Risk Management Considerations for Contracting With a Dental Service Organization

Theodore Passineau, JD, HRM, RPLU, CPHRM

Dental service organizations (DSOs) have been around for some time; however, they recently have become a more common model for the delivery of dental services. Many experienced dentists are tired of the day-to-day tasks associated with running a business — and, for some of these practitioners, selling their practices to DSOs is beneficial.

This article reviews the business model that DSOs typically use and discusses five key points that dentists should consider before entering into a DSO contract.

The DSO Model

Typically, when a DSO purchases a dental practice, the DSO assumes all responsibility for the business operations of the practice. This allows the dentist to concentrate on the delivery of clinical care.

The practice may continue to bear its original name and, to the outside world, appear to be the same solo practice it has always been. Or, the DSO may change the name of the practice, making it clear that the dentist no longer owns the practice.

In either case, the dentist typically transitions from being the proprietor/owner of the practice to an employee of the DSO. The transition in ownership will likely change how the practice operates. From a risk management and patient safety perspective, some of these changes may have a significant impact on the practice’s (and doctor’s) potential liability.

Below are five important risk management considerations to think about prior to signing a contract with a DSO.

Consideration #1: Authority and Oversight

Even though the dentist no longer owns the practice, he or she has a continuing legal and ethical duty to always practice within the standard of care and to recommend and provide care that is in each patient’s best interest. As a result, the dentist should strongly consider negotiating that he or she maintains authority over all aspects of clinical care, including treatment planning.
Situations have arisen with DSO arrangements in which nonclinicians have taken over treatment planning and the recommendation of services, possibly for the purpose of increasing practice revenue. In other situations, dental practitioners have been put under such time constraints that they were not able to provide the full scope of appropriate care before having to move on to the next patient.

When a patient is not treated properly or is “upsold” services, the potential exists for the dentist to face a professional liability lawsuit and/or disciplinary action by the state board of dentistry. Thus, it is important that the responsibility and authority for all clinical decision-making remain with the treating dentist.

**Consideration #2: Environment of Care**

Under the new DSO arrangement, practice staff — who were previously employed by and under the direct authority of the dentist — are now employees of the DSO. The DSO may choose to keep all of the employees in place, or they may choose to bring in new employees whom they consider more suitable.

A change in staffing can threaten continuity of care during the time the dental practitioner adjusts to working with new teammates. In some cases, the working relationship may work out very well; in others, difficulties may occur. In any case, staffing decisions no longer rest with the dentist.

Because the DSO now owns the physical practice, they also will have authority over how it is configured and the equipment and materials used for the provision of care. The DSO’s conclusion regarding which equipment and materials are most suitable will override the employee dentist’s preferences.

As the owner, the DSO also will decide what form of documentation the practice will utilize going forward. If an electronic health record (EHR) is used, the DSO presumably will pick the particular system, possibly without input from the employee dentist.

All of these changes in the practice environment can affect the quality of care that the employee dentist is able to render to her or his patients.

**Consideration #3: Office Policies and Procedures**

When the dentist owned the practice, he or she could develop and enforce policies that were reflective of his or her philosophy of care and well suited to a particular patient population. Once a DSO is the owner of the practice, this may change.

The DSO may have a standard set of policies and procedures that are followed in all of its locations. From a policy and procedure standpoint, some things may improve as the DSO implements one set of policies and procedures that have been carefully crafted and field-tested. However, some policies might be inconsistent with the dentist’s traditional approach to dealing with patients. The employee dentist will need to acclimate to the new way of doing things. Changes to policies and procedures might
include how patients are scheduled, the process for informed consent for treatment, and policies related to routine follow-up and access to after-hours care.

The DSO also may have standardized procedures for handling patient complaints, problem resolution, and financial policies. These procedures may or may not be consistent with the dentist’s philosophy. Sometimes, if patients are dissatisfied with how their complaints are resolved, they may elevate those complaints to the state board of dentistry. When complaints are filed with the board, they normally are made in the name of the treating dentist (whom the board has authority over), rather than the DSO (which the board does not oversee).

**Consideration #4: Professional Liability Insurance**

An important point that is easy to overlook involves the dentist’s professional liability coverage under the new DSO arrangement. The DSO contract may allow the dentist to continue coverage with the carrier he or she previously had, which generally is ideal.

However, if the DSO provides the dentist’s coverage, the dentist has several factors to consider. First, the dentist should review the type of malpractice coverage he or she has had prior to joining the DSO. If the dentist has been covered under an occurrence policy, he or she should have coverage for any care that was rendered while the insurance policy was in effect. On the other hand, if the dentist has had a claims-made policy, it might be necessary to pay for extended reporting period (“tail”) coverage for any late-arising claims. The contract with the DSO should clearly state who will pay for tail coverage premiums (which can be substantial).

Next, the dentist should ensure that he or she has adequate coverage and consent to settle under the DSO’s insurance policy. The second point is especially important if the dentist is ever sued for malpractice related to treatment or service that he or she believes was within the standard of care.

If the DSO has settlement authority over a case, they may consider simply settling the case rather than defending it to be an expedient solution. However, if a settlement occurs and a payment is made, that payment must be reported to the National Practitioner Data Bank. Further, in most jurisdictions, a settlement also must be reported to the board of dentistry. In both cases, the report is made in the name of the dentist, not the DSO.

Although the dentist may have adequate insurance coverage, he or she can still suffer reputational or licensure difficulties if a nonmeritorious malpractice allegation is not vigorously defended.

Third, prior to contracting with a DSO, the dentist should verify that the contract does not include an indemnification, or “hold harmless,” clause. By accepting this type of contract, the dentist agrees to defend and/or indemnify the DSO for any liability the DSO may face as a result of the dentist’s actions. Typically, professional liability insurance policies do not cover hold harmless agreements; any expenses associated
with an indemnification clause (such as attorney fees or settlement costs) would have to be covered by the dentist’s personal funds.

Finally, if the dentist anticipates providing any dental care outside the DSO office (e.g., through volunteer work), he or she should verify having full coverage for the activity with the professional liability carrier.

**Consideration #5: The End Game**

Prior to contracting with a DSO, the dentist should consider the possibility that the arrangement will not work out as well as hoped — and it might become necessary for the parties to part ways.

As such, the dentist should consider what the contract says in regard to termination. Depending on the legal form of the contract, the dentist may have protection under state employment practices laws, or he or she may not if the contract creates an independent contractor relationship. The contract provisions might affect who can terminate the contract, for what reasons, and with how much notice.

The dentist also should consider whether the contract contains a noncompete clause. This type of clause, which is common in employment contracts for professionals, may prevent the practitioner from practicing within a certain geographic area for a defined period of time after the contract is terminated. If the dentist wishes to continue practicing in the area in which he or she lives after the contract is terminated, a noncompete clause might be problematic.

**Conclusion**

Joining a DSO can be beneficial to many dentists; however, it is essential that the considerations discussed in this article are thoroughly understood and agreed to by all parties prior to formalizing the contract. Additionally, the importance of having an attorney competent in this area of law review the contract cannot be overemphasized.