The basic decision you must make regarding your immediate future will be to determine the style and type of practice best suited to your needs and personality. Should you choose a solo, associate, or group practice? While the choice is yours, it is wise to consult with dental societies, suppliers, accountants, lawyers and management consulting firms for additional information about the variety of practice arrangements.

Solo Practice
Historically, the majority of dentists preferred to be their own boss. A solo practice offers the following advantages, which appeal to many practitioners.

The solo practitioner is independent and has complete autonomy in making decisions and in setting practice policy. The potential for financial reward and the freedom to use equipment, methods and personnel of personal choice are some of the advantages of this mode of practice.

Finally, as a solo practitioner, you can design and manage an office suited to your needs and desires. For some dentists, these benefits are outweighed by the responsibilities of solo practice.

The dentist who practices alone has sole responsibility for all decisions and must make a larger financial investment. The solo practitioner also faces greater financial risk and a slower economic start. Lack of emergency coverage, increased difficulty in scheduling time off for vacations and meetings, and lack of immediate professional consultation and advice are other disadvantages attributed to the solo practice.

Becoming an Associate
In the learned professions the associateship relationship has developed to assist new practitioners in establishing themselves. In medicine, law and dentistry an associate is a practitioner who agrees to work in a practice for a certain period of time as either an independent contractor or as an employee. This non-owner, sheltered situation allows a transitional period in the professional and career development process and often leads to practice ownership opportunities.

The associate position is not restricted to new graduates, however. Many older practitioners have accepted positions as associates in an established practice to increase their income and keep clinical skills sharp. Retirees, faculty members and other dentists who wish to work only part time may find an associate position ideal in meeting their professional needs.

A dentist who is considering becoming an associate should seriously evaluate the pros and cons of such an arrangement. When determining whether to seek out an associateship form of practice rather than another private practice alternative, it must be recognized that there are numerous types of associateship arrangements. Therefore, the planning and decision-making should be viewed from multiple vantage points.

First, decide if associating, in the generic sense, is an option you wish to pursue. Second, determine the type of associateship arrangement that is preferable or acceptable. Allow sufficient time to obtain a reasonably clear understanding of what is sought and why, before a serious exploration of associateship opportunities is initiated. Without this, considerable time will often be wasted for both parties. Moreover, it is impossible to evaluate and compare associate opportunities without first determining personal preference and desired arrangements.

An important suggestion to any dentist or dental student who wishes to become an associate is to start the planning and decision-making process well in advance of the intended date of becoming an associate.
failure of the relationship and cause the associate to leave the practice believing the owner had not provided the “real facts.” Who is at fault in these situations? Associateships rarely fail due to only one of the parties, rather they fail from joint problems or misunderstandings. Prospective associates must consider themselves at least partially at fault for the failure of the associateship if they enter into an arrangement without thoroughly evaluating the facts and the opportunity.

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Advantages and disadvantages
For the associate dentist, becoming part of an established practice means no initial financial investment and the potential for a possible ownership arrangement in the future. In addition, the arrangement offers an opportunity to learn from an experienced clinician in a setting with more regular hours than those of a solo practice. Not everyone is suited for an associate position, however, and the following disadvantages are sometimes cited: other practice situations may offer higher income; the potential for personality conflicts within the hiring practice staff; the necessity to practice according to policies with which you may not agree; lack of control over auxiliary personnel; and aggregate loss of individuality within the practice.

If the idea of associating with an established practice is appealing, the following evaluatory questions will help you make your decision:

1. Are you looking for a period of transition from the academic environment to the responsibilities of managing a private practice?
2. Do you want to practice without committing yourself to a particular setting or locale while you review and refine your career goals?
3. Do you want further technical and practice management experience in a clinical, rather than educational setting?
4. Is it important that you quickly establish a good professional reputation? (You can capitalize on the goodwill effects of associating with a well-regarded practitioner.)
5. Do you want to begin practicing immediately even though you do not have the financial resources required to establish your own private practice?
6. Do you want the option of buying into an established practice rather than undertaking the economic and psychological stresses of establishing a new practice?
7. Do you want some time to get to know the community, its people and its dental needs before making a permanent commitment to the locale?
8. Do you want to practice in an area where it may not be practical to establish a solo practice?
9. Do you want to earn income immediately, without assuming the financial risks and management responsibilities of a solo practice?
10. Do you want the camaraderie and professional consultation opportunities that come with working with others?

If your answers to these questions are positive, an associate position may work well for you. Answer the following questions, as well—the associateship position is not without drawbacks.

1. Will being an associate benefit your career?
2. Are you open enough to seriously consider the senior dentist’s suggestions? (Or do you tend to automatically negate advice in asserting your independence?)
3. Emotionally, can you defer ultimate authority over practice management decisions to the hiring dentist? (The associate is responsible for operating in a manner compatible with the way the practice has been built.)
4. Will you be willing to consult with the hiring dentist on complicated procedures until your experience or postgraduate training justify additional responsibility?
5. Would you be willing to provide the support and make the compromises necessary for a successful working relationship, i.e., truly become a member of the team?
6. Would you be satisfied with your financial compensation and responsibilities? (Remember to consider the overhead costs involved in running the practice.)

If you answered “no” to more than one item above, you may be uncomfortable in an associate position and may wish to consider other options.

In determining whether to establish a sole practice or join an established practice, it is important to consider both the financial and the legal implications of both alternatives. Seeking competent professional advice will be important in best understanding both implications.

**Locating Associateship Opportunities**

If you feel an associateship would be compatible with your needs, goals and personality, you need to locate potential opportunities. Graduating dental students should begin this search by the start of their senior year. Do not make a decision after investigating and interviewing only one possibility. Meet with various dentists and carefully compare what each practice has to offer. Remember, the situation you choose is where you’ll be working daily. Take advantage of all available resources to find compatible situations and people.

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**Sources**

Word of mouth is one of the most credible vehicles for finding a prospective match. Let your professors, your classmates and your other contacts in dentistry know you’re looking. And don’t forget the following resources:

- state and local dental societies in your preferred area;
- practice management consultants and brokers
- bulletin boards and placement services in the dental schools;
- dental supply companies;
- dental school faculty
- dentists in your community of choice;
- hospital-based dental programs;
- the classified advertising sections of dental publications. (*Journal of the American Dental Association, ADA.org/goto/Jada*)
- Internet

**Advertising for a placement**

An advertisement should be as detailed, specific and straightforward as possible. Buying more words is cheap compared to the cost of wasting...
Chief among the considerations and decisions to be made in an associateship agreement is the exact legal status of the associate in the practice, that is, whether the associate is an independent contractor or an employee.

As the prospective associate, you should avoid overstatements in your advertisement instead of boasting that you graduated from the “best” dental school or that you have “broad experience,” state specifically where you were educated and outline your professional experience. Include your location requirements, specialty skills, areas of strength and interest in partnership possibilities.

After you’ve investigated your sources, compiled a list of possible opportunities. Your next task in the screening process is to find the person with whom you can establish a solid, successful working relationship.

The final package
Check with the local dental society, the classified advertising sections of area or regional dental journals, and with other practitioners in the area for insight in negotiating salary, fringe benefits and the associate’s legal status.

Formalizing an associate relationship requires a legal contractual agreement that includes, among other things, the duration, financial terms and basis to terminate the associateship. For the protection of all parties, legal consultation and advice should be utilized in drawing up and finalizing this agreement. Sixty-three percent of non-owner new dentists have some type of associate/employee agreement, according to the ADA Survey Center 2002 Survey of New Dentist Financial Issues. Sample employment agreements can be found in the publication, Frequently Asked Legal Questions, 2004, Practice Options: A Guide for the New Dentist and Associateships: A Guide for Owners and Prospective Associates, 2004 American Dental Association, 1-899-947-4746.

Among the issues that can be addressed contractually are:

- Length of the contract
- Use of facilities (rights and privileges, time and extent);
- Compensation (terms of payment, possible offsets);
- Expenses (who pays office expenses);
- Management (who has management responsibility, including over staff);
- Legal classification (independent contractor or employee);
- Patient care (upon termination, who will treat patients so that they are not abandoned; who will take over financial arrangements; who will be able to contact patients and on what terms, etc.);
- Options (buy-in options, right of first refusal, non-compete or restrictive covenant clause)

Chief among the considerations and decisions to be made in an associateship agreement is the exact legal status of the associate in the practice, that is, whether the associate is an independent contractor or an employee.

Federal and state revenue authorities favor the withholding of employment taxes, so if an independent contractor relationship is contemplated, the hiring dentist must make certain that the relationship satisfies the requirements of the Internal Revenue Service and appropriate state agencies. Since these agencies will look at the actual facts of the situation, not simply how the parties refer to themselves in the agreement, legal counsel is necessary in developing the relationship as well as in drafting the associateship agreement.

For more information on this topic, please use the IRS internet website www.irs.gov/pub/irs-pdf/p1779.pdf.
Associations Arrangements

There are various forms of associateship arrangements. While significant legal and practical differences do exist among these forms, the common aspect of such arrangements is that the dentist who is deemed the associate has no ownership or equity interest in the practice. The type of associateship best suited to you is really a function of understanding the different types, determining which is best suited to the practice, your values, need for independence and philosophy of practice.

One of the most important issues that differentiate one type of associateship from another is control. Who will have control over management decisions — i.e., what, when and how things get done? The degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship between the parties involved. This issue of control is not only important from the standpoint of how day-to-day management of the practice is handled, but it also has significant tax and financial implications. The Internal Revenue Service (IRS) has established a list of factors that are used in determining whether the issue of control indicates that an employer-employee relationship exists.¹

Associate-employee

The associate-employee is a dentist hired by a practice-owner or the practice entity, depending on whether the practice is incorporated. Several factors may be used to distinguish the employer-employee relationship. Generally, a worker such as an associate is classified as an employee when the employer (in this case, the hiring dentist) has the “right to control” the way in which the worker’s services are performed.²

The typical associateship agreement is one of employer and employee. The employee must abide by the employing dentist’s practice policies and philosophies, fees, scheduling, and payment and collection policies. In the vast majority of cases, associates are likely to be classified as employees for IRS purposes, as well. The owner often assigns patients to the employee to help establish a patient base and to involve the employee in various aspects of diagnosis and treatment planning. As an employee, the associate typically has no ownership rights to patients records, at least at the onset of the agreement.

The employer is often responsible for maintaining all equipment, except for the associate’s personal instruments, and has final authority in such

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² Sfikas PM. You and your associate. JADA 1996;127:1790.
matters as working hours and vacation periods.
The owner may provide such benefits as payment for reimbursement for the associate's malpractice insurance, professional dues, health insurance or disability premiums. Other indicators of employee status might be withholding of taxes and employer-provided benefits, including sick leave, continuing education course reimbursement, vacation pay, workers' compensation and liability insurance.

**Associate-independent contractor**

In contrast to an employee, an independent contractor dentist is considered to be a self-employed professional. One often held view is that an independent contractor can be defined as an independent business person, who contracts to do certain work according to his or her own methods, without being subject to the control of the hiring party, except as to the product or result of the work. If the associate is a self-employed individual, that may mean that the employer only prescribes what shall be done, not how or when it shall be done. Simply performing work to the satisfaction of the employer does not make the doctor contracting to do the work an employee. On the financial side, typically an independent contractor will have no employer-provided benefits; there are no contributions to retirement plans for the associate by the practice owner and unemployment and social security taxes are the responsibility of the associate.

The independent contractor as a self-employed person working under a contractual arrangement generally compensates the practice owner under any number of formulas or on a flat rate basis for the use of the facilities. Depending on the contractual relationship, an independent contractor would generally exercise rights to independent employment by establishing personal work routines, hours and fees, appointment book control and complete treatment planning. Additionally, the independent contractor might hire chairside employees and provide supplies. Of course, these terms are negotiable between the parties and should be clearly defined at the onset.

The independent nature of this relationship carries greater financial and management responsibilities for the associate. For example, the independent contractor will likely have no employee benefits from the practice owner. Further, the associate will usually have responsibility for providing his or her own professional liability and malpractice insurance and for providing treatment of patients in the event of absence or illness of the associate.

If the parties decide that an independent contractor classification is appropriate, one issue in particular should not be overlooked: Who will retain the patient records on termination of the relationship? If there is no contractual provision spelling this out, the potential for a dispute on this point exists.

Other contractual provisions applicable upon termination of the agreement that the parties should discuss include: where patient records are to be housed and how long they will be maintained for availability in the event of malpractice litigation; what provisions exist for access to these records; permission to make duplicates of the patient records; and any provisions for or against solicitation of patients by the associate for future treatment.

The associate should consider securing the right to photocopy the specific records of patients personally treated in order to have the basis for effective malpractice suit defense. Likewise, if it is agreed that the independent contractor associate retains the records, the practice owner should consider having the right to retain a copy of the patient records, or at least have access to the records at any time in the future for malpractice suit defense.

It is vital that the independent contractor relationship be properly structured to lessen the possibility of an Internal Revenue Service or state revenue agency challenge to the classification of the associate doctor. The IRS looks closely at independent contractor arrangements with a view to reclassifying them as employer-employee relationships for tax purposes. If the IRS is successful in such a challenge, the practice owner can have a substan-
tial liability for unpaid withholding taxes, penalties and interest. In addition, dentist/employers must comply with state laws on employment taxes and employment insurance contributions.

To avoid or lessen the chance of a challenge to the independent contractor status of an associate, appropriate legal guidance should be sought. There is no substitute for retaining the services of a lawyer experienced in such matters if an associate-independent contractor form of arrangement is contemplated.

As mentioned previously, one of the most important considerations regarding independent contractors is the issue of control of the worker. In a properly structured relationship, the owner must be very careful not to control both the means of the associate’s work and the results of the associate’s efforts.

If the owner, for example, wants to control which patients are seen, the nature of the treatment planning, what procedures are performed, and provides all instruments and equipment, even an initial glance at this arrangement would suggest that the associate is acting similar to an employee rather than as an independent contractor.

The status of employee or independent contractor has historically been arrived at by applying “common law” rules for determining whether there is an employer-employee relationship present. One of those factors is whether the worker is subject to the control or right to control of the owner. However, other factors may, on balance, mitigate this determination.

The important point is that the arrangements must be structured and carried out properly in order to reflect the intentions of the parties and to comply with the law.

Independent Contractor arrangements

Time-sharing and solo group arrangements are other less common forms of associateship that would typically be classified as an independent contractor arrangement. The time-sharing concept simply has one dentist renting time, space and equipment in an existing office from another dentist. Each dentist maintains a separate practice and their primary relationship to each other is in the physical space.

A solo group is one in which solo practitioners, each with their own practice, share facility overhead, certain personnel and occasionally supplies or marketing expenses. Typical examples might be two general dentists or an endodontist and a periodontist in a solo group. In a time-sharing arrangement it is very important that the agreement is clearly spelled out since the potential exists for problems with shared space and equipment. Equipment purchase and maintenance and shared supplies are good examples of issues that warrant full discussion.

In a solo group arrangement, a written contract can identify specific rights, duties and obligations. For example, if management responsibility for the facility or certain shared staff is part of the arrangement, the details should be clearly discussed and noted in a written contract.

Furthermore, the timing and method for performance reviews and merit salary increases for shared employees, if any, are critical in nurturing good employer/employee relations and for enhancing the solo group arrangement between the dentists. However, shared staff issues demand caution. Dentists are specifically cautioned to check with legal counsel regarding potential legal pitfalls of inappropriately providing benefits to all employees of a doctor’s practice under federal legislation referred to as ERISA. These and many other concerns can be fully discussed, agreed to, and put into a written agreement before a dentist enters a solo-group associate arrangement.
Checklist A: Potential Indicators of Employee Status

☐ Hiring dentist or dental practice entity furnishes supplies
☐ Hiring dentist or dental practice entity furnishes instruments, equipment and/or office support
☐ Hiring dentist or dental practice entity repairs instruments and equipment
☐ Hiring dentist or dental practice entity imposes safety precautions
☐ Hiring dentist or dental practice entity formulates patient care guidelines and specifications for dental care performed
☐ Hiring dentist or dental practice entity determines and requires adherence to practice patient care management and methods
☐ Hiring dentist or dental practice entity observes patient treatment methods
☐ Hiring dentist or dental practice entity interprets patient care plans and treatment
☐ Hiring dentist or dental practice entity has the right to alter patient care plans and treatment
☐ Hiring dentist or dental practice entity prohibits hired dentist from working for others, and/or hired dentist provides services on substantially full-time basis
☐ Hiring dentist or dental practice entity assumes liability stemming from worker dentist’s performance (through insurance or otherwise)

Please note: State law defining various independent contractor relationships may need to be consulted.

The checklists shown above for indicators of independent contractor and employee status may be helpful tools in thinking about this issue. The rights, duties and responsibilities of an associate vary considerably depending on whether the associate is an employee or an independent contractor. One way to highlight the differences is to compare the status of the associate in both classifications. It should be noted that a given relationship may be viewed as an employee for certain purposes and an independent contractor for other, in part because definitions may vary under different laws, e.g., taxation, workers’ compensation, malpractice, etc. Crafting the agreement to facilitate the informed intent of the parties regarding how they wish to address issues is important.

Although the vast majority of associates are employees, it is important for prospective associates and practice owners to look at the pros and cons of having the associate be an independent contractor or an employee. In this regard a dentist should obtain advice from an accountant and lawyer, before cementing the relationship in a written agreement.
Checklist B: Potential Indicators of Independent Contractor Status

- Hiring dentist or dental practice entity lacks control over manner of performance of dentist contractor’s work
- Hiring dentist or dental practice entity lacks authority to supervise performance of dentist contractor’s work
- Worker dentist controls premises (or authority could be shared with the hiring party)
- Worker dentist is compensated without reference to time engaged in work
- Absence of insurance carried by hiring dentist or dental practice entity for worker dentist (unemployment and worker’s compensation, liability insurance)
- Worker dentist has authority to delegate work to another
- Worker dentist is compensated without reference to time engaged in work
- Worker dentist covers or shares expense of employee’s compensation
- Worker dentist is obligated to reimburse dentist or dental practice entity for losses or damages

Developing a successful associateship relationship requires careful thought and planning on the part of both the hiring dentist and the prospective associate.

Here are some additional resources to help you work through the “Independent Contractor or Employee” issue:

- For a discussion of the IRS factors, see [www.business.gov](http://www.business.gov) and type in independent contractor v employee in search engine

Finally…
Developing a successful associateship relationship requires careful thought and planning on the part of both the hiring dentist and the prospective associate. Further in-depth information on this topic is available in the newest edition of *Associateships: A Guide for Owners and Prospective Associates*, part of the Practice Management Series. The edition has been extensively updated to reflect recent changes in tax laws, specifically IRS attention to reviewing independent contractor status in small businesses. Also available is *Transitions: Navigating Sales, Associateships and Partnerships in Your Dental Practice*.

Call the ADA Salable Materials Department for ordering information, 1-800-947-4746.