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Benefits of Using a Written Letter of Intent in a Dental Practice Sale, Purchase, or Buy-In

By Nicholas W. Reeves, Esq.

Whether negotiating the sale or purchase of a dental practice, or a buy-in by an associate dentist, the importance of preparing a written letter of intent (“LOI”) cannot be overstated. It is all too common for doctors to ignore the importance of a LOI, and instead proceed with informal discussions and a hand-shake. However, this approach often leads to miscommunication between the parties as to the buy-in or sale, and results in wasted time and money for both sides.

Benefits of Using a Letter of Intent

The use of a written LOI is beneficial in an associate buy-in or purchase of a dental practice for a number of reasons. First, it allows the parties to avoid misunderstanding concerning key terms and conditions of the transaction while negotiating a finalized contract, and before the buyer spends time and money performing due diligence. The LOI should summarize the key terms and conditions that were tentatively agreed to by the parties in the first round of negotiations. This will ensure the parties are “on the same page” before proceeding with further negotiations and performing due diligence. A LOI is also important at this stage in order to identify any deal-breakers that would prevent the parties from reaching a final agreement. For instance, imagine the parties are on the same page with regard to the purchase price, but have diametrically different views as to how the purchase price should be paid (*i.e.*, the payment terms). Or, what if the selling dentist is nearing retirement and wants to stay on as a part-time associate for a period of time, but the buying dentist has other plans? A LOI would identify these types of issues at an early stage of negotiation, before the parties incur additional legal fees for the preparation and negotiation of the final transaction documents. If the parties are unable to agree on key terms and conditions at this early stage, then it is unlikely they will be able to reach a final agreement.

Furthermore, a written LOI will give the buying dentist the confidence to begin performing due diligence, knowing that the parties are in agreement with respect to the key terms and conditions of the sale or buy-in. It may also assist the buying dentist in obtaining financing for the acquisition from a lender, as many lenders will require a written LOI between the parties before issuing a loan commitment to the buyer.

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Binding Nature of Letters of Intent

While there is no doubt that a written LOI can save both parties additional headaches and unnecessary costs that could result from the failure to use a LOI, it is important that the parties use clear language to avoid any ambiguity as to which provisions are binding. Some doctors are hesitant to use a LOI because they do not want to risk being bound by provisions that the parties intended to be non-binding. This concern is easily addressed by the use of clear and concise language as to which terms are binding, and which are not. Dentists should discuss their intentions as to the binding nature of certain terms openly with the other side, and with their legal counsel.



The benefits of using a LOI in a dental practice sale or buy-in far outweigh the concern some doctors may have about the binding nature of such documents, especially when those concerns are easily addressed with a well-drafted LOI. It is important that dentists engage legal counsel not only to assist in the negotiation of a sale or buy-in, but also to prepare a LOI that summarizes the key terms and conditions of the transaction.

How Training Can Prevent Claims of Harassment in the Dental Office

By Tanya Nardone, Esq.

The U.S. Supreme Court views training, in addition to developing and implementing policies and procedures addressing discrimination/harassment, as part of an employer's responsibility to exercise reasonable care to prevent harassment. [See *Faragher v. Boca Raton*, 524 U.S. 775 \(1998\)](#). The goal of such training is to keep employees out of trouble when it comes to harassment in the workplace. The training, however, will also put the employees on notice and provide an affirmative defense for the practice. To minimize litigation and liability, it is simply not enough to have a written policy and procedures. You must actually (i) inform and educate your staff of the policy and procedures, and it is prudent to (ii) perform training annually on workplace harassment.

Most employers have developed and implemented policies and procedures regarding harassment in the workplace. But, employers rarely perform the necessary training required to adequately inform and educate their employees on these policies and procedures. Conducting such training is an important factor in minimizing litigation and liability involving harassment.



EEOC reports a continued rise in claims of discrimination, including harassment based upon sex, age, race, national origin, and religion. In general, there are ways to minimize claims of harassment. Developing and implementing a policy and corresponding procedures, regarding workplace harassment, and providing staff training, are certainly essential and the most direct ways to prevent and respond to harassment. Other preventative measures, a practice can implement, to minimize harassment in the office and the exposure that arises from claims of harassment, whether such claims can be substantiated or not, include: (i) implementing language in your practice's policies to make it clear that discriminatory harassment and other related offenses are terminable offenses; (ii) obtaining employee acknowledgments from all new employees of harassment policies and procedures at orientation; (iii) redrafting employment applications to include certain related assurances that all applicants acknowledge and initial and; and most importantly (iv) ensuring prompt investigations and responses to harassment complaints, including that any wrongdoer misconduct is substantiated. Taking these preventative measures will not make a practice impervious to receiving and dealing with the harassment complaints. It simply places the practice in a better position to resolve any such issues.

The Specifics of Conducting Workplace Harassment Training

Conducting training on workplace harassment generally should take no more than two to three hours and could be conducted in a staff meeting that includes all employees. Such workplace harassment training should include: (i) the completion of an attendance sheet on which all staff members would sign as an acknowledgment of their attendance at the training; (ii) a review for all staff members of the sources of law/guidance and harassment definitions, prohibited behaviors, and other types of harassment; (iii) an explanation of staff members' responsibilities related to workplace harassment, including their responsibility to report harassment; (iv) a review of the practice's anti-harassment policy and procedures with all staff members, including what action to take when harassment occurs; and (vi) time for answering any questions. After the all-staff workplace harassment training, the remainder of the workplace harassment training would be geared towards management staff only, including the owning dentist(s), any associate dentist(s), office manager(s), and any other supervisory/management staff. The supervisory portion of the workplace harassment training would include additional sources of law/guidance, standards for employer liability, and the employers' defense in harassment cases. At the conclusion of this training, and for any future new employees, an acknowledgement of the practice's anti-harassment policy and procedures should be signed by all staff members. With the exception of new employees' acknowledgments, the signing of this acknowledgment would include each staff member acknowledging and indicating that they are not aware of any facts or circumstances that would suggest any potential harassment occurring in the practice's office as of the date of the training.

Quote of the Month

"Failure to prepare is preparing to fail."

John Wooden
UCLA Basketball Coach

Is It Necessary to Pull Patients' Credit Reports?

By Ashley Privett, Esq.

More and more healthcare providers are pulling patients' credit reports to assist with deciding how to work with patients on billing. The large credit reporting companies such as [TransUnion](#) and [Experian](#) now offer less expensive versions of specialized reports that are typically sold to hospitals by smaller healthcare providers.

Under the Fair Credit Reporting Act, it is legal for healthcare providers to check a patient's credit if (i) the patient has a balance owed or (ii) is applying for financial help. In any other instance, the provider must ask for authorization prior to checking a patient's credit. Healthcare providers also have to remember they cannot refuse to treat a patient seeking emergency treatment, regardless of whether the patient can afford to pay or their credit score.



While these credit reports can provide valuable insight to healthcare providers and can help with the financial planning between the provider and the patient, there are still concerns. First and foremost, healthcare providers need to be aware of the privacy issues that may arise. If you are considering pulling your patients' credit reports, it is necessary to have a procedure to follow regarding how to treat a patient with bad credit.

Consumer advocates worry that credit checks will force healthcare providers to pressure patients into immediate payment or pressure customers into putting their bills on a high interest credit card. In reality, a credit check will allow healthcare providers to assess whether a person qualifies for discounted services or charity care.

Patients, on the other hand, may worry that a healthcare provider checking their credit score will negatively impact the patient's credit. These credit inquiries are "soft inquiries," meaning they do not affect credit scores and do not show up on credit reports issued to lenders.

Ultimately, if you are going to check your patients' credit scores, it is recommended that you clearly inform your patients. We would recommend that you include a statement in your privacy policy declaring that you may check your patients' credit scores. We would also like to note that it is not necessary to check the credit of every patient who walks through your door. It will be the most efficient for you to have a standard in place, such as only checking the credit scores of those patients for whom you are financing a procedure. Patients should also be informed of what is included in the specialized credit report that you are receiving.

Again, it is always best to be upfront with your patients. Having an open dialogue is imperative to maintaining a trusting relationship with your patients. Communicating with them about the credit report can be beneficial to both you, as the provider, and to them, as a patient. For example, a good payment history on their report does not mean they may not have a financial need or that their medical bills would not burden them. Ultimately, if you decide to pull your patients' credit reports, talk to them about it. Having an open dialogue with them from the beginning could save you a lot of hassle and headaches down the road.

Upcoming Events/Deadlines

March 6th

Paragon's Ohio Excelleration Seminar

Held at the Westin Columbus.

March 13th

Paragon's East Coast Excelleration Seminar

Held at the Westin BWI Airport.

March 20th

Paragon's Indiana Excelleration Seminar

Held at the Sheraton Indianapolis Hotel.

March 31st

Electronically file Forms W-2, W-2G, 1098, 1099, and 8027.

March 31st

Electronically file Forms W-2, W-2G, 1098, 1099, and 8027.

The Importance of Email Maintenance: How Long is Your Dental Practice Storing Emails?

By Will Gutmann

The dental attorneys at Nardone Law Group in Columbus, Ohio, continuously monitor recent trends in the law in order to better serve our clients. In the wake of the recent Sony Corp. data breach, the security of e-mails and other electronically stored information has become a major concern for businesses, both big and small. In a dental practice, the privacy of your patients, employees, and associates should be of the utmost importance. Nardone Law Group's dental attorneys continuously stress the importance of implementing a formal policy for record retention. In our prior article, "Having an Effective Record Retention Policy Can Help Save Time, Money, and Trouble," we recommended that dental practices should permanently retain all files. A record retention policy can help a dental practice streamline business, employee, and patient procedures, improving the overall efficiency and organization of the practice. To ensure that your dental practice is avoiding potential liabilities, every file, record, and document should be accounted for, from the moment it is created, until it becomes obsolete. But what effect should this have on e-mails?

The recent string of high-profile data breaches has shifted the public's focus to cybersecurity, especially in regards to electronically stored communications, such as e-mails. E-mail is a vital communication tool for almost any business and is often used as an electronic "filing cabinet," where employees can easily store and retrieve information and attachments. Many dental practices utilize e-mail in the same manner, communicating within the practice, as well as with patients and other third parties. Traditionally, well-established companies will implement an e-mail deletion policy that calls for the automatic deletion of e-mails after a set period, typically after 90 or 120 days. With the startling success of hackers in breaching Sony's defenses, many legal analysts and computer experts are now making the argument for a more prompt destruction of non-essential e-mails.

In light of this developing trend, our dental attorneys recommend that dental practices adopt the practice of deleting e-mails after 30 days. One possible option, for instance, is to program your e-mail software to automatically delete messages after 30 days, unless they are manually placed, or archived, in a special "safe" folder. Adopting such a practice will ensure that private communications are properly deleted, while still allowing the option of storing any e-mails that need to be kept longer. While this is not a perfect defense against hackers, it is an excellent start towards protecting your dental practice's patients and employees.

Setting Up Your E-Mail to Automatically Delete: Microsoft Outlook

Programming your dental practice's e-mail software to automatically and permanently delete unwanted e-mails after 30 days provides a line of defense against data hackers, allowing you to protect your patients and your business. To demonstrate how to set up an automatic deletion system, known as "AutoArchiving," we have provided step-by-step instructions on how to do so within Microsoft Outlook, a commonly used e-mail application.



When operating in Microsoft Outlook, the necessary steps are as follows:

1. On the left side of your Outlook screen, right-click on any folder icon that you want to customize (*i.e.*, Inbox, Drafts, Sent Items, etc.) and select "Properties."
2. Click on the "AutoArchive" tab.
3. Under the "AutoArchive" tab, you can customize your e-mail server archive/delete settings, including the ability to save or delete items after a set period of time (days, weeks, months).
4. If you wish to have e-mails automatically deleted from a certain folder, select "Archive this folder using these settings" and select your desired amount of time (we are recommending 30 days, or 1 month).
5. It is important to select "Permanently delete old items," if you wish for the e-mail messages to be deleted, rather than archived.

NLG Comment: It is important to note that these steps apply only to Microsoft Outlook. If your dental practice utilizes a different e-mail software, however, the process is likely to be similar. Dental practitioners should consult with an IT professional before taking these steps, to ensure that this is the most efficient method and is a viable option for your specific dental practice.

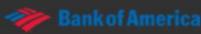
When establishing a record retention policy, it is important to include electronic communications, such as e-mails. Recent data breaches have demonstrated that it is no longer wise or safe to indefinitely store e-mails. Therefore, it is important to implement a system that automatically deletes unnecessary e-mails and messages after a set period of time, while allowing for the retention of necessary e-mails. Proper e-mail maintenance and organization will help protect your patients, employees, and dental practice from unwanted leaks, and will streamline your business as a whole.

SAVE THE DATE

FRIDAY, JULY 31, 2015



**EVERY CHILD
DESERVES DIGNITY**

KiDDS CUP generously sponsored by  **Bank of America**  **HAMILTON CAPITAL MANAGEMENT**

Zimmerman, Boltz & Company, Paragon Management, and Nardone Law Group invite you to be a part of the kiDDS Cup Charity Golf Tournament. Come and experience the magic as the dental community comes together in one remarkable effort to change the lives of children in and outside our borders.

The beneficiaries for 2015 include Free to Smile and kidSMILES. All donations received will be dispersed by the kiDDS Foundation board to benefit these two non-profit dental organizations.

Stay tuned for more details as we approach the July 31st date!



The kiDDS Foundation is a not-for-profit organization that strives to provide children the ability to receive dental care and to help change children's smiles around the world.



Free to Smile is a local NPO that conducts multiple dental missions around the world. Teams of volunteers perform cleft lip and palate surgeries on children who often face social stigma, speech defects, and nutritional challenges because of their condition. FTS has mission sites in Guatemala, Niger, Tibet, Cambodia, and Colombia.



KidSMILES is a volunteer-led, non-profit Pediatric Dental Clinic that provides quality dental care and education, but their main focus is disease removal and prevention. Located in Columbus, KidSMILES offers comprehensive dental care at a cost of only \$10 per visit per child.

Nardone Dental Practice Advisor



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