THE GOLDMAN LAW FIRM
MERCHANT BANK BUILDING
55 MAIN STREET
TIBURON, CALIFORNIA 94920
(415) 435-5500
FAX (415) 435-5156
SNAKEBIT@GOLDMANLAWFIRM.NET

RONALD P. GOLDMAN
MARY SACKETT
KEVIN KELLY
JULIA N. GOLDMAN

Business Law for the New Dentist

By Ronald P. Goldman
Snakebit@GoldmanLawFirm.net

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Top Ten Business Pointers for the New Dentist

1. **Business Agreements Should Always Be In Writing (Associate/Purchase/Partnership/Space Leasing)**

2. **Assemble your professional team: (Accountant/Attorney/Insurance Broker)**

3. **Conserve your capital and do not enter into agreements blindly**

4. **Read every word of every document that is presented to you for your signature**

5. **Covenants Not to Compete – know when they are enforceable**

6. **Don't Be Afraid to Negotiate agreements/leases**

7. **Take Due Diligence Seriously**

8. **Don't Allow A Practice Situation to Compromise Your Standard of Care**

9. **Be careful what you sign, backing out can be costly!**

10. **Do not assume, do not believe oral assurances, do not be taken advantage of and good luck follows hard work**

ASSOCIATE/INDEPENDENT CONTRACTOR CHECKLIST8

The practice owner hires an associate dentist to provide professional services to patients of record of the practice owner. The associate does not obtain an ownership interest in the assets of the practice.

1. **Form of Agreement**
   a. One written document/signed/dated

2. **Relationship of Parties**
   a. Employee/employer – employer withholds taxes, pays 50% of Soc. Sec.
   b. Independent contractor/practice owner – associate runs own business, files schedule C with taxes, pays 100% of Soc. Sec.

3. **Terms of Agreement**
   a. Compensation - flat fee/percentage; collections/production
   b. Benefits
   c. Job duties

4. **Expenses**
   a. Overhead
   b. Supplies
   c. Inventory/Lab
   d. Flat cost or production based

5. **Ownership Interest**
   a. Patient records - who owns, who can copy, what happens upon termination
   b. Equipment, supplies, computer data, telephone number

6. **Income/Production/Collections**
   a. Mechanics/bookkeeping/records/billings

7. **Management Duties**
   a. Hire/fire support staff
   b. Who sets patient schedule

8. **Insurances**-Malpractice/Office Package/Workers Comp/Overhead/Disability/EPLI
   a. Insurance costs
   b. Insurance - cross-verification

9. **Termination/Death/Disability/Sale/Option to Purchase/Right of First Refusal**
   a. Provision to discuss equity purchase in 12 to 18 months

4. **Covenant Not to Compete; Non-Solicitation and Liquidated Damages Provisions**
   a. Covenant Not To Compete – unenforceable
   b. Non-solicitation – enforceable
   c. Liquidated Damages -enforceable

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TIBURON, CA 94920 TELE (415)4 35-5500 FAX (415)435-5156 82011 SNAKEBIT@GOLDMANLAWFIRM.NET

ASSOCIATE AGREEMENT TERM SHEET©

1. Full name of the practice owner and complete address and phone number for the practice?
   - A. Is the practice incorporated, if so, what is the name of the professional corporation?
   - B. Does the practice use any fictitious names, if so, what are they?
   - C. Is the practice a general practice or specialty practice?

2. Full name and mailing address for the associate.

3. Type of Associate Arrangement
   - A. Employee or
   - B. Independent Contractor (IC)

4. Payment Arrangement:
   - A. Per diem amount?
   - B. Bonus Amount?
   - C. Blended compensation where there is a per diem and then bonus kicks in over a threshold amount?
   - D. Payable who often or on which days? Every week, every other week, twice per month, one per month?

5. Duration of Agreement
   - A. How long with the agreement last (typically 12 months with automatic renewal with either party having the right to terminate within 30 days)
   - B. When will the agreement take effect?

6. Any Benefits to be provided to Associate?
   - A. Typically none if Associate is an independent contractor
   - B. Typically same as other employees if the Associate is hired as an employee

7. Any Expenses passed onto the Associate
   - A. Typically the associate pays their own malpractice insurance regardless of status (employee or IC);
   - B. All other expenses in the practice are covered by the practice owner, unless otherwise agreed and if so, what else is the Associate to pay for?

8. Patient Record Ownership - Your Choice, either A. Or B.
   - A. All patients in the office who are treated by the Associate are patients of record of the Practice Owner and Associate may not solicit or contact after agreement has terminated; or,
   - B. Those patients brought into the practice by the Associate through his or her own efforts shall be considered a patient of record of the associate and if the Associate ever leaves the practice, he/she can take his/her own patients of record. The patient of record designation is reviewed weekly on new patients seen in the practice. Associate prohibited from soliciting the patients of record of the practice owner.

9. Non Solicitation and Liquidated Damages Provisions

   A. Agreement will provide that after the associate agreement comes to an end, the Associate will not solicit or attempt so solicit patients of record of the practice owner. In a specialty practice, we will attach a listing of the referral sources to the practice and this will consist of your "trade secret and proprietary information" so that if the Associate receives referrals from those sources after leaving the practice, then the Associate will need to pay a stipulated amount per patient so referred. In a general practice, if patients of record find their way to the associate after termination of the agreement at Associate's new location, then the Associate shall pay for the right to have been exposed to the goodwill of the practice at the rate of $1,500 per patient who transfers from the established practice to the new practice.

10. Agreement to Negotiate Practice Equity Purchase (Optional)

   A. This provision provides that the practice owner and the Associate will negotiate an equity purchase by the Associate at some designated point in time (6, 12 or 18 months) after entering into the Associate Agreement. This provision does not create a binding agreement but it does create the obligation to discuss an equity purchase provided that neither party has terminated the agreement beforehand.

PARTNERSHIP & SHAREHOLDERS AGREEMENT CHECKLIST©

Two or more dentists join together to create a separate legal entity, either a partnership or corporation, which will own the dental practice. The partnership/corporation, typically, has a single identity to the patients. Partners own percentage interest in the partnership and shareholders own shares in the professional corporation.

1. **Form of Agreement**
   a. Written

2. **Relationship of Parties**
   a. Partnership – No limited Liability
      i. Partnership of Professional Corporations – limited personal liability
   b. Creation of Professional Corporation
      i. Each doctor is a shareholder
      ii. Created by filing Articles of Incorporation
      iii. Need for Shareholder Agreement
   c. Fiduciary Relationship

3. **Joint Operation Agreement - Key Provisions**
   a. Division Of Expenses, Profits and Losses
   b. Patients, Records, and Referrals
   c. Temporary Disability
   d. Voluntary and Involuntary Dissolution

4. **Ownership Interest**
   a. Referral sources asset of the business entity
   b. Patient assignment upon dissolution

5. **Management Duties**
   a. How are decisions made
   b. Who will be the managing partner/president

6. **Liability Considerations**
   a. Partnership – joint and several
   b. Corporation

7. **Termination/Dissolution/Death/Disability/Sale/Withdrawal**
   a. Termination – notice timing, who remains, how to divide assets and liabilities
   b. Dissolution – practice dissolved, each partner continues to practice
   c. Death – fund buy-out by life insurance
   d. Disability – cover for each partner/shareholder or hire an associate
   e. Sale of Interest – right of first offer, right of first refusal, refusal of sale

8. **Covenant Not to Compete; Non Solicitation and Liquidated Damages Provisions**
   a. Covenant Not to Compete if One Partner/Shareholder buys out the other
   b. Non-Solicitation of referral sources and patients

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Tel (415) 435-5500 FAX (415) 435-5156 ©2011; SNAKEBIT@GOLDMANLAWFIRM.NET

PURCHASING A DENTAL PRACTICE:
DUE DILIGENCE CHECKLIST©

1. **Financial Records**
   a. Tax returns (personal/corporate) for last three years.
   b. Production runs - last three years.
   c. Profit/loss for last three years.
   d. Accounts receivable
   e. Listing of participating insurance programs.

2. **Quality of Care**
   a. Philosophical concurrence with Seller as to practice of dentistry.
   b. Chart review - do charts/records reflect what you would consider to be "standard of care" for charting/record keeping?
   c. Treatment plans - do you agree with Seller's approach on patients?
   d. In-office patient check - spend one or more days in office and clinically observe Seller's treatment.
   e. Identify high risk areas or problem patients of Seller's practice, if any. If such areas exist, will these patients complete treatment with Seller, transfer to Buyer or transfer out of practice?
   f. Identify any techniques utilized in practice which may give rise to future problems, i.e., use of unapproved endo filling materials, ortho practiced in the office, treatment beyond scope of license.
   g. Does Seller utilize an effective post op recall system?
   h. Review cases that Seller treatment planned that you will perform.

3. **Insurance/Risk Management Considerations**
   a. Is Seller presently insured?
   b. Has Seller been insured without interruption since inception of practice?
   c. Obtain copy of Seller's present malpractice Declarations page to identify carrier, policy number, coverage period, policy limits.
   d. Will Seller be continuing his malpractice policy or obtaining a tail?
   e. Is Seller presently being sued for malpractice? If so, get full information on all such legal actions.
   f. Has Seller been sued in the past or had peer review actions? If so, what treatment was involved and how did the action/claim resolve?
   g. Has Seller had any disputes/conflicts with any other local practitioners?
   h. Has Seller had to sue patients for collection? If so, are any such suits planned.
   i. Are there any existing patients who have treatment to complete but are not returning to office.
   j. Are there any other patients who have any other disputes with the practice?

4. **Managed Care Agreements - HMO, PPO, Capitation, Indemnity**
   a. Percentage of practice income from MCA
   b. Can plans transfer to you
   c. Do plans allow for your quality of care
   d. What kind of patients are being seen and what type of treatment is being performed on these patients

5. **Seller's Record with Third Party Payers**
   a. Has Seller's membership in a panel or qualification in a third party payor plan ever been revoked, suspended or cancelled - if so, why
   b. Any third party payor audits within the last 24 months - if so, what was the result

6. **Associates in the Practice**
   a. Currently in practice
      i. What will happen to them
      ii. What protection do you have against patient loss
   b. Have there been any associates within 24 months
      i. Who are they, where did they go, has there been patient or employee loss
   c. Anyone outside of the practice have a patient list

7. **Other Dentists in the Practice**
   a. Sub-tenants or space leasers
      i. Any written agreement
      ii. Is there a threat of practice raid
      iii. Is there jointly owned property
      iv. Can you terminate the agreement
      v. What future protection do you have

8. **What Advertising has the Practice Used**
   a. Yellow Pages - cost of same
   b. Dental Referral Services
      i. Can they be assumed by Buyer
   c. Coupons or other deals that Buyer must honor

9. **Seller's Standing in the Dental Community**
   a. Member of local dental society
      i. If not, why - was the membership terminated and if so, by whom
   b. Have there been peer review actions
   c. Have there been any Board of Dental Examiner investigations
      i. If so, how many, when did they occur and what was the result

10. **Key Referral Sources to the Practice**
   a. Have Seller list them
   b. Ask Seller to describe his/her referral criteria
   c. Contact the specialists and ask:
      i. Opinion regarding quality of Seller's dentistry
      ii. Any reason they know of not to buy the practice

11. **Seller's Staff**
   a. What longevity of staff (ask about turnover)
   b. Have any expressed the desire to quit if the practice is sold
   c. When is the last time staff was given a raise - is there a system for review and raises
   d. Does the practice have a pension plan

12. **Miscellaneous Items**
   a. Software License Transfer fee (seller should pay)
   b. Insure the practice is "lien" free
   c. Insure that practice is free of "leases" i.e., phone systems, photocopier, or dental equipment
   d. Get copy of Office Lease
   e. Is the dental office in OSHA compliance

DOCUMENTATION CHECKLIST FOR SALE OF A DENTAL PRACTICE©

1. **Description of Assets**-describe the subject matter of sale, and allocates price to subject matter (equipment, supplies, records, goodwill, covenant not to compete).

2. **Terms of Consideration**-cash payment and/or financing.

3. **Other Items**-right to use seller's name, telephone listing, trade names, web site, referral sources.

4. **Covenant not to Compete**-term and boundary (***valid*** under Business and Professions Code Section 16601).

5. **Accounts Receivable**-***key clause***- who gets them, mechanics for collection -- allow buyer's right to retain income for his/her own production after sale closes.

6. **Retreatment**-***key clause***-automatic mechanism for handling re-work of seller's dentistry so buyer does not lose money and seller does not end up in malpractice suit. See model provisions.

7. **Letters of Announcement and Introduction** - cost is shared between Buyer and Seller

8. **Seller's Warranties Regarding Ownership Debts**-***key clause***-provide for indemnification if debts surface after closing.

9. **Buyer's Warranties**- ***key clause*** - Buyer affirms that he/she has performed their due diligence, do not rely on anything other than financial data, ***beware of confirming truth of everything in writing***

10. **Insurance**-***key clause***-seller and buyer to remain insured at least five (5) years after sale.

11. **Custodian of Records**-***key clause***-buyer retains all of seller's records. When inactive may send to seller or destroy; buyer should not agree to hold seller's records forever. See model provisions.

12. **Employees**- all employees terminated as of the Closing Date, Seller to resolve any employment issues prior to closing date.

12. **Hold Harmless/Indemnification**-seller responsible for seller's treatment before closing, buyer responsible for buyer's treatment after closing; with cross-indemnification.

13. **Closing Date and Escrow**

14. **Contingencies**-***key clause***-state what deal is contingent on, i.e., bank loan, assignment of lease, passage of state boards.

15. **Bill of sale, Promissory Note, Security Agreement, Consent of Spouses**

LETTER OF INTENT

(***name of buyer***) ("Buyer") agrees to purchase the general dental practice of (***name of seller***) ("Seller") ("Seller"), located at (***address***) consisting of the following:

1. Use of the Seller's name in the practice.

2. Telephone Directory listing, telephone numbers including (***tele number***) and the fictitious name if any, and any and all web sits, domain names, logos, service marks, and trade marks used or affiliated with the practice.

3. Patient records, files, models, ledgers, photos and radiographs;

4. All of the dental equipment free and clear of any leases or liens, which will be in good working order, instruments and supplies located in the practice;.

5. Office furnishings and business equipment used in the equipment;

6. Letters of introduction written by the Buyer signed by the Seller and mailed to the patients of record;

7. A Covenant Not To Compete for 5 years and a radius of 20 miles from the Seller's Dental Practice;

8. A retreatment provision providing that in the event of dentistry which prematurely fails, which is observed by Buyer within 12 months of the Closing Date, which is not greater than 18 months old, and for which Seller concurs as to the need for retreatment, Seller shall be able to perform the retreatment in the Buyer's office with Seller paying for any lab bills or Seller may defer to Buyer who may perform the retreatment and charge Seller 50% of the customary fee for such treatment (according to Seller's fee schedule) with Seller paying for any lab bill associated with the retreatment. Any dispute will be submitted to a third party mutually agreeable dentist for determination.

9. The allocation of the purchase price as to the practice assets shall be determined by mutual agreement between the parties;

10. The Purchase shall not include the Seller's Accounts Receivable or cash on hand as of the Closing Date of Sale; and,

11. The purchase and sale of the practice to close on or before that date (Closing Date of Sale) as mutually agreed to by the parties for the sum of (***Specify the amount in*** words)s ($0,000.00). The purchase price shall be paid by way of cash on the Closing Date of Sale.

12. This offer is submitted with a $5,000 refundable deposit to demonstrate the Buyer's good faith and to secure her position as first in time and right to purchase Seller's Practice. Such deposit shall be returned to Buyer in the event of the failure of any of the following contingencies:
    - A. Negotiation of a mutually agreeable contract of sale;
    - B. Assignment of the existing lease to Buyer or negotiation of a Lease or the for the office where the practice is located at terms acceptable to Buyer;
    - C. All of the assets of Seller's Practice shall be conveyed to Buyer free and clear of any and all liens or encumbrances;
    - D. Inspection and approval of the books, ledgers, charts, equipment, facility and records of Seller's practice as requested by Buyer and such inspections to be completed not later than ten days before the Closing Date of Sale.

13. This offer is submitted this _____ day of (date), which supersedes any previous offer, and is null and void if not accepted within seven (7) days.

Buyer:

Signed _____
, D.D.S.

The foregoing offer is accepted this_____day of (date).

Seller:

Signed _____
D.D.S.

SELECTING THE RIGHT LEGAL ENTITY FOR YOUR PRACTICE

Selecting the right legal entity for your practice is an important first building block to a successful and enduring practice. The inquiry into what legal entity will best suit your objectives should start with the following considerations: tax ramifications, lawsuit exposure, transferability, and expandability.

Regarding taxes, you need to have a basic understanding of how the legal entity is taxed; and, more importantly, you need to get your accounting/bookkeeping system in place from day one to ensure a smoothly running practice. Your exposure to lawsuits from your own conduct as well as the conduct of others should be examined to minimize your liability. Transferability relates to your capability to move your dental practice to a new location. This would involve moving clearly identifiable assets (dental chairs, equipment, etc.) and intangible assets (goodwill and patient loyalty) to a new location. Lastly, you want to ensure that the legal form of your practice allows you to expand to fit future needs.

As you contemplate which legal form your dental practice should take, you need to remember the rule, "If it is not in writing, it does not exist," as applied to business relationships. Any time you are building a business relationship with another dentist – whether a family member, best friend, or respected colleague – a comprehensive written agreement entered into at the start, while the relationship is upbeat, is the best insurance for a smooth relationship.

SOLE PROPRIETORSHIP

The most common dental practice entity is the sole proprietorship. As the name implies, this entity is for a single practitioner. It is not appropriate for two or more dentists. As an associate independent contractor, you will operate as a sole practitioner within another dentist's practice.

Legal: Setting up a sole proprietorship is as simple as opening your dental office, obtaining a business license, and notifying the Board of your practice address (B&P Section 3070). In completing the paperwork for the business license, you designate your practice as a sole proprietorship.

Taxes: For a sole proprietorship, a Schedule C which attaches to the federal tax Form 1040, is used for tax reporting related to the practice. You also need to obtain a tax identification number from the state Franchise Tax Board and the federal Internal Revenue Service. The state and federal identification numbers are necessary for such items as quarterly payroll tax reports and quarterly estimated income tax payments. Unlike an employee, as an independent contractor, you will need to pay quarterly tax payments. Make sure your accountant sets you up from the start of your practice to make these important tax payments to avoid a future tax catastrophe.

Liability: In a sole proprietor-owned practice, the dentist is directly liable for his or her own actions, such as in cases of patient treatment that leads to dental malpractice, and his or her own financial obligations, such as in cases of office or equipment leasing and in cases of judgments for on-the-job inquiries, wrongful termination, and sexual

harassment. The sole proprietor is also indirectly (vicariously) liable for actions of his or her employees, such as an injury inflicted to a patient by an associate dentist.

Advantage/Disadvantage: This business form is easy to set up and costs nothing to maintain. Its disadvantage is that it cannot be used when two or more dentists wish to jointly own the practice, except for a married dentist couple as discussed above. If you are an associate independent contractor, then your exposure is minimal although you should obtain proof of malpractice, workers comp, and premises liability insurance from the practice owner.

DENTAL CORPORATION

Legal: A dental corporation is a legal entity formed by filing articles of incorporation with the California Secretary of State's Office and running the corporation according to bylaws. When a dentist incorporates, the result is called a professional dental corporation.

Once such a corporation is formed, it must obtain a certificate of Registration from the Board. The dental corporation can issue stock only to one or more dentists, and the shareholders meet at least annually to discuss corporate business and elect directors and officers to run the corporation. An attorney or accountant usually files the paperwork to form or dissolve the dental corporation and to document the annual shareholder and director minutes.

Taxes: A dental corporation is subject to state and federal taxation on any net income of the corporation that is not paid out as expenses, salaries, or bonuses. Money paid as a salary or bonus to the dentist. shareholder is taxable to the individual as income. The corporation must pay a minimum tax to the state, currently $800, for the privilege of being incorporated. Most such entities try to leave no income in the dental corporation at year end to avoid double taxation, and the Internal Revenue Code Subchapter S election is popular to allow the treatment of income and losses as an individual rather than as a corporation.

Liability: It is a common misconception that the corporate status protects the individual against all liabilities of the dental. corporation. The dentist who incorporates remains personally liable for malpractice suits under California law and by alleging that the corporation is the "alter ego" of the dentist, a plaintiff attorney can include the individual dentist. in any other type of lawsuit that arises from the corporate practice. Limited liability can be achieved if leases, purchase agreements, or lines of credit are entered into on behalf of the dental corporation without the dentist providing a personal guarantee for the obligation. In these situations, if the corporation defaults, the creditor theoretically can only pursue corporate assets, not individual assets.

Advantages/Disadvantages: While many years ago, incorporating would provide the dentist with a variety of tax advantages, those have been eliminated through tax reform to such an extent that fewer tax planners now recommend incorporation. Incorporation does have the advantage of allowing for practice expansion, multiple dentists. ownership, sale of an identifiable practice entity, and long-term perpetuation of the business entity. The cost of incorporating, minimum tax payments, annual minutes and annual corporate returns must also be factored into the decision regarding incorporation.

DENTAL PARTNERSHIP

Legal: A partnership involves two or more dentists who agree to jointly own and operate a practice of dentistry. It is formed by a written agreement between the parties, and the partnership as an entity can own such things as the patient base of a practice as well as office equipment and the real property where the office is located. The partners owe each other a "fiduciary" responsibility to act in the best interest of the partnership at all times. If the partners do not agree in their partnership agreement as to how the partnership will terminate or dissolve, California law dictates that all of the assets of the dental partnership be sold and the proceeds applied to the liabilities and any remaining money slip between the partners.

Taxes: Partnership revenue, expenses, and income or losses are handled by way of a Schedule K-1, which is attached to each partner's federal Form 1040. Most tax planners agree that a dental partnership does not provide any tax advantages over the sole proprietorship form of practice entity.

Liability: Each partner is liable for the debts and liabilities of the dental partnership as well as for the other partners while performing partnership activities. Thus, each partner will be vicariously liable for malpractice actions filed again his or her partner even if only one partner treated the patient. Partners are also liable to one another and the partnership to act in the best interest of one another under the implied fiduciary duty.

Advantages/Disadvantages: Partnerships are often very successful for multi-dentist single-patient-base practices. Partnerships allow for the entry and exit of partners and can be customized so that all details regarding termination, death, and disability etc. can be planned for the seamless perpetuation of the practice. Partnerships do not work as well when each partner wants his or her own separate patient base, and dissolution can be a difficult process if the agreement did not provide a specific game plan for dividing the tangible assets and patient base between the partners. Lastly, the vicarious liability among partners is an undesirable aspect that cannot be eliminated.

SOLO-GROUP (PRACTICE ASSOCIATION AGREEMENT)

Legal: This is an agreement between two or more dentists who wish to maintain separately owned practices with shared overhead expenses and/or certain shared tangible assets. Although this agreement looks similar to a partnership, no legal entity is created by a practice association agreement. A written agreement should be entered into between the associating dentists that clearly identifies the business relationship as one between independent practices and that covers such things as how joint and separate expenses will be shared and how to handle a transaction in the event of a sale, death, disability or withdrawal of a party from the agreement.

Taxes: Since no legal entity is created, there are no taxes to the practice association agreement. Each practitioner handles his or her own taxes consistent with the form of his or her business entity, whether a sole proprietorship or dental corporation.

Liability: One objective of the practice association agreement is to avoid the vicarious liability that exists with a partnership. Generally, dentists who take part in a

practice association agreement will not be held liable for the actions of the other dentist members of the practice association agreement as long as a separateness of the practices is maintained, such as separate letterhead, separate bank accounts, and separate patient bases. There will be vicarious liability for jointly treated patients, jointly hired employees, and joint asset purchases, if any.

Advantages/Disadvantage: A practice association agreement gives the participating dentists the advantage of sharing overhead expenses with a minor risk of vicarious liability for the actions of the participating dentists. This business form also lends itself to a clearly identifiable independent practice that can be moved to a new location or sold to a new owner. The practice association agreement allows for multiple dentist participation and entry and exits of dentists and can be customized so that all details regarding termination, death, disability, etc., can be planned for the seamless perpetuation of the association.

SPACE SHARING AGREEMENT

Legal: A practice-owning dentist (lessor) leases one or more operatories and support staff to another dentist (lessee) who establishes his or her own independent practice with a patient base separate from the practice owner. Typically, basic landlord/tenant law applies to this business relationship. The lessor dentist should check his or her office lease to ensure compliance with any provision or assignment or subletting because sometimes the master landlord's consent is required before a space leasing agreement can be created. The space leasing agreement should spell out if supplies are included or excluded, that malpractice insurance is required of the lessee, and that each party's patient bases shall not be solicited or proprietary data copied by the other party.

Taxes: Since no legal entity is created, there are no taxes to the space leasing agreement. Each practitioner handles his or her own taxes consistent with the form of his or her business entity, whether a sole proprietorship or dental corporation.

Liability: The dentists who take part in a space leasing agreement will typically not be held liable for one another's actions as long as a separateness of dental practices is maintained, such as separate letterhead, separate bank accounts, and separate patient bases. There will be a vicarious liability for jointly treated patients, jointly hired employees, and joint asset purchases, if any.

Advantages/Disadvantages: The lessor dentist can generate income from an underutilized dental office; and, if the lessee is a specialist, some referrals can stay within the office, which is attractive to patients. The advantage to a leasing dentist is that he or she can begin to build a dental practice without the capital outlay required to furnish a new office. If staff is included in the lease, they can sometimes be resistant to working for a new dentist or working longer hours. There is also a chance that an unscrupulous lessor or lessee will attempt to solicit the patient base or referral sources of the other party. Either party to this agreement may transfer his or her rights to another dentist typically with the consent of the nontransferring party.

SPACE SHARING AGREEMENT CHECKLIST©

A practice owner (lessor) leases one or more exam rooms and support staff to an independent practitioner (lessee) who will establish his/her own independent practice with a patient base separate from that of the practice owner (lessor). The lessee owns his or her own patient base but no other ownership interest in the lessor's practice.

1) **Form of Agreement**
   a. A complete written document/signed/dated

2) **Relationship of Parties**
   a)Separate and distinct practices
   b)Landlord/tenant relationship

3) **Terms of Agreement**
   a) Rent - flat fee and/or percentage of collections/production.

4) **Taxes**-each party responsible for their own

5) **Expenses**
   a) Overhead, staff, supplies - usually covered by rent.
   b) Inventory, promotion, telephone, postage - add to rent.

6) **Ownership Interest**
   a) Right to take patients/records - ensure that records are separately identified.
   b) Equipment, supplies, computer data, telephone number, yellow pages ad.

7) **Income/Production**
   a) Mechanics and verification (who sends bills, who keeps books, who makes collection).

8) **Management Duties**
   a) Right to hire/fire support staff
   b) Who sets schedule of exam rooms, assistants, etc.
   c) Utilization of staff.

9. **Liability Considerations**

10. **Insurances**-Malpractice/Office Package/Workers Comp/Overhead/Disability
    a. Insurance - who obtains it and who pays
    b. Insurance/Indemnification/Cross-verification

11. **Termination/Death/Disability/Sale/Option to Purchase/Right of First Refusal**
    a. Who has right to do what - plan for each scenario.
    b. Conditions to event - timing, notice.
    c. Protection of investment to both parties.

12. **Anti-Solicitation Clause**-valid as to separately identified patients

The Goldman Law Firm, Snakebit@Goldmanlawfirm.net
55 Main Street, Tiburon, CA 94920, Tele: (415)4 35-5500 Fax: (415)4 35-5156