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news



Paul Revere

Founding Father and America's First Forensic Dentist.

After making his famous midnight ride, Paul Revere, the dentist, went on to revolutionize identification of the war dead.

William James Maloney, D.D.S.; George Raymond, D.D.S.

The poet Henry Wadsworth Longfellow ensured Paul Revere's place in American lore with his epic poem "Paul Revere's Ride." The image most Americans have of Revere originates from this poem—that of Revere riding a horse through the midnight darkness through the Boston countryside to warn Colonial villagers of the imminent march of British troops on Lexington.

Longfellow exercised considerable license in his poem depicting the fateful events of the evening of April 18, 1775. However, one indisputable fact is that Revere was asked by his friend Dr. Joseph Warren to make the journey which set into motion the events that would lead to the birth of a great nation.¹

Warren was born in Roxbury, MA, on June 11, 1741. He was a Harvard-educated physician. At the age of 26, he decided to dedicate himself to the radical cause. He published a series of articles in the Boston Gazette in response to the Townsend Acts, thus anger-

"Listen my children and you shall hear of the midnight ride of Paul Revere"

— Henry Wadsworth Longfellow

ing the loyalists. His activity in radical circles brought him into contact with Samuel Adams and John Hancock. He was introduced to Paul Revere through his Freemason connections—Warren was the senior mason in all of the Colonies, having been appointed to this position by the Earl of Dumfries, Grand Master of Scotland.² Warren rose to power in Boston and was elected second general in command of the Massachusetts forces on June 14, 1775.

On the morning of June 17, 1775, Warren was told British forces had landed at Charlestown.

He rode to the American fortifications on Breed's Hill and was offered command of the Colonial militia at what would become known as the Battle of Bunker Hill. Warren refused to assume command and instead took his place in the militia line as a regular volunteer. As the British launched their third and final assault, he was struck by a gunshot between the eyes and died instantly.

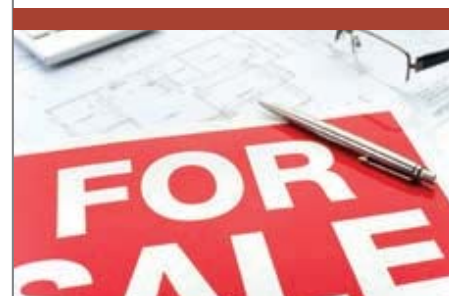
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Practice Purchases and Sales Keeping Everyone Satisfied

Buyer beware. Seller too. A successful outcome is possible if both take proper precautions, including securing professional assistance.

Jennifer Kirschenbaum, J.D.

WE HAVE A BUYER—typically, an individual looking to take over a practice to get his or her professional start, or to grow a current operation. We have a seller—typically, someone looking to retire or relocate. Each party is approaching the practice purchase with different goals: the buyer to get what he or she is paying for; the seller to receive the purchase price and, presumably, to transfer his or her patient population to a trusted professional.

As an attorney working on practice purchases, I have found that the varying perspectives of the buyer and the seller must be respected and considered at all times during the emotional process of a sale and that expectations must be managed accordingly. So, how do we go about achieving such a lofty goal of not just closing the deal, but managing expectations and emotions during the process? The easy answer is to ensure an organized sale process, with proper due diligence and a realistic lead time for closing and transition. Accomplishing this takes a lot of work on both sides of the deal.

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Practice Purchases and Sales *continued from page 1*

For the buyer, understanding what is being purchased is essential. How does the buyer achieve this? Purchasing without an understanding of the patient population; without access to the books and records, account receivable reports and payor mix; and without disclosure of referral sources is a critical mistake. If the seller is nonchalant about providing access, simply assuring you, "Don't worry about it. I've had a wonderful 40 years at this location and the patients will stay. You don't need to see the books," do not proceed without insisting and receiving access to the practice for due diligence.

Once you have access to the books, it is important to make an obvious acknowledgment: you are a dental professional, not a CPA. Get your accountant involved early to review the books with you; and make sure your accountant is familiar with reviewing practice books and is in a position to comment on the practice's viability. Do not be reluctant to ask your accountant, no matter how long you

have been working together, if he or she works regularly with other dentists and has experience with practice sales. If the answer is no, find a healthcare accountant who specializes in practice valuation and sales.

If you are considering financing your practice purchase, be sure to work with a financial institution that caters to healthcare professionals; not only are you likely to see favorable lending rates, you will also have the benefit of working with an additional team member versed and trained in practice purchases, valuation and process.

Access to the practice is not limited to books and records or a listing of accounts receivables; it may include as well access to the human resources of the practice—the staff. If the practice you are taking over has a loyal, hard-working and employable staff, your job as a new owner may be made substantially easier. However, if you are stepping into a practice where the staff running the day to day are potentially subpar and/or possibly operating outside

compliance, it is critical that you have this information, as it may determine your success as the new practice owner.

NOT ALWAYS PURE MOTIVES

In what is a fairly typical occurrence, the young dentist is approached by a practice broker and a sale is executed. Here, diligence is often overlooked because your friend the broker is paid on commission and not motivated to assist in diligence but, rather, wants to see the seller realize the highest price possible. The buyer has possibly agreed to self-finance by a bank referred by the broker and has signed a promissory note, documents are not reviewed by an attorney and the exchange is made. What happens? Maybe everyone is happy with what he or she has received, but maybe not.

If not, and one party is looking for recourse for being sold a bad bill of goods, what does the attorney the buyer has sought out have to work with? The agreements were not drafted properly and the buyer has a note in place for which he or she is on the hook. How can we proceed? The answer to this question most certainly depends upon what transpired and was executed for the practice purchase. Without reviewing the hypothetical contract here, I can say the buyer (and seller) would have been better served with independent healthcare legal counsel on each side of the deal and a proper due diligence period. Regrettably, for many people involved in a sale, cost is a deterrent to working with an attorney. Should something go wrong, however, and the parties resort to litigation, which is not uncommon, the cost is multiplied considerably from what it might have been had proper representation been secured at the start.

For the seller, frequently the decision to sell is an emotional one. You have spent years building your patient base and have developed relationships with some—or many—of your patients. You have a certain way of operating your practice, with the help of staff members, many of whom have been loyal to you and depend upon you to earn a living. You are faced with many questions, for which there is no right or wrong answer. When do you tell your staff? When and how do you tell your patients? How long should you stick around after the closing? The answers depend upon your particular situation and what works for you. Certain elements of a sale, for instance the purchase price, should be handled uniformly across purchases, that is, the seller should require to be paid at the time of closing. Whether the buyer procures financing or has the means to pay out of pocket, the safest way to ensure you receive what you are requesting for your practice is for the money to be received at the time of transfer.

SELLER'S REMORSE

Many disputes post-sale are over the value of what has actually been received as opposed to what was represented. Allowing the buyer to self-finance, that is, agree to pay over time from his or her own money or, rather, money generated from your practice, introduces a huge variable into the deal. Will the buyer continue to pay on time? If not, what is your recourse? Have you taken adequate security? Did you take a lien on the buyer's home? Is the right to the purchase price secured by the assets of the practice or rights to account receivables? If so, are you actually willing to take the practice back a year or two after the sale if there is a default? Do you really think there will be much to take back if the buyer defaults a year or two into the deal? Having worked with clients through multiple deal scenarios, as well as through litigations erupting post-sale over the purchase price and value, I can attest that once you have sold your practice, it is highly unlikely you will want to go back. And if you do, what you will find will not be what you left.

As an alternative, the buyer may finance the purchase, allowing the seller to be paid at the time of closing and allowing the buyer a cushion of time to pay down more substantial sums owed and, currently, at reasonable interest rates. The purchase price is not the only concern for buyers stepping into a practice. Operating expenses will also be a consideration. In most deals, the account receivables attributed to services rendered by the seller

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will remain the property of the seller after the closing. If the buyer is depending upon the patient mix—private pay versus insurance—as well as the patient retention rate, it may take several months for money to start accruing at the practice. To prevent a cash crunch simultaneous with the practice purchase, it is advisable to consider a line of credit, bridge loan or to procure additional financing, along with the sale price if lending.

An additional consideration in the sale process is the practice's physical location. Many dental professionals have invested in their practices and purchased their space. Depending on the potential terms offered, a buyer may want to purchase the property along with the practice. For a young buyer, potentially doubling the cost of the purchase price by adding property may sound overwhelming, but it may be the most practical financial decision to make.

The alternative to purchase typically is to take over any existing lease or to enter into a lease with the current owner. Depending on the terms offered, leasing may make sense. However, more often than not, in rental situations, I see costs relevant to ownership passed on to tenants, who are not seeing the benefits of ownership. Whether to consider a real estate purchase with the practice is dependent upon the facts and should be vetted accordingly—yes, more due diligence, including a real estate appraisal. If you are considering purchasing the real estate, do not wait until terms are reached in the practice; put purchase of the property on the table early on.

AVOID SURPRISES

With a purchase or sale, unmet expectations are inevitable no matter the level of due diligence. Sometimes a buyer is simply sold a bad bill of goods. Sometimes the buyer and/or seller have unrealistic expectations or are not honest with themselves regarding what they want out of the deal, resulting in discontent post-closing. However, there is no secret as to how to best manage expectations. The answer was given in the first paragraph of this article: commit yourself to an organized sale process, proper due diligence, and enough lead time on the deal for both parties to be comfortable, but not enough for the deal to drag on. The other key is having the right team to assist you in this process—your healthcare attorney and accountant (and financial institution for financing)—so you are protecting yourself with proper process and contracts and have assistance with diligence and financing options.

As with most things in life, when entering into a practice purchase or sale, there is no substitute for preparation, support and proper execution. ☘

Ms. Kirschenbaum is an attorney. She manages Kirschenbaum & Kirschenbaum's healthcare department, which specializes in representing dental practitioners in practice purchases and sales, employment contracts, regulatory compliance, prepayment and payor audit defense, licensure and general litigation matters. Kirschenbaum & Kirschenbaum is a member of the New York State Dental Association Legal Panel. She can be reached at (516) 747-6700, ext. 302, or at Jennifer@Kirschenbaumesq.com.

THE NEW YORK STATE Department of Health-AIDS Institute Oral Health Regional Resource Center and the NY/NJ AIDS Education & Training Centers are making HIV Oral Health Preceptorships available to dentists, dental hygienists and primary care clinicians in New York State and New Jersey. These programs are tailored to meet the needs, interests and experience level of the individual provider. Typical sessions are from one to five days and are available for the person with no or very little HIV experience, those looking for a more detailed clinical experience in an HIV primary care center or people wishing to broaden their oral pathology knowledge.

Preceptorship sites are in multiple locations in both New York and New Jersey. The actual location will depend upon the level of the preceptorship program selected for the applicant as assessed by the program director. Tuition is fully covered by a grant from the Health Resource and Service Administration. Nationally accredited continuing education credits are available from the New York State Dental Foundation and the Dental Hygiene Association of the State of New York.

For further information or to register, contact Howard Lavigne, deputy director of clinical education, New York State Department of Health-AIDS Institute at (315) 477-8479 or HELO1@health.state.ny.us. ☘

