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If Dentistry's Social Contract with America Could Talk

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Dentistry must make running the business of dental practices compatible with professional responsibility.

As a contract, I demand my parties comply with my terms. After all, an agreement between an entire society, along with its governing bodies and the dental profession, impacts the oral health of all prospective patients. My unwritten terms delineate society's and the dental profession's rights, responsibilities and expectations regarding the practice of dentistry in our country. My parties' duties to respond to the changing demands of oral healthcare delivery and societal needs constitute their prime directives.

Over the past few decades, dental management organizations (DSOs), many nondentist-owned, have met practices' growing need for more efficient business and administrative skills and systems. Regretfully, the dentists affiliated with these groups too often allow corporate financial imperatives to interfere with, and control, clinical processes. Lay interference in professional decision-making violates my terms. Society has a right to expect, and dentistry a duty, to rescue professionalism from the slippery slope of commercialism. The dental profession must incorporate the business and financial expertise of DSOs into dental practices to make available cost-effective care that meets dentists' ethical duty to place patients' best interests above personal and corporate interests.

Intent of my Parties

America and the dental profession must remember why they brought me into existence. The public wanted to trust that their doctors knew what they were doing and would meet the oral health needs of individual patients, and society as a whole. To achieve these goals, society granted the privilege of a virtual monopoly on the practice of dentistry to those able to successfully obtain a degree from an accredited program and meet state licensure requirements.

In return, dentistry agreed to provide the public with access to quality dental care in each patient's best interest at an affordable cost. The parties agreed that only the dental profession qualified to implement these initiatives. As a key piece to the deal, society demanded that dentists adopt and comply with a code of ethics, self-regulate and address society's changing oral health needs.

It concerns me that both parties now continually breach my terms. The dental profession fails to successfully address inadequate access and the ever-increasing cost of care and now struggles to control quality in an increasingly commercialized delivery process. On the other side, states grant nondentists the right to own dental practices and bleach teeth and empower midlevel providers to perform duties

previously reserved for licensed dentists. My parties act as if I no longer apply. I cannot believe they think the advantages of these violations outweigh the long-term benefit of compliance. I worry they will rescind me.

Accept Dentistry as Both Profession and Business

Dental practices, from their inception, exhibited characteristics of both a profession and a business. They simultaneously offered a healthcare decision-making service and required a profit from that service to exist. The inherent tension in this duality exponentially expanded after the Federal Trade Commission and US Supreme Court ruled in the 1970s that the ethical prohibition of professional advertising effectively operated as a restraint of trade.[1] In addition, potential conflicts between business goals and professional responsibility increased over time as the administrative complexities of the delivery of oral healthcare and operating a business exploded.

DSOs met the demand with critical management skills provided in a manner organizationally distinct from clinical practice. Their services included: office management; non-licensed personnel staffing; IT support; regulatory compliance; billing; payroll; and accounting. In today's model, the DSO corporate entity typically owns the equipment, while a separate entity owns the practice and employs licensed dentists and auxiliaries. Problems arose as DSOs directly interfered with clinical decision-making to meet financial goals. Legal and ethical violations included DSOs splitting fees with nondentists, controlling practice accounts and, ultimately, clinical treatment plans.

The fact that my terms required dentists to act in the best interests of patients stands as the best evidence that all agreed the business demands of dental practice present inherent conflicts of interest with professional conduct. Dentistry must not pretend its business component does not exist, because society's current problems with inadequate access and inflated costs stem directly from a failure of dentistry to successfully deal with this stark reality. Abdicating control to nondentist business experts threatens the quality of care and only exacerbates the situation.

Eliminate Nondentist Practice Ownership and Control

Currently, approximately six states, including Arizona, Mississippi, North Dakota, New Mexico, Ohio, and Utah,[2] permit nondentist or unlicensed ownership of dental practices. The supporting legislation in these states reveals the threats nondentist practice ownership presents to the public. The New Mexico state board's rules regarding the responsibility of nondentist-owners provide: "No person other than a New Mexico licensed dentist shall direct, control or interfere with the dentist's or dental hygienist's clinical judgment."[3] The Utah Statutes state: "Directing or interfering with a licensed dentist's judgment and competent practice of dentistry..." is a felony.[4]

In the remaining 44 states that require dentist practice ownership, DSOs attempt to control dentists' clinical decision-making through onerous management agreements. Texas, in addition to lim-

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iting practice ownership to dentists, makes it a violation of the Texas Dental Practice Act for management contracts to dictate, among others, any of the following improper influences on professional judgment:

- "... imposing requirements concerning the type or scope of dental treatment..."
- "... controlling, owning or setting conditions for access to ... dental records..."
- "... imposing requirements concerning the supplies, instruments or equipment deemed reasonably necessary..."[5]

Owners earn decision-making authority regarding their assets primarily based upon their legal position. Owners' financial risk of loss on their investment and liability for debt obligations makes owners solely accountable for the ultimate viability of a practice or business. In addition, continued ownership requires commitment to the entity's future and ultimate success. This liability and mindset ensure that owners have the authority and motive to implement and enforce policies.

One could ask why, then, would states allow nondentists to own dental practices in the first place. It appears counterintuitive when such arrangements risk direct violation of the very licensing laws states created to protect the public as part of my terms. I can only construe these states' decision to breach my terms and allow nondentist practice ownership as society's vote of no confidence in dentistry's ability and willingness to successfully provide necessary access to care at an affordable cost. These so-called "corporate states" turn back the clock to the days prior to licensing laws and the promise of ethical practitioners, which leaves the expectation of quality care in the hands of the market. Society must require that only licensed dentists own practices because only dentists have promised to place patients' interests above dentists' interests, and only owners can ensure this happens.

Contract at Crossroads

America and the dental profession formed me to establish the general parameters for the ideal relationships between the dental profession and society as a whole and the individual dentist and patient. As dentistry failed to meet its obligations to provide adequate access to care and control costs, DSOs filled the void with nondentist-controlled commercialization. In response, society diluted dentistry's virtual monopoly with midlevel providers. As dentistry then failed to place patients' interests in quality above the profit motives of DSO owners and managers, society allowed nondentist practice ownership. Society, in effect, utilized DSOs as a form of external control to let the market balance cost and access with less regulated quality. Regretfully, society mistakenly has given privileges to control the delivery of oral healthcare to those who made no promise to elevate patients' and society's interests above their own.

I stand at the crossroads of my implied contract life. If my parties continue to breach more than comply with my terms, then they will abrogate me and return to their course of dealing prior to my formation. A tragic but preventable scenario.

Dentistry's Duties

Dentistry must recognize it alone can save me and itself as a profession. In order to do so, dentistry must continue to earn society's trust on three fronts. First and foremost, define its professional purpose as an ethics-based calling, not a profit-driven financial strategy. Society will only reciprocate on its promises if dentistry meets its obligations to prioritize the oral health of all above its own financial remuneration. Do the right thing and the money will come.

Second, dentists must undertake the financial risk and responsibility of ownership interest in their practices. Only practice owners earn the authority to incorporate ethical principles into their business plans. In addition, join organized dentistry's advocacy efforts to fight against nondentist practice ownership.

Third, learn the necessary practice administration skills to either directly manage or delegate, and never abdicate authority to implement ethical decision-making in any clinical situations.

I conclude that my terms apply now more than ever. During these challenging times, neither party wants me to terminate. As I see it, only the dental profession, with its expertise, can spearhead the appropriate response to today's crisis. Entrusting oral healthcare decisions to individuals who accept no ethical responsibilities merely re-establishes the risks I sought to eliminate. Dentistry must embrace and integrate DSOs' business expertise into dental practice as a tool to control costs, increase access and, simultaneously, serve patients' best interests. I trust dentistry to comply.

D.D.S., J.D.

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4. Utah Code Ann 58-69, Sections 501(3), 503(1).
5 Texas Administrative Code, Title 22, Part 5, Ch. 108(F), Rule§108.70.