



SPECIAL DIVORCE CONSIDERATIONS FOR DENTISTS

Guest Contributor:

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After representing a number of dental professionals and spouses in divorce proceedings in Arizona, we identified several issues that are somewhat unique to dentists and their practices. As with physicians, dentists who divorce have to address student loans, division of higher incomes, division of assets, and spousal maintenance. However, the division of the largest community asset, the dental practice itself, is where much of the complication occurs. Engaging an attorney who has dealt with these issues may be helpful.

What makes dental practices different from other medical practices is the salability factor. There are a number of dental practice brokers around the country who are in the business of selling dental practices (frequently, they are marketed to newer dentists out of school). In theory, this common market should make valuing the practice easier. After all, isn't it worth what someone would pay for it, like the value of a used car? Not in the realm of divorce. The reality is, the practice may be worth significantly more than the broker's value, which was based on different factors than those used by courts. This distinction, and an attorney with the ability to

explain the same to the court, may make a difference of hundreds of thousands of dollars!

Dentists, perhaps more than any other group of medical professionals, rely on their reputation in order to secure business. This is often referred to as "goodwill." Because so many people fear visiting the dentist, a pleasant experience is both a relief and a high likelihood that the patient will return to the same office, or dentist, for future care. Goodwill may be attached to the dental office or to the individual practitioner, such that even dentists who do not operate their own practices may have their goodwill with the community assigned a value and divided as an asset.

In Arizona, the goodwill that a practitioner develops over the course of his or her career is considered when determining the value of a practice during asset division. In *Wisner v. Wisner*, the Arizona Court of Appeals laid out some of the factors which courts should consider when determining the existence and value of professional goodwill, including the practitioner's age, health, past earning power, reputation in the community for judgment, skill and knowledge, and his or her comparative professional success.

A dentist who has performed good services for a long time may have generated a substantial amount of goodwill with patients, and that goodwill may significantly increase the legal value of that dentist's practice during divorce proceedings.

Evaluators may consider the practice's assets and income, which can include contractual agreements with insurance providers, relationships with current patients (particularly when patients require long-term care for endodontic implants, etc.), the average number of new patients that the office treats each month, and several other factors.

In addition, the value of a dental practice may be subject to adjustment because of its locality and the rates of recent sales of similarly situated practices. This means that a practice located in Cave Creek or North Scottsdale may be treated as being more valuable than similar practices in Flagstaff, Sedona, or Tucson because nearby practices—and the property on which the office is built—are more valuable, with less regard for the practice's actual income.

Even standing 'non-competition' agreements with past partners or employees of the practice may be assigned a value for property division purposes. Evaluating a dental practice is simply more complex than evaluating many other types of businesses.

While we have seen divorces where the focus of the business evaluation is mostly on the income stream, the business might also have actual assets that are of significant value. If x-ray equipment or other medical devices are owned (as opposed to leased), that equipment needs to be valued. Even a small dental practice often has in excess of \$100,000 in equipment, from specialized handheld tools to dental furniture. If the practice is specialized, such as orthodontics, periodontics, or oral and maxillofacial surgery, the equipment value may be even more significant.

Although dentists are held to the same Title 25 Divorce laws as everyone else, navigating the valuation of the practice is key to establishing the community interest and negotiating spousal support. However, the lesson to be learned is that the broker's value of the practice cannot be substituted for a true evaluation for purposes of the divorce matter. Hiring the right expert to value the practice is an expense, but, especially for the spouse attempting to maximize the value in the business, it is not a step that should be avoided.

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The image is a composite. The top portion is a promotional graphic for the 2013 SmartScramble Charity Golf Tournament. It features a smiling golf ball character wearing a red cap and holding a golf club. Text includes: "2013 SMART SCRAMBLE", "Join us for the 2013 SmartScramble Charity Golf Tournament", "April 19, 2013", "All Proceeds Go To: give kids a smile!", "McCormick Ranch Golf Club in Scottsdale, AZ", and "Swing for SMILES". Contact information for Matthew Faulhaber is provided. The bottom portion is a photograph of four people (three men and one woman) standing behind a large green ceremonial check. The check is from "The 'Give Kids A Smile' Organization" for the amount of "\$25,000.00" (Twenty-five thousand dollars and 00/100). Logos for SmartScramble, Give Kids A Smile, SmartPractice, and Smart are visible on the check.