Winter 2015

NARDONE Dental Practice Advisor

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A Healthy Dental Practice Needs a Smart Digital Plan

By Mark Scholl, EnginePoint Marketing

Since keeping your practice healthy in the long-term means not just quality care for your current patients, but continuing to bring in new ones, it is important to know the best place to find them and search engines are an increasingly popular hangout.

Using a search engine to do everything from buying a book to booking a vacation has become second nature to consumers. Finding a dentist is no exception. Each year more and more patients go online to search for dentists, hygienists, endodontists, orthodontists, and periodontists.

In fact, in 2015 we witnessed a 15% increase in the number of searches across the dental category. Additionally, 41% of the people who looked online for a dentist conducted their search on a mobile device. These numbers are expected to rise further next year.

So how do you tap into this pool of potential patients? Cover these digital basics to help your search rankings and improve the experience on your site.

Make Mobile Your Friend

It's crucial that your site is mobile-friendly, meaning, it needs to be easy for people to view and interact with on a mobile device. The more digital the world becomes the more people rely on their smartphones. 82% of smartphone users say they use search to find local businesses. But many sites do not render nicely on a small screen. Making your site responsive (meaning, it will automatically adjust to various screen sizes) will allow any potential patient full access to your site without trouble. Google agrees. The search engine now elevates the rankings of sites that are mobile friendly.

Provide Answers, Not Keywords

It's tempting to just stick keywords on your site in order to try to elevate rankings, but new patients are not searching for keywords, they are searching for answers. It's not just what they typed, but why they typed it. Consider the questions they are trying to answer and provide content that answers those questions. Yes, include the right keywords, but be sure you are actually providing content that is valuable.

Inside This Issue

Ask for Reviews

Don't be afraid to ask your current patients to write an online review about their experience with your practice. Good reviews can help sway the decision for potential new patients. These reviews can be gathered on Facebook or even Yelp. Reviews are indexed by search engines and sometimes show up in search results. But more importantly, 88% of potential consumers trust online reviews as much as personal recommendations.

Consider Paid Search

While search engine optimization is an extremely valuable tool for search engine visibility, don't overlook paid search as a fast, effective means for finding new patients, as it provides a variety of targeting options. You can select exactly what types of keywords to show your ad on and exactly which pages on your site to send searchers to. And importantly, you can target those ads to specific areas of your town, ensuring you are reaching potential new patients nearby.

enginepoint

If you would like more information about how to reach patients online, visit enginepoint.com/dental. They have marketing solutions designed specifically for the dental industry to help you find new patients.

Mark Scholl founded EnginePoint Marketing in 2004 to move search marketing into the realm of business strategy. Mark follows the ever-changing industry with dogged-attention—keeping clients informed and educated about the relevant changes in the companies, engines, programs, and algorithms.

Understanding Your Commitment Letter, What Is Really Approved?

By Justin Baker, First Merchants Bank

Purchasing or starting a dental practice will be one of the largest financial decisions of your professional career. It is important to work with a bank that understands the specific financial needs of the industry.

Once you have decided on the bank(s) you want to work with, you will be asked to submit various financial documents for the bank to review. Assuming the loan opportunity is approved, the bank will issue the terms of the loan in a formal commitment letter. Upon receiving the commitment letter(s) from the lender, you will want to compare them to see the differences.

There are a few major points to review closely:

- Amount approved
- Term and amortization of the loan
- Type of loan
- Collateral
- Interest rate
- Pre-payment provision
- Loan fees
- Guarantors
- Funding or expiration dates
- Loan closing conditions

Amount Approved: This is the dollar amount the bank approved. The bank may approve 100% financing for a purchase or start-up, however, depending on cash flow, they may finance less than the purchase price and ask the seller to hold a note back. The bank will often provide a line of credit to help cover the first several month of operations until collections are received by the practice.

Term and Amortization: This is important to understand. This is the length of the practice note as well as the repayment period. Many times these are the same in the instance when the term is shorter than the amortization. This creates a balloon payment.

Type of Loan: Most practice loans are usually structured as term loans with regular monthly principal and interest payments due or lines of credit with only required interest payments due.

Collateral: With most loans, the bank will require an All Business Asset filing of the practice to secure the loan. This will require an assignment of life insurance on the owner in the amount of the practice loan.

Interest Rate: Typically, most practice loans have a fixed interest rate. In the instance of a line of credit, they may have a variable interest rate. Additionally, some banks may only be willing to offer a fixed rate for a time frame that is shorter than the term of your loan. In this instance, the interest rate may re-price or change after this initial fixed rate period. It is important to understand the difference.

Prepayment Provision: Penalties applied to the loan for either early pre-payment or refinance. Make sure given your unique circumstances or plans for the practice that you understand the impact.

Loan Fee: Any applicable loan fees the bank may charge for the loan. This might be negotiated if additional products are used such as a business checking account or merchant services.

Guarantors: The guarantors are required to sign on behalf of the loan. This may vary depending on the cash flow of the practice, however, it will usually include any owner that has a 20% or greater ownership interest in the practice.

Funding or Expiration Dates: When the loan must close by and how long the commitment letter is valid.

Loan Closing Conditions: The items the bank needs in order to close the loan after the commitment letter has been accepted. This might include: a copy of the office lease, the legal entity documents for your practice, a copy of the purchase contract or any invoices from vendors that need paid, evidence of various forms of insurance, a copy of your active dental license and a clear lien search on your and the sellers practice entity.

In summary, make sure you understand all terms within your commitment letter and do not focus solely on the interest rate. While certainly important, making a loan decision based on the rate, without understanding how the other terms of the loan may impact your business and create future challenges. It is often beneficial to have your accountant or attorney assist in reviewing the complete terms of the loan, as not all commitment letters are the same. Occasionally, a lender may have some leeway on some of the terms (such as loan fees or interest rate) and may be able to offer better terms if additional bank services or products are used in conjunction with the loan.

Justin Baker is a Healthcare Relationship Manager at First Merchants Bank. He has been providing financial solutions to healthcare clients for more than eight years.

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Business Associate Agreements

By Blair Browning, Law Clerk at Nardone Law Group

Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), a business associate agreement is a contract that ensures that business associates appropriately safeguard protected health information. It also serves to clarify and limit the permissible uses and disclosures of protected health information by the business associate, based on the relationship between the parties and the activities or services being performed by the associate. The associate may use or disclose protected health information only as permitted or required by its business associate contract or as required by law.

What is a business associate? A business associate is a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information. A business associate also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of the covered entity. A covered health care provider, health plan, or health care clearing house can be a business associate of another covered entity.

Requirements of a Business Associate Agreement

The requirements of a business associate contract are governed by 45 C.F.R. § 164.504(e). The regulations state that the contact must; (1) describe the permitted and required uses of the protected health information by the business associate, (2) provide that the business associate will not use or further disclose the protected health information other than as permitted or required by the contract or as required by the law, and (3) the business associate must use appropriate safeguards to prevent a use or disclosure of protected health information other than is provided for by the contract. Further, if a covered entity knows of a material breach or violation by the business associate of the contract or agreement, the covered entity is required to take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful, then the covered entity must terminate the contract or arrangement. If termination of the contract or agreement is not feasible, a covered entity is required to report the problem to the Department of Health and Human Services Office for Civil Rights.

Why do you need one?

Since most health care providers do not carry out all of their health care activities and functions by themselves, it is sometimes necessary for covered entities to use the services of a variety of other persons and businesses. A business associate agreement allows the covered entity to carry out the functions of its business with the help of it business associates, while still protecting the privacy of its patients. The agreement ensures that the covered entity and the business associate understand the scope of the information that can be disclosed and the rights and responsibilities each have under the agreement.

The goal of the agreement is to ensure that business associate relationship is in writing and is fully understood by the parties. However, a business associate agreement is not required in every situation where protected health information is disclosed outside the covered entity.

Exceptions to the Business Associate Agreement Requirement

A business associate agreement is not required when disclosure is made from a covered entity to a healthcare provider for treatment purposes. This means, any covered health care provider (or other covered entity) may share protected health information with a health care provider for treatment of an individual patient without a business associate contract.

As discussed above, a covered entity includes a health care provider (e.g., doctors, clinics, dentists, pharmacist), a health plan (e.g., health insurance companies, HMO's), and a health care clearing house. A health care provider means a provider of medical services, and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business. *(Continued on next page..)*

Upcoming Events

December 24 – 25, 2015

NLG offices will be closed in observance of Christmas.

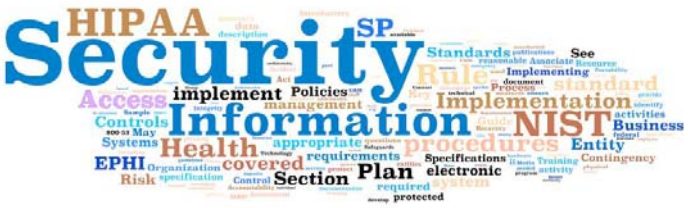
January 1, 2016

NLG offices will be closed in observance of the New Year.

January 22, 2016

Paragon's Indiana Excelleration Meeting
Sheraton Hotel at Keystone Crossing

(Continued from previous page..) As an example, a hospital is not required to have a business associate contract with the specialist to whom it refers a patient and transmits the patient's medical chart for treatment. A physician is also not required to have a business associate contract with a laboratory as a condition of disclosing protected health information for the treatment of an individual.



Business associate agreements are also not required in many other situations. Please note that the following is not an exhaustive list of situations where a business associate agreement is not required.

- When a health care provider discloses protected health information to a health plan for payment purposes, or when the health care provider simply accepts a discounted rate to participate in the health plan's network. A provider that submits a claim to a health plan and a health plan that assesses and pays the claims are acting on its own behalf as a covered entity, and not as the "business associate" of the other.
- With persons or organizations whose functions or services do not involve the use or disclosure of protected health information, and where any access to protected health information by such persons would be incidental, if at all.
- With a person or organization that acts merely as a conduit for protected health information, for example, the U.S. Postal Service, certain private couriers, and their electronic equivalents.

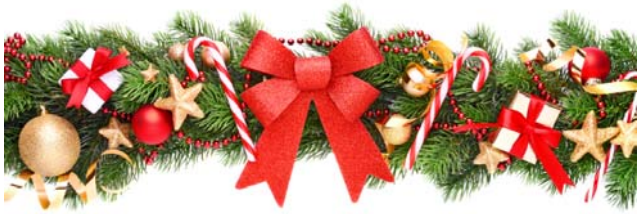
However, even if a business associate agreement is not required, covered entities must make reasonable efforts to disclose only the "minimum necessary" to achieve the purpose for which it is being used or disclosed. Herman v. Kratche, 2006 Ohio 5938, 8th Dist. Under the HIPAA regulations, only the minimum necessary amount of information consistent with the stated purpose is to be disclosed. However, 45 C.F.R. § 164(b)(2)(i) provides that minimum necessary does not apply to disclosures to or request by a health care provider for treatment.

If you are unsure whether a business associate's agreement is required in a given circumstance, dentists should consult with their legal advisor or a member of their state dental board to avoid a HIPAA violation. The experienced dental attorneys at Nardone Law Group, in Columbus, Ohio will assist you and your practice to ensure you are taking the necessary precautions to protect your business.

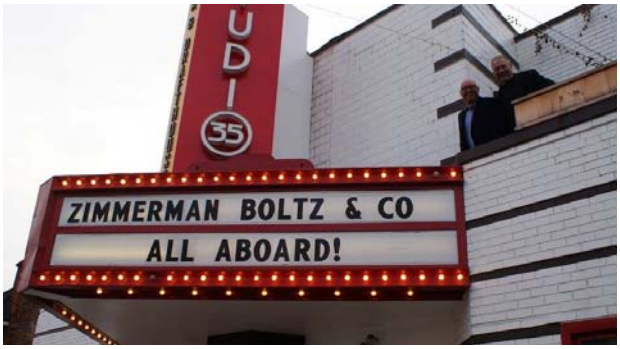
Quote of the Month

Vince Nardone believes that the following quote from the book "Bold," by Peter H. Diamonds and Steven Cutler, is a good and practical point regarding operating a business, including a dental practice, especially when it comes to employment and HR issues. Please see below:

"People tend to frame things very narrowly. They take a narrow view of decision making. They look at the problem at hand and they deal with it as if it were the only problem. Very frequently, it's a better idea to look at problems as they will recur throughout your life and then you look at the policy that you're to adopt for a class of problems—difficult to do; would be a better thing. People frame things narrowly in the sense, for example, that they will save and borrow at the same time instead of somehow treating their whole portfolio of assets as one thing. If people were able to take a broader view, they would, in general, make better decisions."



We are thrilled to report that over $8,000 worth of toys were collected to benefit the Firefighters 4 Kids Toy Drive with the help of those who attended the Zimmerman, Boltz & Company Holiday Spectacular.



Hygienists: Independent Contractor or Employee?

By Tanya Nardone, Esq.

We want to make our dental practice clients aware that dental hygienists—whether full-time or part-time, permanent or temporary, or even if only working for one day—do not qualify as independent contractors under Federal or State law. Dental hygienists are almost always employees and should be paid as employees. We certainly understand that some dental practice employers benefit from treating dental hygienists as independent contractors. But, the simple fact that a dental practice may benefit does not justify an incorrect worker classification of a dental hygienist. Additionally, there are certain repercussions that may result, such as an Internal Revenue Service ("**IRS**") audit or Ohio Department of Job and Family Services audit. These audits, if conducted, will likely result in findings that any dental hygienist treated as independent contractor should have been treated as an employee, and will likely result in additional taxes, premiums, penalties, and interest owed.

Why Treat A Dental Hygienist as an Independent Contractor?

A dental practice may want to classify a hygienist as an independent contractor to: (i) avoid the payment of payroll taxes—shifting the tax burden to the dental hygienist; (ii) exclude the hygienist from certain practice benefits that are only available to practice employees; (iii) avoid the potential of other employment related claims, such as workers' compensation or unemployment compensation, which can ultimately impact the practice's workers' compensation or unemployment compensation ratings; or (iv) avoid the potential exposure of certain law suits, such as age discrimination or sex discrimination, including sexual harassment. Although there may be certain benefits for treating workers as independent contractors, we must consider the legal test used by Federal and State courts on this issue.

Legal Test

When examining the factors to determine the worker classification status, there are certain factors that have more weight than others, most importantly including the control factor. The IRS and the courts scrutinize the working relationship to better understand how much and what type of control is placed on the worker by the employer. The IRS and the courts generally find an employer-employee relationship exists when the employer has the right to (i) control and (ii) direct the worker—not only as to the result of the work but as to the manner in which that result is accomplished. It is also important to distinguish between the legal test and the factors determining proper classification. The legal test and inquiry is whether the relevant employer has the right to control the manner in which the work is performed. This is different from the need to control.

From all of us here at Nardone Law Group, we wish you and yours a very Merry Christmas and a Happy New Year, and we look forward to a successful 2016!

The right to control does not have to be exercised, it just has to exist for there to be an employer-employee relationship. This is a very important distinction.

If we apply that legal test to the relationship between a dental practice and a dental hygienist, the conclusion should be clear. That is, State law requires the dental practice and the licensed dentist to oversee the work performed by the dental hygienist. There are many instances where the dental hygienist cannot perform certain work without the oversight of the particular licensed dentist. Ultimately, recognizing that the Federal and State agencies will rely heavily on that distinction, it will be unlikely that dental practices will persuade those agencies of a determination other than employer-employee. Thus, while many dental practices will continue to attempt to hire dental hygienists as independent contractors, rather than employees, for State law purposes, we must recognize and acknowledge that dental hygienists work under the supervision of the licensed dentist. That is, the control remains with the dentist, not the dental hygienist. Therefore, for Federal tax purposes and State tax purposes—including unemployment compensation and workers' compensation purposes—dental hygienists are employees, not independent contractors.

> NLG Comment: For a dental hygienist, there are some workers that a dental practice hires that are obviously independent contractors, such as an IT person, a cleaner, or a contractor: For these workers, the dentist does not have the right to control the manner in which the work is performed.

If you are considering classifying a dental hygienist—or another individual to perform work for your practice as an independent contractor—please contact experienced legal counsel to ensure the worker is properly classified.

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Sign up on our dental blog at: www.nardonelawgroup.com/dental-blog

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