

DSO AFFILIATION: CONSIDERATIONS FOR A SELLING PEDIATRIC DENTIST – PART 2

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Introduction

Published in the 2026 Q1 *PDT*, part 1 of this article focused on planning and preparing for the sale of a pediatric dental practice to a DSO. In Part 2, the focus shifts to the execution of a sale. To ensure the sale contracts are enforceable it is important to understand and adhere to the legal requirements and limitations of selling to a DSO. Marketing the practice and identifying the right buyer entails conducting due diligence. Once a Buyer has been identified the sale transaction is negotiated and documented. A transaction with a DSO is complex, requires attention to detail, and involves the full professional team identified in Part 1.

Legal Requirements and Limitations of Selling to a DSO

A key consideration when selling a pediatric dental practice to a DSO is the legal and regulatory environment in the jurisdiction of the sale. Of particular concern is the state's regulation on the corporate practice of dentistry (CPOD). Regulation of CPOD has a long history of seeking to protect the public against the delivery of dental care through "commercial exploitation" by unlicensed persons.¹ There is significant regulatory variation across the U.S. that necessitates a state specific assessment when selling a practice to a DSO. Four guiding principles have been identified for evaluating the legal parameters of a corporate affiliation: "1) ownership or proprietorship of and control over a dental practice; 2) control over dental offices, equipment, or materials; 3) employment of dental personnel; and 4) control over clinical judgment."²

An essential step in planning and preparing for a sale to a DSO is to understand the legal requirements and limitations. Another pediatric dentist's experience and terms of a sale, while informative, is not a substitute for a legal analysis of the relevant statutes, rules, case law, and advisory opinions by your legal advisor as they relate to CPOD.

It is also important to factor in any review or approval process required when contracting with a DSO. For example, in North Carolina, management arrangements with an entity that is not a professional entity or dentist requires review by the Board of Dental Examiners.³

An emerging trend that may have increased relevance to the sale of a pediatric dental practice to a DSO is the adoption and expansion of state health care transaction notification and approval requirements. States are enacting legislation that increases oversight of health care transactions by addressing perceived problematic transactions before consummation of the transaction or monitoring the impact of transactions on cost, quality, equity, availability of care, and competition.⁴ These laws vary with regard to the subject health care entities, covered transactions, notice period, review and approval provisions, and post-closing requirements. In 2023, New York State enacted a law requiring disclosure of material transactions; which are defined to include a single transaction or a series of related transactions in a rolling 12-month period resulting in a health care entity increasing total gross in-state revenues by more than \$25 million. It requires health care entities, which are defined to include management service organiza-

tions, to provide 30 days' notice to the Department of Health prior to the closing of a covered transaction.⁵ In 2024, Indiana adopted legislation that requires a health care entity, which is defined to include a private equity partnership, to provide 90 days prior notice of merger and acquisition transactions with total assets, including combined entities and holdings, of at least \$10 million to the office of the attorney general.⁶ In 2025, Massachusetts amended its transaction notification and review process and now requires 60 days' notice before the date of proposed material changes that include, but are not limited to, transactions involving significant equity investors (defined to include "any private equity company with a financial interest in a provider, provider organization or management services organization")⁷ that result in a change of ownership or control of a provider and significant acquisitions, sales or transfers of assets.⁸ It is not out of the realm of possibility for a DSO to have portfolios reaching the threshold limits and private equity partners that can trigger these emerging transaction notification and approval requirements, especially in a thriving pediatric dental practice with multiple clinic locations. This is a legislatively active issue that is continuing to evolve.⁹

Working with a legal advisor to be familiar with the current federal and state transaction requirements when preparing for a sale to a DSO can help in planning for any necessary notice and approval steps.

Identifying and Engaging the DSO Buyer

While most dentists will sell a practice only once in their career, established DSO buyers ("Buyer(s)") will be experienced in the acquisition of dental practices. This is where the work that's been done to plan and prepare for a sale, assemble an adviso-

ry team ready to advocate on behalf of the dentist ("Seller(s)"), and understand the legal requirements and limitations of selling to a DSO is applied in support of leveling the playing field and identifying the right Buyer for Seller and practice. While not required, engaging a broker as discussed in Part 1 to market the practice to multiple Buyers may better ensure the identification of the right DSO in the context of Seller's goals. In addition to providing a clearer picture of a Seller's options, it can create competition and lead to better offers.¹⁰

Just as a potential Buyer is going to conduct due diligence that includes interviewing Seller, equally Seller should engage in an interview process with a potential Buyer, which the broker can facilitate at the optimal time. The interview should include questions that allow Seller to determine whether there is an alignment of goals and priorities. If Seller's goal is to retire and walk away from the practice, an inquiry as to the importance of post-closing employment to Buyer may provide early insight into possible misalignment.

If Seller's goal is to preserve the legacy of the practice, an inquiry about Buyer's experience in the pediatric dental space could be important. Similarly, inquiries into Buyer's post-closing plans such as rebranding of the practice, maintaining staff, changing hours, shifting the payor mix, changing the practice management software, and implementing centralized services could be valuable. Speaking with previous sellers to learn about their experiences with Buyer during the sale and post-closing periods can be helpful in the due diligence process.

Regardless of whether Seller plans to sell and walk away, phase into retirement, or grow their practice, it is important to gain as much information as possible about Buyer to understand whether their

expertise, goals, and priorities align with Seller's goals and needs and the nature of the practice. Due diligence inquiries could include:

- Who is the Buyer?
- What is their organizational structure?
- Do they own other dental practices in the state?
- Is this a single purchase or a roll-up/consolidation?
- Who are their investors (e.g., private equity)?
- What financial return is expected and how will it be achieved?
- What are Buyer's past and present litigation and bankruptcy actions?
- What is Buyer's prior success record in the dental marketplace?

Moving the Transaction Forward Including Negotiations and Transaction Documents

Once a Buyer(s) is identified, purchase price negotiations should occur to see if financial terms for the potential sale can be mutually agreed upon. As addressed in Part 1, obtaining a professional practice valuation prior to marketing the practice or negotiating with a Buyer can be a valuable starting point for the purchase price negotiations and provide support for the asking price. The Seller should ensure that their other professional advisers, including tax, financial, and legal advisers, are part of these negotiations.

Buyer will have their own methodology for determining the purchase price; which is likely based on a multiplier of the practice earnings using an *EBITA* (earnings before interest, taxes and amortization), or *EBITDA* (earnings before interest, taxes, depre-

ciation, and amortization) determination (e.g., purchase price = *EBITA* or *EBITDA* x multiplier). Multipliers vary but historically have been higher than what a singular dentist buyer can afford to offer Seller.

Buyer will require access to the practice's financial information to propose a purchase price. A non-disclosure agreement (NDA) that protects Seller's identity and confidential information that is not specifically authorized must be executed prior to release. The obligations for confidentiality survive the termination of the NDA for an expressed period of time, if not indefinitely.

If purchase price negotiations are successful, the parties proceed to execute a letter of intent.

LETTER OF INTENT

While letters of intent (LOI) may not be used in every sale of a pediatric dental practice, they are significant in a sale to a DSO due to the complexities of the DSO transaction. The LOI serves as a foundational roadmap for the principle terms of the practice sale. Negotiation and agreement on the financial terms of the transaction, which include how the purchase price will be paid, become part of the LOI.

The payment of the purchase price may include holdbacks, earnouts, clawbacks, and/or rollover equity. Holdbacks can protect Buyer for indemnity claims, provide post-closing working capital, and pay Seller's pre-closing expenses due post-closing. The amount and time Buyer holds the holdback post-closing are often negotiable. Earnouts or clawbacks protect Buyer against paying too high a purchase price should the practice not perform post-closing as anticipated. An earnout, used to pay Seller a higher purchase price, is paid when the practice meets certain productivity markers post-closing. Alternatively, a clawback requires repaying a portion of a purchase price if the practice

THE DSO SALE ROADMAP

From Preparation to Transition

Selling your pediatric dental practice to a DSO is a multi-step journey. This roadmap outlines the key stages of a successful transaction from planning through post-closing.



Careful planning, the right partner, and a clear process lead to a successful transaction and a strong future—for you, your team, and your patients.

fails to meet productivity markers. Consulting with their tax and legal advisers regarding the feasibility of the practice meeting any productivity markers will maximize Seller's potential for success. Roll-over equity involves Seller investing a portion of the purchase price in Buyer. The potential for a favorable financial outcome requires a detailed understanding of the transaction structure and its associated risk and compliance with regulatory requirements.¹¹

Additional financial considerations include purchase of Seller's accounts receivable, discounted based on aging, and resolution or assumption of practice debts and liabilities.

In addition to financial considerations, the LOI will detail the structure (e.g., asset vs. equity purchase; administrative service arrangements), due diligence and closing timeline, restrictive covenants, and binding provisions. Buyer will generally not make escrow payments for exclusivity in negotiations, as expected with a non-DSO Buyer.

It is common for Buyer to present the LOI to Seller for review. Due to the complexity of purchase price payment and other financial aspects of the transaction, Seller should extensively review the details of the transaction funds flow with their professional advisers.

While not contractual, except for binding terms like **exclusivity** in dealings or **confidentiality**, the LOI creates psychological and strategic momentum to the sale process.¹¹

LOI terms become enforceable if the parties move forward with the transaction incorporating them into the purchase contract. Legal counsel will have difficulty modifying the terms of an executed LOI unless there is a significant change in practice circumstances unknown at the time the LOI was signed or Buyer's ability to pay the purchase price or timely close. This is a compelling reason for

Seller to have the LOI reviewed by their legal, tax and, financial advisers **before it is signed**. While such review will increase fees at the front end, it will likely save money on the back end.

Similar to the LOI, Buyer will provide the transaction documents to Seller for review. These documents are templated or standardized for the particular DSO's purchase transactions. Negotiation may be limited but varies across DSOs. The Seller's attorney will need to navigate this with Seller and the DSO's legal counsel or representatives. Regardless of Buyer's engagement in negotiation, it is imperative that Seller understand the terms of the proposed sale of their practice.

PURCHASE AGREEMENT

If the LOI is not terminated by time or action of the parties, Seller and Buyer will move to enforceable contracts. The Purchase Agreement will be **the primary document controlling the sale of Seller's assets**; it will include the terms of the LOI, expand on its provisions, and define the legal structure of the transaction. The legal structure will likely be the sale of assets rather than the sale of ownership in Seller's practice entity. The assets being purchased may be transferred pursuant to two separate purchase agreements to comply with state requirements against the corporate practice of dentistry. An asset sale is generally the most tax favorable structure for Buyer due to a Buyer's ability to depreciate tangible assets and amortize goodwill. At the same time, whatever is allocated to goodwill will be taxed as capital gains to Seller. It is not uncommon for DSO buyers to allocate 90% or greater of the purchase price to goodwill which can reduce the after tax impact to Seller. Other principle terms include without limitation:

- **The purchase price, and how it will be paid to Seller.** The Seller can expect cash paid at closing subject to adjustment for any long-term debts secured by the practice assets. Such

debts will be paid at closing, reducing the net proceeds paid to Seller. Holdbacks, earnouts, and rollover equity will further reduce the amount of net proceeds paid to Seller at closing.

- **Representations and Warranties.** The Seller will be asked to make extensive representations and warranties regarding Seller's business conduct and practices, which as discussed in Part 1 can include the pre-closing operation of the practice; compliance with state and federal regulations including professional and business licensing; billing practices; legal actions; employment practices; debts and liabilities; and third party payor credentialing status or prior credentialing history, if applicable. The Purchase Agreement should include the representations and warranties of Buyer, which will be limited in comparison to Seller's, but should include at least the following: i) the legal status of the buying entity(s); ii) the legal authority of Buyer to enter into the transaction; and iii) the authority of the persons signing the Purchase Agreement on behalf of Buyer.
- **The closing and effective date for transfer of the assets.** The proposed closing date is generally 45 to 60 days from the LOI execution date. This varies depending on the parties and the particular circumstances of the transaction, including pre-closing regulatory requirements.
- **Seller's restrictive covenants.** The Seller will be restricted by **non-compete provisions** (as permitted under state law) restricting Seller from practicing dentistry in a defined radius from all of Seller's practice locations being sold to Buyer and for a defined time period post-closing.
- **Non-solicitation provisions** prohibiting Seller from soliciting or inducing patients and em-

ployees to leave the practice during the time that Seller works for Buyer, and the later of a defined time period post-closing or after Seller's separation from Buyer as an employee will be included. Also included are **non-disclosure provisions** that may indefinitely prohibit Seller from using the confidential information of the practice including its associated trade secrets (as allowed under state law).¹³

- **Non-disparagement provisions** that will survive the closing of the transaction may also be a part of Seller's restrictions. These restrictive covenants may be included in the Purchase Agreement and/or in ancillary agreements.
- **Dispute resolution provisions.** These provisions will direct and control how the parties resolve any disputes that arise between the parties, and may include mediation and/or arbitration provisions. A DSO will generally include arbitration provisions but may agree to allow parties to engage in nonbinding mediation as a prerequisite for arbitration. The provisions may also allow for a prevailing party to recover their legal fees and costs associated with any ensuing litigation from the opposing party.

ADMINISTRATIVE SERVICES AGREEMENT

The transaction will include documents that require Buyer to manage the practice through the terms of an administrative or management services agreement. This agreement will identify all of the non-clinical and administrative services that Buyer will provide for the practice and the fees to be paid for such services post-closing. It is important that the services Buyer provides and the manner in which it is paid are in compliance with state law and do not impact the delivery of clinical care. The Administrative Services Agreement will have ten or more year terms with renewals and

limitations on its termination. The terms will be consistent across all of Buyer's transactions and leave little room for negotiation. If Seller and Buyer are partnering after the closing to jointly own Seller's practice, these terms become more important for Seller to understand and accept.

EMPLOYMENT AGREEMENT

It is generally expected that Seller will be employed by Buyer for a defined number of years (e.g., 3 to 5 years with automatic renewal) post-closing. Even if Seller is retiring, they will be expected to work for some defined period of months post-closing to facilitate the practice transition. The Seller will execute an employment agreement with Buyer that includes the term of employment and all other terms related to post-closing employment, including without limitation:

1. hours to work;
2. exclusivity of employment;
3. termination;
4. restrictive covenants;
5. compensation structure
6. benefits;
7. responsibilities other than patient care; and
8. dispute resolution.

This document will control Seller's continued provision of patient care or other services post-closing. Of particular significance is Seller's right to unilaterally terminate their employment and preserve the right to receive any post-closing purchase price payout. Buyer likely prefers the right to unilaterally terminate Seller's employment; without specific

protective provisions this poses a risk to Seller as to not receive post-closing payments. Buyer may include professional liability coverage as a benefit to Seller but often it may be limited to a *claims made policy*, requiring tail coverage upon Seller's separation from employment. If Seller has *occurrence based* coverage, Seller could negotiate maintaining that policy with Buyer paying the premiums or reimbursing Seller. Associate dentists working in Seller practice at the time of sale may also need to be under contract with Buyer to work after the closing.

EQUITY ROLLOVER AGREEMENT

If the transaction allows for or requires Seller to rollover a portion of the purchase price (i.e., make an equity investment in Buyer), an Equity Rollover Agreement will be required. This agreement provides the terms for Seller to rollover a part of the purchase price in exchange for minority equity interest in Buyer at closing. The Seller should carefully review the terms of the agreement with their advisers to understand their rights and protections as they relate to any governance role in the entity, exit and liquidity mechanisms, tax advantages and consequences, and compliance with CPOD and other laws.¹⁰

TRANSITION SERVICES AGREEMENT

This agreement allows Buyer to continue to bill for patient services through Seller as a credentialed provider for a limited, specified period of time post-closing to give Buyer time to obtain credentialing. The term of this agreement will be determined by how long it takes Buyer and its dentists to become credentialed in compliance with any third-party payor or government program reporting and approval requirements. The purpose of

the agreement is to allow for the continuation of uninterrupted billing for professional services. A key consideration for the Seller is to ensure they have sufficient indemnification. If Seller's practice is a fee for service practice this would not apply.

SUCCESSION AGREEMENT

Buyer may require the execution of a succession agreement if Buyer purchases less than 100% of the practice assets and as a result Seller and Buyer jointly operate the practice post-closing. In joint partnerships, the practice continues to be operated by the Seller entity. Buyer will have purchased a majority of practice assets allowed under state law and Seller will retain a minority interest. The terms of this agreement will need to comport with the legal requirements of owning a dental practice in the subject state. The purpose of the succession agreement is to provide for the seamless transition of the practice to another subject state licensed dentist in the event Seller (or its owner dentist) separates from the practice for any reason. If Buyer purchases 100% of practice assets a succession agreement is not necessary.

LEASE

A new lease, or assignment of lease, as previously referenced in Part 1 of this article will need to be executed.

Once the negotiations and transaction documents are complete, the sale is ready for closing.

Closing the Deal and Post-Closing Implementation

Negotiation is a give and take process that often requires compromise, and perhaps more so on the part of the Seller when Buyer is a DSO. Prior to closing, it is important to reflect on whether in negotiations Seller has deviated from their

goals and priorities, and if so, has the compromise resulted in other advantages that outweigh the concessions? It is also important to evaluate whether Seller fully understands the provisions of the transaction documents. If so, Seller is ready to proceed with closing.

The closing is done remotely by the exchange of electronic signatures after a closing call among the parties' legal counsel or representatives to confirm that the transaction is ready to close.

The post-closing obligations of each party must be completed as provided for in the transaction documents. Completion of these obligations helps ensure a successful transition of the practice from Seller to Buyer.

Summary

The DSO is generally a sophisticated and experienced Buyer with significant resources to support the execution of a purchase. There is significant variation in the structure and operation of DSOs that warrants transaction specific advice and guidance. An engaged Seller with the support of a professional team can balance the playing field and ensure a sale that is aligned with their goals and priorities, legally enforceable, and transacted to protect the interests of a Seller and their practice.

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