

SECOND TIME AROUND



CONTINUUM SERIES – UK

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OVERVIEW

Dental Protection's **Continuum** series of advice booklets forms part of our commitment to assist and support members every step of the way from student to graduate, from the early years of professional life on to safely negotiating the many challenges that can arise at critical moments throughout a professional career, and helping them through to a happy and worry-free retirement (and beyond). In particular we aim to make members aware of the dentolegal pitfalls associated with all these critical moments, so that they are more able to cope with them at a personal level and to manage them safely and successfully in a professional sense.

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1.0 INTRODUCTION

There's a raft of issues to consider when selling up as a practice owner and making the transition back to an associate. Here, we look at some of the challenges you may never have previously considered.

Evidence suggests that, increasingly, in an economically challenging world, more dentists are looking to relinquish some – or all – of their business responsibilities earlier on in their career. This is often combined with a desire for a more flexible career plan leading up to retirement to account for the downturn in an economy that has been slow to recover. Dentists in their fifties are selling practices and moving from practice ownership to retirement or full or part-time associateships.

Increased competition and changing consumer behaviour now means some dentists may have to consider working beyond the early age of retirement previously enjoyed by their predecessors. Therefore, many practitioners considering selling a practice may continue working in order to continue earning or to accrue any financial benefits – an NHS pension, for example. In response to this trend in the UK, Denplan recently launched (in March 2015) a dental partnership-funding programme – offering to acquire 50% equity stake in practices and become an equal partner, with the dentist retaining full clinical management. Its managing director, Steve Gates, explained: “Our strategy in launching a new partnership programme has been led by Denplan’s member dentists as it has become clear that, for many of them, succession planning and retirement is an area that is taking an increasingly high priority.”

Risky business

Additionally, dentistry has become big business, and more and more clinicians are being tempted by favourable employment packages and opportunities to progress their careers with fewer individual responsibilities. Often, a practice principal is approached by a dental corporate body with the view to buying the practice, with a contractual agreement that they may or must carry on working as a clinician there. But, whatever the reasons, any move means that someone else will take over the responsibility for some or all of your patients and it is this that presents a potentially critical moment where you may be vulnerable to criticism, complaints and allegations of negligence.

Options to sell (possible purchasers)

- Existing partner/s
- Associate
- Corporate body
- New practitioner/s
- Any dental registrant/s.

Just as important, the experience of Dental Protection is that clinicians will often need to re-visit their practising styles in order to adapt to a corporate working environment and to a greater or lesser extent be prepared to forego the autonomy enjoyed in a small practice setting. Additionally, if you plan to take a career break for any length of time, it may be also be prudent to undertake a form of retraining. Dentistry is a fast-paced changing world and any gaps in your professional knowledge may impact negatively on the quality of care delivered.

All in the planning

Planning an exit strategy as a principal is vital in maintaining the efficiency of any practice and, indeed, avoiding any risks to your good clinical reputation and that of the practice. Commonly, it is acknowledged that such planning needs to be four years ahead of exit if the systems are to be in place to facilitate a successful changeover. In this run up to retirement, you should also review and – if necessary – improve the qualities that confirm the value of your practice. It will be worthwhile to make sure that your clinical and financial records are comprehensive and meet the standards expected by published guidelines and there will be audits in place for all the areas that help to manage risk.

Communication is key

The communication of your plan is key to any successful transition, as it is in all other areas of your professional life. It is also vital that you take into account how it will impact on:

- Your future career
- Your future finances
- Your future commitment to the practice
- The continued running of the business
- The clinical ethos of the practice
- The rest of the practice team
- The continued care of patients.

A Personal Development Plan (PDP) is a dynamic tool that not only encourages lifelong learning, but can also identify areas for career development. It can be used to identify goals for those forthcoming years leading up to your exit as principal and should ascertain the methods for achieving these goals. Any changes in the management of a dental practice inevitably come with a period of adjustment for everyone – especially patients – and a degree of risk. But there are ways in which these risks can be reduced and, if the unthinkable happens, ways in which subsequent risks can be contained.

As a second-time associate, there are some key things to establish in contractual terms before the changeover. There are clearly a number of very basic topics to be discussed: payment methods, whether you retain any administrative responsibilities and what your working hours will be, for example.

Professional legal advice

Don't forget that it is critical to have a formal contract that covers your new working relationship right up to the time when you decide to part company. It is simply not enough to have a "gentleman's agreement" with your new practice owner. Although you may not envisage any future disagreement at the moment, working carefully through the elements of a formal contract gives you

the opportunity to establish absolute clarity about your mutual expectations in relation to the terms within it. This is entirely the time to take professional legal advice – your investment of time and resources will not be wasted. You will have both the peace of mind of knowing that you are protected on your terms and a clear position in the event of a dispute.

A good fit

For those of us who have owned one practice for many years, it might come as a surprise to find that there are very different styles of leadership and approach. It's a good idea, consequently, to explore whether your practising ethos matches that of the new practice owner(s). This is true whether you are staying in your practice or moving to a different one. Most important is the need to clarify what you are looking for in your new role and share these objectives with the new owner(s). Until you actually have that conversation, you cannot have an understanding between you. Tensions will arise very quickly in a situation where you rely on reading each others' minds.

List any goals and expectations and future career forecasts; openness and honesty is the best policy for everyone involved and will ensure your patients' continuation of care. If you stay at your old practice, will you remain as a clinical lead? Can you influence how the practice is run and its choice of materials? Indeed, will the practice protocols remain the same? Expectations need to be well managed, and patient relationships now need to be considered within the framework of a new regime. This new environment may well prove challenging for a former principal who is now an associate. But equally it can be difficult for the new owner too – the aim is for constructive, supportive and pragmatic communication.

Preparing to adjust to a loss of autonomy – to varying degrees is a useful exercise and a reflective log could prove an essential tool as a means of thinking in a critical and analytical way about what this is going to mean to you. If you can be focused, courageous, honest and structured when reflecting you will be able to identify development areas. Responsibility and accountability are two very different things so whilst any contract should set out boundaries of responsibility, each and every clinician has a duty of care to all patients, whether a practice principal or not.

Patients and the team

Your patients and the practice team rely on your services and decision-making and, for the most part, respect you as an individual of integrity. The patients allow you to treat them safely and the team values your leadership skills and team approach, both placing high levels of trust in what you tell them and what you do. Any change of ownership can wrong foot patients and staff alike. Regular and effective communication is important on both fronts.

Excellent discussions, excellent records

Discussions with the patients about their oral health and thorough treatment planning alongside a comprehensive valid consent process are valuable protection against allegations of inappropriate care whether you remain at that practice or not. Good record keeping should contain sufficient information (both clinical and administrative) for a third party to be able to see and understand precisely what occurred at any particular time. These two strategies, coupled with an up-to-date awareness of current thinking in diagnosis and treatment planning, will avoid the majority of problems.

Great expectations

As a practice principal, your team relies on your skills as a clinician and business owner and look to you to foster an environment of clinical excellence with the expectation that everyone works professionally, ethically and to the best of their ability (within their Scope of Practice) in the best interests of patients.

End results

Good communication is an essential part of successfully running a dental practice – and this should continue as and when you decide to relinquish that role. A few simple steps can help to prevent any number of unfortunate situations, misunderstandings and complaints, especially when there is a period of change. The cases seen at Dental Protection suggest that a significant proportion of complaints are underpinned by avoidable breakdowns in communication and, if clinical ability forms one of the pillars of sound patient care, then communication ability forms another.

It has often been said that a poor clinician who is a good communicator has fewer problems than a good clinician with poor communication skills – and so maintaining patient and staff confidence in you as a leader and clinician during this period is essential. If you established a strong rapport with your patients and team consistently and effectively over the years, then any areas of conflict should easily be overcome.

There may be trouble ahead if...

- A patient has only ever seen you for their care and treatment
- The patient thought they had long-term treatment understandings
- A patient has enjoyed the familiarity and culture of your practice
- The medical and dental histories and information about patients has been kept only in your head rather than in the records
- Over the course of a long career with few complaints, you have failed to keep up to speed with the record-keeping detail required
- It has not been thought necessary to record the conversations leading to a familiar and regular patient giving consent for treatment choices
- You know a patient so well that the progression of some slowly emerging conditions, such as periodontal disease or chronically infected teeth, was not spotted
- You favoured a “patch up” style of dentistry, considered by a patient as the less stressful, quicker and cheaper treatment option
- Not enough time had been given to complete or discuss a long-term treatment plan due to short-term practitioners dealing with a patient which resulted in a crisis management of the situation
- You leave midway through completing treatment plans, leaving some work to be finished by a successor.

2.0 SECOND-TIME SUCCESS

A CASE STUDY

As an experienced and successful second-time associate, Dr P is well equipped to share his experience of making this step change. He was approaching 60 and he and his partner had already taken on two associates two or three years prior to his bowing out as principal in preparation. These two associates became partners and Dr P stayed on as a second-time associate in the role of mentor.

He says: *“Freeing myself from the administrative role was a revelation and I found I was enjoying working in the practice rather than on it. Change can create a little staff disharmony and so team management, good communication and support for the new partners is key.”*

The transition needs to be as harmonious as possible for all parties involved, with everyone focusing on patients’ interests first and foremost.

“Long-term planning is essential to avoid rocking the boat during a changeover. I started thinking about my plans 10 years before the move. I began with a blank piece of paper and wrote down all that I wanted to achieve; you cannot plan enough. It’s a living document and, as things progress, you need to be aware that changes and adjustments will need to be made. Luckily, I have achieved everything I planned all those years ago.”

Here, Dr P lists some areas of concern and potential conflict in any new arrangement when moving from principal to second-time associate:

- **Equipment changes:** Most clinicians have individual preferences, whatever treatments they provide. If you are not familiar with the equipment, ask questions. Additionally, ask how and where instruments are re-processed and stored should this change or you move practices.
- **Introduction of targets:** For those not used to targets, the corporate world can feel alien and prove disconcerting. Getting used to the ideas of a 21st-century dental world of KPIs, for example can be unsettling and appear threatening. Talk this through with the new owners to avoid confusion.
- **Types of materials used:** The quality of the treatment you provide is likely to suffer if you are suddenly confronted with materials you have never used before. Mixing requirements, handling characteristics, setting time and other key features can all be very different and can take some getting used to. But, on the plus side, you may discover you much prefer these new materials to those you had been using previously.
- **Working patterns and a new environment:** You may find that, under a new regime, you are expected to work in ways unfamiliar to you. Some practitioners rotate into different surgeries and this too may be a little disconcerting if you’ve worked in the same practice with the same dental nurse for many years. Contracts should outline these expectations for the benefit of associate and owner. Any changes in the working environment such as working in different clinical settings can lead to stress so make sure you understand each other’s expectations for the outset. Additionally, you may need to work part-time due to family commitments or simply desire to reduce the number of hours or days worked. This will inevitably have implications for the dentist and practices in terms of productivity and workload.
- **Adapting to new systems:** You may discover that the new systems a new owner adopts make no logical sense to you at all. Find out what is expected of you in terms of using and adhering to these systems and policies and don’t be afraid to ask if something doesn’t make sense. An experienced clinician may be too embarrassed to ask for help when they encounter problems. But, each time we learn a new procedure or technique, we all become students again. Also, do not assume that anyone other than you is responsible for ensuring that the surgery environment doesn’t impede your ability to practise safely.
- **Patient base:** When a dentist leaves an existing business arrangement in a practice – and continues to work reasonably close to the practice they have just left (subject to any contractual terms precluding this) – it’s likely some patients will want to follow the dentist for their on-going dental care. In that case, it may be possible to arrange with the original practice owner to forward records for those patients who wish to continue treatment in the new practice. Working from the original set of records would be in the patient’s best interests as it avoids the need to retake radiographs and allows the clinician to monitor care and review historical treatment more accurately.

Situations also arise where an assistant dentist may leave a practice and wish to take the patient records with them. While there is no statutory basis for this, it is widely thought that, unless agreed otherwise, the records are owned by the practice. However, any departing practitioner should be given reasonable access to the records if required in the future. This will allow them to respond to any concerns later raised by patients. To avoid grounds for dispute on the departure of a practitioner, it is recommended that reference to the ownership of records be made at the outset in a written contract between the practice owner and associate dentist.

- **Time away from practice:** There may come a time when you want longer breaks away from working. Again, it's all in the planning. Some new owners will be sympathetic to your situation, others less so, perhaps, and it should all form part of the negotiations in the sale.
- **Associate agreement:** The BDA has a model for an associate agreement and it may be worth referring to this. The agreement is protection for both parties.
- **Legal contract:** A legal contract will be binding on both the buyer and the seller and it is usual for the contract to contain a clause to prevent the seller from working in the area after the sale. If a clinician intends to continue working as a dentist then make sure that this clause allows you to do so. Some practitioners continue working in their own practices under the new ownership as an associate or assistant. Ensure the appropriate contracts for this are negotiated at the same time as the sale.

The new owner will be paying for the goodwill and will not want to lose what he has bought. Working nearby is certain to be noticed by old patients and could possibly be a source of friction with the new owner. If you are not going to continue working as a dentist, then an exclusion clause is quite reasonable.

Your contract should include agreements in relation to:

- Your relationship with your successor/remaining partners and practitioners
- Withholding of funds for remediation of treatment where necessary
- Communication
 - With patients
 - About complaints
 - With suppliers and labs
 - With local colleagues/practices.

- **Managing staff:** If you are continuing to work in the practice after the sale, you will have the opportunity to manage relationships, complaints and the transition for the staff. Where this is not the case, it might be helpful to try to create a situation where your successor is either already well known in the practice (a current partner or associate) or is able to have a significant period of transition and hand over. Welcoming a potential buyer into the practice for a meaningful length of time means that any changes in culture and style can be handled and developed carefully and accepted by both patients and staff before you finally leave.
- **Financial change:** Take professional and expert advice on:
 - Timing of the sale
 - NHS contractual arrangements
 - Financial business and tax arrangements
 - Employment law
 - Informing and complying with appropriate regulators
 - Pension arrangements.
- **Sensible investment of capital received:** If you are taking your NHS pension, plus receiving monies from the sale of the practice, you are going to be in possession of a reasonably large sum of money. Seeking good independent advice will help you plan successfully for the future in relation to the lifestyle you are planning to lead.
- **Disharmony because of an acrimonious sale:** Good communication is essential in a sale of a practice as is the goodwill that goes with it. It is becoming increasingly common for patients to bring claims alleging under-treatment when a practice changes hands. Leaving a practice may mean a new start for you, but the challenging patients you once treated and difficult times you may have gone through may return – this time in the form of a legal case – and an acrimonious sale will not help.
- **Maintenance of teaching/hospital/association positions:** Some new owners may consider your involvement with dental schools, hospitals and/or dental associations provide added value for the practice; other may view it as a burden and unnecessary time away from the practice. Again, be sure to enlighten the new owners of your outside commitments if you wish to continue with them.
- **Use of DCPs and hygienists:** Once you are an associate, you will need to establish what access you have to other members of the clinical team and the costs incurred.

- **Choice of laboratory:** Some corporates have dental technicians in situ. Dentists can be particular about their choice of laboratory and it can destabilise you and your way of working if there is an expectation upon you to change. It may be prudent to discuss this at point of sale.
- **Advisory role to new principal:** Some second-time associates are welcomed back in an advisory role, especially if they have a long-term understanding of the practice's patient base. However, this varies. It's good to remain involved but you need to know when to step away.
- **Reduction of hours and increase in holidays:** Good communication is vital. Any change in working hours or holiday entitlement can be added as a clause to a contract or sales agreement. Be mindful of the fact that, over time, you may wish to work fewer days or fewer hours each day and this will also need to be discussed early on as it will have a big impact on the running of the practice and the rest of the team.
- **Arrangements for dealing with historic treatment failures, misdiagnosis etc, especially important as the date to leave the practice completely approaches:** Most dentists want to leave their practice without the anxiety of future complaints, claims or conflict. If you become aware you are leaving your practice at some time in the future, it is not yet the moment to relax and rejoice in the comfort of knowing that someone else will be taking over your patient list.

Common sense tells us this is actually the time to step up the efforts to establish credible patterns of best practice and preparation should start some four years before you leave a practice in order to give you the best chance of an anxiety-free departure. Never has the importance of record keeping been more important than here. Recording a methodical process of examination and treatment planning at each course of treatment, together with discussion with the patient of all options that might be suitable for them, will help to demonstrate high-quality care and current best practice. Handing over patients to another clinician, as mentioned previously, can be problematic. Goodwill is essential so try to reach an agreement with new owners as to how any treatment failures in the future will be paid for.

Did the records show?

- Identification of the relevant problems in the patient's mouth
 - Monitoring of the patient's condition, and/or the carrying out of the appropriate investigations that would provide the information necessary to reach a proper diagnosis and treatment plan
 - Identification of any relevant risk factors that might be contributing to the patient's oral health (oral hygiene, diet, smoking, bruxism or parafunction)
 - Whether or not you had informed the patient about their oral condition, and communicated effectively with the patient about what was being done and why, or what the patient could do to help, control or improve the situation.
 - The available treatment options available to the patient that, in some circumstances, might include the possibility of a referral for specialist advice or treatment
 - What was discussed with the patient, the option of a referral for a second opinion or specialist assistance
 - That the patient has successively declined your recommendations for certain treatment or, perhaps, a referral
 - The recommendations made and the patient's response.
- **Planning new ways of dealing with time freed up by not having to manage practice:** Often, a second-time associate is one step away from retirement. Make sure you use this newfound freedom wisely in relation to your own health.
 - **Due diligence and regulatory compliance:** You should leave your practice fully compliant with, for example the Care Quality Commission (CQC). Often there may be a lead-in period in which new partners can make alterations while you're still there to advise.

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- **Communication to patients should be personalised and well written, informing that responsibilities have been transferred:** Dental Protection will be pleased to review your draft letter.
 - **Publicity of transition and communicating that new arrangements are in place:** When clinicians disappear without warning – other than in the most exceptional of circumstances – patients will often feel let down, or even abandoned. This, in turn, can make them less forgiving if it later transpires there is some kind of problem with work that was previously provided.

The simplest of gestures, such as a letter to former patients (agreed with the new practice owner) thanking them for their past loyalty, confirming any arrangements you have made for their future care and treatment, and wishing them well for the future (if you are moving to another practice), ends what may have been a long and happy relationship on a positive, professional note. Ideally, the outgoing dentist should personally introduce the new dentist to patients.
 - **Legal strength of employment commitment clause:** Sometimes contracts include binding out clauses and/or restrictions of practice (such as disallowing you to cannot practice within a five-mile radius, for example). If challenged, it is not always easy to establish how watertight these clauses are and it is best to seek legal advice.
 - **Arrangements for core CPD within the practice:** In a well run practice all core CPD CPR training is done as a team – the majority of us are very proud of that and wish it to continue.
 - **Writing your PDP and being on the “receiving end” of appraisals:** Suddenly, as an associate, you may find yourself undergoing an appraisal by a member of staff you once employed. There can be friction when the dynamics of a professional relationship change within an existing team but, if performance reviews are efficient and professional with pre-established criteria, then any negative impact will be minimised and will only improve performances.
 - **Fees:** Clarity of remuneration methodology should form part of the contract you have with the practice owner.
 - **And finally, knowing when to bow out!** Try hard to avoid interference in the running of the practice and/on undermining the new partners. Knowing when to walk away is essential.

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