

DENTAL PRACTICES

**ASSOCIATE
DENTISTS**

1099 PRESENTATION

JANUARY 2023

INTRODUCTION:

For decades dental practices have utilized the services of “Associate Dentists”. These Dentists, for the vast majority of instances, were treated as independent contractors versus W-2 employees. The statistics maintained by chrisad, inc. over its forty-one year history illustrates this presentation and arrangement.

As is the case in any such arrangement, there are positives for this structure and only a few potential drawbacks. It has been and remains fairly clear that the taxing agencies recognize that many/most dental practices in fact utilize the services of Associate Dentists who are then sent 1099's. To date, this has not been an issue with the taxing agencies on a Federal or State level.

Please note that this writing is not intended to apply legal precedent or imply any recommendation. Nothing included herein should be taken as a guarantee. All Dental Practices and Associate Dentists should seek professional advice related to any arrangements to be set in place and then make a decision based upon their own comfort level and relationship with the Dental Practice as well as how they feel most comfortable practicing in the dental field. This writing is intended to provide information and positions. Tax precedent information can be found on-line. In addition, each State has varied case positions with regards to the 1099 versus W-2 treatment.

This presentation addresses the top level items and not the varied positions which are underneath such a top level set of details.

POSITIVE VARIABLES FOR DENTAL PRACTICES AND 1099 INDEPENDENT CONTRACTOR ASSOCIATE DENTISTS:

The positives include the ability for the Associate Dentist to maintain their autonomy whether using a Schedule “C” or an entity (i.e. S-Corporation) for their revenue receipts and for the deduction of related expenses.

Associate Dentists are paid a percentage of the collected receipts for the procedures related to the patient. This factor supports the arrangement that the Associate Dentist is a 1099 Independent Contractor versus a W-2 employee. Please

see the Section below “Requirements for a 1099 Independent Dentist to be Treated as a 1099 Party”.

POSITIVE VARIABLES FOR DENTAL PRACTICES AND 1099 INDEPENDENT CONTRACTOR ASSOCIATE DENTISTS

What is the benefit of an independent contractor agreement? Well, it depends upon the compensation. A dental associate would have to do the math. If they’re offering an employment agreement, and the compensation is “\$X. In contrast, if they’re offering an independent contractor agreement, with compensation of “\$Y” the Associate Dentist has a calculation to complete while making the assumption that all factors to be an independent contractor will be met.

The reason why they’re different is if the employer doesn’t have to pay any of the benefits. Which usually could add up to thousands of dollars a year. Theoretically, the dental associates should make more under an independent contractor agreement.

The Associate Dentist will have to pay for all the expenses of being a dental associate. Now, one could form an S-Corporation and then expense those as business expenses. But it is likely to cost more for the Associate Dentist to get their health, vision, dental, life coverage, etc. than if they went through a group plan with an employer. Most dental associates, honestly, don’t have the option. Most Dental Practices are not going to give the Dental Associate their choice. Rather, the Dental Practice will present its proposal after the two parties have met and discussed all relevant factors which would lead to the most apparent beneficial relationship. It then become incumbent upon the Dental Associate to understand the terms and arrangement and make their most informed decision with any necessary professional advice being sought.

The Associate Dentists clearly has a material incentive to produce as much as possible for the Dental Practice as by doing so their revenue increase. If the Associate Dentist become “lazy” and they are not committed to treat more the Dental Practice patients the Practice losses only its ability to perform additional dental procedures and places this undertaking upon others within the Dental Practice. The Dental Associate has a reduced revenue flow. Therefore, the positive is certainly built into this contracted relationship for both parties.

The tax benefits that the Associate Dentist would incur are not a part of this short presentation in that such would be between the Associate Dentist and their tax professional. Regardless, there are certainly tax benefits and the extent of such is varied depending upon each Dental Associate and their tax arrangements. The Dental Practice would want there to be some benefit for the Associate Dentist as well which is why the Dental Practice must provide certain non-controlling benefits in this arrangement.

**BASIC REQUIREMENTS FOR A 1099 INDEPENDENT
ASSOCIATE DENTIST TO “POSSIBLY” BE TREATED AS A
1099 INDEPENDENT CONTRACTOR:**

The first and foremost necessity is an “agreement” – a “contract”. This agreement is not only to include items such as a non-compete clause and non-solicit clauses but must also explicitly spell out the independent contractor arrangement. This would include the percentage rate being paid, the term of the agreement for services, the extension or rollover of the service arrangements, the ability for the Associate Dentist to provide their specialized procedures to other Dental Practices, and so on. Each and every variable that is important to both the Dental Practice and the Associate Dentist should be included in the agreement. In addition, any penalties for terminating the agreement, violating the agreement and/or other conflicts which may arise should be addressed and the agreement should always include an arbitration clause so that any conflicts can be resolved by an independent party which ruling would be final – no appeals.

One aspect that consistently is overlooked and should be included relates to the issue of the use of the office, the tools, the staff and so on. In order to avoid this appearance of an employee, the agreement with Associate Dentist should state “not” only what the percentage of collections will be paid to the Associate Dentist but “also” the amount the Associate Dentist is required to pay to the Dental Practice for the use of its facility. In other words, if the agreed upon percentage is 30% then the agreement should state that the percentage is 40% with 10% being allocated back to the Dental Practice for the Dental Associates use of the office, tools and staff (if any). The net of 30% is what would be paid.

It is imperative to answer the questions which may be asked in any review as to whether this Associate Dentist is a true 1099 independent contractor or a W-2

employee. The Internal Revenue Service maintains a twenty-question list to apply (such is not included herein but can be found on the internet). This test is the same for any person in any position. In our opinion, Associate Dentists are not quite the same as other independent contractors. Nevertheless, it is important to counterbalance these potential questions with arrangements that would eliminate or reduce any attack from any one of the questions on this aforementioned list.

There are significant differences between State requirements (State to State) and Federal requirements. One must act in accordance with their State law requirements as well as Federal legal requirements, California has had many Cases and now has the A-B-C Test. This three-part question list can be found on the internet. It, in essence, attempts to make it extremely difficult for California Dental Practices to have 1099 independent contractor Associate Dentists. The California requirements were developed over a period of years and from a number of Court cases and Court rulings. It should be noted that California is one of the more difficult States to operate a business in – common fact. This does not mean an independent contractor relationship can never exist with an Associate Dentist in California but rather a Dental Practice must be far more careful with its arrangements with the Associate Dentist and that the Associate Dentist clearly understands the arrangements and the benefits to both parties. The Dental Practice must be fully comfortable with the position of the Associate Dentist.

One variable that California appears to be overlooking by attempting to have all workers be employees versus independent contractors is that the State feels there may be an abuse by the party engaging the independent contractor – certainly this may exist but with proper agreements and counsel this should not be any part of the position in California. The State also is concerned that they will lose money with independent contractor status arrangements which is actually untrue and shortsighted. The fact is that if a Dentist from New York who was an employee decides to join a Practice in California as an Associate Dentist this Dentist will have a far greater desire to produce more as they significantly benefit. The more they produce more revenue is created in the State and on a global basis there would be far more taxable income than if the employee were a W-2 Dentist. Is it about control? Is it about unemployment? Is it about workers compensation? It may be all or none of these but only the inability to see that growth and production means “more” taxable revenue to the State. There are many horror stories unfortunately in the State of California – an ice cream store attempting to open in San Francisco for two years finally gave up and opened in another State. How does this help the economy in California? It does not. Having used California as an example any Dental Practice should gain an understanding and obtain feedback as to how

difficult their own State is with regards to negating independent contractors. It is a guarantee that many States are quite amicable to such arrangements if they are reasonable and not harmful and in addition are beneficial to the State itself.

**RAMIFICATIONS TO THE DENTAL PRACTICE OF HAVING
THE DENTAL ASSOCIATE BEING A 1099 INDEPENDENT
CONTRACTOR VERSUS A W-2 EMPLOYEE:**

There are quite a few benefits to the Dental Practice. In summary, the Dental Practice (a) should have (per historical data) a more incentivized Associate Dentist who will produce far more for the Dental Practice than a W-2 employee most likely would, (b) the Dental Practice would have a much happier Associate Dentist who will tax benefit, have more freedom and have the ability to provide services per the agreement to other practices, (c) the Dental Practice will avoid the payment of the Social Security and Medicare taxes (which is significant), (d) payroll and employee file costs and time requirements would be reduced – some offset by an independent contractor required documentation and (e) avoid having to provide numerous benefits or other coverages for the Associate Dentist such as retirement plans, malpractice insurance, health coverage, etc.

Although there are numerous benefits all Dental Practices should look at the Possible Risks section below. There are always risks – there are risks in most undertakings – in this instance employee or not. If anyone believes that having an Associate Dentist removes all risks or a majority of them – such is not the case. Simply put the risks are different and the risks remain.

**RAMIFICATIONS TO THE 1099 ASSOCIATE DENTIST OF
BEING A 1099 INDEPENDENT CONTRACTOR VERSUS A W-2
EMPLOYEE:**

The initial aspect as to an advantage of being a 1099 Independent Contractor is based upon the ability to calculate your own mathematical position. If you are offered and/or negotiate an agreement whereby the 1099 independent contractor Associate Dentist receives an acceptable (very good) percentage of collections for patients which the Associate Dentist had treated – this top line revenue is (1) a true incentive and (2) straightforward. However, only the most all-inclusive written

agreements will be straightforward. For a 1099 Associate Dentist independent contractor arrangement to be successfully put in practice it usually comes down to “money”. What is the Associate going to be paid on a percentage basis. These rates have increased over the last number of years. Nevertheless, for both parties, this increase has resulted in positive outcomes for both the Dental Practice and the Associate Dentist.

The Associate Dentist will most likely operate their own practice (medical professional entity) through an S-Corporation. A schedule “C” would be a material mistake and a single member LLC reports on Schedule “C” which brings us back to “don’t structure yourself in this manner”. This is why an S-Corporation is usually the best option for any Associate Dentist.

The Associate Dentist will have to pay all of their own expenses. This includes all costs incurred that can be attributable to their medical entity. In addition, they would need to arrange their own malpractice insurance along with arranging for themselves much of what may be in place if they were a W-2 employee. Albeit these undertakings may appear as a negative arrangement for the Associate Dentist, this in fact may not be the case if the independent contractor arrangement abides by tax law. If so, the Associate Dentist clearly has an incentive to produce, the ability to reduce what would have been W-2 wages by their operating expenses and also to reduce the Social Security and Medicare taxes by only paying such on the W-2 they provide to themselves from their own S-Corporation. As an example, if an Associate Dentist was to make \$250,000 via a W-2 arrangement they would pay approximately \$15,500 in Social Security and Medicare taxes and also pay approximately \$62,500 in Federal taxes (exclusive of other taxable income). If the Associate Dentist received a 1099 via their own S-Corporation the revenue would be the \$250,000 (assuming the percentage matched the guaranteed wages). The possible expense would be in the 40% range for this example. This then reduces taxable income to \$150,000. The Associate Dentist would issue a W-2 to themselves in the area of \$75,000. The Social Security and Medicare tax for both the employee and employer would amount to approximately \$11,475. The Federal tax would be approximately \$25,000 – (excluding other variables). The total taxes would then be approximately \$36,475. This is compared to the W-2 taxes in the amount of \$78,000 – a significant reduction. This example excludes many personal tax variables (both positive and negative) and is only shown to illustrate the “possibility” of the W-2 – 1099 difference if a legally independent contractor relationship was in place – one that met all requirements in order to proceed in this manner.

In addition, this independent contractor arrangement also excludes the proven likelihood that the incentivized Associate Dentist will produce far more for the Dental Practice than if they were a W-2 employee.

This Associate Dentist also has the ability to earn elsewhere in that they would have the freedom to provide their services to other Practices.

Please see the “Risks” section below.

POSSIBLE RISKS OF A DENTAL PRACTICE CLASSIFYING THE ASSOCIATE DENTIST AS A 10999 INDEPENDENT CONTRACTOR:

Even with complete agreements between the parties there will always remain the possibility that the theory of “reasonable minds” - “differing minds” may develop. Although this sort of potential dispute (dispute of any material nature) is very unusual – such may occur. If this arises the resolutions can (may) overtake the desired will and then “what is the benefit of an independent contractor agreement”?

There are two types of risks (a) regulatory and (b) business operational.

From a regulatory standpoint the risks relate to the review of the relationship and either having the State or Federal Government disagreeing with the arrangement and thereby causing a change and possibly redoing the classifications for the approximate three-year previous period. This could create a quagmire in that if the payment is changed to a W-2 and yet the Associate Dentist reported the income and then took expenses to undo everything in order to seek only the difference is a material undertaking for any regulatory agency. Such agencies may initially not care but they will need to be convinced to care as it would be a violation in that double taxation would occur.

From a business operational aspect – the main issues are (a) a falling out between the parties and how does the Dental Practice protect itself from a vengeful to be ex-Associate Dentist, (b) upon termination it has been known to occur whereby the independent contractor files for unemployment (knowing they were not an employee) which opens a “can of worms” with the State employment department and the hearings rarely benefit the Dental Practice. Although these instances are rare, it remains imperative to have painful clauses that can be administered if an

Associate Dentist after departure does anything that would have the Dental Practice and/or have it be a costly dilemma. These “painful” clauses cannot and should not be revenge appearing but rather only “penalties” for the defaulting per the arrangements set in place, a fee to the Dental Practice, etc.

Having a clear and distinct understanding with the Associate Dentist and an Associate Dentist that the Dental Practice has comfort dealing with along within a very detailed agreement assists with this independent contractor arrangement and hopefully precludes any desire upon termination or disassociation by the Associate Dentist to seek “revenge”. This cannot be understated.

RESPONSIBILITIES OF AN ASSOCIATE DENTIST BEING TREATED AS AN INDEPENDENT CONTRACTOR:

Associate Dentists have a number of arrangements they must make exclusive of obtaining proper professional guidance, establishing their dental entity, obtaining their EIN, etc. The Associate Dentist must be ready, willing and able to meet the arrangements that will have been set forth in their agreement with the Dental Practice. As imperative as it is for the Dental Practice to honor with the greatest of intent the terms of the agreement and the opportunities presented to the Associate Dentist, the Associate Dentist likewise needs to be as honorable with their due diligence and their desire to benefit the Dental Practice and themselves.

If one is working as an independent contractor, they will have to set up their entity (usually an S-Corporation), be responsible for finding and obtaining health insurance, vision coverage, dental coverage, disability insurance, and life insurance and set up a retirement plan. They will have to do all of this themselves or in conjunction with their professional advisor(s) and/or bookkeeper. They would also have to pay for their DEA, license, and CE, and they most likely will not receive paid time off.

In most instances, Associates Dentists, after doing a math equation and creating a plan of action, determine that they can come out ahead as an independent contractor and make sense of the arrangement. They have no problem doing all those things. Other Associate Dentists loathe having to worry about these things on their own. They want to work as one of the employees and have the employer deal with all of these matters on their behalf. This demonstrates the necessity of the Dental Practice and Associate Dentist having a complete understanding and good will feeling about the planned structuring.

INSURANCE COMPANIES – FRIEND OR FOE?

We have heard that some Dental Practices are being informed by parties appearing to act of behalf of dental insurance companies to “not” issue 1099’s to their Associate Dentists. If this is true, and we certainly believe it is, why would such be stated?

The insurance companies would not and could not advise a Dental Practice to violate tax law – therefore it would most likely “not” be the insurance companies directly.

Could it be a surrogate for the benefit of the insurance carrier? Possibly!

Why would they do this – (a) they are aware that Associate Dentists produce more and therefore the insurance carriers have to pay out more, (b) if the Dental Practices take this advice and do not issue 1099’s they create a potential dilemma for the Dental Practice if they are ever examined and (c) if examined and these Associate Dentists are recharacterized as W-2 employees the most likely outcome would be less insurance submissions.

Dental Practices must also ensure themselves that 1099 Dentists with their own firms have the right to treat a patient in the Dental Practice where they are providing their services and that the Dental Practice (not treating the patient) has the legal right to submit the insurance claim when another non-employee Dentist performed the treatments to the patient and does not have an arrangement established with the dental insurance carrier.

CONCLUSION:

In conclusion, it is fairly clear that some options exist. Regardless of the option which may be agreed upon by the Dental Practice and the Associate Dentist prior to any finalization each party must know their benefits and any risks. In addition, both parties must have the best of faith in their arrangement.

Regulatory controls are most prominent and should be taken into consideration with regards to any agreement.

Insurance companies only play a part if there are any limitations for an Associate Dentist treating patients for the Dental Practice which is the entity with the insurance submission responsibility.

One should take any and all advice provided and supplement such advice and feedback with their own beliefs coupled with their relationship with the Dental Practice.

In essence – all options are attainable, but the attainment of any option requires significant due diligence and documentation.