



SYNSTRAT

What Happens When Dental Associateships Implode?

Mary and George didn't choose to be associates, rather it happened because they worked for the two practice founding associates. As each of the original associates, Leo and Tony, reached retirement they'd sold their associateships. Mary, who had been employed for a little bit longer, bought first followed soon after by George. Mary and George had negotiated a detailed associateship agreement, aspects of which had been contentious. Tony and Leo, the departing dentists, had operated together for 37 years with a two-page pen and ink Heads of Agreement, which had gathered dust in a drawer, and a handshake. Each had settled into a personal rhythm in the practice. While they were quite different personalities with little common interest outside of the practice, their ability to operate under very informal rules had suited both. When Leo sold to Mary, Mary had pursued a detailed associateship agreement with Tony. Tony made it plain that he wasn't going to be part of any new agreement, having survived for 37 years on little more than a handshake. However he was selling out to George, and if George and Mary wanted a complex agreement that was their business. Both George and Mary consulted solicitors, who advised them towards a complex agreement, the negotiation of which made the solicitors hefty fees. Tony and Leo, the ex associates, continued to work for the new associates on a reduced time basis. They noted the frenzy of legal advice and negotiation between Mary and George, and shook their heads in disbelief. They privately thought that the difficulties in negotiating the thick agreement had themselves assisted in propelling George and Mary towards a future dispute.

The Build-Up of Tension

For several years the practice appeared to run smoothly, with Tony and Leo retiring completely from dentistry and being replaced by younger employed dentists, Jo and Lee. However beneath the surface, tension was building up between George and Mary. From time to time, George had stretched his hours beyond those allotted in their associateship agreement. The transgressions weren't serious, and amounted to little more than finishing off a patient's treatment after normal knock-off time. Mary believed that George was pushing the envelope too far. Underneath, she was jealous because the output in George's personal surgery was routinely about 25-30% greater than Mary's in most months. Mary beefed that she was paying an unfair proportion of the practice overheads. George's response was that she took up the same amount of space; she used the same amount of equipment, had a chairside nurse and received the same amount of reception assistance. The best way for Mary to deal with the issue of proportioning costs was for her to beef up her own output. The practice had ample patients to keep both associates busy, with a reasonable quantity left over allocated to Jo and Lee.

Three years on, the associates had begun to consistently irritate each other. For instance, Mary claimed that George had put up his fees unilaterally without appropriate consultation. George's responses were:

1. He had given Mary a copy of the proposed schedule, and she hadn't responded in a timely manner; and
2. He was attracting sufficient personal referrals to demonstrate that many patients had accepted his fee schedules.

Mary was extra nice to the receptionist, whereas George could be brusque and businesslike. Mary accused George of being rude to the staff, whereas George saw it merely as representing a difference in style.

George wanted to upgrade and add to equipment, but Mary referred to the paragraph in their associateship agreement that said no equipment to a value of more than \$3000 could be purchased without the associates consulting each other.

George had consulted Mary about the new computers, but when she hadn't responded prior to going on leave, he ordered them while she was on holiday because the practice needed the extra computer grunt to fully utilise its software. He also noted that this had improved practice efficiency. Mary was faced with a fait accompli, and certainly didn't want to take the practice back to an inferior standard of information processing.

Mary said that George took an unfair proportion of new patients, while George indicated that that merely reflected the number of personal referrals he was attracting. Whilst Mary was nice, she was also less than efficient in her own surgery. Patients noticed that at times she appeared to momentarily lose concentration, and at a subliminal level this deterred some from recommending her to friends and neighbours.

Jo and Lee watched, as did the reception and chairside staff. The build-up of tensions between Mary and George was more obvious than they realised.

Maximising George's Investment

George's perspective was that he had invested in a dental associateship and he had a right to maximise his potential. He viewed Mary as possessing a negative outlook. He thought that Leo and Tony had been too laid back and he intended to run the practice productively and profitably. He was output-orientated.

Mary's perspective was that George had been fine to work with when they had been employed by Leo and Tony, but had changed after becoming an associate. She liked to socialise with other staff but felt that George tended to be greedy and oppressive. George simply regarded himself as being businesslike.

The more each of their mannerisms irritated the other, the greater was their tendency to exaggerate each one's negative view of the other.

The Locum Dentist

The associateship agreement provided that each could employ a locum dentist in their own surgery during significant absences for medical or compassionate circumstances. When Mary needed to take maternity leave, she proposed that Jo become her locum. George's response was that both Jo and Lee were joint employees of the associateship. It was up to Mary to bring in a locum from outside of the practice. He felt that he should not be disadvantaged by Mary's absence. By strict interpretation of their associateship agreement, George was correct. It was probable that had Mary not irritated him over other minor issues that he would have made a concession and let Jo work for Mary, as in reality the locum's contribution to George's profit was small, and nearly all of his profit came from his own efficient surgery. However their relationship had deteriorated to a point at which there was significantly reduced trust. George found that he enjoyed the period of Mary's absence because his decisions went unchallenged.

Fortuitously, Mary enjoyed significant family support and was able to come back to practice relatively early from her confinement after the birth of a healthy child. However she resented the fact that George's fees had increased in her absence, whilst her locum had reduced the fees flowing through her surgery. On the surface she appeared happy, but underneath her mistrust of George was heightened. George was unaware that he had done anything untoward. Jo and Lee sensed the potential for conflict and kept their heads down. Fortunately the two receptionists were mature and strictly followed the patient allocation protocols, with personally referred patients allocated to their dentist of choice. New patients were then allocated 50% each to Mary and George up to the capacity of their surgeries. Surplus new patients spilled to the employed dentists, Jo and Lee. Nevertheless, Mary was suspicious that George was getting an unfair share and the gap between George and Mary's fees in their own surgeries had widened. George was managing the structure of his patient book much more productively

and actively, and had fewer but longer appointments. He was able to achieve a much greater fee per hour than was Mary. He also had good judgement as to which patients to let go to Jo and Lee.

Mary's Husband

In the background was Mary's husband Con, a moderately successful small businessman who knew very little about the business practice of dentistry. He looked at printouts of monthly production by dentists and noted that George now routinely produced at least \$20,000 more fees per month than Mary.

The outputs of Jo and Lee were of course shared by the associates; being paid into their non profit partnership which paid the joint practice overheads. George and Mary contributed equally to the shortfall in this partnership account. Con regarded the allocation of business expenses on the 50% to each associate basis as being unfair, even though it was in accordance with their associateship agreement. The exceptions were laboratory costs and specific high cost items associated with advanced treatments such as implants. Con urged Mary to stand up to George and demand that expenses be shared proportionate to dental fees. George's response was that:

1. The cost sharing was in accordance with their agreement.
2. He wasn't stopping Mary from running her surgery more efficiently and charging more fees.
3. He wasn't going to make himself vulnerable to having to pick up even more practice overheads should Mary choose to run her surgery even less efficiently than at present. Just as a shearing team is rendered more efficient when gun shearers compete for the highest output 'ringing the shed', dental practitioners are more efficient when each of the associates organise their surgery and their book for maximum output. Instead of complaining to George, Mary should address the fundamental issues surrounding the running of her surgery.

Con had already made up his mind that George was taking advantage of Mary. He didn't comprehend George's response. From George's perspective he was merely being an efficient dentist, and expected Mary to be similarly minded.

Capital Expenditure

There was a need for capital expenditure to update the décor and replace some equipment. George could see the necessity as becoming more urgent. Mary prevaricated, but in reality she was being torn between different pressures. The rational part of Mary's brain said that the capital expenditure was necessary, whilst her emotional side resented that the needs of the practice were being spelled out by George. In the background, Con was opposed to capital expenditure as he thought that George might benefit more than Mary.

The Employed Dentists

Of the employed dentists, Jo was giving overtures that she had ambitions to become a full associate in the practice within a reasonable time, whilst Lee had indicated that he would probably move on in the next year or two for personal reasons.

Keeping the practice up to date was important to Jo, who was developing a good personal following and referral base, albeit that George recognised that Jo had considerable room for improvement. He saw Jo's potential and recognised that a practice with strong associates had the potential for sustained growth. His underlying concern was that Jo might side with Mary on important issues. Mary too respected Jo, but was concerned that Jo might align herself with George! Jo did her best to concentrate on dentistry and keep an arms' length professional relationship with Mary, George and all of the staff at the practice.

The Re-Equipment Explosion

George had inspected other leading practices belonging to friends and acquaintances, and he realised that the practice controlled by he and Mary needed a significant facelift. A fair amount of the equipment was ageing, plus they needed additional items. All in all they needed to spend at least \$400,000 on equipment and renovation, although some persons who advised them urged a higher spend. Since replacement partitioning and cabinetry could be lease financed, as could equipment, the upgrade could be arranged tax-effectively, with payments staggered over five or so years. Some lesser work could be paid for as normal maintenance and tax deducted in year one.

George also reasoned that with a combination of better referral and increased efficiency, the practice would not only cover its leasing and maintenance expenses, but grow its fees significantly and enhance both profit and value.

By now George had learned that he needed to broach significant issues carefully with Mary, but he was also determined to force necessary change in the practice. Mary listened to George's plans, but her demeanour was cautious. She took the proposal home to discuss it with Con, whose reaction was negative. He couldn't see what was wrong with the existing equipment or the appearance of the practice. He was heavily influenced by the fact that his own business, which provided services to the building industry, ran from very ordinary premises. Many of his clients drove slightly battered trucks or vans. Con thought that dentists' working conditions bordered on utopian. Mary doubted that she was going to get as much benefit as George. With Con's support, Mary told George she didn't want to spend much money on the practice.

The Associateship Agreement

George went back to the detail in the associateship agreement. The agreement specified that the associates must consult each other about equipment purchases of more than \$3000. The agreement was less specific as to what would occur if there were differences of opinion over such purchases.

Elsewhere the agreement had a section concerning resolution of associateship difficulties. Because the agreement had been put together by two lawyers, the prescription was that if those differences could not be resolved by mutual discussion, the associates were to approach the head of their state's legal representative body, who was to appoint a mediator from a panel of lawyers doing mediation work.

George had to break the deadlock, but the more he tried to reason the greater became Mary's avoidance of the subject. Mary was afraid of giving in and then having to justify her change of heart to Con. George then advised Mary in writing that unless she would agree to participate in the renovation and re-equipment of the practice to the necessary standard, he felt that he had no option but to invoke the mediation clause in the associateship agreement.

George's letter should have been a signal for Mary to engage in a full discussion of the issues involved, but Con suggested that they consult a lawyer he knew from the Sludge & Grubb law firm. Sludge & Grubb had built up their practice around litigation, whereas what Mary really needed was somebody to guide her towards a sensible outcome of change in the practice at reasonable cost. The lawyer interviewed Mary and Con at length and carefully enumerated all of the incidents where George had allegedly breached clauses in the associateship agreement. The reality was that George's transgressions were minor, and some had at least been tacitly agreed to by Mary. However emotions had caused them to become magnified in their perception. The outcome was that Sludge & Grubb wrote a letter to George advising him of his numerous alleged transgressions and demanding that he correct his behaviour.

The letter from Sludge & Grubb sent George off to find a solicitor of his own, who duly wrote a stronger letter denying all of the allegations put on Mary's behalf but then alleging a series of breaches of the agreement by Mary.

Both solicitors then advised their clients that they wished to consult barristers on their behalf as to the correct meaning of aspects of the associateship agreement. The matter was now threatening to turn into a legal feast. They were learning that lawyers come in at least quad sized groups, i.e. each party's solicitor and each party's barrister.

Level Headed Advice

Fortunately at this juncture Leo poked his head into his old practice to say hi. Leo had just lunched with another dentist who had sorted out a complex matter privately. Leo explained to Mary and George that this process was less antagonistic, and almost certainly a cheaper way of sorting out their differences, whereas the legal route of confrontation was going to involve lots of heated argument and it was questionable where it could lead. After all, no court can force two associates to like each other but they can require warring parties with common property to sell that property if they cannot resolve their

differences. Whilst at some point the lawyers would agree on a mediator, that was not likely to produce a long-term solution. Clearly the quad of lawyers could do very little to actually help the situation, and it was unlikely that a barrister mediator would understand sufficient of dental business to assist. Unfortunately the solicitors chosen were naturally combative and their actions periodically added fuel to the fire. The barristers, through the solicitors, were already asking for expert valuation reports on the practices. Leo's friend had learned that disputes between a couple of dentists had resulted in each paying out legal and associated costs of more than \$120,000. A total of \$240,000 plus seemed a lot to sort out a practice dispute between two dental associates.

Fortunately, at Leo's insistence, both Mary and George decided to step back from the precipice while they consulted a non legal adviser. The two solicitors were unhappy about being placed on hold, and made the predictable noises concerning the perils of non legal advice. By this time Con, too, had become concerned at the likely magnitude of the looming legal costs. There was also a hidden cost of loss of production and disharmony in the practice while the dispute raged on.

Non Legal Mediation

The independent consultant laid down his approach in a letter to both the parties, indicating that he could only work with them with both of their cooperation. He asked each to state simply in writing what were the major issues of concern to them. He then spelled out a process which commenced with a joint meeting at which both presented their views of the core issues that lay between them. By now the consultant had a fair idea as to where the real differences and causes lay. He then proceeded to meet with each alternatively. At each stage he reported back to them, either at a joint meeting or by email. On a couple of occasions the parties suggested that they wanted to take some legal advice. The consultant said by all means they could do so, but pointed out the perils of reigniting their conflict. He also pointed out that the lawyers had no solution other than to hammer away at the opposition's weakest spot.

The Options

The initial options were:

1. George could buy out Mary's associateship.
2. Mary could buy out George's associateship.
3. They could jointly agree to sell the whole practice, however everybody agreed that this was unlikely.
4. They could disassociate with one dentist retaining the existing premises and the other moving. They could then run the respective practices in their own style.

It readily became apparent that:

1. Mary didn't want to buy George out because she didn't wish to take on all of the hassle of running a four-dentist practice.
2. George was prepared to buy Mary out and run the whole practice until Jo was ready to step up to an associateship.
3. Neither Mary nor George wanted to sell the whole practice.

In the background Mary didn't want to sell her associateship to George. Slowly it emerged that the logical and preferred solution was for Mary and George to disassociate. That then raised issues as to whether each would take one employed dentist and the relevant fees, as well as share of equipment etc. Those issues took a while longer to hammer out. However at least by now the parties recognised that real progress was being made towards resolution of the dispute rather than simply fuelling it. At each point their non legal mediator pointed out to them the cost of not resolving their differences.

What Happened?

Mary chose to relocate, but chose to accept a payment from George in respect of her share of the patients who were normally treated by Jo and Lee. Jo and Lee remained in the existing practice location and became employees of George. Mary took some equipment, and there were some monetary adjustments. It was agreed that Mary would take one quarter of the small instruments and George three quarters, with a monetary adjustment. All of the small items were heaped on tables. A coin was then

tossed and they were divided up on a three pick for George and one pick for Mary basis. For simplicity, Mary took one half of the consumable stock on hand and George retained one half. There was a slight adjustment for the value left in the existing fit-out. However, given the need for significant renovation, that was a token payment only. George then got on with rearranging the practice into his mode of operation. Although George initially had to pay more overheads than previously, because he was now occupying the entirety of the practice's premises, he rapidly organised the renovation and re-equipment. Patient referrals accelerated. Jo was then invited to purchase an associateship from George. Because Jo had watched the issues develop between Mary and George, she saw and accepted the need for the changes in the practice. She was enthusiastic about the practice upgrade. Subsequently both George and Jo increased their personal fee output significantly. Lee continued to work in the practice for a time, but eventually moved on. George and Jo employed a combination of dentists and a hygienist, but built their practice associateships around the throughput of their own surgeries.

Mary found that she preferred to work in a much smaller practice. She enjoyed dentistry when it was relatively free from hassles. She employed a part-time dentist to assist with the workload, but realised that, unlike George, she was not interested in a very large practice, preferring to remain small and easy to manage. This frustrated Con because he had had visions of Mary employing several other full-time dentists and running a much larger scale practice business. However it became evident that Mary was best suited to her quieter mode of operation.

The Lessons

- Resolving associateship squabbles via lawyers rarely does more than generate substantial fees. Inevitably lawyers multiply and call for a variety of expert reports. Once each side has engaged solicitors and barristers and is heading toward a mediation, the perceived necessity of preparation greatly adds to cost. Only some mediations reach successful outcomes. Where lawyers are dealing with issues about which they have little understanding, such as managing a practice book, or the necessity versus desirability of upgrading equipment, they flounder. In such circumstances lawyers invariably propose compromised outcomes which may make little sense to either party. However one thing is certain, and that is that in a complex matter involving solicitors and barristers, the legal and associated costs mount rapidly. In 23 years of dealing with dentists, it is my overwhelming experience that lawyers cannot resolve associateship conflict. Introducing them invariably heightens mistrust.
- Not all dentists share the same vision for practices. Some dentists deliberately choose to practice quietly, whilst others seek to build practices at a rate which makes quieter associates uncomfortable. Above all, people are different and sometimes the personalities of potential associates mean that the two should never join together in practice.

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