

Chapter 6

NEGOTIATING THE WIN-WIN SALE & ACQUISITION

Assume that the fair market value of the practice and any personal goodwill of the practice owner are agreed upon. Further, assume that the seller/purchaser had also agreed on the date of valuation in the event that the incoming doctor has been an associate in the practice.

The practice would usually be sold in one of two ways; either in a taxable asset or stock sale and acquisition. Under either method, the parties would attempt to maximize the economic benefit and minimize the federal income taxes paid in accordance with applicable tax regulations. To accomplish this objective, the "tax-neutral" fair market value may be adjusted up or down relative to the tax detriment and/or benefit to either of the parties and would consider the following: (a) the contribution which both the purchaser and seller have made to the fair market value, assuming that the purchaser has been an associate in the practice; (b) the amount which would be paid in taxes, both by the seller and purchaser; (c) the terms and conditions of the practice acquisition and sale, e.g., seller assisted financing; (d) depreciation recapture amounts under Internal Revenue Code ("IRC") Sections 1245 and 1250; (e) installment sale regulations under IRC Section 453; (f) the payment of Social Security benefits; (g) tax-qualified retirement plan termination, transfer, rollover and/or distribution; (h) estate planning considerations; and (i) any other matters which may effect either the seller or purchaser. These factors, by their nature, may benefit one party and be a detriment to the other. For this reason, sellers and purchasers of professional practices should be very cautious of allowing one advisor to represent them jointly in a practice sale and acquisition. Once these tax considerations are defined and worked out, the respective accountants for both the seller and purchaser should work out the cash flow for both doctors.

In the process for the sale and purchase, the advisors to both parties should: (a) agree upon the value of the practice; (b) consider the tax effects and possible alternatives; (c) negotiate the "one best method" to complete the transaction; and (d) confirm the outcome or cash flow to each party to the transaction.

Asset Sale

In an asset sale, the purchaser acquires all or part of the seller's assets and probably would not want to assume any of the seller's liabilities, e.g., amounts owed on dental equipment or expansion loans. For the purchaser, due to the "stepped-up" basis to the fair market value of the seller's assets, an asset sale is generally more preferable than the purchase of stock, which is paid in after-tax dollars. An asset purchase allows a purchaser to allocate the purchase price to the assets of the practice in accordance with IRC Section 1060. In other words, the purchaser can amortize or depreciate acquired assets. For example, dental equipment is depreciated over 7 years and goodwill over 15 years.

Reporting Requirements

IRC Reg. 1060-1T(h) requires the seller and purchaser in an asset acquisition each to report on IRS Form 8594 specific information about the allocation of purchase price among the assets transferred. Although the allocation of purchase price on Form 8594 will be binding on both the purchaser and seller, pursuant to a written agreement, the IRS retains the ability to challenge the taxpayer's determination of the fair market value of any asset. If the purchaser and seller have not reached a written agreement regarding to the allocation of the purchased assets, they would file Form 8594 individually. The allocation of the purchase price in a professional practice transfers become more significant at any time when the difference between capital gains and ordinary income treatment widens.

In the event that a C-corporation sells its assets and the retiring or departing owner assigns or sells his or her personal goodwill, another Form 8594 would have to be prepared relative to the personal goodwill in accordance with applicable tax regulations.

Contingent Liabilities

An asset acquisition permits the purchaser to acquire assets of the practice only and not acquire unknown or contingent liabilities. This is not the case in a stock acquisition, although this problem can generally be avoided or minimized by the seller indemnifying or holding harmless the purchaser from any potential liabilities of the practice arising prior to the closing date and the purchaser doing the same for the seller after the closing date.

Like-Kind Exchanges

In an asset acquisition where the doctor is planning to sell his or her practice and purchase another shortly thereafter, IRC Section 1031, like-kind exchange treatment, may be possible. Such treatment would defer any gain to the purchaser on tangible like-kind property, dental equipment, if certain tests are met. It should be noted that the regulations under IRC Section 1031 are relatively complex and require that the new assets, i.e., dental equipment, be identified within 45 days of the closing of the first practice sale. The closing of the subsequent practice purchase must take place within 180 days after the first practice sale. In short, property covered by IRC Section 1031 is deferred from IRC Section 1060 treatment. While IRC Section 1031 usually pertains to real estate, it can also be applicable to dental equipment. Under regulations issued in year 2000, reverse exchanges are now permitted where the second property can be acquired prior to the first property being sold. This change provides additional planning opportunities not previously present in like-kind exchanges.

Goodwill

IRC Section 197 was issued pursuant to the Revenue Reconciliation Act of 1993 and provides for intangible assets including goodwill, going concern value and covenants not to compete to be depreciated by the purchaser over a 15 year period, provided such asset was acquired after August 10, 1993. Prior to this date, goodwill was not depreciable. At that time,

covenants not to compete were amortized by the purchaser over the length of the covenant period. This time period was typically three to five years. Currently, covenant compensation must also be depreciated over 15 years and would be considered ordinary income to the selling doctor. If consulting fees or other compensation is paid to the seller for services rendered in the practice, such amounts are not considered covenant compensation. This compensation would be currently deductible to the purchaser and would be considered ordinary income to the seller. Caution; the consulting fees are only deductible where the consulting services are provided.

Personal Goodwill

Since repeal of IRC Section 337, known as the "General Utilities Doctrine", in 1986, a practice or business which operates as a C-corporation incurs a double tax upon the sale of its assets. The double tax equates to a 35% tax at the corporate level, and capital gains rates at the shareholder level when the assets are distributed. Because the largest portion of the selling price is typically goodwill, this is a significant problem.

Because of the outcome of 2 tax cases^{1,2} in 1998, goodwill can be "personal" to the shareholder/doctor if the C-corporation's revenues are derived from the personal efforts or reputations of those individuals who are not subject to non-competition provisions or agreements with the business or practice. Although still arguable for tax purposes, if the goodwill is an individual asset and not a corporate asset, then the double tax can arguably be avoided to the extent that goodwill is personal.

Stock Sale

If the practice is organized as an S or C-corporation, the selling doctor can sell either the assets or the stock of the corporation. For the seller, asset sales are favorable where the seller operates as a sole proprietorship, general partnership, limited liability company or S-corporation. Where the seller operates as a professional C-corporation, the seller is subject to two levels of tax: one on the sale of assets at the corporate level, and the second on the distribution at the shareholder level. Here, a stock sale is more preferable than an asset sale, triggering only a single level of tax to the doctor(s)/shareholder(s). Although the sale of stock is taxed at favorable capital gains rates to the seller, the acquisition of stock is non-deductible to the purchaser. Nonetheless, the problem of the double tax where a professional C-corporation sells its assets may be minimized or eliminated by combining the corporate sale of assets with the sale of personal goodwill of the retiring or departing doctor, consulting agreements, deferred compensation arrangements and/or non-competition agreements. These agreements must be legitimate and valid, otherwise the Internal Revenue Service (the "IRS") could consider any of these agreements as a "sham" or "disguised sale" and recharacterize the transaction in an unfavorable manner.

¹ Martin Ice Cream Co. v. Commissioner, 110 T.C. 189 (1998)

² Norwalk v. Commissioner, 76 T.C. 208 (1998).

One method to balance the tax disparity in a stock sale is to measure the economic detriment to the purchaser and economic benefit to the seller, then negotiate a revised purchase price. This same result can be accomplished in an asset sale by balancing the tax detriment to the seller on the C-corporation's sale of its assets against the benefit to the purchaser in the ability to depreciate or write-off the acquired assets. This problem is minimized if personal goodwill is present, as the personal goodwill should arguable only be taxed at one level.

Representations and Warranties

A representation or warranty by the seller is a statement contained within the purchase and sale agreement regarding the status, condition or some aspect of the practice, its financial condition or operation. A representation or warranty may also be made by the purchaser regarding the purchaser's financial condition or ability to acquire the practice, e.g., the purchaser is not under a restrictive covenant provision as a result of prior employment within a specified geographical area of the practice being acquired.

Figure 6-1 provides representations and warranties which may be made by the seller in a practice acquisition. Such representations and warranties are and should be rather detailed. It should be noted that Figure 6-1 is an example of representations and warranties where a practice owner selling stock in the practice. However, if the seller would sell the assets of the practice, as opposed to its stock, the representations and warranties should not differ significantly.

Representations and warranties can be made absolute or "to the best of the seller's knowledge." For example, Section 1.7 of Figure 6-1, provides that, "to the best of Seller's knowledge, the accounts receivable of the practice are fully collectible". This representation may be acceptable to the purchaser as to the accounts receivable because the seller has no knowledge that they are not collectible. This language may not be acceptable to the purchaser as to other Sections contained in Figure 6-1, particularly Section 1.9, Tax Matters, and Section 1.19, Litigation.

The representations and warranties for the purchaser are usually fewer in number than for the seller and usually relate to the purchaser's ability to enter into an agreement for the purchase of the practice.

Indemnification

In the indemnification provisions, the seller would agree to indemnify or hold harmless the purchaser for any breach of the seller's representations and warranties and vice-versa. In such a provision, the seller would hold harmless or indemnify the purchaser for any losses or claims arising prior to the closing date of the acquisition and sale. Alternatively, the purchaser would be asked to indemnify or hold harmless the seller for any losses or claims arising after the closing date of the acquisition and sale. Such provisions can be drafted in a limited or broad manner. The purchaser probably would not agree to indemnify claims of the seller after the closing date relative to the seller providing consulting services or rendering professional services

on behalf of the purchaser. Likewise, the seller probably would not agree to indemnify the purchaser prior to the closing date relative to the purchaser working as an employee or independent contractor in the practice. It should be noted that indemnification provisions are only as effective as the ability of the indemnifying party to hold harmless or reimburse the other party for the claim in question. However, where the purchaser pays the seller over time, the purchaser may desire to negotiate an "offset" provision against sums owed to the seller. An offset provision places the burden on the seller to institute any litigation against the purchaser for the amount of any offset. Finally, the purchaser and seller may wish to indemnify each other for claims in certain situations above or below a certain monetary or "basket" amount. This amount would be subject to negotiations among the parties to the acquisition and sale.

Rework

The sale and acquisition documents should specifically define the possible problem of "rework", whereby the purchaser would feel obligated to the patient to recreate work previously completed by the seller. Rework can be a very sensitive and emotional concern for both the seller and purchaser where it comes up. It can be very significant in crown and bridge practices, orthodontic practice sales and acquisitions and in general practices where orthodontics or "TMJ" treatment has been rendered by the seller. Typically, the seller would not desire to pay or indemnify the purchaser for any rework and the purchaser would desire the seller to complete any rework at his or her expense. This is a subject of negotiation. Misunderstandings between the purchaser and seller may arise by the failure to consider this matter, particularly where seller-assisted financing is in place.

Letters of Intent

A letter of intent is a preliminary letter agreement which precedes negotiation of the purchase and sale of the practice. The provisions contained in the letter of intent should provide a formalized request by the seller, or purchaser, of the price, terms and conditions of the practice acquisition and sale. Figure 6-2 provides an example of a letter of intent.

The letter of intent may or may not include provisions relating to the confidentiality of information obtained by the purchaser for review by advisor(s) and provisions for the payment of earnest money, both of which may be contained in a free-standing document or letter.

Where earnest money deposits are withheld and the amounts may be substantial, the purchaser may be frightened away and may think that he or she will forfeit previously paid earnest money in the event that the seller does not choose to sell the practice or the parties cannot agree on the terms and conditions of the sale. Therefore, earnest money provisions should be reasonable, which reasonableness depends upon the financial condition of the purchaser and the fair market value of the practice. Earnest money deposits typically range from \$10,000 to \$100,000.

A provision sometimes contained in a letter of intent is one whereby the seller agrees to negotiate only with one purchaser for a certain time period, e.g., 30 or 90 days.

Because the price, terms and conditions of the acquisition and sale are determined by the requesting party, seller or purchaser, prior to the preparation of the letter of intent, its use generally decreases the time spent in negotiations. Therefore, a letter of intent should assist in completing the acquisition and sale within the time period desired by the parties and serve to keep advisory fees within budget.

Obtaining Financing

For the purchasing doctor, you will need a loan not only to finance the acquisition of your practice, but later for purposes of expansion and resource management or, to establish your practice, in the event that you do not acquire one. Whatever your reasons to borrow money, it is imperative to complete an analysis of the loan repayment in light of your anticipated and current revenues, operating expenses and compensation. In other words, think about repayment of the loan in light of your anticipated cash flow before borrowing the money. The lender needs to know: (a) the purpose of the loan; (b) the amount of the loan repayment; and (c) the sources of loan repayment. The key factors in obtaining any loan are preparation and giving yourself an appropriate amount of time to secure the funds.

Often, purchasing doctors wait longer than appropriate to commence the process of obtaining financing for practice acquisition purposes. This is probably due to the perceived complexity of gathering and preparing the required information to obtain the financing. In preparing an informational package for the lender, consider the following format: (a) projected monthly personal expenses; (b) personal financial statement; (c) projection of first year's practice operations; (d) practice valuation; (e) the names, telephone numbers and addresses of the advisors to the transaction; (f) and due diligence reports; (g) financial statements, including year-to-date, and tax returns for the practice over the last five (5) years; and (h) any other relevant information, primarily relating to the financial condition of the practice being acquired.

Before granting a loan, the lender will review the informational package presented and, usually through the additional step of a loan committee if the lender is a bank, will either grant, conditionally grant, or reject your application based upon your: (a) ability to repay the loan; (b) character; and (c) previous repayment history.

Seller Assisted Financing

An important concern for the seller is being paid the acquisition price for the sale of the practice. Therefore, the seller should not generally be eager to provide the financing. However, in the current economic environment, potential purchasers may not have the ability to obtain financing for the full purchase price, plus working capital. In order to minimize this problem, the practice valuation should prove helpful to a lender as an analysis to show, in quantitative terms and based upon historical results, that the loan for the practice can be repaid, if granted.

Nonetheless, many potential purchasers have high debt due to school loans. Add to this the economic crisis which face lenders from time to time and you end up with purchasers without the ability to obtain the financing. Dental lenders are now available to work exclusively with dental and specialty practices and understand the doctor's borrowing needs, as well as the concept of goodwill or a "patient in the chair". These lenders are willing to make loans to dentists and specialists which banks ordinarily would not make, as loan officers usually do not understand the business of dentistry or its specialties. In certain circumstances, your advisors should be able to locate suitable financing for the practice acquisition. However, where financing is obtained, the lender may request the seller to provide some portion of the financing to ensure that the seller assists in the transition of patients to the purchaser. This concept of "shared risk" will be a significant trend in the future.

Generally, practices sell for higher values where some component of seller assisted financing is available than where it is not. Alternatively, the pool of purchasers shrinks where the sale is contingent upon the purchaser financing 100% of the acquisition price.

In the event that the seller is leaving the geographical area or will not otherwise have the ability to return to active practice should the purchaser default on payments of the purchase price, the seller would attempt to receive the purchase price in full, at closing.

The complete sale of a practice should be distinguished from the situation where an associate buys into a practice over a predetermined time period. In this instance, seller assisted financing is much less of a risk to the seller than in a complete sale because the seller remains active in practice.

Where the seller provides financing for the practice sale, the seller should require to obtain the same type and amount of security which a lending institution would require in approving a loan for the acquisition. The personal guarantees of both the purchaser and the purchaser's spouse, if married, should be required in most, but not all circumstances. In most instances, the incoming or purchasing doctor would not desire to provide personal guarantees of parents or relatives personal guarantees. However, if the seller acts as a lending institution, the seller should require the same security as a lending institution. Therefore, the request for the personal guarantee(s) of family members would probably be made.

As an additional consideration for obtaining adequate security by the seller, if some portion of the sale of the practice is through lending institution financing, the lending institution generally requires a first lien on the practice assets being sold. Therefore, in the event of purchaser default, the lending institution is paid prior to the seller. This would be one reason for the seller's need for security similar to that which would be required by a lending institution.

If seller assisted financing is provided, a provision is typically included in the acquisition documents, whereby the restrictive covenants are invalid with regard to the seller upon default of the purchase price by the purchaser. In some states, the purchase price is paid pursuant to a "cognovit" promissory note. A cognovit promissory note is one whereby judgement for default

can be taken immediately by the note holder, which cuts off all defenses of the debtor and any appeal of judgment taken on the note.

Another provision is often included in the acquisition documents whereby the purchaser is prohibited from practicing in a specified geographical area, over a specific time period, in the event of default on sums owed to the seller. Here, the seller prohibits purchaser from relocating nearby the acquired practice if the purchaser leaves prior to completing all obligations.

If the seller owns the practice facility, the seller may desire to retain the ability to terminate the lease in the event of non-payment under any seller assisted financing.

Where seller assisted financing is provided, the seller would desire to: (a) know the character of the purchaser to whom the financing is being provided; (b) obtain a substantial down payment; and (c) obtain the same amount and type of security which a lending institution would require in approving the financing. Seller assisted financing is not something which most sellers are eager to provide. However, to the extent that the seller is confident that he or she will be repaid, the interest on the loan can be a worthwhile investment. If granted prudently, seller assisted financing can provide the seller with a "fair" selling price for the practice, while providing the purchaser with an opportunity to acquire the practice which the purchaser would not otherwise have, but for the financing. A common mistake in this area is for the seller or seller's advisor(s) requesting a selling price so high that the purchaser gets discouraged and defaults. Selling prices are not increasing, they are decreasing.

Covenants Not To Compete

The primary value of a practice is its patient base. In acquiring a practice, the purchaser would not desire that the seller to compete after the acquisition is completed, except for those professional services rendered on behalf of the purchaser.

Alternatively, the seller would not desire for the purchaser to possess the ability to render professional services if the purchaser defaults on payment of the acquisition price or as a competing associate of the practice prior to its acquisition.

A covenant not to compete is usually contained as part of the acquisition documents. Although the enforceability of a covenant not to compete varies from state to state and cannot be reduced to a single formula, a covenant will more likely be enforced when it is a reasonable step in carrying out the securing of the goodwill of the acquired practice and is limited to those areas affecting the existence of goodwill.

The Restatement, Contracts, Second provides that promises imposing restraints, covenants not to compete, that are ancillary to a valid transaction or relationship include the following: (a) a promise by the seller of a business (practice) not to compete with the purchaser in such a way as to injure the value of the business sold; (b) a promise by an employee or other agent not to compete with the employer or other principal; and (c) a promise by a partner, or

shareholder, not to compete with the partnership, or corporation. To be enforceable, a covenant not to compete must be limited as to the period of time, the area, and the activity involved; this is to indicate that the restraint is no greater than necessary to protect the legitimate interest of the purchaser upon the sale.

Covenants not to compete usually relate to the following: (a) time, e.g., three to seven years; (b) geography, e.g., ten miles, twenty miles, freeway boundaries or some defined location, a county or communities; (c) non-solicitation of patients of the practice or its employees; and (d) trade secrets and confidential information of the practice, e.g., patient lists and/or referral sources.

The sale and acquisition documents described in Figure 6-3 would provide for restriction covenant provisions. The Practice Document Matrix in Figure 6-3 lists the documents necessary for any private practice option.

Employment or Engagement of the Seller After the Acquisition

While it is an accepted practice for the purchaser to employ or engage the seller in the practice after the acquisition in order to assist in the transition of patients, the period of time necessary to accomplish the transfer is generally shorter than the purchaser thinks. This assumes that the complete practice is being acquired and sold and that the purchaser and seller are not planning on a co-ownership or solo group arrangement.

There are two reasons for this limited transition period. First, the seller generally desires to be compensated for professional services rendered in the practice, as well as to be paid for his or her presence on the premises of the practice for patient and/or referral source introductions and to answer any questions from the purchaser. Therefore, the seller is typically compensated by way of: (a) payment for professional services rendered; and (b) an hourly, half-day or full-day rate for patient and/or referral source introductory and other consulting services for the purchaser. To the extent that the seller is being compensated for professional services, the cash flow of the practice is reduced. This limits the purchaser's ability to pay the lender and/or seller the purchase price. The end result is that the transition period should last only a short time period of one to three months. In the event that the seller and purchaser plan to work together for more than a short period of time due to the uniqueness of the practice or the seller's desire to continue to work, the impact upon cash flow must be considered.

Second, the practice facility size and design often does not allow for the seller and purchaser to render professional services together, comfortably. Therefore, in order for the seller and purchaser to work at the same time, both doctors tend to be somewhat cramped and inefficient.

These comments are generalizations and exceptions exist. However, for the purchaser to protect himself or herself relative to the seller's rendering of services, professional or otherwise, after the acquisition, the purchaser should retain the ability to limit or terminate the relationship.

The seller's purpose should not be to earn a living in the purchaser's newly acquired practice, but to assist in the ownership transition.

An important exception exists in that the selling doctor's anticipated retirement may only be partial and not complete. The parties can definitely negotiate that the selling doctor may remain in the practice, even for an indefinite period of time within limitations, to continue to render services on a mutually agreeable basis under agreed upon schedules, compensation, terms and conditions. In fact, the selling doctor may negotiate that his or her restrictive covenants would be null and void if the purchaser inappropriately terminates the seller's employment as an employee or engagement as an independent contractor after the sale.

The Needle in the Haystack

How do the seller and purchaser find each other? Through, in no particular order: (a) practice brokers; (b) dental schools; (c) dental equipment and supply companies; (d) advertisements in local, county, state and national dental publications and journals; (e) dental fraternities; (f) dental laboratory technicians; (g) practice management consultants; (h) accountants and attorneys; (i) newspaper classified advertisements; (j) study clubs; (k) colleagues; and/or (l) a combination of any of the above.

Practice brokers sell many of practices around the country. Although a brokerage fee of approximately ten percent (10%) of the selling price is customarily charged, the ten percent (10%) can be well the fee if the seller cannot find a purchaser or if the candidate/purchasing doctor cannot locate the "right" practice.

Practice Mergers

Practice mergers usually work well for both the retiring and purchasing doctors. Let's say that a retiring doctor is having difficulty locating a purchaser, which will be a future trend due to supply and demand. Often, there is a doctor nearby who could be busier. Your practice can merge into the most desirable of the two facilities and the younger doctor can buy-out the retiring doctor. The economics are usually good in that the overhead of the disappearing practice is easily absorbed into the overhead of the surviving practice. Your dental supply representative can be extremely helpful in this situation because the dental supply representative knows your neighbors who you don't know.

Practice sales and acquisitions work well when the parties and their advisors understand all of the relevant factors relating to the transaction. Where the sale and acquisition is a "win-win" for both the selling and purchasing doctor, the sale and acquisition usually works well.

Figure 6-1

REPRESENTATIONS AND WARRANTIES

1. Representations and Warranties of Seller. Seller hereby represents and warrants to Purchaser as follows:

1.1 Organization. The Practice is a professional corporation duly organized, validly existing and in good standing under the laws of the State of _____, has full corporate power and authority to own all of its property and assets and to carry on its dental practice as it is now being conducted.

1.2 Authorized Agreement. All corporate action by the Practice necessary for the authorization and consummation of the transactions contemplated hereby has been taken.

1.3 Valid and Binding Agreement. This Agreement has been validly executed and delivered by and constitutes a valid and binding obligation of Seller enforceable in accordance with its terms.

1.4 Ownership of the Practice. Seller owns beneficially and of record one hundred percent (100%) of the shares of the Practice's issued and outstanding capital stock, free and clear of all liens, claims, encumbrances or restrictions of any kind, which constitutes the "Shares". Each of the Shares has been duly authorized and validly issued and is fully paid and nonassessable. The Practice has outstanding no other equity securities, or any securities options, warranties or rights of any kind convertible into equity securities of the Practice.

1.5 Financial Statements. Seller has delivered to Purchaser copies of the Practice's financial statements for the fiscal year ended _____ (herein called the "Financial Statement Date"), and for the fiscal year ended on _____, of each of the years _____ and _____ and notes thereto and the Practice's "Interim Financial Statements" for the period _____ through and including _____ (all of which statements are herein collectively called the "Financial Statements"). The Financial Statements have been prepared on a compilation basis and are true, complete and correct, have been prepared, from the books and records of the Practice on a comprehensive basis of accounting, consistently applied for the periods indicated, and which present fairly the financial position and results of operations of the Practice as of the dates thereof and for the periods covered thereby. There are no facts known to Seller which would materially alter the information contained in the Financial Statements.

1.6 Inventory. The Practice's dental supply inventory and dental instruments are merchantable, suitable and usable in the ordinary course of the Practice's business and operations. The Practice's assets include a sufficient (but not an excessive) quantity of each type of such dental supplies and instruments in order to meet the normal requirements of the Practice's business and operations.

1.7 Accounts Receivable. All accounts receivable of the Practice are valid and enforceable. To the best of Seller's knowledge, the accounts receivable are fully collectible.

Figure 6-1

1.8 Liabilities. Except as disclosed in the Financial Statements or on Schedule 1.8 (attached hereto and incorporated herein by reference), the Practice has no debts, liabilities or obligations of any nature whatsoever, whether accrued, absolute, contingent, or otherwise. All deposits, accounts and notes payable, and other liabilities of the Practice are current and not in default.

1.9 Tax Matters. The Practice has timely and duly filed with the appropriate governmental agencies all tax reports and returns required to be filed by it. All of such reports and returns are true, correct and complete for the periods covered thereby. The Practice has timely and duly paid all taxes required to be paid by it in respect of the periods covered by such returns. All deposits required by law to be made by the Practice with respect to employees' withholding taxes have been duly and timely made. True and complete copies of all federal income tax returns on Form 1120 for the tax years ending _____; _____; and _____ as filed with the Internal Revenue Service have been delivered to Purchaser, together with all supporting schedules thereto. There are no federal, state or local tax liens upon any property or assets of the Practice. The Practice has not requested any extension of time within which to file any tax returns which have not since been filed, and no deficiencies for any tax, assessment or governmental charge have been claimed, proposed or assessed by any taxing authority and there is no basis for any such deficiency or claim. As used herein, the term "tax" includes (but is not limited to) all federal, state, and local income, sales, employees' income withholding, social security, franchise, property, and all other governmental taxes, fees and charges.

1.10 Title to and Condition of Property. The Practice has good and marketable title to and rightful possession of all assets it owns, except assets sold or otherwise disposed of in the ordinary course of the Practice's business and operations, free and clear of all liens, security interest, encumbrances, and restrictions, except: (i) liens for current taxes not yet due and payable; and (ii) liens or encumbrances described in Schedule 1.10 (attached hereto and incorporated herein by reference). Purchaser acknowledges that Seller is making no representation or warranty with regard to the condition or use of the assets of the Practice, except as expressly set forth in this Agreement.

1.11 Compliance with Law. The Practice has been and is being conducted in compliance with all applicable federal, state and/or local laws, rules, regulations and orders, non-compliance with which would have a material and adverse affect on the Practice, its business and operations, or its assets.

1.12 Insurance. Schedule 1.12 (attached hereto and incorporated herein by reference) lists all insurance policies maintained by the Practice, showing the types of coverage, policy expiration dates, policy numbers and policy limits as to each such policy. All such policies pursuant to which coverage exists are in full force and effect and have been issued under valid policies for the benefit of the Practice by insurance carriers licensed to do business in _____. The consummation of the transactions contemplated hereunder shall not cause the termination or cancellation of any such insurance policy.

Figure 6-1

1.13 Contracts and Leases. Except as disclosed on Schedule 1.13 (attached hereto and incorporated herein by reference), the Practice is not a party to any written or oral contract, lease or commitment. All agreements listed in Schedule 1.13, to the extent that the same grants rights to the Practice, are enforceable by the Practice and the Practice has not received notice of any claim to the contrary. Each agreement listed in Schedule 1.13 is in full force and effect, constitutes a legal, valid and binding obligation of the respective parties thereto, enforceable in accordance with its terms, except as indicated in Schedule 1.13. Complete and correct copies of all written items listed in Schedule 1.13 have been made available to Purchaser prior to the execution of this Agreement.

1.14 Defaults. Except as listed in Schedule 1.14 (attached hereto and incorporated herein by reference), all parties obligated under the agreements listed on Schedule 1.13 are in compliance in all material respects with the terms thereof and there has been no notice of default or termination.

1.15 Transactions with Seller. Except as disclosed on Schedule 1.15 (attached hereto and incorporated herein by reference), the Practice does not owe any amount to, or have any contract with or commitment to, Seller (other than compensation for current services not yet due and payable and reimbursement of expenses arising in the ordinary course of business), and Seller does not owe any amount to the Practice.

1.16 Employee Benefit Plans. Except as disclosed on Schedule 1.16 (attached hereto and incorporated herein by reference), the Practice has not and does not sponsor, maintain or contribute to any employee pension benefit plans within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974 ("ERISA") or any other program or arrangement under which the Practice has any obligations in respect of, or which otherwise cover, any of the current or former employees of the Practice, or their beneficiaries. Each terminated qualified retirement plan (within the meaning of Section 401(a) of the Internal Revenue Code), herein called the "Terminated Plan," (a) has received a favorable determination letter from the Internal Revenue Service with respect to its termination; and (b) was terminated in accordance with all applicable federal, state and local laws, rules and regulations. In addition to and no in limitation of the indemnification provisions contained in Section _____ hereof, Seller hereby agrees to indemnify and forever hold harmless Purchaser, individually and jointly, from and against any and all actions, causes of action, liabilities, damages, penalties, costs and expenses (including, but not limited to, attorneys' fees) directly or indirectly arising from or related to the Terminated Plan.

1.17 Other Employee Matters. Except as disclosed in Schedule 1.17 (attached hereto and incorporated herein by reference), the Practice has no plans and/or policies with respect to vacation pay, holiday and/or sick pay, pension and profit-sharing contributions, health, medical or any other type of employee welfare benefit plan within the meaning of Section 3(1) or ERISA to which the Practice presently contributes or is required to contribute, nor is the Practice indebted to any employee other than for wages and benefits earned during the current payroll period which are not yet due and payable. Except as set forth on Schedule 1.17, there are no controversies pending between the Practice and any of its employees, which controversies

Figure 6-1

have affected or may affect materially and adversely the business, operations, assets, prospects or condition (financial or otherwise) of the Practice.

1.18 Absence of Certain Changes. Except as set forth in Schedule 1.18 (attached hereto and incorporated herein by reference), during the period from the Financial Statement Date to the Closing Date, the Practice has not and will not have:

- (a) Experienced any change in its business, financial condition or operations which may have any material adverse effect on the Practice, its financial condition, its operational results or patients; or
- (b) Incurred any obligation or liability, except current (liabilities incurred in the ordinary course of business and consistent with its prior practice;
- (c) Failed to replenish its inventory of dental supplies and instruments in a normal and customary manner consistent with its prior practice;
- (d) Created or suffered to exist any lien, claim or encumbrance with respect to its assets;
- (e) Sold, transferred or otherwise disposed of any assets or properties of the Practice other than in the ordinary course of its business;
- (f) Forgiven or cancelled any debts or claims, or waived any contractual or other rights; or
- (g) Otherwise conducted its business or entered into any transaction, except in the usual and ordinary manner and in the ordinary course of its business.

1.19 Litigation. No litigation or other judicial, administrative or investigative proceeding is pending or threatened against or affect the Seller, the Practice or its assets.

1.20 Consents. To the best of Seller's knowledge, no consents or approvals of any third party are required or will be required in order to permit the consummation of the transactions contemplated by this Agreement.

1.21 Permits and Licenses. Schedule 1.21 (attached hereto and incorporated herein by reference) sets forth all licenses and permits issued by applicable governmental authorities presently held by the Practice with respect to the operation of its business. Seller has not received notice of any violations with respect to any of such license or permits.

Figure 6-1

1.22 Bank Accounts. Set forth in Schedule 1.22 (attached hereto and incorporated herein by reference) is an accurate and complete list, disclosing the name and address of each bank in which the Practice has an account or safe deposit box, the number of any such account or any such box and the names of all persons authorized to draw thereon or to have access thereto.

1.23 No Guaranties. None of the obligations or liabilities of the Practice are guaranteed by any other person or entity, nor has the Practice guaranteed the obligations or liabilities of any other person or entity.

1.24 Title to the Shares. Seller has valid and unencumbered title to the Shares, free and clear of all restrictions, liens and encumbrances, and has full legal right, power and authority to enter into this Agreement, to sell, assign, transfer, and deliver the Shares hereunder, and to perform his other obligations under this Agreement. Upon delivery of and payment for the Shares, Purchaser shall acquire title thereto, free and clear of all liens, restrictions or encumbrances.

1.25 Correctness of Representations and Warranties. The representations and warranties made by Seller herein or in any certificate to be furnished to Purchaser or Purchaser's counsel pursuant hereto, or in connection with the transactions contemplated hereby, do not contain and, at the Closing, shall not contain any untrue statement of a material fact and do not omit and shall not omit to state all material facts necessary to make the statement or facts contained therein not misleading. All statements made and data presented by Seller in this Agreement and in any certificate or schedule provided to Purchaser by Seller pursuant hereto shall be deemed to be representations and warranties under this Agreement to Purchaser by Seller.

Figure 6-2

LETTER OF INTENT

ACQUISITION OF STOCK OR ASSETS?

Joseph G. Jones, D.D.S., Inc.
[Insert Address]

[Insert Date]

Dr. Thomas R. Roberts
[Insert Address]

Dear Tom:

The purpose of this correspondence is to summarize certain of the key terms of your proposed acquisition of my dental practice, as follows:

1. Dr. Thomas R. Roberts ("Purchaser") shall acquire all of the assets (the "Assets") of Joseph G. Jones, D.D.S., Inc.

What about personal goodwill?

2. The purchase price ("Purchase Price") for the Assets shall be \$[Insert Amount].
3. The closing of the above-described purchase and sale of the Assets shall occur on [Insert Date] (the "Closing Date").
4. At closing on the Closing Date, Purchaser shall pay Seller an amount equal to the Purchase Price, less the earnest money described in paragraph 5.
5. Seller hereby acknowledges receipt of \$[Insert Amount] as an earnest money deposit ("Earnest Money"), which shall be retained by Seller as liquidated damages (and not as a penalty) in the event that Purchaser does not purchase the Assets by the Closing Date for any reason, except as set forth in Sections 8 or 9 herein. The Earnest Money shall be applied against the Purchase Price. In consideration of Purchaser's payment of Earnest Money, Seller hereby grants to Purchaser the exclusive right and option to purchase the Assets (subject to the terms of any definitive agreements between Seller and Purchaser) from the date of this letter through the Closing Date. In the event that Purchaser does not purchase the Assets on the Closing date for any reason set forth in Sections 8 or 9 herein, Seller shall promptly return the Earnest Money to Purchaser upon Purchaser's written request (either hand delivered or by ordinary U.S. mail) stating such reason.

Figure 6-2

Dr. Thomas R. Roberts

[Insert Date]

Page 2

6. Seller (at Purchaser's option) may remain employed by Purchaser for a period of three months immediately following the Closing Date at a rate of compensation equal to \$[Insert Amount] of gross collections attributable to Seller's rendering of professional dental services to Purchaser's patients.
7. During negotiations regarding Purchaser's proposed acquisition of the Assets, Purchaser will have access to and will be requesting certain of the following information regarding Seller and its patients (all of which information is herein collectively called the "Confidential Information"): patient lists, records and other information regarding Seller's patients (whether or not evidenced in writing); patient fee schedules and fee policies; financial plans, records, ledgers and information; employment records, data and policies; business and practice methods and operations; business and practice forms, correspondence, memorandums and other records; and any other Confidential Information which Purchaser encounters during Purchaser's review of the transactions contemplated by this letter. In consideration of the release by the Seller of the Confidential Information to Purchaser, Purchaser agrees that: (a) the Confidential Information shall (at all times) be and remain the exclusive property of Seller; and (b) Purchaser shall hold the Confidential Information as a trustee and fiduciary for the Seller; and (c) Purchaser shall not directly or indirectly use for any purpose, copy, retain or disclose or convey to any third party, except Purchaser's advisors, any Confidential Information without the prior written approval of Seller.
8. This Agreement is expressly contingent upon Purchaser obtaining financing for the purchase of the Assets, suitable to Purchaser in Purchaser's sole discretion.
9. This Agreement is expressly contingent upon Purchaser obtaining a lease for the premises of Seller, suitable to Purchaser in Purchaser's sole discretion.
10. Purchaser and Seller acknowledge and agree that except for the matters outlined in Sections 5 and 7 herein, this letter of intent does not create or impose any legally binding obligations on the part of either Purchaser or Seller. Purchaser and Seller further acknowledge and agree that the consummation of the transactions outlined above, other than those described in Sections 5 and 7 herein, are expressly conditioned upon and subject to the execution of definitive legal documents, which legal documents shall be in form and substance satisfactory to Purchaser, Seller and their respective legal counsel.

Figure 6-2

Dr. Thomas R. Roberts
[Insert Date]
Page 3

If the terms outlined are acceptable, please sign and date where indicated below, and return a signed and dated copy to me.

Sincerely yours,

JOSEPH G. JONES, D.D.S., INC.

By: _____
Dr. Joseph G. Jones, President

I hereby accept the terms contained in this letter.

Date: _____

Dr. Thomas R. Roberts

Figure 6-3

PRACTICE DOCUMENT MATRIX				
Establish Practice	Sell/Acquire Practice	Sell/Acquire Portion of Practice/Practice Merger	Associateship	Solo Group Arrangement
<ol style="list-style-type: none"> 1. Lease for Practice Facility 2. Choose Operating Format (Corporate or Non-Corporate Form) 	<ol style="list-style-type: none"> 1. Non-Binding/Binding Letter Of Intent 2. Asset or Stock Purchase Agreement 3. Assignment or Sale of Personal Goodwill Agreement 4. Promissory Note 5. Pledge and Security Agreement 6. Bill of Sale 7. Restrictive Covenant Agreement 8. Employment Agreement for Former Owner, if Applicable 9. Consulting Services Agreement for Former Owner, if Applicable 10. Deferred Compensation Agreement-Already in Effect 11. Lease Agreement 12. Memorandum of Lease/ For Recording Purposes 	<ol style="list-style-type: none"> 1. Share or Asset Purchase Agreement 2. Owner Employment Agreements 3. Buy-Sell Agreement 4. Deferred Compensation Agreements, if Applicable 5. Close Corporation or Shareholder or Operating Agreement 6. Owner Employment Agreements 7. Merger Documents, if Applicable 	<ol style="list-style-type: none"> 1. Associate Employment Agreement 2. Non-Binding Letter Agreement Outlining Key Terms of Potential Practice Ownership <p style="text-align: center;">vs.</p> <ol style="list-style-type: none"> 3. Share Option Agreement and Co-Ownership Agreements as Schedules 	<ol style="list-style-type: none"> 1. Associate Employment Agreement 2. Asset Purchase Agreement 3. Operating Agreement/Facility Sharing Agreement 4. Buy-Sell Agreement 5. Lease Agreement, if Applicable 6. Choose Operating Format (Corporate or Non-Corporate Form)