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## **Chiropractic and Contracts**

By David Foster, DC

Why should a chiropractor know about contracts? Chiropractors have gone through years of academic schooling and have never had the need to craft a contract. The reality is that most chiropractors will be confronted with the need to have a contract. The most common chiropractic contract is with a chiropractic associate; the second most common chiropractic contract is for the sale of a practice.

This article is not to instruct chiropractors on the contents of these contracts, but to give value to why, when, and how to create and use these documents. Good business judgment is presented in this article.

Chiropractors can possibly eliminate costly mistakes by reading this article.

### **The Chiropractic Associate**

Many chiropractors hire associates with the highest level of good intention; the associate begins the relationship with equally good intentions. In theory, the practice will grow and the associate will cultivate a patient following and goodwill within that practice. This relationship may prosper for an extended period of time without incident.

The associate's perspective of this relationship usually changes first. Human nature alters the associate's perspective. The associate gains enough knowledge and experience to feel confident in succeeding independently. A true sign of this is when the associate tallies his services for the week, compares them with his pay and feels exploited. The vision of the associate is to look at the services billed and the imbalance in compensation received.

The risk is with the employing chiropractor. Without a pre-employment contract the employing chiropractor is in a very precarious position. The chiropractor has executed exactly what he stated from the beginning of this relationship. He has given the associate opportunity, instruction, and invaluable experience. The associate has the ability to legally open a practice next door and take a percentage of the existing practice

with him without compensating the employing chiropractor. The employing chiropractor is in a very poor negotiating position.

If a pre-employment agreement with an established noncompete clause were executed, the chiropractic owner would be protected. Additional areas of concern under such a contract would be compensation; termination; conduct; insurance; liability; and responsibility.

As the employer originating the agreement, it is considered good business protocol to protect oneself before the relationship develops. In my office, the new associate signs the agreement on the first day.

### **Contract of Sale for a Chiropractic Practice**

Selling a practice is different than selling anything else you own. It holds physical and emotional value. Discussing your practice as "assets, patient files, and accounts receivables" all depersonalize the practice you have created, sweat over, and nurtured. Realize before the process begins that the other professionals have a business perspective of your practice; it's not emotional with them. The difficult job for the seller is to hold the emotional and pure business perspectives in check.

When chiropractors sell their practice the sellers are traditionally responsible for originating a contract of sale. Most chiropractors contact their attorney and accountant and ask them to start the process. My question, is what does your attorney or your accountant know about your chiropractic practice? What is their experience in selling a professional practice such as yours? Who will teach them the mechanics of your practice? How much time and money will you spend in teaching them this needed information?

It has been my experience that lawyers know the law, accountants know accounting, but neither know chiropractic. They are not knowledgeable of the personality or the emotions of the chiropractor. Transferring ownership in a chiropractic practice is significantly different than other businesses. To ask your local accountant to appraise the dollar value of your practice is like asking them to tune your car. There is no one equation to value your chiropractic practice. Each practice is unique and has its own personality. An experienced person who has exposure to many "for sale" practices can give you the most accurate, objective, and useful perspective of value and marketability. Do not recruit your lawyer or accountant to do the job of a professional practice broker. Your loss will be greater than the cost of the broker.

When hiring an attorney to develop a contract you should be careful and critical. Invest your energy wisely and interview a few lawyers until you feel you can work with one effectively. You will spend approximately \$150 per hour for advice. Explain your needs and absolutely request an approximation of time and cost. Do not expect the professional to do it all for you. His job is to execute your wishes, as long as they're legal, not to tailor a deal to his liking.

All contracts must contain the basic financial transaction; covenant not to compete; accounts receivable transfer; prepaid expenses; lease; creditors; employees; and transition agreement. The contract should be simply stated and easy to read. Each topic should be presented independently of one another for additional clarity. Most importantly, the chiropractor should understand each issue completely. The time with your council should be spent educating you on the legality of the sale, not the chiropractor educating the lawyer on the mechanics of the practice.

My experience tells me when two chiropractors negotiate they should negotiate face-to-face without the presence of any professionals. The professionals should work in the background to educate the seller and buyer about each topic when needed. The reality is the chiropractors must work together and discuss all issues toward resolution. When this negotiation process is used, compromise and conclusion is accomplished with less effort, stress and professional cost. In contrast, when you walk into a negotiation with a lawyer on one side and an accountant on your other, you are looking for a long, drawn-out, costly meeting that could be counterproductive.

Never allow the attorneys to negotiate the contract without your presence. Once your council starts to speak directly with the buyer's council all good intentions are gone between the seller and the future buyer. The likelihood of the deal closing will decrease significantly. They may argue for hours on a minor issue you will end up paying for. By you being present, you can keep the big things big and the small things small, while coaxing the process toward completion. The contract is basic, but emotions and legal naivet<sup>3</sup> can create friction. The ideal scenario is when an experienced mediator reads through a "boilerplate" contract of sale with the seller and buyer. The mediator explains each issue of the contract and allows both parties to vocalize their concerns and negotiate their points. When both parties understand and recognize the others' concerns, a compromise is usually imminent.

Using an outline "boilerplate" contract ensures all major issues are explained and understood, with only the unique additions being incorporated. At this stage the document can be delivered to your professional for

review. An accountant can give you a strategy to limit the tax liability on the proceeds of the sale. Your attorney will make sure all of your intentions are legal and facilitate the transaction to closing. This process allows the buyer and seller to work together to accomplish the goal of transition, minimizing effort, stress, and expense.

The chiropractor-associate and the sale of chiropractic practice contracts are basic documents. If both parties are knowledgeable of the contents of the contract, the negotiation proceeds with little confusion.

*Note from the author:* I consult, broker, appraise, and mediate contracts to the chiropractic profession. My expertise lies in all aspects of the chiropractic buy/sell transactions and is based on experience. I have a B.S. in marketing/finance from Boston University, and I was a securities broker prior to becoming a chiropractor 14 years ago. During the past decade, I have completed the buy/sell transaction many times, working through many legal and financial obstacles to consummate a deal. I also hold a real-estate license in the state of New Jersey.

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