved. You certainly need to work with and oversee those third-party professionals. But, stick with what you are good at—performing dental services. And, rather than spend your evenings or weekends on tasks that others should be performing, and that you should not be doing in the first place, spend more time with your family and friends. Go see a movie, go out to dinner, etc. The point is that you should not allow your Practice to become your life. Rather, use the Practice in a way that allows you to enjoy your life!

## Commercial Teeth Whitening

By Erin Myers, JD/MHA student at Ohio State University

The teeth-whitening industry has pushed the boundaries of professional dental licensing. In particular, a dispute has arisen as to whether teeth-whitening is: (i) solely a cosmetic procedure not governed by state laws of dentistry; or (ii) the actual practice of dentistry governed by state law. At least 14 U.S. states at this point have defined teeth-whitening services as the practice of dentistry. A recent Alabama court case highlighted this controversy surrounding BriteWhite, a teeth-whitening company, and the Alabama Board of Dental Examiners.

Following BriteWhite's arrival on the market, the Alabama Board of Dental Examiners alleged that BriteWhite, a company that manufactures a teeth-whitening system that is sold in spas and salons, was practicing dentistry without a license. Further, the Board attested that such services presented a public safety threat. In Alabama, the law stipulates that only licensed dentists may perform teeth-whitening procedures. BriteWhite responded that the company was only supplying the instructions and materials

to cosmetically bleach teeth and was not actually performing any dental procedure. BriteWhite claimed a violation of its due process and equal protection rights. The case remains in litigation.

The existence of companies like BriteWhite may cause dentists to lose potential teeth-whitening clients to the commercial teeth-whitening industry, which may negatively impact profitability. More importantly, other dentists are likely concerned with the lack of oversight of these services being completed by non-dentists. The idea here, as we always hear from the Dental Boards, is that the public safety is of the utmost importance. Thus, there are many dentists that advocate for tighter restrictions in the commercial teeth-whitening industry. For those interested in this issue, we encourage you to contact your state representatives on this matter, as well as the state dental association.

➔ NLG Comment: If anyone is interested in learning more about the Alabama case, please contact Erin Myers at [emyers@nardonelawgroup.com](mailto:emyers@nardonelawgroup.com).

## Avoiding Probate

By Pilar Puerto, Esq., LL.M

As part of the estate planning and succession planning services that NLG provides, assisting our clients to ensure that their assets avoid probate is certainly part of the discussion. This article addresses the main reasons why you would want your estate to avoid probate.

Probate is a legal proceeding to: (i) administer certain kinds of property (called probate property) owned by someone who has died (called the decedent); (ii) see that claims, expenses, and taxes are properly paid; and (iii) see that the remaining estate is distributed to those entitled to receive it under the decedent's Will or Ohio law. The probate process is administered under the authority of the county probate court. The following are some of the top reasons why you would want your estate to avoid probate:

### 1. Costs

For their services, the attorney and executor are entitled to fees from your estate, which may be very expensive. In some jurisdictions, the attorney's fees are what a court approves as "reasonable," and in other jurisdictions it is based on the value of your estate. Regardless, with an estate of \$400,000, attorney's fees can easily amount to \$20,000.00 or more. There are also appraiser's fees for appraising the value of your estate. Finally, there are the court's filing fees. All together, these fees could cost your estate thousands of dollars.

### 2. Delay

The probate process is something that is controlled by courts. It can take a minimum of six months from the date of death, but if there are creditor issues or an Ohio or Federal estate tax return is required to be filed, this process may last more than a year. If there is a contested Will or complicated tax litigation, this process could even last years. And, not until debts are paid off and contested matters settled, may the executor distribute your estate's assets to your loved ones. Thus, the probate process may present a significant delay for your assets to be distributed to your loved ones. It is also important to remember that your most valuable asset is likely your dental practice. Thus, the sale of your dental practice would have to go through probate and proceeds from the sale would be tied up with the probate process as well.

### 3. Privacy

Court documents are public. Today most courts have their dockets on their website where anyone may access a copy of the papers that have been filed with the court. The court's docket includes filings that reveal all of your assets going through probate, the value of your assets, your Will, and various other personal matters of your estate, which would all become public.

### 4. Your Loved Ones

As important, if not the most important, is the negative impact the probate court process has on your loved ones. It is difficult enough that they are dealing with the loss of a loved one. Now, by having to participate in the probate process by ensuring your assets are properly administered in compliance with the probate court rules, they are continuously reminded of it. This process can take up to 18 months after the date of death.

Thus, there are steps that can be taken to ensure your assets avoid probate. In next month's article, NLG will address those steps that each of you should review and discuss with your family.



## Employment Agreements with Associate Dentists

By Vincent Nardone, Esq., LL.M, and Tanya Nardone, Esq.

The main purposes of employment agreements with your associate dentists are to ensure that everyone in the employment relationship understands their rights and obligations and to protect your dental practice from unnecessary competition and potential legal issues. If we set expectations early and place them in writing, we avoid most—not all—controversies.

### Important Employment Agreement Provisions

Thus, an employment agreement between a dental practice and an associate dentist must set forth the basics of the employment relationship. Basic terms that should comprise every agreement and that both dentists should consider include:

1. Whether or not the associate is an employee or independent contractor. There are very rare instances where an employing dentist may treat an associate as an independent contractor. Generally, if the employing dentist and the employing dentist's attorney/accountant are following the law, the employing dentist must treat the associate as an employee.  
  
**NLG Comment:** NLG will be drafting an article on this specific issue in a later publication.
2. The Term. The employment agreement must contain an employment term, which is the timeframe for the employment. You must consider not only the initial term, but also any renewal terms, and how the agreement will be renewed. For instance, will the employment term renew automatically, or require written consent?
3. Compensation. Next, an employment agreement should define the associate's compensation in terms of amount and structure. As many of you know, the terms of compensation are open to a variety of options, such as: (i) collections versus production; (ii) draws; (iii) flat fees; (iv) guaranteed minimum salaries; (v) profit centers; and (vi) bonuses. Most importantly, both parties must fully understand and believe that the terms of compensation are fair.
4. Fringe Benefits. These may include health insurance, CE, vacation and sick days, retirement, disability or life insurance, depending upon the overall deal and compensation.

5. Duties and Responsibilities. The agreement should clearly state the Practice's expectations along with the associate's duties and responsibilities, including a work schedule. NLG also recommends that the Practice list out its duties and responsibilities to the associate doctor as well.
6. Restrictive Covenants. The agreement should include non-disclosure promises. The associate dentist will promise not to retain or disclose patient lists, referral source lists, practice forms, business and development plans, and computer information etc. Second, the associate doctor will agree not to solicit patients, employees, or referral sources. Finally, the employee will agree not to compete in a geographical area for a certain period of time after termination of the agreement.

**NLG Comment:** There is a lot of misconception out there as to this provision. NLG will be drafting a separate article on this in a later publication.

7. Exit Strategy. As with many marriages, many associate relationships fail. It is very common for an associate to discontinue working for you 6 months, a year, or two years later. Thus, understanding how and when the agreement may be terminated is very important.
8. Rework. "Rework" means any follow-up treatment necessary to correct a material or work defect in Seller's original treatment—other than normal wear and tear, decay, accident, or patient misconduct—whereby the Seller performed the original treatment within the one year period before the date the follow-up treatment became necessary. Such treatment should be addressed in terms of how the associate will repay the Practice for any rework, including during the term of the agreement and after termination.
9. Malpractice Insurance. Make sure it is clear who is responsible for obtaining it, maintaining it, and paying for it, as well as understanding the differences between tail coverage versus an occurrence policy.

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**Employment Agreements Cont...**

10. Anticipating Ownership. If the associate dentist has an interest in owning the dental practice, you should discuss ownership with the associate as early as possible. Your employment agreement can anticipate ownership by providing for options to acquire an interest in the dental practice. You may also define goals for your associate dentist to meet before the associate can purchase an interest. Any option to purchase can set forth purchase price, terms of payment, and structure of the co-ownership.

In sum, the goal of an employment contract is to ensure that everything that the two parties have agreed to is in writing and is fully understood by the parties. If you have controlled and understood the associate's expectations, and have written down in the agreement everything that has been agreed upon, then the employment relationship is more likely to work out. There is a list of other provisions that we could certainly include in this article. But, we simply do not have enough space. Please see our dental blog for a more specific employment checklist that we have drafted and should be considered as part of negotiating an employment agreement.

**IRS Tax Tip**

If you or a dependent changed your legal name last year, be sure to notify the Social Security Administration before you file your tax return with the IRS.

This notification is important because the name on your tax return must match SSA records. If the two names do not match, you will likely get a letter from the IRS about the mismatch. And if you expect a refund from IRS, this mismatch could delay it.

To let the SSA know about a name change, you can file Form SS-5, Application for a Social Security Card. You can get the form at SSA.gov, by calling 800-772-1213, or at any SSA office. You can file Form SS-5 at an SSA office or by mail. Your new card will have the same SSN as before, but will show your new name.



**Upcoming Events and Deadlines**

February 17, 2014	President's Day - Nardone Law Group will be open.
February 18, 2014	IRS deadline to file a Form W-4 Employee's Withholding Allowance Certificate to claim an exemption from income tax withholding for 2014.
February 18, 2014	IRS deadline to furnish Forms 1099-B, 1009-S, and certain Forms 1099-MISC to recipients.
February 28, 2014	IRS deadline to file Form 1096 with information returns, including Forms 1098, 1099, and W-2G, for certain payments made in 2013.
February 28, 2014	IRS deadline to file Form W-3 with Copy A of all Forms W-2 issued for 2013.

**Quote of the Month**

Don't believe the world owes you a living; the world owes you nothing - it was here first.  
 - Robert Jones Burdette

**Nardone Dental Practice Advisor**



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