

Appendix 10

Example: Employee Associateship Agreement*

EMPLOYMENT AGREEMENT

This Agreement is entered into as of _____, 200_ (the “Effective Date”), by and between Thomas Owner, D.M.D., a Sole Proprietor (“Employer”), and April Associate, D.D.S., an individual (“Employee”), reflecting an employment arrangement between Employer and Employee.

- 1. Employment.** Employer hereby employs Employee, and Employee hereby accepts such employment as a general dentist, upon the following terms and conditions.
- 2. Professional Services.** Employee shall render professional general dental services at Employer’s facilities on a full time basis on behalf of and at the direction of Employer to new and existing patients of Employer who are assigned to Employee. Employee shall be committed to the enhancement of Employer’s general dental practice and shall use her best efforts to further the goals of and to promote such practice.
- 3. Standards of Practice.** Employee shall at all times conduct herself in accordance with the ethical standards of the dental profession, and shall abide by all protocols of treatment and quality of care policies as may be established from time to time by Employer or to which Employer is subject. In addition, Employee covenants that at all times during the term of this agreement, Employee’s services so rendered shall comply with (1) all applicable federal, state, and local laws, regulations and ordinances, (2) the professional standards then prevailing in the community, and (3) currently accepted methods, practices and code of ethics of the American Dental Association. At _____’s expense, Employee shall remain fully licensed to practice dentistry in [state], maintain membership(s) in professional societies as appropriate, and attend such professional meetings and continuing dental education programs as may be necessary to maintain her professional knowledge and skills as determined by Employer.
- 4. Hours.** Employee shall be available to render professional services on behalf of Employer for five (5) days per week on a monthly basis during Employer’s regular business hours including, at the election of Employer, after-hours emergency appointments and extended morning and evening hours in accordance with a schedule to be developed by Employer prior to the day(s) Employee is scheduled to work.
- 5. Billing and Collections.** Employee agrees and acknowledges that Employer alone has the right to bill and receive payment from patients and third-party payors for services rendered by Employee hereunder, and Employee shall not bill any patient or third-party payor for such services. Employee shall assist, upon Employer’s request, with preparation, submission or certification of any bills related to the services provided hereunder. Any payment received by Employee from any source whatsoever, and whether in cash or by check, for services performed by Employee hereunder shall be held in trust for the benefit of Employer and shall be immediately remitted to Employer by Employee. Employee acknowledges that the amount of fees charged to patients of Employer and the use of such funds shall be determined in the sole discretion of Employer.
- 6. Patient Records.** Employee shall prepare and maintain records for patients of Employer in accordance with accepted standards of practice in the community, applicable laws regarding confidentiality of dental records, the policies and procedures established by Employer and the terms of applicable third-party payor agreements. Such patient records shall be the property of

Employer. Employee shall not have general access to the patient records of Employer, but access only to those records of patients Employee treats. All patient records, histories, charts, and other information regarding patients treated or matters handled by Employee under this agreement, regardless of whether any of the foregoing are in Employee's possession, shall be the property of Employer, subject to all applicable federal, state and local laws, regulations and ordinances and any applicable code of ethics. If, however, on termination or expiration of this agreement for any reason, a patient shall so request or the Employer otherwise considers it appropriate, Employee shall have access to or be furnished copies of applicable documents requested by patient, expenses of duplication to be borne by the Employee.

7. **Patient Flow.** Employer shall assign patients to Employee from existing patients. Employee shall have the duty to actively assist in building the referral base of the Practice and in securing new patients.
8. **Business Records.** Employee shall not have general access to the business records of Employer. Employee shall have access to the business records only to the extent necessary to verify compensation due Employee.
9. **Restrictive Covenant.** In consideration of Employee's association, working on patients of record and being introduced to referral sources and prospective patients, and the time and expenses incurred in training and promotion of Employee, during the term of and at and for a period of two years after the expiration of this Agreement (whether at the end of the term of this Agreement or if Employee or Employer sooner terminates this Agreement), Employee shall not engage directly or indirectly in the practice of general dentistry whether as a partner, employee, independent contractor, associate or otherwise, within ____ () [miles, city blocks, or feet] of the Practice location, nor any subsequent office location which may be opened while Employee is employed by Employer.

In the event Employee violates the terms of this restrictive covenant, in addition to all other remedies Employer shall have will be the right to obtain injunctive relief to prohibit Employee from such practices; additionally, due to the irreparable damage Employee's violation will cause the Employer, and because the parties cannot ascertain with any certainty the damage that Employee will cause to Employer, Employee agrees that she shall immediately pay to the Employer, during any period for which injunctive relief has not been secured or if injunctive relief is not granted, not as a penalty, but as liquidated damages \$ _____ together with any costs and attorneys' fees incurred in seeking enforcement of the provisions of this restrictive covenant.

10. **Compensation.** As compensation for all services rendered by Employee hereunder, Employer shall pay to Employee ____ (%) of Employee's gross monthly collections, that is, gross fees received by Employer for services which Employee performs and completes during such period, net of any discounts or credits allowed by the Employer and ____ percent (%) of Employee's laboratory expenses incurred. Employee shall be paid semimonthly in arrears on the fifteenth and last day of each month, subject to all applicable withholding taxes.
11. **Professional Liability Insurance.** Employee, at her expense, shall obtain and shall maintain during the term of this Agreement a policy of professional liability insurance coverage for errors and omissions resulting, in whole or in part, from the acts of Employee in connection with Employee's duties hereunder on a claims made basis, in amounts of not less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) aggregate, and shall at least annually provide a copy of the binder of insurance evidencing the coverage. Employee must require that any insurance carrier provide Employer at least 15 days prior written notice of any cancellation, termination, modification or amendment. By entering into this Agreement, Employee agrees to indemnify and hold Employer harmless and defend against any claims or liabilities arising out of, or relating to, any acts or omissions of Employee in connection with treatment provided by Employee.

12. Term and Termination. This Agreement shall commence as of the Effective Date and shall continue in effect for _____ () months (the “term”), automatically renewable for successive periods equal to the term in length (each a “successive term”), unless sooner terminated by either party providing 60 days prior written notice to the other of intent to terminate. Furthermore, the parties may terminate this Agreement at any time by mutual consent.

13. Option to Form Partnership or Purchase. The parties contemplate that a partnership agreement for a minimum of _____ years will be executed by them to be effective upon the termination of this Agreement as of _____ (the “effective date”). On the effective date Employer and Employee covenant and agree that Employee shall have the option to enter into such a partnership in Employer’s general dental practice on the terms herein provided. The terms of the partnership agreement shall provide that Employer shall be entitled to ___% and Employee ___% of the partnership net income, and that Employee shall purchase from Employer, at book value as then accounted for in the financial statements of Employer not including any good-will, a ___% interest in the professional equipment to be used by the dental partnership. Employee’s interest in such assets shall be paid for in equal consecutive monthly installments of principal, plus 5% interest on the remaining unpaid balance, over a _____ year period, pre-payable without penalty. The partnership agreement shall contain such other reasonable and customary provisions as the parties may mutually agree upon.

If prior to the effective date Employer dies, becomes disabled (as defined in Employer’s major medical insurance policy), retires or withdraws from the practice, Employee shall have the option to purchase the practice, exercisable by a writing to Employer or Employer’s representative, at its appraised value, excluding good will, as determined by each party selecting an independent appraiser with experience in valuing dental practices in the area or region, which appraisers shall agree upon a third independent appraiser with such experience who shall alone make the appraisal for this purpose and whose selection and determination shall be final. If prior to the effective date Employer shall attempt to sell the practice to a party other than Employee, Employee shall have the right of first refusal to purchase the practice from Employer on identical terms and conditions. Employee’s option to purchase or right of first refusal, as the case may be, shall be exercisable by a written notice specifying Employee’s intent and delivered to Employer or Employer’s representative within 60 days of the event prompting such option or right.

14. Entire Agreement. This Agreement constitutes the entire agreement between Employee and Employer with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified in any respect whatsoever, except by an instrument in writing signed by the parties.

This agreement is signed by the parties and effective on the date first written above.

Thomas Owner, D.M.D.,
A Proprietorship

April Associate, D.D.S.

By: _____
Thomas Owner

April Associate, individually

*This sample agreement is reproduced only as an example. It is intended for familiarizing parties considering entering into such an arrangement. However, this sample should not be used without the services of an attorney. The law varies from jurisdiction to jurisdiction and parts of this agreement may be invalid, incomplete or unenforceable depending upon the jurisdiction in question.