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DANGER ZONES IN EMPLOYMENT AGREEMENTS

Congratulations! You've graduated, passed all the examinations and met all the requirements to be licensed as a dentist. Even better, you have an offer of employment. However, before your first day at the practice, you're presented with an employment agreement. What now? Here is a summary of important considerations with respect to employment agreements.

Term of Employment

In Florida, private employment relationships — as opposed to many government employment relationships — are generally at-will. In essence, the employment relationship can be ended at any time with or without cause, and with or without notice. This can only be changed by the execution of a written employment agreement with a defined term of employment. The term must be specifically stated. An agreement that merely sets out your annual salary is not enough. Be sure to review the agreement to determine: 1) if there is a definite term and, if so, 2) that the term stated matches any discussions/verbal agreements you had with the employer.

Termination Provisions

These provisions usually set out differences, if any, between termination (for cause or without cause) and voluntary resignations. For example, many employers will provide advance

notice to an employee when termination is without cause, but terminations for cause can be immediate.

Non-compete Provisions

Most employment agreements contain non-compete provisions. Individuals accepting these provisions can be prohibited from working for another employer engaged in the same business, being a partner in a business that competes with the employer or opening his/her own business that competes with the employer, after being terminated or even voluntarily leaving employment. Non-compete provisions have both time and geographical limitations. For example, they may prohibit competition for two years and within X miles from any office operated by the former employer. Many of them also limit or totally prohibit the employee from even referring patients to other practices. If the former employer is successful in enforcing a non-compete in court, damages and attorney's fees can be awarded against the former employee.

Non-solicitation Provisions

Most employment agreements also include non-solicitation agreements. These provisions prohibit former employees from soliciting patients/clients of the former employer's practice when the employment relationship is



terminated, whether voluntarily or involuntarily. Solicitation can be defined extremely broadly. For example, the provisions can prohibit the disclosure of names and addresses, etc. of the former employer's patients. Many non-solicitation provisions also prohibit former employees from soliciting or recruiting their former co-workers. These provisions also include both time and geographical limitations. Damages and attorney's fees can be awarded for violation of these provisions.

Malpractice Coverage Provisions

Such agreements usually contain provisions discussing how payment of malpractice insurance is paid. They also may set out whether reimbursements are required from the employee if employment is ended within a certain period of time, and may include information regarding the need to pay for "tail coverage" when employment ends.

Arbitration Provisions

Many employers are including arbitration agreements in their employment agreements. Under arbitration agreements, any challenge to matters concerning employment cannot be filed in court but must be submitted to arbitration. Arbitration is a process that involves either a single individual or panel of three individuals accepting evidence and reaching a binding decision on challenges relating to employment. There is no judge or jury in an arbitration proceeding. These provisions also have been determined to be applicable to discrimination

complaints.

Reimbursement Requirements

In many instances, employers will pay for employees to receive training, attend education classes or even pay for licensing. However, many employers have provisions in employment agreements to recoup these costs under certain circumstances. For example, many agreements will have a minimum employment time period that has to be met to cancel recoupment of costs.

Governing Law Provisions

All agreements, including employment agreements, set out where and what law controls suits filed to enforce their provisions. They will generally indicate which state's laws are to be applied and where suits to enforce the agreement can be filed. For example, a nationwide company may require that such suits be filed in the state and county where its headquarters are located.

Transactions were once confirmed by simple verbal or handshake agreements. However, society has become more paper driven in general and written agreements are now the norm. The same is true for employment. The key is to be aware of what you are signing before you sign and asking questions if you are unsure.