



## DENTAL NEWSLETTER

November 2017

### Conflicts of Interest

What do dentists think about the following:-

- Health insurers owning dental clinics and offering differential rebates to entice patients away from experienced dentists in privately owned practices?
- Health funds advising insured patients that their dentist of choice is no longer a "preferred provider" implying to the patients that there is something undesirable about that dentist?
- Three major health insurers operating a website like Whitecoat and promoting it as an independent information source?
- Dentists who are employed by health insurers being on ADA committees?
- Preferred provider holding ADA offices?

Please email Synstrat your views on the above.

### Dental divorce and dental disputes

Read the article at <http://www.synstrat.com.au> which has recently been circulated. For objective well-reasoned practice valuations which assist in dispute resolution contact Synstrat – Graham Middleton on 03 9843 7777.

### NIB gaining more power over dentists

AAMI, a division of Suncorp now sells an extended insurance package including health insurance and received commission from NIB for health insurance contracts. NIB now also has arrangements with Qantas.

If NIB can pay commissions to third parties then there is clear evidence of a good profit margin.

### Practice valuation enquiries

Please speak to Graham Middleton or David Collins by calling 03 9843 7777. In their absence please speak to Jenny O'Brien who will arrange a time to discuss.

### Fight back against major health funds

There are more dental practices than is commonly known who are successfully converting their patients to smaller health funds which will offer the same rebates without requiring practices to become preferred providers or alternatively becoming self-insurers.

The fact is that with about a 22% profit margin the major health funds are desperate to get every possible dentist and dental patient under their wing.

Dentist who fear the impact of the major health funds are advised to contact Independent Dental Network (IDN).

### Independent Dental Network (IDN)

#### Keeping control of your practice

Dentists who wish to avoid the pitfalls of having patients diverted from their practices by the major health funds should speak to IDN (contact Merv Saultry [merv@independentdentists.com.au](mailto:merv@independentdentists.com.au)) an organisation which equips them to ward off that threat. Those with the major health funds and will enable them to have:

1. Patients self-insure or
2. Patients transferred to a smaller not-for-profit fund without suffering any loss of rebates.

Dentists need to combat the threat of their practices being marginalised by a few large health insurers.

IDN provides dentists who wish to retain their freedom from the encroachment of large health funds the tools to market their practice and offer patients an ethical and more beneficial choice of dental insurance, including an ability to switch to a mutual fund which doesn't interfere with patient choice of dentists by discriminatory rebate setting, and which offers patients superior value for their insurance dollar. Alternatively, patients can opt out of extras insurance and contribute to a savings plan (with accounts run in a major bank) to pay for planned dental treatment.

The health insurance industry heavily advertises extras because that's where it makes the big profit. Overall the industry only pays out 78 cents per dollar of extras premium, which in turn covers only 52% of treatment costs. Dentist are aware, that's a rip-off. Every member practice retains its own identity while belonging to IDN, which gives it the marketing tools to promote itself under its own name.

Synstrat Group nor Synstrat's directors have no financial interest in the Independent Dental Network other than ensuring that its dental clients insulate their practices from the predations of the major health funds.

#### They fight on

David Arlette and Michael Ryan were once partners in a business called Petsfirst which offered services to Veterinary Practices. That business had a sad ending. They also operated under a business name Ingenuity Management or Ingenuity Management Group which sold services to dentists. Dr Arlette (not a dentist) and Dr Ryan (not a dentist) had a falling out. David Arlette has circulated correspondence to customers alleging that a company of which Dr Fiona Hunter who is a dentist and the wife of Michael Ryan is the sole director has engaged in conduct which has misled dentists that its business is

David Arlette's business which David Arlette claims it is not. David Arlette indicated that his business, Ingenuity Management Group Pty Ltd has registered the trademark "Ingenuity Management Group" and he has circulated correspondence to clients to that effect.

It is alleged that the business which Michael Ryan and Fiona Hunter control has told its customers that its business "Acumen Dental" was previously known as "Ingenuity Dental" and this has caused confusion as to whether David Arlette's business is still in business!

Refer to earlier mention of Michael Ryan at [www.Synstrat.com.au](http://www.Synstrat.com.au)

#### **Four year restraint deemed enforceable**

The Victorian Supreme Court has found a four year restraint period to be reasonable and enforceable against a former key employee of an IT company.

The Court has ordered the IT specialist to be restrained from working for a competitor business and soliciting other employees of Southern Cross to join his new employer for the entire four year restraint period until June 2020.

One of the key reasons behind the lengthy restraint being upheld was due to the fact that in June 2016 the IT specialist sold his 40% share in Southern Cross for \$3.5 million as part of a share sale agreement.

In exchange for selling his shares, the IT specialist also agreed to remain with Southern Cross as an employee. However, whilst working for Southern Cross during the restraint, he also commenced employment with a competitor, Blue Connections Pty Ltd on a one day per week basis and \$5000 per month in salary.

#### **Restraints reasonable**

On the question as to whether the restraint was reasonable, Justice Michael McDonald emphasised the IT specialist had received a large amount of financial consideration in exchange for his entry into the restraint and stated "*there is nothing exceptional in a four year restraint in the context of a goodwill case where the vendor received a substantial amount of consideration*".

Further, His Honour also relied on the fact the IT specialist continued to receive a salary from Southern Cross as an employee after the sale of his shares and therefore determined the four year restraint against the IT specialist was reasonable in the circumstances.

#### **Restraints excessive**

His Honour also concluded the meaning of 'restricted business' and 'business' under the share sale agreement's definitions and was confined to IT procurement and associated IT managed services. His Honour stated "*a competing business will only be a restricted business if it is engaged in activities which are the same as those undertaken by Southern Cross as at 28 June 2016*" which in this case covered the activities the IT specialist was undertaking with his new employer.

We note that this ruling had features beyond that of some actions concerning restraint in relation to those who have sold dental practices of which we are aware.

#### **Restraint clauses for dentists**

Generally dental buy/sell agreements should limit the period and distance of restraint as we note some excessive restraint clauses have not been enforceable.

It is necessary to demonstrate actual financial damage to the purchaser of a practice if enforcing restraint. Restraint periods should be specified as commencing from the day that employment in the formerly owned practice ceased.

Restraint should not be confused with breach of an employee's duty of care to an employer and we note that the above IT case had elements of both.

#### **The Legend of "Doc" Holiday**

Read about The Legend of "Doc" Holiday, Dentist at the Battle of the OK Corral in **Synstrat Dental Stories**, which is a 335 page book which is a must read for dentists. It details a series of good and bad practice experiences but names and some details have been changed to preserve identities. It contains valuable insights for practice owners and intending buyers as to what works best and what doesn't. To obtain a copy of this publication, make a tax deductible donation of at least \$30 to the **Delany Foundation**, a charity which brings hope and opportunity into the lives of young people deprived of education in Australia, Papua New Guinea, Kenya and Ghana. Once you have made your donation, please email confirmation of your donation along with your postal address to [cheryl@synstrat.com.au](mailto:cheryl@synstrat.com.au) and a copy will be sent to you. Donations can be made by mail to:

#### **Delany Foundation**

**PO Box 429**

**CASULA MALL NSW 2170**

Or via direct debit to the Delany Foundation Ancillary Trust, BSB 062 784 CBA account number 4050 5402.

Should you have any difficulties, contact Matthew Mahoney on 0419 202 787 or 02 9600 8184.

#### **Real estate markets**

Real estate markets may be worse than depicted. A greater number of houses in Melbourne and Sydney not going to auction but listed for sale is generally a sign of a weakening market. A reduced amount of stock available for sale is also a sign of a weakening market as some sellers sensing that they can't get the price they want withdraw. In the apartment market, inducements to buyers in the form of furnishings etc. are a sign of a weakening market as are rental guarantees.

**For more information on these topics visit  
[www.synstrat.com.au](http://www.synstrat.com.au)**

Register your email address to receive our newsletters electronically, plus additional exclusive information which is only emailed to dentists on our distribution list. Send your details to [dental@synstrat.com.au](mailto:dental@synstrat.com.au).

**THE SYNSTRAT GROUP ARE AUSTRALIA'S MOST EXPERIENCED DENTAL PRACTICE BUSINESS ADVISERS, FINANCIAL ADVISERS, ACCOUNTANTS AND VALUERS**  
**For further information on this subject, please call:**  
**Graham Middleton, David Collins and Paul Steel**  
**Telephone: 03 9843 7777**  
**Email: [dental@synstrat.com.au](mailto:dental@synstrat.com.au)**  
**Internet: [www.synstrat.com.au](http://www.synstrat.com.au)**

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