



ADS Florida Insider

EXPERIENCE, INFORMATION AND CONSULTANTS YOU CAN TRUST

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New Year, New Strategies

With 2011 here, doctors face unprecedented uncertainty in the economy, their practices, and investments. While most signs are pointing towards an ongoing and imminent recovery (visit <http://economy.ADSflorida.com> for indicators) and economists nationally and worldwide are optimistic, the end of the tunnel is not quite here yet. With the political forecast for legislative gridlock as a result of the Republican gains in the just completed mid-term elections, further uncertainty for the country's economy has been created, and it's fair to say that doctors face more economic uncertainty now than at any time in recent memory. That's why it's more imperative than ever for doctors to spend the time and energy to establish a practice budget, in conjunction with a full review of their fee structure, to help assure success. Doctors should begin the process now so that they can have a comprehensive budget in place as soon as possible for the remainder of the New Year.

While only about 10% of doctors nationwide have a written practice budget, their practice profits are dramatically higher than the remaining 90% who do not. For marketing, the amount of time, energy and money devoted should be inversely proportional to the level of your optimal capacity. Looking at 2009 and 2010, many doctors have reported a decline in new patients. To remedy this, the first step to take in the budgeting process is to develop a marketing plan to reverse this detrimental trend. It is suggested that if you are operating at 80-90% of optimal capacity, 2-3% of collections should be devoted to marketing. If you are operating at 70-80% of capacity, 3-4% of practice collections should be spent. Finally, if you are operating below 70% of optimal capacity, you should be spending 4-6% of collections, if not more, on marketing in order to boost practice production.

In addition to finding ways to attract new patients, you must also review your fee schedule and consider the timing and amount of a fee increase for 2011. We recommend that doctors select a fee percentile that accurately reflects their quality of care, and then increase all fees below that percentile up to it (request a localized ADA code

report at <http://feereport.ADSflorida.com>). Once your practice's fees are at the desired percentile, you should raise every fee the same percentage across the board, every year. With inflation low, and consumer spending tepid, a minimal fee increase of approximately 2% for 2011 may be justified.

From here, overhead expense must be reviewed on a line-by-line basis. 2010 expenses should be reviewed against results for 2009 to determine areas of significant increases. Looking ahead to 2011, expenses in every category should be scrutinized for possible savings. It is also important to monitor expenses to ensure they stay within an acceptable range.

You may also consider changes in practice staffing. In practices that are down, this may involve laying off an employee, or replacing a full-time with a part-time employee. Moreover, you must decide whether to eliminate automatic pay raises and begin using an incentive bonus plan. Finally, changes in your production and procedure mix should be reviewed to determine how they may impact 2011 lab and supply expenses. Note that these costs increase every year, which is just another justification for an annual increase in your own fees.

Once the income forecast has been completed and the overhead expense percentages have been converted into dollars, your practice budget can be finalized. You can then determine the optimum way to distribute the projected practice profits between salaries, dividends (S-Corporations), retirement plan contributions, fringe benefits and professional expenses.

Your practice budget is vital for the ongoing success and health of your business. A little time now will save stress, and dollars, throughout the year.

Questions about your practice for 2011? Email us at question@ADSflorida.com. For a local overview of fees for 2011, ADS Florida is offering you a free customized report. If you are interested in receiving one, please visit <http://feereport.ADSflorida.com> and complete the form.

Are you charging Enough?

Request Your Localized Fee Report Today

Treatment fees directly impact your annual income, overhead and practice value. There's no better time to review what you charge.

This report is free to ADS Florida newsletter subscribers. Visit FeeSurvey.ADSflorida.com to request your localized report.





The \$1.6 Million Detail

In November 2010, the Court of Appeals in Michigan upheld a lower court ruling and ordered the defendant to pay a total of \$1,615,000 in damages and attorney's fees. What did he do? The defendant, the seller in a dental practice transition, opened a new practice within the agreed upon restrictive covenant area. Only about 100 patients actually transferred, which represented less than 5% of the active patient base at the time of the sale. Even so, the awarded damages amounted to 80% of the purchase price plus over \$42,000 in legal fees.

One of the primary provisions found in Purchase and Sale contracts and Employment, Independent Contractor and Partnership Agreements is a **Restrictive Covenant**, or **Covenant Not to Compete**. We are often asked whether these are enforceable in Florida.

YES, restrictive covenants ARE enforceable in Florida. In fact, a few years ago in Naples, a physician who opened up a practice on Marco Island had to pay \$90,000 in damages plus legal fees and was prohibited from practicing in Collier County for two years because he violated the restrictive covenant from when he was an employee of an area physician.

That is just one example.

We are also asked questions that relate to the distance and time that is considered enforceable. Essentially, the restriction on the geographic area is situational and jurisdictional – it depends on where you live and what you are restricting.

Currently in Florida, the standard is that the area has to be "reasonable." If required, the court will disregard the restricted area set out in the contract and define what is "reasonable." This decision is usually based on:

1. Protecting the employer, buyer or remaining partner from damage that could be caused to the practice by a violation of the restriction and;
2. Protecting the employee, seller or departing partner from undue restrictions of the practice of their chosen profession.

Generally speaking, highly populated areas will generally have covenants with shorter distances whereas sparsely populated areas will have longer distances.

An example of an enforceable restrictive area could be a five to seven mile radius from the practice location in most metropolitan or developed areas of Florida. An unreasonable restriction would be a 25 mile radius from the same practice. On the other hand, it might be reasonable to enforce a 25 mile restriction in an urban area for a dentist that draws patients from a 25 mile radius or for a practice in a more remote or rural area.

With respect to time, Florida Statute §542.335 clearly provides the following restrictive covenant provisions:

1. For Employees or Independent Contractors:
A covenant of 6 months or less is presumed to be reasonable
A covenant greater than 2 years is presumed to be unreasonable

For the time period between 6 months and 2 years, the employer must show that the time restriction is necessary to protect a legitimate business interest of the practice.

2. For Sellers:
A covenant of 3 years or less is presumed to be reasonable
A covenant of greater than 7 years is presumed to be unreasonable

For the time period between 3 years and 7 years, the buyer must show that the time restriction is necessary to protect a legitimate business interest of the practice.

It is also made clear in the Statute that an injunction can be obtained from the court to prohibit the continued violation of a restrictive covenant and the court shall not consider any individual economic or other hardship that might be caused to the person. The prevailing party can also be awarded attorney fees.

The bottom line: Restrictive Covenants are enforceable in Florida and can be very expensive if violated. That said, Restrictive Covenants that are unreasonable will most likely not be enforced. Having an experienced professional who works with these types of agreements on a regular basis can prove to be invaluable (possibly worth even \$1.6 million) whether you are buying or selling your practice.