

**SPACE SHARING OR SOLO-GROUP RELATIONSHIPS:
AN IDEAL EXPENSE REDUCTION PLAN FOR YOUR DENTAL PRACTICE**

(Part 1 of 5)

*By Barry H. Josselson, A Professional Law Corporation **

“Space Sharing” or “Solo-Group” relationships are also known within the California dental community by a host of other names such as “Facilities Sharing” relationships, “Office Sharing” relationships and “Expense Sharing” relationships. However, regardless of the specific nomenclature used to identify the relationship or the agreement between the dentists, all of them have one general common goal: *to provide for increased efficiencies in the dental practitioner’s office and to reduce the dentist’s overhead expenses*. The more efficient (i) use of office space by two or more dentists and (ii) utilization of chair-side assistant or front office staff skills may make more profitable the dentist’s practice.

The Solo-Group relationship is not only utilized among general practitioners but also among dentists within the same specialty (for example, endodontists and periodontists) as well as dentists in different specialties (for example, orthodontic-pedodontic relationships). Such arrangements prove valuable irrespective of the age of the practitioner or the business of his or her dental practice. It is especially ideal for practitioners who are semi-retired and for active practitioners who wish to reduce the number of days which they practice while simultaneously seeking to reduce their overhead.

However, Solo-Group relationships are *not* without their possible drawbacks. Unlike the solo dentist’s previous business environment where the practitioner is the sole owner and, therefore, sole decision-maker with regard to the practice’s administration, there are now two or more owner-dentists who are maintaining their “solo” practices but are now joining in one office environment and creating a “group” practice. A clear delineation of duties and responsibilities by each dentist in the contemplated Solo-Group relationship is, therefore, appropriate. The numerous and substantial benefits of *memorializing in writing* the Solo-Group relationship are clear:

- i. the clear *identification* of critical issues before the commencement of the relationship,
- ii. the *resolution* of any ambiguous verbal understandings between the parties, and

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iii. the written confirmation of the parties' understanding such that any misunderstanding between the parties at a later point in time can be resolved promptly and without animosity by reference to the dentists' prior agreement.¹

Parts 1, 2 and 3 of this 5-part article shall enumerate many of the more important provisions to be included and addressed in a properly drafted Solo-Group agreement. Part 4 of the article provides various options which the dentist may employ when determining rent for the use of his or her office and the proper allocation of jointly incurred expenses. Part 5 of the article concludes with a comparison of a Solo-Group relationship's similarities to other dental practice relationships and an admonition to dentists to seek the advice only from experienced dental legal counsel who have an intimate or specialized knowledge of dental Solo-Group relationships.

Integral Provisions Found in Solo-Group Agreements

1. Term of Relationship. This provision in the agreement specifies the length of time of the relationship between the dentists subject to any earlier termination as permitted in the document. The parties usually choose a term as short as six months and as long as five years depending upon the types of commitments made by the parties to one another. For example, one would not recommend a short term if the dentist moving (hereinafter referred to as the "New Dentist") into the existing dentist's office facility (hereinafter referred to as the "Original Dentist") had a large patient base to whom notices of the new office location are being sent or if substantial money is being spent by the New Dentist to acquire an ownership interest in the dental equipment or office leasehold improvements. Even if both dentists desire a long term relationship (for example, five years), the parties must identify in their agreement certain events which would appropriately give either the right to terminate the relationship with the other. Such events include, but are not limited to, revocation or long term suspension of one's license to practice dentistry, death, or long term total disability. These contingencies are discussed more fully in part 5 of this article titled "Termination of Relationship."

2. Use of Facilities. This provision in the agreement is one of the most important in the entire document. Both dentists need to address the office space and time restrictions, if any, placed on each party. Is the entire dental office (except for the dentists' private offices) available for use by each dentist or just select areas? Is the dentist's use of certain operatories and the lab exclusive or non-exclusive? Specific days of utilization of operatories by the dentist should be clearly set forth in the agreement; however, should the same time restrictions apply to non-clinical use of the premises such as administrative work and various paperwork duties? Should the space and time restrictions be waived if the other dentist is not performing any dental procedures? Only if there is a patient emergency? Are the space and time restrictions to be determined solely by one dentist and which may be altered in such dentist's sole discretion? Or are changes and revisions to the time and space terms possible only by mutual consent? May the Original Dentist permit other dentists to join the Solo-Group relationship without seeking the approval of the New Dentist?

¹ Please see Mr. Josselson's prior 4-part article titled "Written Associate Dentist Agreements: Required Protection for Both Parties" in which he details the substantial benefits of written vs. verbal agreements between owner-dentists and associate-dentists.

The appropriate answers to all of these questions depend upon the specific needs and goals of the parties. The best time, however, to address these questions *is before* the parties have made commitments of time or money to the relationship and *not after* such expenditures have occurred.

3. *Form of Operation.* The agreement should confirm that the parties acknowledge that there does *not* exist an employer-employee relationship or partnership relationship between the parties and, therefore, neither dentist has the right to bind contractually the other by the such dentist's actions or the actions of his or her associates or employees.

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**SPACE SHARING OR SOLO-GROUP RELATIONSHIPS:
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(Part 2 of 5)

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Integral Provisions Found in Solo-Group Agreements (continued from Part 1)

4. Separately Incurred Expenses. Because each party to the Solo-Group relationship has retained his or her own separate identity and has maintained his or her solo practice in a group setting, it is important for the parties to identify what expenses, if any, remain the "separately incurred" expenses of each party. The most common example of such separately born expense is the dentist’s utilization of the hygienist and sometimes the chairside assistant. If there are special supplies which are used only by one dentist, these items can similarly be excluded from any jointly shared listing of expenses and can remain the separately borne expenditure of that dentist.

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5. Indemnification. As noted previously, the Solo-Group or Space Sharing agreement should acknowledge that the parties are not merging their practices with one another (thereby creating a partnership or corporate relationship) but are only sharing space and various support services while retaining their separate and independent legal status. Accordingly, in the event that either dentist is improperly named as a defendant in a lawsuit for acts committed by the other space sharing dentist, the agreement should provide that the innocent or blameless dentist should be indemnified or held harmless by the dentist responsible for the events giving rise to the litigation. Such indemnification provisions should be mutual and reciprocal and should cover any and all court costs, legal fees and other expenses related to the defense of any lawsuit. The provision should also include that the indemnified party may elect to select legal counsel of his or her choice to defend himself or herself.

6. Personnel and Office Management. The agreement should specify those rights and responsibilities of each dentist regarding the hiring, supervision and termination of staff working for such dentist. In those instances where the Original Dentist is providing the New Dentist not only the space, equipment and supplies but also the front office and back office staff as part of the consideration for the Space-Sharing relationship, the Original Dentist usually retains the authority to make such personnel and management decisions. In those instances, on the other hand, where the New Dentist is financially responsible to pay for his or her own staff and has brought his or her own staff from the prior office or has hired new staff (therefore, a separately incurred expense), the agreement between the dentists most often indicates that each dentist is responsible to manage and supervise such dentist's separate staff. What happens when each dentist retains the authority to hire his or her own staff, the staff members do not get along, and neither dentist wishes to replace his or her employee while permitting the other dentist's employee to remain? If the agreement does not provide that one dentist has ultimate decision-making authority in the area of personnel and management and the two dentists are unable to resolve their personnel or management disagreement, many agreements provide that the relationship can be terminated without cause upon giving written notice. This extreme and onerous remedy of terminating the relationship because of friction between staff members may be utilized when neither dentist is willing to replace such staff person.

7. Assignability. A Solo-Group relationship between dentists is a personal one. The parties have presumably chosen one another in part because of their compatibility in practice philosophy. The agreement, therefore, should prohibit either party having the right to assign such party's rights under the agreement to another dentist without the prior written approval of the other dentist.

**SPACE SHARING OR SOLO-GROUP RELATIONSHIPS:
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(Part 3 of 5)

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Integral Provisions Found in Solo-Group Agreements (continued from Part 2)

8. Malpractice Insurance and Licensing. The agreement should specify what policy limits of malpractice insurance each party must maintain. Some agreements provide that election is to be made by the Original Dentist. The particular malpractice insurance carrier providing the coverage is normally not an option to be chosen by the Original Dentist. Obtaining and maintaining specific licenses (for example, business licenses and DEA licenses) are often a prerequisite for initiating or continuing the Solo-Group relationship. Their revocation or failure to renew can give rise to termination of the agreement as hereinafter discussed.

9. Practice Continuity. What happens if one of the dentists dies, becomes totally or permanently disabled, retires, or wishes to sell his or her dental practice? The importance of dental

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practice continuity is crucial. Maintaining the practice's value by *not* allowing a substantial period of time to elapse without coverage being provided for the dentist's patients is sound business planning. Making provisions for the sale of your dental practice should any of these contingencies occur can be addressed in your Solo-Group agreement. The best candidate to acquire your practice in the event of a death, disability, retirement or desire to sell may be the colleague sharing space with you. What specific terms and conditions do you need to consider? A first issue to resolve is whether the purchase of the dental practice by your Solo-Group colleague shall be *optional* or *mandatory*. Secondly, the method for determining the purchase price of the practice is important. The parties may review annually their practices and determine their value and which such value shall control in the event of a disability, death or withdrawal. A second option is for the parties to stipulate in their agreement as to a formula which shall be employed to value their practices. A third option is to have the parties agree that the dental practice shall be appraised by one or more experienced dental practice appraisers and whose opinions shall be binding. The terms of the purchase must also be specified: (i) the amount of the down payment, (ii) the balance of the purchase price, if any, to be financed by the seller, (iii) the interest rate on the promissory note and (iv) the term of the promissory note are all critical factors to be determined *in advance* of any event triggering a buy-out.

Some Solo-Group agreements provide instead that the other party *has only a right of first refusal* to acquire the dental practice before it may be purchased by another dentist. Some agreements have burdensome provisions if the New Dentist elects *not* to purchase the dental practice of the Original Dentist: the New Dentist must move from the premises should the buyer of the Original Dentist's practice wish not to continue the Solo-Group relationship. Read carefully your agreement before agreeing to its terms.

10. Renewal. The agreement should specify *what events must occur for the New Dentist to renew* the Solo-Group relationship with the Original Dentist. One such condition is giving appropriate notice to the Original Dentist of the New Dentist's intention to renew. A reasonable period of time is no less than six months. A second condition which should be satisfied prior to renewal is determining a new "use fee", if any, from that which may have been paid during the prior term. Lastly, the parties may wish to re-allocate certain expenses between themselves to make more equitable the responsibility for paying for such expenses.

11. Attorneys' Fees and Arbitration. Your agreement (as well as all contracts which you may sign) should provide for your recovering your attorneys' fees and related court costs should it be necessary for you to enforce the agreement's terms due to the other party's breach. California Code of Civil Procedure Section 1021 permits parties to stipulate between themselves that the prevailing party to any litigation may recover such attorneys' fees due to the other's breaches of the specific terms of the agreement. The parties may also agree in advance that any dispute may be resolved by binding arbitration subject to certain guidelines (for example, as set forth by entities such as the American Arbitration Association or Judicial Arbitration & Mediation Services, Inc.). The parties should stipulate as to the number of arbitrators to hear the dispute, the specialized dental or health care background required of such arbitrators, and that the arbitration shall determine which party is the prevailing party and the award of the prevailing party's reasonable attorneys' fees and costs.

**SPACE SHARING OR SOLO-GROUP RELATIONSHIPS:
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(Part 4 of 5)

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Integral Provisions Found in Solo-Group Agreements (continued from Part 3)

12. “Use Fee” and Sharing of Common Expenses. This part of the agreement addresses the most important issue in the relationship: the allocation of expenses between the parties or reimbursement by one dentist to the other for the pro-rata use of office staff, supplies and other dental office assets. The formulas for determining the sharing or reimbursement of expenses by one dentist to the other can range from the very simple to the very complex. Here is an example of a simple agreement: the parties have agreed that the New Dentist (i) can use specific operatories for specific days during the week, (ii) can avail himself or herself of all dental and general office supplies, and (iii) can utilize all front office and chairside assistants. In consideration of such

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benefits, the New Dentist pays to the Original Dentist an agreed upon percentage of the daily gross production or a fixed monthly rental, whichever is greater.

This scenario is realistic, simple to create and mutually beneficial to both dentists. The Original Dentist has under-utilized staff and available space and days for another dentist to utilize. The New Dentist simply pays a percentage of his or her daily gross production (including lab charges) and without adjustment for discounts or non-collection. The Original Dentist reserves the right to review the New Dentist's day sheets or billing records.

A more complex scenario involves the exercise of a "use fee" - a monthly or annual fee to be paid by the New Dentist to the Original Dentist for the Original Dentist's expenditure of money on the equipment, leasehold improvements and other trade fixtures in the dental office. In those facilities where substantial capital has been invested, the use fee paid by the New Dentist to the Original Dentist represents a legitimate return on the Original Dentist's investment from which the New Dentist is benefiting when utilizing the dental office. For example, assume a newly constructed dental office with \$100,000 worth of equipment and leasehold improvements which are totally OSHA compliant. The New Dentist has equal access to the entire office throughout the week as does the Original Dentist. Many accountants or dental consultants would presume a 10% annual return on the Original Dentist's investment of \$100,000. The \$10,000 return divided by one-half utilization between the two parties would, therefore, result in a \$5,000 "use fee" by the New Dentist payable to the Original Dentist throughout the year.

In addition to the annual use fee the parties must equitably divide the "jointly incurred" operating expenses of the dental office. This part of the agreement requires substantial input by the dentists. Division of these dental office operating expenses can be determined in a myriad ways; however, our law firm's experience has been to recommend dividing select office expenses based upon one of three options:

- (a) Division of expenses based upon number of days in the office by the dentist compared to the total number of work days that the dentists worked that month;
- (b) Division of expenses based upon the dentist's production or collections compared to the office's total production or collections during that month; or
- (c) Division of expenses equally between the dentists utilizing the facility.

Option (a) is frequently used for expenses such as rent due and owing the landlord and sometimes for variable expenses such as salaries and payroll costs related to front office or back office assistants.

Option (b) is frequently utilized for expenditures such as general office supplies, dental supplies and consumables. The rationale is that the higher producing dentist consumes more of such supplies than the lower producing dentist and being financially responsible for such expenses based upon the ratio of said dentist's production or collections to the total office's production or collections is equitable. This option may also be applied when determining the dentists' respective responsibilities for staff salaries and related payroll costs.

Option (c) can be applied to any expenditure *which is fixed and not increased* or decreased based upon the dentists' presence in or absence from the office. The office rent to the landlord can be divided under this option as well as under option number one.

Irrespective of which option is chosen for division of general operating expenses between the parties, *the agreement must address the issue of new equipment acquisitions*. It should properly document whether such new equipment acquisitions are included in the operating expenses as well as whether the depreciation of such equipment is included in the definition of operating expenses.

Lastly, the agreement should properly address (i) the period of time within which one party shall reimburse the other who has paid for that dentist's share of the expenses, and (ii) the consequences should the dentist who paid for the incurred expenses and obligations of the other dentist for that time period *not* be repaid.

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Integral Provisions Found in Solo-Group Agreements (continued from Part 4)

13. Termination of Relationship. In much the same way that an associateship agreement or office lease agreement specifies consequences of one party not adhering to the terms of the agreement, your Solo-Group agreement should also identify those events constituting a default and the remedies available to the non-defaulting party. Solo-Group agreements should distinguish between terminating the relationship “with cause” from terminating the relationship “without cause”. Examples of termination “with cause” would be (i) failure by the dentist to pay his or her allocable share of the operating expenses within the time specified, (ii) failure to adhere to the terms and conditions of the office lease with the landlord, (iii) loss or revocation of one’s license to practice

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dentistry, (iv) suspension of one's license to practice dentistry for a protracted period of time, (v) conviction of a felony or misdemeanor involving moral turpitude, and (vi) filing a petition in bankruptcy or making an assignment for the benefit of the dentist's creditors.

Sometimes the parties wish to terminate the Solo-Group relationship for reasons unrelated to any breaches or defaults committed by either party. There may be a compelling personal reason or a legitimate business reason for one party having to withdraw from the relationship. Irrespective of whether the termination is "with cause" or "without cause", the parties need to determine how much notice must be given by one party to the other under either situation, and whether there shall occur a forfeiture of any pre-paid "use fee" or security deposit. Dentists should seriously consider the possibility of a penalty for a premature termination of the Solo-Group relationship if the non-terminating party has expended considerable time and money in preparing the office for the presence of another dentist. For example, if there has been a "use fee" paid in advance by the New Dentist, the Original Dentist may consider retention of such "use fee" if the termination is due to the New Dentist's decision to terminate the relationship "without cause".

We have also encountered in our law practice numerous Original Dentists who initially desired to have New Dentists join their offices. After a short period of time and a great amount of money expended by the New Dentist in notifying his or her patients of the new location, obtaining new stationery and incurring other office-move related expenses, the Original Dentist becomes less enamored with the obligation of having to share the office with another party. The Original Dentist then informs the New Dentist of his or her change of heart and desire to return to solo practice with a higher overhead. While the agreement should not prevent either party from terminating the relationship without cause, the agreement should provide for compensation by one party to the other if the party seeking a termination is doing so "without cause".

Conclusion

Solo-Group relationships afford great flexibility to dentists. They permit dentists to be creative to meet their specific needs. These needs may consist of financial concerns regarding increased overhead or the desire to continue the practice of dentistry albeit on a less active basis. The Solo-Group relationship has many of the characteristics of other business relationships found within the dental community. It is similar to a landlord-tenant relationship in some respects because of the obligation to pay for certain office expenses. The failure to abide by the terms of an office lease permits the landlord to terminate the lease in much the same way that a Solo-Group dentist may terminate the agreement should a party breach any of its terms. It is similar to a partnership relationship because of your having another dentist knowledgeable about your practice and available to purchase it upon a premature death, disability or withdrawal. It is similar to an owner dentist-associate dentist relationship by your having another dental professional within the premises to whom your staff may be accountable and whose presence may justify economically the business decisions you make in your office. Many Solo-Group relationships continue to function substantially similar to the parties' prior solo practices in which the dentists separately paid for their supplies, staff salaries and lab expenses, and other related general business expenses.

As is true in all business dealings or personal relationships, the better that each dentist identifies and understands the goals and needs of the other party the greater is the likelihood of success in the Solo-Group relationship. While there may be some loss of autonomy by having two

dentists practicing in the same dental facility where formerly only one practiced, the increased profitability that can be accomplished by sharing fixed overhead costs and certain variable costs is very real.

Seek the advice of dental legal counsel who has substantial experience in advising dentists and in drafting documents memorializing the terms of such relationships. Find another dental colleague whose practice philosophy and management style compliments you or makes up for your deficiencies. If the issues raised in this article have been addressed by you and your prospective Solo-Group colleague to your joint satisfaction, then your practice of dentistry in future years will be a positive and financially rewarding one.

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