Succession and exit strategies

Avoiding costs and legal wrangling

By Amanda Maskery, UK

Whether you are in the final stages of your career or just starting out, the need for a succession plan and exit strategy is equally important. You may be a sole practitioner or partner within a partnership or own shares in an incorporated dental practice, or it may be that you are contemplating the purchase of your first acquisition—one thing you need to ensure is that provision is made for a future sale or the circumstance of a sudden death.

While, admittedly, leaving the business may seem a long way off and a succession plan is something that will most probably not be foremost in your mind while you are busy running your practice portfolio, by planning now for the future, you will save yourself a great deal of potential costs and legal wrangling further down the line.

It is very important to specify who would take over your practice should you decide to sell or should you unexpectedly pass away. In running a practice, you will invest much time and money building up the business and will probably have the goodwill of a loyal and long-standing group of patients, so it is essential you know your successor will build on your hard work. This will also make the transition smoother for the business and patients afterwards. One way to do this is by bringing in an associate well in advance who has an interest in one day acquiring his or her own practice. If the associate is brought in in good time, he or she can become integrated within the business, learn how the practice operates and establish a rapport with patients. This will reduce some of the issues that may arise when a stranger takes over a practice and will put your mind at rest that the practice will be in safe hands moving forward.

Another major consideration in succession planning, for NHS practices in particular, is the NHS contract. Even if a practice is mainly private, there could still be an NHS children’s contract, in which case consideration has to be given as to how this contract would be affected. At present, a practice may have a general dental services (GDS) contract or a personal dental services (PDS) contract. While the first can be transferred as part of the sale of a dental practice, the other cannot. If you are considering selling your practice and have a PDS contract, you need to be aware that the process will involve transferring it to a GDS contract, which involves an application to the NHS.

If you are a sole trader, or a partner, and hold a GDS contract, the process is not as straightforward as transferring the contract straight to the buyer, as NHS England prohibits GDS contracts from being directly transferred. A temporary partnership will need to be set up between the retiring dentist and the buyer. Once the sale has been completed, notice must be given to NHS England that a new partnership has been formed. Within a certain period after the sale, the seller will then formally retire from the partnership. Again, notice must be given to NHS England. The GDS contract is then left in the name of the buyer.

If you are an incorporated company and hold a GDS contract, the easiest way of transferring is the sale of the entire issued share capital to the buyer. It is important to note that if this is the way in which the contract will be transferred, there are certain provisions within GDS contracts held by limited companies regarding change of control that require NHS England’s permission for the contract to be transferred.

Your initial plans may be to sell your practice and then retire completely—although one good way of ensuring that the goodwill of the practice is protected is for the seller to continue to work at the practice as an associate after completion of the sale and slowly phase out his or her involvement. If the seller is happy to
do this and the buyer is happy for the seller to stay on, an associate agreement should be drafted as part of the sale process. If the seller is adamant that he or she wants to retire immediately after the sale, the practice could send a joint letter from the seller and buyer explaining to the patients that the practice has been sold. However, this may affect the goodwill of the practice if the seller leaves abruptly, so it is worth considering the sale of your practice a good while before you actually retire.

If you are a sole practitioner with a GDS contract considering utilising the 24-hour retirement policy post-completion, it may also be worth noting that you are specifically not entitled to this benefit as a sole practitioner, as there is no one to take over your GDS contract and therefore the contract is effectively brought to an end and can be put out to tender.

In a sale agreement, it is common to include restrictive covenants, which prevent the seller from working at another dental practice within a certain radius and for a specific period after the sale has been completed. There also tend to be provisions preventing the seller soliciting patients, suppliers and employees. These sorts of provisions will apply even when a seller stays on as an associate after the sale and subsequently leaves a number of years later. The main reason for these provisions is the protection of the goodwill of the practice, but they can be very restrictive on the seller, depending on post-completion plans. If the seller wishes to practise at a local hospital or work as a locum after the sale, the restrictive covenants may prevent him or her from doing so. Therefore, it is important for the seller to carefully review any such restrictions within the sale agreement.

It is also important that you have a will in place, to make provision in the event of an unexpected death. It is important too that clear instructions be given to contact the local area team (LAT) within a strict time frame after the death. In the case in which a sole practitioner has a GDS contract and dies unexpectedly, the contract will be terminated 28 days after his or her death, unless his or her personal representative notifies the LAT of the death. It can then extend the period from 28 days up to six months. If clear instructions are not given to the personal representative, it can result in the deceased’s estate not being able to benefit from the goodwill the deceased built up in the practice. It is vital that the importance of notifying the LAT be stressed to the personal representative, especially if it is a family member, as dealing with the deceased’s business may fall to the bottom of the list when that family member is grieving. It is important that this extra time be secured, to allow the estate to decide how best to dispose of the business.

If you are a partner in a practice, it is worthwhile making provision in the agreement to cover the circumstance of a partner dying, as well as making specific provision within your own will. The partnership agreement may give the remaining partners the option of purchasing the deceased’s share of the practice or may provide that they are to cooperate with the sale of the deceased partner’s interest in the practice. Either way, it creates certainty as to what will happen after the death of a partner and can make the process much easier for the family and personal representative of the deceased. The 28-day period in which the LAT has to be informed of the death still applies for the case in which the deceased was in partnership, however, it is possible for the remaining partners to undertake to perform the deceased’s units of dental activity which can take the pressure off all involved while a decision is made as to how best to deal with the deceased’s share of the partnership.

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