



# ADS Florida Insider

EXPERIENCE, INFORMATION AND CONSULTANTS YOU CAN TRUST

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## Confidentially Speaking

Hy Smith, MBA | President, ADS Florida



A commonality of business transactions is the execution of a "Confidentiality Agreement" or "Non-Disclosure Agreement" (NDA). The purpose of the agreement is to ensure that confidential information about the business for sale is kept only to the purchaser and the purchaser's advisors for the purpose of evaluating the purchase itself. The agreement is between the broker participating in the transaction and the purchaser and, in the case of a dental practice sale, will cover information such as the name and address of the selling doctor and practice, financial reports, data from the practice management system, staffing details, purpose of the sale and a myriad of other pertinent pieces of information.

Recently, we have seen that some brokers have attempted to expand the authority of their confidentiality agreements. In one such instance, the broker stipulates that the client is not to contact the owner, employees, suppliers or other brokers to review and evaluate a potential practice opportunity. It is certainly reasonable that the employees and suppliers of a subject practice are not to be contacted and the broker should be the primary contact for all questions regarding the practice instead of the selling doctor. However, attempting to forbid a purchaser from contacting another broker or steering that purchaser to a particular broker is nothing more than an attempt to limit the ability of the purchaser to solicit counsel, representation or advice on a major step in his or her career. There is simply no ethical rationale for this action.

A reputable and experienced transition specialist and appraiser is most often the best evaluator of the opportunity as a business. While an accountant (preferably with dental experience) can be a strong contributory voice on a purchaser's advisory team, a local broker with appraisal and evaluation experience usually can provide vital insight and knowledge that may be missed by others. A local broker can also be invaluable for the evaluation of the purchaser's individual situation. The full-time transition specialist is the only one on the team that works with transitions day-in and day-out.

In many states, including Florida, the sale of businesses, including dental practices, is regulated by the state's

real estate law and require brokers or specialists to be licensed as agents or brokers to receive a commission for their services. In Florida, Florida Statute (FS)475.01 governs real estate brokers and, by law, a broker is any person who brings together two or more parties for the purpose of affecting a sale of a business or real property. This relationship implies that there is an expectation that the broker be compensated for his or her efforts and services.

**" Dual-representation, or the representation of both parties in a transaction, is explicitly illegal in the state of Florida."**

Brokers have a duty to treat the public with honesty, integrity and fairness.

The public has the right to rely on representations of the Broker being accurate to the best knowledge of the Broker. Further, a Broker may only represent the seller or purchaser of a property, or the transaction as a whole (whereby no representation is established). The Broker may only represent a transaction if both parties are notified, in writing, at the outset. Dual-representation, or the representation of both parties in a transaction, is explicitly illegal in the state of Florida.

Whether you use it or not, as a buyer or seller, you have the right to representation. As a seller, this generally is stated in a listing agreement but may also be initiated once two parties have found each other.

**" Any specialist who suggests that you should not retain legal or financial counsel should be questioned as to their motives and interest in presenting a fair deal."**

As a purchaser, a similar agreement for representation could be entered into between you and the broker or agent. If the execution of an agreement is required to acquire information about an opportunity and that agreement states that you may not enlist an advisor or representative, attorney, accountant, broker or other, you should consider whether the party requesting your signature is acting fairly in limiting your counsel.

Additionally, any specialist who suggests that you should not retain legal or financial counsel should be questioned as to their motives and interest in presenting a fair deal.

The purchase or sale of your practice may be the biggest step to that point in your career. Ethical professionals will operate in an up-front, open and fair manner, with the utmost respect. Take advantage of the opportunity to work with those professionals as they are the ones that are most interested in your continued growth and success.



## The Art of Leadership

We often hear from dentists that they only want to do clinical dentistry and not face the issues of day to day practice management. Unfortunately, just hiring a practice management consultant or an office manager to provide leadership for your office usually will end in disaster.

As a service and provider based business, the vision and direction towards success must originate from the owner dentist and then be communicated to and embraced by the entire team. We can all agree that delegation of duties is essential to the operation of any successful business or dental practice but the delegation of the responsibility to inspire and motivate the staff to achieve that successful practice will always remain the responsibility of the owner dentist.

In *Leadership Is an Art*, Max DePree writes, "The leader's first job is to define reality. The last is to say thank you." Before you can lead your organization through a crisis, you have to acknowledge that you are indeed in one. Next, you have to get everyone else to acknowledge it as well. Only then can you define the problems accurately and develop plans to deal with them.

Why is working with crisis so difficult? Leaders often go into denial about the urgency and severity of the challenges they are facing. Or they tend to blame external events, people, or organizations for their problems. Without accepting that the problem is theirs to fix, they cannot understand what they are dealing with.

Often the hardest part is to acknowledge your role in the origins of the crisis. Even when leaders acknowledge their responsibility, they may face significant resistance from their organizations in solving it because people have great difficulty in admitting their mistakes. This is why crises require so much skill on the leader's part.

Denying reality has destroyed more careers and organizations than incompetence ever did. Instead of asking yourself why it is so difficult for other leaders to face reality, ask instead, "Why is it so hard for me?"

The first reason is that people always prefer good news or a quick fix. Rarely are they willing to acknowledge that their organization is facing a crisis. Crises often start out in relatively benign ways, and then seemingly minor events escalate into major ones. Unless leaders face reality early, they can easily miss the signals of the deeper crisis that is waiting ahead. Until its leaders acknowledge the crisis, their organizations cannot address the difficulties.

Many people find reality is just too horrible to face or they are too ashamed, so denial becomes a convenient defense mechanism. If you feel yourself getting defensive, ask yourself, "What am I defending against? Will denying reality make the situation worse?"

### Don't Shoot The Messenger

Jamie Dimon, J. P. Morgan CEO, had this experience: "At a management meeting a woman got up and said, 'If you're a leader, you need one person who tells you the truth every time something goes on.'" To which Dimon noted, "If you have ten people around you and only one of them is telling you the truth, you have a real problem...everyone has to do it."

Why aren't there more truth tellers in organizations? The reason is that they are afraid of getting in trouble with a boss who won't accept bad news. Leaders who are approached by a bearer of bad news may wind up shooting the messenger, because reality is just too painful to face. Look at what happened to Enron's Sherron Watkins when she took her concerns about financial misstatements to chairman Ken Lay. She was not only rebuffed but ostracized within the firm. No wonder many employees hesitate to tell the truth to their bosses.

Sadly, most organizations operate more like Enron than J. P. Morgan. Instead of building an organization of truth tellers, many leaders surround themselves with sycophants who tell them only what they want to hear, rather than sharing the stark reality. Without a culture of openness and candor, leaders are highly vulnerable to missing the signals of big problems ahead.

By the time they acknowledge how deep their problems are – or outsiders like government agencies, consumer watchdog groups, or the media do it for them – it is too late. Then they find themselves forced to defend their companies against charges that are even worse than reality.

Bill George former CEO at Medtronic told his employees: "You'll never get fired for having a problem, but you will get fired for covering one up. Integrity is not the absence of lying. Rather, it is telling the whole truth, so that we can gather together the best people in the company to solve the problem."

It is important to publicly express appreciation to the truth tellers so others in your organization will follow suit. Only with a culture of candor and openness can organizations cope with crises and act in unison to get on top of them.

The definition of a successful dental practice is individual. No two dentists will ever agree on what defines success. Some are motivated by helping people, others money, some by a level of professional achievement. Whatever your ultimate definition of success, you are the leader of your business and responsible for your destiny.

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