WHITE PAPER

The Top 10 Traps in Dentist Employment Agreements

What Every Associate, Owner, and DSO Should Know Before Signing

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Marshall P. Strisik, Esq.
Health Care & Dental Practice Transactions Counsel

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Introduction

Dental employment agreements have grown considerably more complex over the past decade, driven largely by the consolidation of the profession under dental service organizations (DSOs). Where a decade ago a new associate might review a two- or three-page offer letter, today's agreements routinely run twenty to forty pages and are drafted by sophisticated corporate counsel representing the practice or DSO — not the dentist. The asymmetry of bargaining power and legal sophistication between the parties is real, and it shows up in the fine print.

This white paper distills ten recurring traps encountered across hundreds of associate, owner-dentist, and DSO employment and services agreements. Some traps are drafting tricks; others are structural features of the deal that dentists routinely underweight during negotiation. None of them are reasons to avoid employment or a DSO transaction outright — but each deserves a deliberate, informed negotiation rather than a signature under time pressure.

> ***Practice Tip:*** *Never sign a dental employment or transition agreement without having independent counsel review it against your specific state's corporate practice of dentistry, non-compete, and fee-splitting rules. Templates are not one-size-fits-all across state lines.*

Trap 1: The Restrictive Covenant That Outlives Its Purpose

Non-compete and non-solicitation clauses remain the single most litigated provision in dental employment agreements. The trap is rarely the existence of a covenant — courts in most states still enforce reasonable ones — but its scope. Agreements frequently define the restricted territory by an unreasonably large radius (10, 15, even 25 miles) measured from every location the practice or DSO operates anywhere in the state, not just the office where the dentist actually worked.

Why it matters

A dentist who leaves one location may find themselves functionally barred from an entire metropolitan area, or even a whole region, because the covenant sweeps in offices they never set foot in. Duration creep is common too: some agreements stack a covenant period on top of a separate "tail" restriction triggered by patient records access.

- Confirm whether your state restricts or bans non-competes for health care providers (a growing trend) and whether recent state legislation has already invalidated the clause as drafted.
- Push to tie the restricted radius to the specific practice location(s) where you actually treated patients, not the DSO's full footprint.
- Negotiate a buy-out option at a fixed, disclosed price rather than an open-ended liquidated damages formula.

> ***Practice Tip:*** *Ask for a map, not just mileage — have counsel plot the actual restricted radius against real competing practice locations before you sign.*

Trap 2: Liquidated Damages Dressed Up as a "Buy-Out"

Many agreements allow the dentist to "buy out" of the restrictive covenant for a stated sum. On its face this looks like a fair release valve. In practice, the buy-out figure is often pegged to a multiple of trailing collections or an arbitrary flat fee disconnected from any reasonable estimate of the practice's actual harm — which can render it an unenforceable penalty in many jurisdictions, or, conversely, a genuinely ruinous number the dentist cannot actually afford to pay.

The trap compounds when the buy-out price is not disclosed until termination, calculated unilaterally by the employer, or subject to upward adjustment based on metrics the departing dentist cannot verify.

> ***Practice Tip:*** *Insist the buy-out formula, and every input used to calculate it, is spelled out in the agreement itself — not left to a schedule the employer can amend.*

Trap 3: Compensation Formulas That Move the Goalposts

Production- or collections-based compensation looks straightforward until you read the definitions section. Traps here include broad, unilateral employer discretion to reclassify "adjustments," write-offs, refunds, and insurance takebacks against the dentist's production after the fact, sometimes months later, shrinking the bonus pool retroactively. Minimum salary guarantees are frequently structured as a draw against future production rather than a true floor, meaning the dentist can end up owing the practice money if production falls short in a slow start-up period.

- Get a worked numerical example in the agreement, not just a formula in prose.
- Ask whether the guarantee is a true minimum or a recoupable draw, and over what period any shortfall is clawed back.
- Clarify who controls fee schedules, payer mix, and scheduling — since all three directly affect production but are typically outside the associate's control.

Trap 4: Quality and Productivity Metrics With No Defined Standard

A growing number of DSO-affiliated agreements tie bonus eligibility, renewal, or even termination for cause to "quality metrics," patient satisfaction scores, or clinical KPIs that are left largely undefined in the contract and instead reside in an employee handbook or internal policy the employer can amend unilaterally. This creates a moving target: the dentist agrees to a number today, and the definition of how that number is calculated changes next year.

> ***Practice Tip:*** *Require that any metric tied to compensation or renewal be defined in an exhibit to the agreement itself, with a defined amendment process requiring the dentist's written consent to any material change.*

Trap 5: Malpractice Tail Coverage Left Ambiguous

Almost every agreement addresses professional liability insurance, but far fewer clearly allocate responsibility for "tail" coverage (extended reporting period coverage) when a claims-made policy terminates. Silence, or vague language stating the party "responsible" will be determined based on the reason for departure, is a trap: tail premiums can run into the tens of thousands of dollars, and a dentist who assumes the employer will cover it can be unpleasantly surprised at termination.

> ***Practice Tip:*** *Nail down, in dollar and percentage terms if possible, exactly who pays tail coverage under every termination scenario — with cause, without cause, resignation, retirement, and non-renewal.*

Trap 6: Termination Provisions That Are Not Actually Symmetrical

Agreements often present termination rights as mutual — either party may terminate on 90 days' notice — but bury asymmetries elsewhere: the employer's list of "for cause" triggers may be broad and self-defined (including vague catch-alls like "conduct detrimental to the practice"), while the dentist's ability to terminate for the employer's material breach may require a lengthy cure period and written notice that resets if the employer offers even a partial fix.

- Compare the cause definitions and cure periods on both sides of the agreement side by side.
- Watch for provisions where termination for cause forfeits an otherwise-earned bonus, accrued PTO, or partially vested equity.

Trap 7: Assignment Clauses That Survive a Sale Without Your Consent

A standard boilerplate assignment clause allows the employer, or its DSO parent, to assign the agreement to a successor entity without the dentist's consent in the event of a merger, acquisition, or internal reorganization. In a consolidating industry where DSO-to-DSO transactions and private equity recapitalizations are increasingly common, this means a dentist can wake up working for an entirely different ownership group, under different clinical philosophy or compensation practices, without ever having negotiated with the new employer.

> ***Practice Tip:*** *Negotiate a right to terminate without penalty, or without triggering the restrictive covenant, if the agreement is assigned to a new controlling entity.*

Trap 8: Equity Rollover Traps in DSO Transactions

For owner-dentists selling into a DSO platform, a partial equity rollover into the DSO's holding company or parent entity is now a standard deal feature. The trap lies in the details: cliff vesting schedules that forfeit unvested units entirely upon termination (even termination without cause), drag-along rights that let majority holders force a future sale on terms the dentist cannot control, and a near-total absence of liquidity until a future recapitalization or exit event that may be years away or may never occur.

- Understand exactly what triggers forfeiture of unvested equity, and whether "good leaver / bad leaver" distinctions apply.
- Ask for real financial detail on the DSO's own leverage and prior recapitalization history before treating rollover equity as a meaningful part of the purchase price.
- Model the rollover value at zero as a sanity check on the cash portion of the deal.

Trap 9: Unilateral Amendment and Policy Incorporation Clauses

Many agreements incorporate an employee handbook, compliance manual, or DSO operating policies "as may be amended from time to time" by reference, and then state that violation of those incorporated policies constitutes cause for termination. Because the employer can amend the incorporated documents unilaterally, the practical effect is that the definition of a dentist's contractual obligations — and grounds for termination — can shift after signing, without a corresponding signature or consent requirement from the dentist.

> ***Practice Tip:*** *Ask that any incorporated policy affecting compensation, termination, or restrictive covenants be attached as a fixed exhibit, amendable only by mutual written agreement.*

Trap 10: Arbitration, Class Action Waivers, and One-Sided Fee Shifting

Mandatory arbitration clauses are common and not inherently problematic, but the trap lies in the details often layered on top: class and collective action waivers that prevent dentists from joining together over systemic issues like wage-and-hour violations; venue and choice-of-law provisions requiring the dentist to arbitrate in a distant state favorable to the employer; and one-sided attorney fee-shifting provisions that require the losing dentist to pay the employer's legal fees but do not provide reciprocal protection if the dentist prevails.

> ***Practice Tip:*** *At minimum, negotiate a mutual fee-shifting provision and a venue local to where you actually practice.*

Closing Observations

None of these ten traps is a reason, by itself, to walk away from an otherwise attractive associate position or DSO transaction. Consolidation has brought real benefits to many dentists — administrative relief, capital for growth, and retirement liquidity chief among them. The point of this paper is not to discourage these deals, but

to insist that dentists negotiate them with the same rigor and professional representation that the DSO or practice brings to the table. A well-negotiated agreement addresses each of the traps above explicitly, in plain terms, before signature — not after a dispute arises.

Every one of these issues is negotiable, and DSOs with mature, well-run legal departments generally expect a knowledgeable dentist's counsel to push back on some of them. The dentists who fare best are not those who refuse to sign restrictive agreements, but those who understand precisely what they are signing.

This white paper is provided for general informational purposes only and does not constitute legal advice. Employment and transactional terms vary significantly by state and by the specific facts of each engagement; dentists and practice owners should consult qualified counsel licensed in the relevant jurisdiction before entering into or terminating any employment or transaction agreement.