<u>ASSOCIATESHIPS, PARTNERSHIPS AND ACQUISITIONS</u>

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As you walk off of the stage, your hand still clutching the document which you have spent your entire adult life persevering for, it hits you, causing you to freeze. You look around and the same blank expressions emanate from your fellow graduates: "Now what?"

In far too many veterinary schools across America the "after life" is not discussed, or is rushed through because of other curriculum requirements. This is unfortunate because far too many of your colleagues make egregious mistakes that derail the full potential of their career simply because they didn't know better. This article provides information that will allow you to avoid pitfalls during your career, whether in an associate position, entering into a partnership or acquiring a practice. .

<u>ASSOCIATESHIPS</u>

In a perfect world, you wouldn't desperately need a job as a veterinarian to pay off your massive student loan debt, which would afford you the ability to negotiate every provision in an associate agreement. However, chances are you are kicking yourself for ordering pizza for the last 3-4 years because "my loans can pay for it." Therefore, we need to focus on a few main points:

1. <u>Compensation</u>. Many owners will attempt to negatively impact your compensation in two main ways. First, they will make you an "independent contractor" rather than an "employee." This impacts you negatively because you do not get to participate in any employee benefit programs (i.e., health benefits, 401k, etc.) and you pay more in taxes because you will pay a "self-employment" tax. Secondly, owners will try to compensate you based upon "collections" rather than your "production." The problem with this is you are now bound to how good the office is at collecting money from clients, something that you have no control over!
2. <u>Associate vs. Contractor.</u> In a recent holding, the California supreme court ruled that in essence, you cannot label an associate as an independent contractor, if that person comes to your office to perform the same kind of work that you already are producing. There are other complications with the case, but clearly the courts in California at least, disfavor this classification. You can check with us as to what other state courts say.
3. <u>Restrictive Covenants</u>. In some states, covenants not to compete are unenforceable against associates <u>*after*</u> the contract has been terminated; however, in all states they are enforceable during the <u>*duration*</u> of the contract. If you plan on staying in the area and you live in a state which allows covenants not to compete against associates after the contract is terminated, then focus on <u>either</u> the radius restriction or the duration of time, but not both.
4. <u>Potential Buy-in</u>. This must be negotiated in connection with the associate agreement, not after you have been there for a year! Your right to acquire needs to be addressed in the document, otherwise it is merely an idea. The formula for the buy-in should be clearly spelled out in the document so there is no confusion later and, if possible, the purchase agreement and partnership agreement should be agreed upon as well.

<u>PARTNERSHIPS</u>

Far too many companies nationwide have gotten on the partnership bandwagon. Due to the complexity of a partnership, many companies have successfully created a "perception of value" seemingly based upon the more confusion they can create! The problem with this approach is that it interferes with the proper formation of the partnership structure. A partnership strategy is not complex, it is simply two parties coming together to allow for a greater return for each individual doctor. The complexity lies in whether or not these two parties are compatible, both in their personal lives and their professional ones. Just because one doctor wants to spend more time with her children does not mean they are a good fit for a partnership! Questions involving patient care, treatment philosophy, career goals, family stability, whether or not there has been a previous divorce, future children, retirement, etc., all need to be addressed prior to the parties even contemplating forming a partnership. Once the parties have determined they are compatible, the partnership document itself must fit the unique nature, set of skills and personality of the practice. Questions regarding new patients, compensation structures, discrepancies in production figures as well as a myriad of other questions need to go into the proper formation of a partnership structure. In short, no two partnerships should be alike.

Also, the doctor who is buying in should not have to wait three to five years to move forward with the acquisition of the partnership interest, a model used by some companies. This unjustifiably places the young doctor in a position where they can be terminated at the very moment they are to buy into the practice. If you have met with this model you must secure your future by locking in your right to acquire the practice in three to five years, otherwise there is an actual economic benefit to the owner doctor to terminate you the closer you get to actually acquiring the partnership interest. The practice value is typically determined prior to the associate's compensation being added to the practice. As such, as you approach your acquisition, the practice may have increased 50-100% in production. But, in the owner's eyes, the practice is now selling for less than what it is worth. Because of this, many transactions typically are terminated during the year the associate was supposed to become an owner.

PRACTICE ACQUISITIONS

First and foremost, be objective when evaluating a practice that you are thinking of acquiring. If you become emotionally attached to a practice, you will find yourself making decisions based upon emotions, rather than logic. Be methodical in your approach. Our firm typically recommends staying away from sellers who are attempting to sell their practices on their own for three reasons: 1) owners are unrealistic about what their practice is worth 2) there is a much higher cost associated with a for-sale-by-owner (FSBO) transaction; and 3) the likelihood of the transaction falling apart is much greater in FSBO transactions. As such, we recommend looking at practices that are being sold by reputable veterinary brokers, with extensive experience in the local marketplace. However, as the buyer, you must always remember that the broker's true client is the seller, not you, even with companies claiming to provide "dual agency" representation. The following is a quick checklist of some of the things to be prepared for when acquiring a veterinary practice:

1. PRACTICE PRODUCTION. If your personal monthly expenses are relatively high, you cannot search for a small practice with "room to grow." You need to find a practice that will allow you to pay your practice expenses, service your debt and still provide you with enough money to pay your monthly expenses and save. Do not focus on the purchase price or the monthly loan amount when searching for practices. Instead focus on the profitability and the salary you should receive after you pay your bills. Does this practice provide you with income needed to match your lifestyle?

2. VETERINARY PROCEDURES. Are you skilled in the procedures performed by the owner at the practice? If not, this practice is not for you. Our most successful clients find a practice where they can do all of the

procedures the current owner does but also have additional training to provide added services to the veterinary practice, thus allowing the buyer to increase the per patient revenue of the practice.

3. LEASE. Far too many veterinarians never have their lease reviewed by a veterinary attorney. As such, there are far too many provisions lurking in a "standard" lease which can be utilized against the future saleability/transferability of the veterinary practice you are attempting to acquire. Deal with these issues prior to you acquiring the practice, rather than subsequent to it. That way, the owner's problem will not become yours.

4. PRACTICE SYSTEMS. Invest in a knowledgeable practice management consultant to evaluate the practice systems in place at the practice. These advisors can provide valuable feedback which will allow you to maximize your internal marketing, streamline your practice procedures and increase the productivity of your employees. They can also let you know if your philosophy matches the owner's philosophy, thus preventing a patient exodus after you acquire the veterinary practice.

5. PURCHASE AGREEMENT. As shocking as this may sound, your colleagues do not always have your best interest at heart. As such, you need to protect yourself and the investment you are about to make with a strong, enforceable purchase agreement. You need multiple restrictive covenants which prevent the owner from raiding your clients and employees as well as protecting you from the owner competing against you. You need a myriad of representations and warranties which the owner must stand behind. Provisions regarding retreatment work and uncompleted veterinary work need to be properly addressed to avoid patient confusion and frustration after the sale. All of these issues, as well as a host of others, are what protect you from being sold something that isn't true.

As you can see, your career will not just be about the clinical decisions you make. The milestones of your career will be in areas which, as a profession, veterinarians have been ill equipped to handle. There are a multitude of people who are trying to take advantage of this. Be prepared for each stage in your career and this will allow you to focus on what you have been trained for, rather then being involved in legal and personal quagmires which can derail your career.

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