



Plus One

What you need to know when adding an associate to your practice

BY CHRIS BENTSON AND DANIEL SROKA, JD

Adding a doctor to the practice is a big decision and affects a great number of systems in the office. Change will occur. Thus, having clarity about why you want an associate is often the first question to ask. (For the purpose of this article, the term “associate” is defined as an employee doctor, whether

part- or full-time, whether a payroll employee or an independent contractor, without a firm plan for any future ownership in the practice.)

Defining Why You Want an Associate

While there may be many motivations for bringing an associate into a practice, typically, an

owner doctor chooses to bring an associate for one of three reasons. The first is to help with the workload of treating patients due to practice growth. The second is to allow for more time out of the clinic or away from the practice, or, said another way, to increase the quality of life for the owner doctor within the practice but not necessarily

to grow the practice. The third reason is often as a first step in a future transition plan where partial or full equity will eventually be offered to the associate doctor, but that plan is not yet defined. Whatever your reason, the practice will experience change on many levels upon the entry of a new doctor.

Depending on the skill level of the associate orthodontist in the clinic, schedules may need to be adjusted if one doctor works more quickly than another. Scripting in the new patient exam will need to be reviewed and rehearsed as patients and responsible parties will ask what role the associate will have in the patient care. Referring doctors and the community will be asking the same question. The



CHRIS BENTSON is president and managing partner of Bentson Clark & Copple LLC, which provides valuation and transition services to orthodontists. He also serves as Editor-in-Chief of the *Bentson Clark reSource*, a quarterly newsletter focused on the business aspects of running a successful orthodontic practice. He can be reached at chris@bentsonclark.com.

DANIEL SROKA, JD, practices law in Greensboro, NC. He is a graduate of Wake Forest University School of Law. He also holds a BBA in accounting from the University of Wisconsin-Madison. He has served the legal needs of Bentson Clark & Copple's referred clients since 2004. He can be reached at info@srokalaw.com.

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practice will need to determine how visible the associate's role will be and how to communicate that role. In addition, office space considerations may need to be determined, scheduling templates for two doctor days versus one doctor day may need to be built, malpractice insurance may need to be adjusted, benefits offered need to be considered, training on charting entries and treatment planning will need to be discussed, and how the new associate will be compensated, as well as his/her effect on the bottom line, will need to be reviewed. The entire

team, including your CPA, will be involved at some level when an associate enters the practice.

The Candidate Profile

When the decision is made to find an associate, another set of questions must be answered. Defining the candidate profile is the next step; that includes personality and character traits as well as skills, academic pedigree, and past experience. After defining a candidate profile that matches your "ideal" associate, a job description that answers such things as full- or part-time, compensation, days worked, will



the associate work exclusively for the practice or be permitted to work elsewhere, ideal entry date, and so forth will be defined. The result will be a candidate profile that will serve as a measurement tool as candidates are vetted. As in most hiring decisions, the perfect candidate may not appear, but one that closely matches the hiring criteria will help guide the practice owner into making the best decision when it comes to making an offer.

How to Locate Candidates

After making the decision to bring an associate on board and defining the ideal candidate and job description, the next priority will be how to locate potential candidates. Currently, there are many more young orthodontists looking for associate positions than there are opportunities. Even so, the geographic location of your practice, your time line for entry, and what you are willing to pay for an associate will likely be the three biggest limiting factors you will face in searching to locate an associate. With that being said, there are several common ways to go about locating a candidate.

Transition Service Companies. Many of these companies have an in-house database of doctors they have spoken with that may be seeking employment. For example, our company has an executive recruiter on staff that exclusively serves doctors looking for associates.

Orthodontic Programs.

Contact the orthodontic programs in your area and express your interest in speaking with residents who may be seeking an associate position when they graduate. Contacting the program chair, a teaching professor, or the chief resident are common first contacts. Often, the program will be willing to circulate or post your opportunity to the existing residents.

Vendor Representatives. You may have built a close relationship with your vendor representatives. They often are aware or have relationships with young orthodontists who are seeking employment. Be sure you can trust the representative with confidentiality. It is extremely important to be sure your competitors and referrals do not hear about your plans.

Meetings and Groups. Alumni groups, as well as local, state, regional, and AAO meetings, are full of opportunities to make connections.

Ads. Place an ad in an orthodontic journal. This can be expensive, but it does get the word out to those doctors looking for work.

AAO's Practice Opportunities Services (POS). This is a free, web-based self-listing program service available to all AAO members. Doctors wishing to sell or purchase a practice or find a full-time or part-time associateship or partnership can register, conveniently and confidentially.

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Initial Phone Call(s) and First Meeting(s)

When a potential candidate is located, a nondisclosure document should be delivered to the candidate and signed before speaking further about the opportunity. Next, the candidate's CV should be reviewed. Ideally, a good CV will include a photograph and an autobiographical

narrative of the candidate's background, and address why the doctor desires to specialize in orthodontics. If there is still interest after securing the nondisclosure document and reviewing the CV and autobiographical sketch, the next step is an initial phone call. This phone call is simply a "get-to-know you" discussion.

Start the phone conversation

by offering a brief history of your practice and explain why you are seeking an associate. Next, ask the candidate to tell his/her story and why he/she is seeking employment. Ask about what interests him/her in your area and the long-term plans for his/her career. The question, "Tell me about your yourself," can be particularly illuminating.

We have found that discussing licensure requirements on this initial call is also beneficial to avoid some false starts. The dental board of your state(s) will define what is required. Be sure to understand if the candidate is eligible by the exam they have or plan to take, or will they have to take another exam. The goal of this call is to listen rather than talk about yourself, your practice, your town, and so forth. By the end of the call, you should know whether or not taking the next step is something to pursue.

That next step is communicating with other doctors who can offer a character reference on the candidate. If you are speaking with a resident candidate, references may be limited to program chairs, professors, or fellow residents. The goal of the referral check is to simply hear character qualities that are congruent with your profile. For example, by asking a reference whether the potential candidate would be seen by his/her fellow residents as a leader or a follower may help identify the level of initiative they may exhibit as an employee. If your profile is for a "practice builder" rather than a "worker bee," this type of feedback can be helpful in providing insight.

If moving forward with the candidate, the next step is an office visit. Schedule at least a half day for the candidate to visit you in the practice during patient hours. After the close of the day, have a conversation over a meal together. If things go well, you may choose to schedule a second visit with his/her spouse. Including the spouse in the decision process is very helpful to the long-term success of the associateship and can be accomplished over a meal. You may also want to organize an introduction to a real estate agent, if neither the candidate nor spouse is familiar with the area. With green lights going off



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by all parties, it is now time to formalize the offer. While you may have discussed the general terms of employment at various points in the journey, a specific discussion of employment agreements is now in order.

Is an Employment Agreement Needed?

There is always an “employment agreement” in place between the employer and the employee. It might consist of a written contract signed by the employer or employee, an offer letter from the employer to the employee, or a handshake, but in any event there is inevitably an understanding between the parties as to compensation, benefits, work hours, and the like. Additionally, federal and state laws impose obligations on both employer and employee that govern their relationship with one another. So, the real question is not: Do I need an

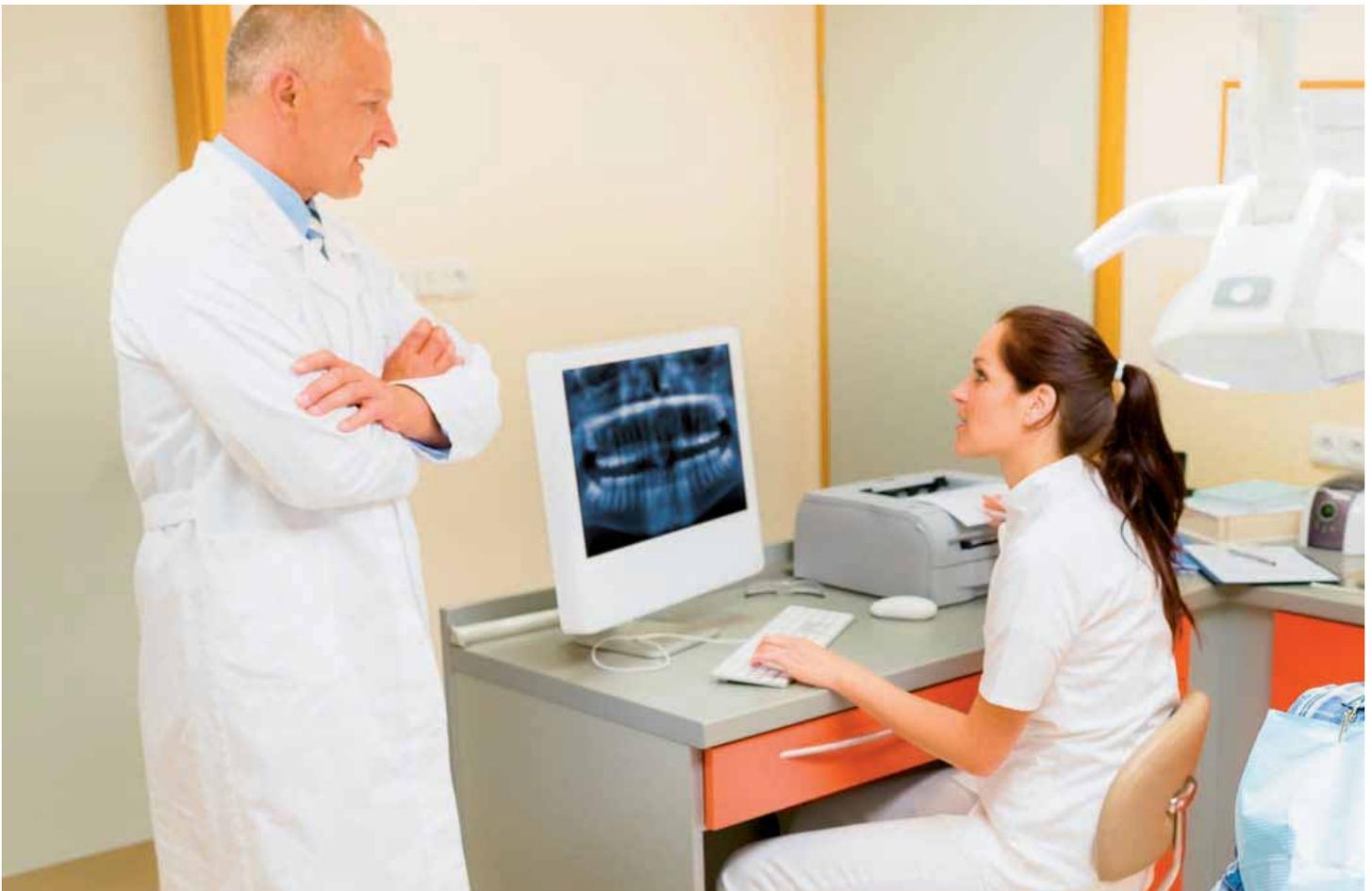


employment agreement? It is: How can I best define the employment agreement?

There is sometimes hesitancy on the part of employers to enter into a written, mutually executed contract with an employee, for fear that it might result in the employer waiving the right to terminate the employee at will. In general, so long as the

document clearly states that the employment is at-will, that the employee is not guaranteed a minimum term of employment, that the employee is not entitled to severance upon termination, and the like, the employer will retain the right to terminate the employee at will. Employers must, however, understand that the right to terminate “at will”

is not to be taken literally; what it really means is the right to terminate for no reason or for any lawful reason. For example, an employer might terminate an employee because the employee is a Duke fan or a Packers fan. However, if the employee is a 57-year-old female and the vacancy is immediately filled with a 26-year-old male, then a





case might be made that the real reason for the termination was age and/or gender bias, even if the new employee is a Tarheels or Bears fan.

Properly drafted, a mutually executed employment agreement can benefit both employer and employee, in that it provides clarity and a reference point to turn to in the case of a misunderstanding or disagreement.

Elements of an Employment Agreement

An employment agreement should at a minimum specify the following: compensation,

benefits, job responsibilities, supervisory relationships, licensure requirements, insurance (eg, professional malpractice), expense reimbursement policy, days/hours to be worked, severance (if applicable), and termination for cause events (if applicable).

The term of the employment agreement is also an important, and somewhat elusive, element. Many employment agreements have a term of 1 or 2 years. The intent is that if the employee remains employed throughout the term of the employment agreement, then the provisions

of the employment agreement (compensation, benefits, etc) will apply for that period of 1 to 2 years. Unfortunately, some employment agreements contain phrases such as, "Employer may terminate this Employment Agreement at any time upon notice to Employee." It would be better to say, "Employer may terminate Employee's employment at any time upon notice to Employee," since the "term" of the employment agreement and the "term" of the employee's employment are not necessarily the same thing.

Also in the unexpected

results category is a phrase such as, "Employer may terminate Employee's employment upon thirty (30) days' notice." If the employer cannot stand to keep the employee on the premises for the 30-day period, then the employee, if told to leave immediately, must still be paid compensation and benefits through the end of the 30-day period. In other words, the employee is entitled to severance, whether or not it was the employer's intent.

The infamous noncompete must also be addressed. Some prefer that noncompetes and related covenants (such as nonsolicitation of patients, employees, and referral sources) be included in the body of the employment agreement, whereas others prefer a stand-alone document. Whatever the case, it is critical that the employer confer with an attorney as to the drafting, signing, and enforceability of such covenants. Even slight technical errors can render such covenants unenforceable.

Finally, or in fact initially, the employer must decide whether to create an employer/employee relationship or an independent contractor relationship. It can be tempting to select an independent contractor relationship, since its tax aspects can be preferable. The employer's CPA should be quick to point out, however, that the IRS may disagree with that classification, in which case significant payroll tax payments and penalties can be imposed on the employer after the fact. The IRS provides guidance as to how to test a relationship and properly classify it as employer/employee or independent contractor. Also, it is important to note that if the relationship can be accurately classified as an independent contractor relationship, the employer must then review applicable malpractice insurance policies, employee handbooks, and benefit plans to determine how they relate, if at

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all, to an independent contractor as opposed to an employee.

Marry or Break Up?

One of the most dangerous provisions an employer can place into an employment agreement is language discussing a potential future partnership with the employee. Even if such language has caveats in bold print in 20-point type that is not binding, is just a proposal, or is otherwise meaningless, the question then must be asked: If it's meaningless, why is it in there? If after a few years the employee thinks that he or she has performed well enough to be a partner and believes that the invitation will be coming any day now, but the employer decides that enough is enough and gives the employee a termination notice, that paragraph in the employment agreement will move center stage. If litigation results,

there are semiancient rules of contract interpretation that could lead to a verdict of significant damages against the employer. Therefore, any discussion of potential partnership should not be done in a written agreement, and even if verbal should always be couched in terms of possibility as opposed to promise.

If the parties decide that it is time for a partnership, then obviously it will be time for a new document and more time with lawyers and CPAs. If, on the other hand, it is time to part ways, if the employment agreement has been drafted adequately, the process and financial consequences should be in the document and would simply need to be followed. **OP**

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