

10-2010

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Recommended Citation

Dunning, David G.; Lange, Brian M.; and Madden, Robert, "Compensating associates for supervising dental hygiene production in U.S. general dental practices: A discussion of a frequently taboo topic" (2010).
Journal Articles: College of Dentistry. 6.
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Perspective

Compensating Associates for Supervising Dental Hygiene Production in U.S. General Dental Practices: A Discussion of a Frequently Taboo Topic

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Received: June 14, 2010

Accepted: October 16, 2010

Published: October 20, 2010

Abstract

Many associateship employment contracts in U.S. general dental practice, probably about 85% based on our review of over 100 contracts in the past decade, are silent about a key issue in associateships--namely, compensating associates for supervising dental hygiene production. Not addressing this issue raises ethical questions as well as concerns about professional liability regarding the supervision of dental hygiene. The associate and owner need to include in an employment agreement what compensation will be given to the associate for supervising dental hygiene production. Compensating associates for supervising dental hygiene production will certainly have a financial impact on the practice. However, directly addressing the issue will allow the owner to manage the financial impact on the practice while also providing a more mutually beneficial employment experience. The associate and owner-dentist need to discuss thoroughly and openly what compensation options are available, if any, to the associate for supervising dental hygiene production. In turn, these should be incorporated in an employment agreement. Five specific compensation strategies are suggested for managing this issue, ranging from production credit for periodic examinations fees and/or radiographs, to compensation for a set amount for each hygiene patient supervised, to profit-sharing based on a pro-rated basis of supervised hygiene production. Successful associateship arrangements, including those intended to lead to future practice buy-in or buy-outs, depend in large part of meeting mutual expectations of both parties. Compensating associates for supervising dental hygiene production is a seldom discussed but vitally important issue to manage.

Key words: Associateships; Dental Practice Management; General Dentistry; Compensation; Dental Hygiene; Production; Employment Agreements.

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doi:10.5436/j.dehy.2010.1.00014



Introduction

One of the most controversial issues in an associateship contract centers on what compensation the associate receives, if any, for overseeing dental hygiene production. In most of the United States the work of hygienists must be directly or indirectly supervised by a licensed dentist. Whether associates are compensated based on their collections/revenues versus production is a separate but important question. We use "production" in a generic sense to refer to the billable work of dental hygienists in a dental practice.

We acknowledge that an associate is to some extent a profit-center for the owner-dentist. Just how much of a profit center relates directly to many variables in an associateship arrangement. But one of particular interest, and one often not discussed during negotiations or even mentioned in associateship contracts, is the taboo topic of associate compensation for supervising dental hygiene production. In approximately 85% of the approximately 100 contracts we have reviewed for senior dental students over the past 10 years, associateship compensation for supervising hygiene production is not mentioned directly or indirectly.

There are many fine resources which delineate and explain key issues in dental (1-11) and medical associateships (12). For example, Hills lists questions that owner-doctors should ask potential associates (12). The Henry Schein paper lists questions potential associates should ask owner-doctors in addition to warning potential associates to ask about any dental hy-

giene procedures they may be expected to perform (5).

In fairness, the purpose of many of the sources cited above centers on hiring associates or more general topics rather than the details regarding associateship compensation. Regardless, among these excellent articles and books we could find only three that mention the taboo topic of associateship compensation for overseeing hygiene production. The first resource is the American Dental Association's Associateships publication (1). We strongly endorse and highly recommend the ADA book on associateships. The book provides a superb overview of the subject. Curiously, however, there is barely a mention regarding associates being compensated for supervising dental hygiene production. This topic appears only on p. 64 and p. 79, in both cases as a bulleted item of importance, something critical in an associateship contract (p. 64) and requiring agreement between the associate and the owner-dentist (p. 79). Ironically, the two sample associateship contracts in the ADA book, one contract for an employee and another for an independent contractor, make no mention regarding how hygiene revenue supervised by the associate will be managed or credited or considered, if at all.

The second reference to associates and income for the production of the hygienist appears in another seminal publication, Roger Hill's ADA Transitions, as a line item in an interview outline for the owner-dentist to discuss with potential candidates (2). The third and final source referencing our topic is Dr. Callan's chapter in

Dunning and Lange's book on dental practice transition (3) Callan acknowledges the controversial nature of associateship compensation for supervising hygiene production. As he suggests, and as evidenced by the sample ADA contracts, most employment agreements for associates are silent on the issue. Callan also suggests a couple of options for compensating associates who supervise dental hygiene. A contract which fails to delineate associateship compensation for overseeing hygiene will result in a higher level of profitability for the owner-dentist, assuming hygienists work in the practice and the work is supervised by the associate. Based on our observations, by default and without some clear discussion otherwise, hygiene production overseen by an associate is more likely to be credited to the owner-dentist than to the associate. This might even apply to the periodic patient examination unless, again, the contract (or some clear understanding outside of the contract which may or may not be followed in actuality) specifies otherwise. This article explores these key issues related to compensating associates for supervising dental hygiene production: ethical concerns; mid-level providers; business entity and its ramifications; options for compensation; financial impact; and other practical considerations.

Ethical Concerns

The default position of many associateship contracts (providing no compensation for the associate who supervises hygiene production) raises some ethical concerns. First, is it just for the associate to receive no additional compensation for

overseeing hygiene production, work which generates potentially considerable profit for the owner? Second, is it just for an associate to be expected to lose valuable chairside production time while overseeing hygiene? This second question of justice is a "double-whammy" for the associate who generates profit for the owner when overseeing hygiene while simultaneously losing income when away from his/her own dental chair.

Regarding the principle of veracity--the duty to be honest and trustworthy in relationships with others, is it honest or trustworthy for the owner-dentist to retain the income of hygiene production overseen by an associate if this business practice is not disclosed or discussed in the employment agreement? Not communicating this arrangement to an associate also falls short of the ethical standard of informed consent: the associate may not know that s/he is not receiving compensation for overseeing hygiene production.

There is also the ethical issue of making or expecting an associate to take risk without receiving compensation. A good rule of thumb or test is this: if you would not be willing to take the risk without compensation, why would you expect anyone else to take the risk without compensation?

Additionally, if the associate provides direct or indirect supervision of hygiene production, his/her license is potentially "on the line" in terms of malpractice/professional liability and the standard of care provided. Again, we strongly believe that the associate should receive some compensation for overseeing such production, particularly in light of various

state dental practice acts governing hygiene activity.

Many contracts, including the sample ADA contracts, clearly state the employee or independent contractor indemnifies and holds the employer or contracting business entity harmless against any claims or liabilities for work done by the associate (see pages 102 and 105 of the ADA Associateships book) (1). So, both the employee and the independent contractor associate are commonly liable for their own malpractice exposure for dental treatment provided. This fact re-emphasizes the need for associates to be compensated in some way for supervising dental hygiene activities. Many contracts also indemnify the associate from liability claims of other dentists in the practice. Whether such hold-harmless clauses will actually hold-up in the event of a claim would likely be dependent on the specific contractual language, the business entity of the practice, and individual state law on a case-by-case basis.

Mid-Level Providers

The advent of mid-level dental provider programs in states such as Minnesota makes the discussion of associate compensation for hygiene production even more critical. Besides the potential loss of associateship positions which could be an outcome of adding the new mid-level providers into the dental workforce, will associates working for owner-dentists receive compensation for supervising the work of mid-level providers? The same issues of ethics and liability also apply to the emerging new dental health care delivery model, with considerable revenue gener-

ated by the mid-level provider, probably as much or more than hygienists.

Additionally, while this article emphasizes hygiene production supervised by associates, similar compensation, ethical and liability issues apply to associate supervision of the work of expanded duty dental assistants. This represents another issue seldom if ever discussed in the literature or mentioned in employment contracts.

We now turn to the legal form of the business entity, focusing on the associate and owner-dentist in terms of liability.

Business Entity and Its Ramifications

The choice of entity is important to your dental practice relative to profits, taxes, succession and legal risks. The selection of a business entity has significant financial ramifications but is primarily a legal decision. Practitioners are strongly urged to seek competent legal and accounting advice in making this decision. An overview of legal forms of dental practice can be found in Wiederman and Crist's chapter appearing in Dunning and Lange's book (13).

Given the fact that associates are subject to liability for the supervision of dental hygiene services and perhaps in the future that of a mid-level provider, the associate should not only be compensated but also protected from potential liability of fellow employees. The question which needs to be answered is: How can I limit my liability from acts of fellow employees and associate doctors in the practice? While being a sole proprietor is the simplest and

cheapest form of legal entity, it is also the most risky. The sole proprietor has essentially unlimited liability for losses and liabilities incurred by the business. In an associateship arrangement, the owner-dentist and the associate have potential liability exposure for each other and for negligent acts of staff members.

In partnerships the partners can sue or be sued for acts of one another. Further, personal assets are not protected. Partners are jointly and severally (individually and separately) liable for partnership obligations, including contracts, torts, and breaches of trust. Included are the acts committed under the partner's supervision of other parties (dental assistants, hygienists, and mid-level providers). Partners could potentially be sued on the basis of the work on an employee-associate.

In a limited liability partnership (LLP), professionals can avoid personal liability for malpractice of other partners. LLP statutes on malpractice vary from state-to-state, necessitating the need to know individual state law. However, a partner who directly supervises a staff member or employee-associate is liable for acts of negligence committed under his/her supervision. This is true for all partnerships, including the LLP. Personal liability is, however, limited to the extent of ownership in the partnership.

In S and C corporations, the corporation is regarded as a separate entity. Therefore, corporations are liable for torts committed by its agents/employees within the course and scope of their employment. Individual doctors are generally not liable for malpractice of other doctors or employee-associates. Still, doctors can

be held liable for acts of employees such as hygienists or mid-level providers while acting under direct or indirect supervision.

There is no completely fool-proof way of avoiding any and all professional liability. However, exposure can be limited through selecting the proper business entity, usually the corporate form. Practicing sound risk management principles--being diligent in supervision, staying current in technical skills, being proficient in interpersonal skills, maintaining professional liability insurance, and being diligent about with whom you work--can all limit risk. Regardless of business entity form, an individual practitioner is always liable for his/her own acts of negligence. Whether contractual terms regarding indemnification and "hold-harmless" would in fact be upheld in a given malpractice claim and how these specific terms interact with business entity liability implications would probably be determined by the courts on a case-by-case basis.

Options for Compensation

As previously mentioned, many associate-ship contracts, probably most, make no mention of any compensation for the associate who oversees hygiene production. In other words, most contracts assume that the associate oversees dental hygiene activity as part of his/her regular job but receives no special or additional compensation for it. The following is a list of a few contractual options designed to make the associate's compensation more just.

1. The associate receives credit toward his/her production for the full patient examination fee and for radiographs, or

only for the full patient examination fee. This method of compensating associates for supervising dental hygiene is by far the most common among the low percentage of contracts that address this subject.

2. The associate receives credit toward his/her production for a set amount for each hygiene patient appointment overseen—for example, \$20 per patient directly examined.

3. The associate receives credit toward his/her production for a specific percentage (say 10 - 20%) of the billable amount for examinations, prophies, radiographs, sealants, scaling and root planning, etc. related to supervised hygiene production. This percentage, in order to be equitable, should take into account the owner-dentist's hygiene overhead and overall overhead (see discussion below).

4. As a more refined option building on alternative #3 immediately above, the owner could share profits with the associate on a pro-rated basis of the hygiene production overseen. For example, the associate-based supervised hygiene production realizes a profit of \$2,000 per month. The owner and associate could share this profit at \$1,000 each (50% in this case or some other negotiated percentage). Refer to the discussion below about dental hygiene overhead costs.

5. The associate receives a higher guaranteed base salary and/or higher percentage of his/her collections/production in lieu of hygiene production being supervised. While certainly a better option than receiving nothing, this last alternative provides

less incentive for the associate to supervise hygiene production.

Financial Impact

Recommended levels for direct overhead costs for hygiene production may range from 33 - 45% (14-15). "Direct overhead" includes the hygienist's salary/wage and benefits. Other cost factors would include support staff, supplies, dental equipment, etc. Altogether these variables raise the total overhead to a range probably between 55 - 70%. Providing some compensation for the associate will certainly decrease the owner-dentist's profit. Let's look at a couple of scenarios to illustrate this.

First, here is a simple example. Suppose an associate oversees one full-time hygienist in the practice and the hygienist sees 7 patients a day for 4 days a week with an examination fee of \$40. An associate receiving credit for this examination fee would add \$53,760 to her/his yearly production numbers (28 x \$40 x 48 weeks). The associate receiving 33% of production would thus earn an additional \$17,741 a year. This would leave the owner with \$36,019 to cover overhead related only to exams and to realize of profit in the range of \$18,000 (50% of the \$36,019).

Let's look at a more lucrative system for the associate. Suppose the associate supervises one full-time hygienist who tended toward the more productive side and generated \$150,000 in revenue. An associate receiving 20% of the \$150,000 hygiene production would realize another \$30,000 for the year in income (\$150,000 x .20%).

The owner's profit in this scenario of more generosity for the associate would be something like: \$150,000 - 105,000 (70%, a high overhead estimate) - \$30,000 = \$15,000 in profit for the year.

Some Practical Considerations

Like all key provisions of an associateship contract, any negotiation for associate compensation for overseeing hygiene production must be pursued in the total context of the entire associateship arrangement. For example, if the associateship contract already provides a very competitive guaranteed salary (and/or compensation %), generous benefits, and the owner paying 100% of the laboratory charges, pursuing a discussion for compensation for hygiene production is probably not in the associate's best interests. One the other hand, if the associate's compensation and benefits package are below market, receiving compensation for overseeing hygiene production would make for a more competitive job offer. How the hygienist is being compensated (salary, hourly rate, salary plus bonus percentage, etc.) must also be factored into the equation of associate compensation for overseeing hygiene production.

As with any major business decision, the owner-dentist and would-be associate should consult with their attorney and accountant as part of the negotiation and approval of an associateship contract.

Attorneys for both parties need to ensure that the specific issue of associate compensation for supervising hygiene production is addressed in the contract. Probably the worst case scenario for not addressing this issue would be to live

with an agreement which is viewed as unfair once clinical and business experience is gained by the associate. This scenario could lead to a disgruntled associate or a failed associate arrangement. Neither of these outcomes is desirable. The Academy of Dental CPAs can be a great resource for accountants specializing in dental practice (16).

Conclusion

This article has reviewed several pivotal issues related to compensating associates for supervising dental hygiene production, including ethical concerns, mid-level providers, the legal form of the practice and its ramifications, options for compensation, financial impact on the practice, and other practical considerations.

In our opinion, associates should receive some compensation for supervising dental hygiene production. It is critical that this issue be discussed in all fairness and in the interest of ethics as part of an associateship negotiation.

As long as the topic is thoroughly discussed, if the associate agrees not to be compensated for hygiene supervision with the understanding of the related professional liability risks, the ethical concerns have been addressed.

However, not discussing compensation for hygiene production seems on the surface to violate ethical principles of justice and veracity and may lead to unpleasant consequences.

List of abbreviations

ADA: American Dental Association.

LLP: Limited Liability Partnership.

CPA: Certified Public Accountant.

Conflicts of interests

The first two authors are editors of one of the books referenced several times in the manuscript, *Dental Practice Transition*, though the book is not endorsed in the manuscript. The third author wrote one of the chapters in the same book, though the chapter addresses a topic, dental fees, not directly related to the content of this manuscript.

Acknowledgments

The authors would like to thank Riley W. Madden, JD, for his instructive perspective regarding the liability and business entity discussion in this article

Authors' contributions

- Main idea:** by all three authors and many former students.
- Literature search:** primarily done by DD with assistance from the other authors.
- Data collection:** by to the extent applicable, primarily done by DD with assistance of the other two authors.
- Data interpretation:** by all three authors.
- Manuscript preparation:** by all three authors with DD the primary author.
- Funds Collection:** Not applicable.

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Citation: Dunning D, Lange B, Madden R. Compensating associates for supervising dental hygiene production in U.S. general dental practices: a discussion of a frequently taboo topic. *Dent Hypotheses* 2010;1:85-93. doi:10.5436/j.dehy.2010.1.00014.

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