

The How, When, Where and Why Of Associateships and Buy-ins

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Associate yourself with people of good quality if you esteem your own reputation, for 'tis better to be alone than in bad company.

George Washington

Over the past decade, the changing economic environment has resulted in a shift in the podiatry labor market. As recently as the early 1990s, the majority of podiatric students aspired to develop and manage their own practice. The more recent challenges associated with obtaining managed care contracts, as well as the managerial burden involved therein, now have many students leaning toward an associateship.

While more students are entering the workforce, eager to associate with an experienced practitioner, many senior practitioners are appropriately “reading the writing on the wall” and searching for an associate and future buyer. This synergistic environment has sparked an acute interest in the “how, when, where and why” regarding associateships and buy-ins.

The Timing

While the mechanism behind finding the right associate for your practice may be similar to any other employee interview, there are important fundamental differences that must be explored. Hiring an associate is a major investment. The objective as well as the timing of such an investment should be carefully analyzed. Are you hiring an associate with the aim of taking more time off, or are you interested in achieving some form of practice enhancement (improved volume, diverse procedural capabilities, etc.)? The following is a list of questions that should be addressed.

- What credentials should the associate have in order to obtain your goal?
- If the associate is expected to raise the overall patient visit volume, what will this do to the practice's total expenses?
- At what patient volume level is your practice's profit margin optimal?
- Is your office infrastructure efficient enough to handle additional patients?
- Is the community in which you practice conducive to growth?
- Are you prepared to manage another physician or perhaps even lose some autonomy?

The Search

Finding a potential associate often demands the use of outside resources. Journals, such as APMA News and Podiatry Management or the numerous on-line resources are a great place to start. There are also private management companies available that assist in finding a qualified candidate.

Be sure that the prospective associate knows the intent of your hire. Frustrations associated with the frequently “disappearing” senior partner can easily be avoided if the associate expects this up-front. Goals and objectives for the associateship should be explored during the interview process. While the significance of medical training can not be overlooked, the candidate's “people skills” should also be assessed. Creating mock situations during the interview is often helpful in evaluating this skill.

Attempt to find a candidate who matches the corporate culture that your office provides. Corporate culture includes the personality and philosophy of your office. Assessing the

candidate within a social environment may assist in this endeavor. Here are some questions that need attention during this process.

- Does the candidate share a similar philosophy regarding patient care?
- Is the candidate willing and capable of carrying out your objectives?
- Is the candidate comfortable living and working within your community?

The Investment

Aside from your support staff, hiring an associate will likely be one of the largest investments that you will make in your practice. It should be treated as such. While the “get what you pay for” proverb may not be completely applicable in this regard, fair business policies and adequate compensation methods are critical for a productive relationship.

Geographical variations of salary exist. That notwithstanding, there are three basic methods of associate compensation:

- Pure salary
- Pure percentage of production (based on percentage of income) *obtain legal advice to be certain that anti-kick back laws are not violated
- Salary plus incentive

Solely providing an associate with a pre-determined salary is an employer-weighted risk. It is difficult to ascertain in advance if the associate will generate enough revenue to warrant this compensation. In the pure percentage of production model, the associate is taking more of the risk. He or she is not able to predict if the patient volume will shift or increase. In the salary-plus-incentive model, both the employer as well as the associate shares the risk. In this compensation package, the associate is paid a nominal base salary and is awarded a bonus after a preset threshold of income is generated. The threshold should be set at approximately three times the base salary. For example, if the base salary is \$40,000 per year, the threshold at which the associate is rewarded a bonus begins at \$120,000 of generated practice income. A percentage (usually 15-25%) of each dollar above \$120,000 is provided as a bonus and may be calculated and paid monthly or quarterly. This is generally the compensation model of choice. It provides and necessitates continual feedback as well as an associate’s active participation in the financial state of the practice.

Aside from salary and bonuses, there are other aspects of the compensation package that may be discussed and negotiated. Some of these are listed below.

- Vacations
- Malpractice insurance
- Health insurance
- Disability insurance
- CME allowances
- Dues and subscriptions
- Auto/gas allowances
- Fees for Licenses and Boards, Managed Care Privileges and Hospital applications

The Contract

Associates should be required to sign a contract of employment. By neglecting to draw up a written agreement, the employer places the arrangement in serious violation of state and federal regulations, and creates employment law conflicts for both parties.

The contract should be designed to protect both parties, and should be prepared by a qualified legal consultant. The following is a list of sections that the contract should address.

- Employment duties and performance
- Terms of employment
- Compensation package (Base and incentive)
- Issues regarding maintenance of working facilities
- Death/Disability/Worker's compensation
- Malpractice Insurance
- Issues pertaining to ownership of medical records
- Covenant not to compete / not to solicit
- Termination clauses

The contract should be as clear as possible. The expected duties and responsibilities of the associate must be detailed. Covenants should be reasonable if they will be expected to hold up in court. As an example, a reasonable restrictive covenant will preclude the associate from practicing podiatry during employment as well as after termination from employ, within a radius of 10 miles of all offices for a period of three years. A covenant will vary according to the population density. Liquidated damages may also be discussed in the contract, should the associate breach this covenant. (You should consult your legal counsel as to the specific parameters that are usual and customary in your state.)

The Responsibility:

Once the associate is chosen and the contract is signed, both parties must assume some responsibilities. The senior practitioner should tirelessly introduce the associate to patients as well as physicians, expounding upon his/her credentials. Established practice protocols should be reviewed and mutually agreed upon in order to ensure that both practitioners essentially "practice as one". The dialog and terms used in the presentation of pathologies and etiologies, as well as the actual delivery of care should be consistent.

The office staff should be educated regarding the associate's role. For a variety of reasons, staff members are often initially reluctant to schedule patients for a new associate. The precise verbiage to use with patients should be selected and discussed with the staff.

The senior partner has an obligation to provide clear and consistent feedback to the new associate. Criticize constructively and privately, yet praise loudly and publicly.

Allowing the associate to participate in management decisions gives him/her a sense of empowerment. Setting quarterly financial goals facilitates the associate's "aim" and improves productivity. Since trust is a critical ingredient for a long-term relationship, an "open book" policy is the only effective way to manage the finances of the practice.

The Buy-in:

Whether by an established or new associate, the foundation of a buy-in relies upon evaluation of the practice's worth. Since many associates feel that they have substantially contributed to the growth of the practice, it is crucial to obtain a qualified appraisal of the practice as early as possible in the relationship. However, should this not occur, an alternative would be to agree upon a date of valuation, generally the date

of hire. If this issue is neglected, an associate may feel as though they are buying into their own hard-earned achievements.

A practice is generally worth the sum of its *tangible* and *intangible* assets. The tangible assets are those items that can be “touched” such as equipment, furniture, supplies, etc. The sole intangible asset of a medical practice is “goodwill”. In a medical practice, there are many components that contribute to this value. While the tangible assets are usually fairly easy to value using current market prices, the intangible assets can be difficult to quantify. Knowing a practice’s *factors of production* helps. The factors of production include such things as the net collection ratio, visit volume, payer mix, cash flow, effectiveness of the management, infrastructure, new patient flow, existing reputation of the practice, and the market share the practice commands. These statistics often help quantify what we often can only qualify.

In summary, a podiatric practice is worth somewhere between one year’s gross and one year’s owner’s compensation. An experienced and qualified medical practice appraiser should be used for the valuation.

The Information:

The seller is expected to disclose all clinical and financial information necessary for the buyer to evaluate his or her risk. The information that may be considered material to the transaction includes, but is not limited to:

- Financial statements
- Tax records
- Bank statements
- Debts of the practice (Both recorded and unrecorded)
- Patient payment records
- Patient medical records
- Information regarding any past, present or potential legal actions
- Documentation of compliance with all regulatory agencies
- Key managed care contracts
- Any special employment arrangements (i.e. family members on the payroll)
- Leases for real estate and/or business equipment

Prior to the disclosure of the above information, the buyer should sign a document of confidentiality. The purpose of this document is to ensure that the information obtained is protected from becoming public and exposing the owner to unnecessary public scrutiny.

The Negotiation:

In any buy-in or practice merger, there are three issues that must be negotiated. They are:

- The price and the terms of the sale.
- The terms of the employment of the physicians as well as how income will be distributed.
- Determining how decisions will be made (governance).

The price of the buy-in and its terms are usually inversely related. Do you want a better price or more favorable terms? Parties negotiating the statement of key issues at the beginning of the process can not only enhance the process by identifying key issues

(price vs. terms); they also make the process significantly shorter. Associates must have an understanding for the emotional state of the proprietor, and likewise the owner must help the associate to appreciate the opportunity being offered and its long-term benefits. Further, the needs of all parties should be considered, from both a cash flow as well as tax position. Both parties must understand that the goal is to develop a long term working relationship - one that fosters practice growth and enhancement. Preferably, the buyer should be permitted to pay down at least some of the debt with pretax dollars. This may be accomplished by structuring a compensation plan with a *compensation differential*. A lower compensation is provided to the buyer and the differential is applied to the debt on a pre-tax basis. However, care should be taken to ensure that the employment documents and other agreements adequately reflect the intent of the plan, its timing and full implementation.

Critical to the long-term success of a multi-physician practice is the concept of governance. Governance is all about balance in the daily operation and decision-making process of the practice. While the Managing Partner has the responsibility of prioritizing corporate goals and objectives, he/she must maintain a subtle balance between those goals and supporting the other physicians' autonomy. Experience, fairness, a keen business insight and a rational decision making strategy are important characteristics of a successful managing partner.

During negotiation, it is important that each party clearly states their needs and priorities. The seller's needs may include:

- Income security
- More free time
- Improved procedural capabilities
- Cash

The buyer's needs may consist of:

- Participation in contracts
- Cost containment (economy of scales)
- Freedom from management
- Increase market share

The rationale for listing as well as ranking these needs should be clear. Both parties should strive to meet the needs of the other, in order to facilitate the process.

The Consequences:

Every transaction has its good and bad consequences. The good consequences are those that allow the arrangement to last indefinitely, and the bad consequences are those that prevent the arrangement from flourishing. These consequences should be anticipated in advance of the buy-in. Therefore, the documents should not only outline the coming together, but also the process for dissolution of the merger. In the event of a break-up, this will reduce the potential for chaos.

Below are some of the factors to consider.

- Will all providers have a balanced incentive to perform? Senior practitioners, particularly those with a priority of more time off, are often accused of "retirement on the job".
- What if reimbursement patterns should change or reduce? Are you banking on the current economy for long term success?

- How might a new partner affect referral patterns?
- How might competitors respond? Will the transaction invite new competition?
- What will happen if the relationship does not work? Are there provisions and break up clauses to protect each party?
- What are the possible consequences of not taking in a partner or an associate? Will the competition move in this strategic direction in order to gain market share?
- How will future growth be borne only by the associate?
- Can we easily follow the cash?
- Does the arrangement promote cooperation and trust?
- Is risk clearly outlined?

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The Legalities:

Practice transactions require a comprehensive review of the circumstances by a qualified healthcare attorney. Antitrust laws, federal Anti-kickback laws, including the Stark Self-Referral Restrictions, are all beyond the comprehension of most buyers and sellers. A healthcare attorney will help to navigate the tumultuous waters, and his importance cannot be overemphasized.

Aside from federal regulations, particular protective covenants should be discussed and agreed upon.

The protective covenants for the **buyer** may include:

- Full disclosure of all financial information
- Indemnification from prior acts. (“Tail Coverage”)
- Maintenance of license, insurability and privileges of the seller (if the seller is to remain an employee of the practice).
- Full effort of selling physician (if remaining an employee)
- Production standards designed to promote full effort.
- Covenant not to compete or solicit patients.
- Termination clause and notice required upon termination.
- Assets transferred free and clear of any liabilities or full disclosure of any related liens.

The protective covenants for the **seller** may include:

- Timely payment
- Certain amount of autonomy for patient care delivery.
- Time-limited clause to back out of the sale should seller’s discretion change.
- Termination clause and notice required upon termination.
- Covenant not to compete or solicit patients.
- Full disclosure and warranties as to performance.

The Process:

One of the most critical factors is for both parties to set realistic expectations regarding the process. The process of finding a partner takes significant time. The first try is often unsuccessful. Secondly, to find the right partner/ associate to negotiate takes patience. The associate may believe that he or she has the ability to negotiate a deal without

professional assistance. While it may seem easy, the reality is that this process takes at least four to six months.

Finally, both parties must evaluate the impact of the negotiations on their long-term relationship and their ability to work together. The process is complex, time consuming, and requires professional assistance. We recommend engaging professionals, developing a strategy, and following a plan in order to achieve a successful end result.

Dr. Guiliana is a nationally recognized speaker and author on topics pertaining to medical practice management. He holds a Master's in Health Care Management and is a Fellow and Trustee of the American Academy of Podiatric Practice Management. He is board certified in Foot Surgery and practices in Hackettstown, New Jersey.

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