

Good afternoon & Happy Belated Thanksgiving.

And thank you for having me here. My name is Bonnie Mohr. I am a New York City divorce attorney. I have also practiced in Pennsylvania and New Jersey. I have been practicing law since 2004. If you are anything like me, you've worked real hard to build your business and you want to protect that business. After all, you've got a lot invested in your practice. I'm here to help you protect your practice and answer your questions about the divorce process as it relates to your practice.

Please remember that lawyers are licensed by state. I am not permitted to give you legal advice in any state that I am not licensed in. The information I am giving you is for informational purposes only. If you are contemplating divorce, please speak with an attorney licensed in your state.

Our first topic is strategies for partnering with your attorney for a productive relationship and the best possible results, our second topic is key divorce issues and the various means to address those issues.

And in our third and last topic, I'll be addressing how to protect your dental practice. Please hold your questions to the end. I saved time at the end for questions. All of this information is also available on my website at mohresq.com.

Here's the good news. According to a study of the 2000 US Census, as a profession, you have a low divorce rate. Unfortunately, your dental hygienists don't fare so well. But please don't leave yet.

Here's the bad news. The courts are pretty much limited to treating divorce as a financial matter – a business wind down – and not the social, economic or emotional undoing of a marriage or way of life.

By illustration, Wikipedia recognizes marriage as a socially or ritually recognized union or legal contract between spouses that establishes rights and obligations between them, between them and their children, and between them and their in-laws. The definition of marriage varies according to different cultures, but it is principally an institution in which interpersonal relationships, usually intimate and sexual, are acknowledged.

By contrast, Wikipedia defines divorce as the termination of a marital union, the canceling of the legal duties and responsibilities of marriage and the dissolving of the bonds of matrimony between a married couple.

Notice that in discussing divorce, nothing is mentioned about the interpersonal relationships or the rights and obligations associated with those relationships.

As I'm sure you are aware, divorce can be exceptionally expensive and emotionally exhausting. To help you manage the cost of a divorce and its impact on your practice, here are some strategies to partner with your attorney for the best possible results.

TOPIC 1 – STRATEGIES

1. Find an attorney you like and you comfortable working with. You will need to work with your attorney closely and there is no need to work with an attorney you don't like. If you and your attorney do not work well together, your divorce action will cost more money just because of the friction in the relationship.
2. Preparation. Meetings work best when you and your attorney are prepared. Divorce is very stressful. It changes your life in a very big way. If you come prepared with the important documents, your attorney can give you better answers.

Before I meet with someone, I like to take 15-20 minutes talking on the phone with them and will ask them to bring certain documents to the meeting. For example, New York has a temporary maintenance statute. Bring last years tax returns and W-2 to the meeting and I can quickly run the numbers to estimate the temporary spousal support liability.

By looking for documents in advance, this will also give you insight as to how difficult it will be to obtain certain document and your attorney can prepare their strategy for your case accordingly.

If you can bring the requested documents to a meeting with your attorney, please have those documents organized. You want to make the most of your meeting. You don't want to be shuffling papers while you are listening to your attorney and you certainly don't want your attorney shuffling papers while they should be listening to you.

COMPLIMENTARY CHECK LIST FOR DOCUMENTS

3. Tell your story. Please tell us your story. This gives us a comprehensive understanding of the facts, allows you to get it off the chest and we can look at your case from the larger picture. In telling your story, the trick is to hit the key facts and not get bogged down in the details. Your attorney will help you tell the story by asking questions where more information is needed.
4. Listen & Ask Questions.

At this point, we are already analyzing your case, formulating a strategy and offering suggestions and advice.

If your case is going to be litigated, at this stage your attorney is already deciding the best way to get your action started, the best way to get your case into court for you or whether to initiate a conversation with opposing counsel.

If your attorney does not give you the broad roadmap of a divorce action, ask for that information. It never ceases to amaze me that attorneys will fail to tell their client what to expect during the process or how critical it is to file a pendente lite motion early in the divorce action depending on the client's needs and resources. That pendente lite motion – or the lack of the pendente lite motion - often sets the tone for the ensuing divorce action.

You should have some understanding about the court's involvement in your divorce action, what you can expect to happen when the court is involved, what documents you will need to provide, what happens if your case settles and what to expect if it is going to trial. This will help you be prepared for what is to come.

5. Keep A List of Questions at the Ready. Attorneys bill by the hour. If you line up your questions and concerns, you get a more comprehensive answer and you don't get dinged for each question.

Even more importantly, don't forget to ask your questions. We want you well-educated about your case and your questions all too often reveal issues in your case that were not brought up in the initial conference.

More often than I like to admit, I learn more about a client's case - and the hierarchy of issue - from the questions they ask than from the story they tell.

6. Have an open, honest line of communication with your attorney. Consider us as your court liaison. We will listen to you, analyze your facts and circumstances, develop a case strategy and present your case to the court. To do this properly and effectively, we need to know what your personal strengths and weaknesses are; and what the strengths and weaknesses of your case are. You do not want us learning about your weaknesses from opposing counsel while we are presenting or arguing your case to the judge. Worst case scenario, your spouse does some permanent damage to your side of the case. Best case scenario, you and your attorney appear unprepared as your attorney flies into damage control mode. If your attorney is in damage control mode, they cannot advance your case in the best way possible.
7. Tell your lawyer what you want. As often as we try, we don't read minds. But we will try to accommodate you. In telling your lawyer what you want, it could be any number of things. Examples could be that you prefer phone calls to emails, that you want to try a four-way settlement conference or that you would prefer to

sell the house immediately and split the proceeds. It can pretty much be anything. By knowing what you want, we can focus your case accordingly. However, as much as we would like to, we cannot guarantee results.

8. Document Production. There is a daunting, endless task. Your attorney will constantly be asking you for documents. If I were to adhere strictly to the rules in New York, I would be asking you for 3 years of taxes returns, bank statements, and financial statements before we even make it to the first court date. As general practice stands, we exchange these documents within 45 days of that first court date. As tedious as this is, you and your attorney make a better impression with the court when you provide the necessary documents. This also allows your attorney to demand documents from your spouse's attorney if their documents are not forthcoming. It's a little hard to demand documents when you haven't provided your own documents – particularly if you want to raise this issue before the judge.

9. Be on time –particularly for court. As dentists running a practice, I know you know how late appointments frustrate your tight schedule. While I always try to maintain a flexible schedule in my office, I can't always accommodate lateness.

More importantly, be on time for court. The court runs on a schedule dictated by a budget. If you can't get out before the lunch break, you are stuck until the afternoon calendar call.

More importantly, when we are in court, this is the best time to make progress on your case towards settlement. I have the attention of you husband's attorney and there is no delay in response time as all parties are currently in the courthouse. I call this the courtroom shuffle as attorneys are constantly shuffling between their opposing counsel and client in an attempt to settle the case.

10. Focus on the Financial. And as difficult as this is to remember, your divorce is a financial dissolution of your marriage. When it comes to the division of assets, it doesn't matter if your spouse cheated on you. It does matter if he used marital assets to cheat on you. As much as you may want to stick it to your spouse, remember it is a very expensive proposition and your better goal is to finish the divorce process so you can move on with your life.

Essentially, Your attorney is a resource. Like any other resource, you want to be smart how you use that resource.

Now I am going to give you few basic strategies not for working with your attorney, but in preparation of your divorce.

1. Copy all financial documents – tax returns, bank statements, brokerage statements, etc. You be surprised how these documents tend to disappear all of a

- sudden. I also need these photocopied because you do not want your spouse to know that you made the preparations to obtain these documents.
2. Change your passwords and the security questions so your spouse cannot log into your accounts. When you change your security question answer, please make sure you do not use questions to which your spouse will know the answer. In 2005, Paris Hilton made news when her T-mobile phone and email accounts were hacked. The hackers were able to unlock the password by answering the secret question. Paris' secret question was "What is the name of your favorite pet" and due to all her media attention, everyone knew about her Chihuahua Tinkerbell. Similarly, it's a very good chance your husband knows your mother's maiden name.
 3. If your spouse reads your emails or you share an account, open a new account to communicate with your attorney. If your spouse set up your email account, or it's a business account to which your husband had administration rights or your husband is the IT guru of the family, open a new email account.
 4. If you have a prenuptial agreement, find it and dust it off. Your attorney will need to read this document and make sure it is valid.
 5. If you haven't already discussed divorce with your spouse, but you are planning too, I recommend that you meet with a divorce attorney first. That way you can take these precautions and your attorney can even help you figure out how broach the topic with your husband.
 6. Read any document prepared by your attorney carefully. While your attorney may know the law, you know the facts of your case better than your attorney ever will. When I prepare anything I want you to sign, I will always ask you to read it carefully for factual accuracy. I also want you to be comfortable with the document you are signing and make sure that it reflects your goals in this divorce action.

Now that you have a smooth working relationship with your attorney, I'm going to identify the key issues – and briefly describe those issues - that you and your attorney will need to resolve during your divorce action. It is important for you to know the key issues so that you can better understand the resolution to process.

TOPIC 2 – ISSUES AND RESOLUTIONS

The key issues in a divorce action are

Spousal support

Child support

Division of the marital assets

Division of the marital debts

Determining separate property and separate debts

Custody and parenting time. Parenting time is also known as visitation

Legal fees & expert fees

1. Spousal Support. Spousal support comes in several varieties – temporary support while the divorce action is pending, durational support to get a spouse back on their feet and permanent support that lasts indefinitely. Spousal support is very fact specific and determined on a case-by-case basis. In addition to looking at the duration of support, you will also need to look at the amount of support to paid and how frequently.
2. Child support. All states have a formula for this. Child support generally includes a base amount of child support and additional support for add-ons. New York's add-ons are child care expenses, educational expenses and unreimbursed medical expenses. Add-ons are paid in addition to the basic support obligation. Depending on the state, child support continues until the child is 18 or 21 years old or otherwise emancipated. The only time I've every seen a child emancipated before 21 years old is when that child joined the military. It is highly unusual for children to emancipate.
3. Division of the marital assets. This is the issue that most heavily concerns your dental practice, although your income stream will also be addressed in the spousal support and child support issues. Marital assets are those assets acquired during the marriage and to a certain extent, the increase in value in assets acquired before the marriage. This will be discussed in more detail as this is the key issue that most affects your dental practice.
4. Division of the marital debts. Similarly, marital debts are those debts acquired during the marriage regardless of whose name is on the debt. Please keep an eye on your husband's spending habits as you could be obligated to help pay off his debts.
5. Separate Property and Separate Debts. We will need to determine which assets are separate property and purportedly off the table for division purposes. We also need to determine which debts are separate debts and remain the liability of the party incurring that debt. As dentists, you will probably have student loans thrown into this mix.
6. Custody and parenting time (also known as visitation). There are 2 kinds of custody. Physical custody or where do the children live and legal custody or the decision-making authority. If children are involved, the court may stall on the financial issues until the parenting-time issues are resolved.
7. Legal and expert fees. Depending on the law of your state, the more-monied spouse may be ordered to pay the legal fees for the less-monied spouse. This can be quite expensive & often has a detrimental impact on getting the divorce action settled if one party is required to pay all of the legal fees and the less-monied spouse has no skin in the game.

Expert fees are the appraisers, tax experts, and other evaluators. Your dental practice will need to be evaluated by an expert. Other things that may need to be evaluated are pensions, investments, collections and real estate - pretty much anything of value where the value cannot be easily determined.

The cost of appraising your practice with cost thousands of dollars.

8. Because we are working with a dental practice, your income stream is a major issue. If you own your practice, you have a certain element of control over your income. Income impacts the true value of your business for evaluation purposes and it also affects the potential child support and spousal support calculations.

If you have a prenuptial or postnuptial agreement, many of the financial issues can be addressed ahead of time. The difference between the prenuptial agreement and the postnuptial agreement is the timing. The prenuptial agreement is entered into before the marriage. The postnuptial agreement is entered into after the marriage. Good luck getting that signature after the marriage unless both parties have something at stake. These documents essentially allow you to rewrite the law as it applies to your case and predetermines how you and your husband will resolve financial issues. I highly recommend these agreements if you have premarital property that you want to protect. These agreements essentially document your premarital property and its estimated value at the time of your marriage. I currently have a case going on now with a 30-year marriage and a claim for separate property credit. My client has no records of his finances from 30 years ago and I haven't found a single institution which can provide financial statements from 30 years ago.

Assuming these agreements do not resolve all of these issues, here are your options.

- straight up litigation
- litigation with the ultimate goal of settling the divorce action
- mediation or
- collaborative law.

Almost all of my cases are resolved by litigation with the ultimate goal of settling the action. I do want the court involvement, I do not want the expensive trial.

Litigation. In straight up litigation, the parties appear at a court for a preliminary conference which establishes a discovery schedule, the parties then engage in discovery or the endless exchange of information, the court will bring the parties back for compliance conferences to see if there is a settlement and both parties are complying with the discovery exchanges. If no settlement agreement is reached and no progress is being made towards settlement, there will be a trial. It is very possible that the judge will not hear your trial, but that it gets referred out to a lower-level "judge" such as a judicial hearing officer, magistrate or referee. In NY, the common practice is for the judge to

have a trial on the custody issues and refer the financial matters out to lower –level “judge.”

Trials are very expensive emotionally, financially and time-wise. While I always have in the back of my mind that your case may go to trial, I still want your case to settle unless you have nothing better to do with your time and money and there are no children involved.

In litigation with the goal of settling, the parties litigate their action in court, but at the same time, try to settle the action. This give you the benefit of court intervention, judicial oversight and deadlines. If your opposing counsel is not playing by the rules, you can seek the assistance of a judge. If the parties are not the far apart on a particular issue, or even if there is a complete deadlock, the judge will often impart some sage advice that helps resolve the issue or applies some needed pressure. Deadlines, believe or not, are sometimes the most critical reason you need the court. I have several actions with no activity because we have no deadlines and as much as I want to move the actions along, for one reason or another, its better to let the action drag its proverbial feet. I want you to be able to move on with your life. I do not want you to remain in this limbo.

Mediation. In mediation, the mediator is the “judicial figure” that helps the party resolve the issues. In shopping for a mediator, be extremely careful. I can’t tell you about all of the states, but in many of the states you do not need any special training or qualifications to hold yourself out as a mediator. While networking, I’ve met several mediators that have no experience in matrimonial litigation, but hold themselves out as divorce mediators.

I am not a fan of mediation. The mediator is not permitted to advice either party and can only give a general education as to the law. If the matter is mediated and the parties seek review of the settlement agreement, you now have added two new parties to the mix and either of these parties can scuttle the deal. But my biggest issue with mediation is that it works best for equal power players in the marriage and I haven’t seen any divorce action yet with equal power players. Assuming the mediator does help you settle your divorce action, this does have the advantage of limited court involvement, lower time investment and a much lower cost.

Collaborative Law. Collaborative law, on the other hand, is mediation with a team – two lawyers, a financial professional, a divorce coach and a child specialist. You have the benefit of focusing on settling the action without the dual component of preparing for litigation. You have the benefit of a “judicial figures” to impart “sage advice.” You don’t have the deadlines or the expense of litigation. Similar to mediation, this only works with the cooperation of both husband and wife and full voluntary financial disclosure.

In both mediation and collaboration, the end goal is a settlement agreement. With the settlement agreement, the divorce papers are then prepared and everything is filed with the court.

TOPIC 3 - PROTECTING YOUR DENTAL PRACTICE

Your dental practice, as an asset of the marriage, must be divided unless your spouse is waiving his interest in your practice. Each state is either an equitable distribution state or

a community property state. Most states are equitable distribution states. In equitable distribution, the asset is supposed to be divided equitably or fairly depending on each spouse's contribution to the acquisition and increase in value in the assets. The longer the marriage, the more equitable distribution tends to equal distribution. In looking at contributions, the court is not confined to economic contributions, but can look at any contribution. Think stay-at-home dad.¹ In community property states, the asset is automatically divided equally.

Even if the practice is in your name only, it is still an asset that must be addressed during the marriage. It is either a premarital asset in which we look at the increase in value – and your husband's contributions to that increase in value - or a marital asset which must be divided as asset of the marriage.

There is no real secret to protecting your business. But there are things you can do to minimize the impact of divorce on your dental practice.

1. The most important thing you can do is offer transparency and honesty.

Transparency. Allow the appraiser to evaluate the business and examine your practice. In the divorce context, people assume the worst. If you are not transparent, the appraiser – and hence the court – will think you are trying to hide something and hold that against you.

Honesty. Credibility is your best asset with the court. The judge is constantly listening to two sides of every story. It is important that the judge believes your side of story.

¹ "Although in a marriage of long duration, where both parties have made significant contributions to the marriage, a division of marital assets should be made as equal as possible, there is no requirement that the distribution of each item of marital property be made on an equal basis" (*Chalif v. Chalif*, [298 AD2d 348](#), 349 [2002] [citations omitted]; accord *Arvantides v. Arvantides*, [64 NY2d 1033](#), 1034 [1985]; *Adjmi v. Adjmi*, [8 AD3d 411](#), 412 [2004]; *Graves v. Graves*, [307 AD2d 1022](#), 1024 [2003]; *Meza v. Meza*, [294 AD2d 414](#) [2002]; *Saasto v. Saasto*, [211 AD2d 708](#), 709 [1995]; *Ehrlich v. Ehrlich*, [184 AD2d 400](#) [1992]). Further, it is proper for the court to consider the parties' relative economic contributions to the marriage in arriving at a formula for the distribution of the marital property (see e.g. *Kaplinsky v. Kaplinsky*, [198 AD2d 212](#), 213 [1993], citing DRL 236 (B) (5) (d) (1); *Palmer v. Palmer*, [156 AD2d 651](#) [1989]; *Michalek v. Michalek*, [114 AD2d 655](#) [1985]; *Kobylack v. Kobylack*, [111 AD2d 221](#), 222 [1985]). In this regard, the fact that one party may have made greater economic contributions to the marriage than the other does not necessarily mean that the former is entitled to a greater percentage of the marital property (*Bartek v. Draper*, [309 AD2d 825](#), 826 [2003]). Rather, "[e]quitable distribution presents matters of fact to be resolved by the trial court, and its distribution of the parties' marital property should not be disturbed unless it can be shown that the court improvidently exercised its discretion in so doing" (*Johnson v. Johnson*, [261 AD2d 439](#), 440 [1999], quoting *Oster v. Goldberg*, [226 AD2d 515](#) [1996], appeal denied [88 NY2d 811](#) [1996]).

2. Next, Look at the characterization of your dental practice as separate or marital property. The more you can claim your dental practice is separate property, the less your practice is subject to distribution as an asset of the marriage.

Separate property is easy to argue, but difficult to prove. It is your burden to prove separate property and the best way to do this is with financial records or a paper trail. And as I mentioned earlier with my divorce matter after 30 year marriage, the paper trail is not always available.

Separate property is not necessarily limited to property acquired before the marriage. Depending on your jurisdiction, can also include inheritances, gifts from third parties and personal injury awards.

The most contentious third party gift is the “forgivable loan” from parents. If your parents give you \$50,000 toward the down payment of the marital home, Is it a loan? Is it a gift? Is it for the couple? or a gift for just their daughter?

3. Also, look to see if there is a possible separate property credit? If you started your practice after the marriage, can you trace the initial investment in the practice to separate property such as premarital savings or a gift from the parents.
4. When it comes time to assigning a value to your dental practice, use recognized appraisers that understand your dental practice.²
 - a. There are primarily 2 ways to approach appraisers. The neutral appraiser. And the battle of the appraisers.
 - i. The neutral appraiser is generally pre-approved by the court and evaluates the dental practice for both parties. You would also be using a neutral appraiser in collaborative law.
 - ii. If using a neutral appraiser, your attorney will either be supporting the appraisal during the trial or undermining the appraiser for a different estimated value for your practice.
 - iii. In the battle of the experts, each party retains an appraiser for independent evaluation of the dental practice.
 - iv. The expert will expect to get paid for providing a report. The expert will expect to get paid again if they have to prepare for trial and then testify. Another reason why litigation is so expensive.

² "There is no uniform method of fixing the value of an ongoing business for equitable distribution purposes and valuation is properly within the fact-finding power of the trial court" (*Miness v. Miness*, [229 AD2d 520](#), 521 [1996], citing *Amodio v. Amodio*, [70 NY2d 5](#) [1987]; *Rice v. Rice*, [222 AD2d 493](#) [1995]). "The determination of a fact-finder as to the value of a business, if it is within the range of the testimony presented, will not be disturbed on appeal where valuation of the business rested primarily on the credibility of expert witnesses and their valuation techniques" (*Ferraro v. Ferraro*, [257 AD2d 596](#), 598 [1999], quoting *Dempster v. Dempster*, [236 AD2d 582](#) [1997], *appeal denied* [90 NY2d 806](#) [1997], quoting *Matter of Penepent Corp.*, [198 AD2d 782](#), 783 [1993]; accord *L'Esperance v. Esperance*, [243 AD2d 446](#) at 447, *supra*).

- b. Also, please keep in mind that there is no uniform method of fixing the value of the business and the valuation is properly within the fact-finding power of the court. This is why transparency and credibility is important. You need to be able to sell your appraiser to the judge.
5. Make sure you are using an appropriate appraisal. Appraising your dental practice for a divorce is different from appraising your dental practice for estate planning, buy/sell agreements or a fair market transfer to a third party.
6. Factors to consider in hiring an appraiser
 - a. What are their professional qualifications?
 - b. What is their experience in evaluating dental practices and other professional practices
 - c. Do they possess integrity and credibility needed for the court to believe their report
 - d. Are they reasonably available or to busy?
 - e. Are they willing and able to properly prepare?
 - f. Will they answer your questions?
 - g. Are they likable and personable? You don't want your expert to rub the judge the wrong way.
 - h. Are they able to think on their feet & roll with the punches; particularly if an unexpected issue is encountered during the evaluation process?
 - i. Is there anything in the background that would allow your husband's attorney to attack their credibility? Remember, your appraiser needs the judge to believe their estimated value of your practice.
7. Another thing to consider in protecting your practice is applications. During a divorce action, your husband's attorney will seek discovery of earlier applications such as mortgage applications, loan application, credit card applications, and even disability insurance applications. I recently filled out a disability insurance application. The insurance broker wanted to know the balance in every personal and business account and went through every asset I had. If you inflated your numbers on these types of applications, the application can come back to haunt you. Again, this will reflect on your honesty and credibility with the court.
8. The best thing you can do to protect your practice is to settle your action. Litigation is not only expensive; it is very time consuming. We are talking numerous court appearances that can take an entire morning or even the entire day, endlessly providing documents to your attorney, answering limitless questions in interrogatories, depositions (this is where your husband's attorney asks you questions under oath and everything is recorded by a transcriptionist) and my favorite – the emails that never stop. You would be amazed at the amount of email that fly among the attorneys on your action. The more time you spend on your divorce action, the less time you are spending on your dental practice.

When settling your action, the primary means to address the equitable distribution of the asset is a buy-out or an offset.

- a. Buyout. You can agree to buy your spouse out of his interest in your dental practice. This typically happens after the practice has been appraised and the parties can agree on a value.
 - b. Offset. In an offset, you don't buy your spouse out of "his interest" in the practice, but you agree to waive a right or assume a responsibility. This is essentially a trade-off. This could be an increase or decrease in spousal support, agreeing to less child support, picking up a debt, waiving your interest in his "retirement" account. The offset could also include you keeping your business and your spouse keeping his business.
 - c. The buyout or off-set does not need to be fair and it doesn't need to be fair market-value. It can be whatever you and your spouse agree upon as long as it doesn't violate public policy.
 - d. Settlements also offer predictability. If you go to trial, the judge will determine the value of the asset and how much of an interest your spouse has in that asset.
9. Prenuptial and Postnuptial Agreements. Prenuptial and postnuptial agreements will allow you to predetermine how your dental practice will be treated during a divorce action. Just because you have an agreement on your dental practice, you may still need to involve the court and/or appraisers. Even if your dental practice is not subject to division, you may still have to contend with defining your income from the dental practice for child support and spousal support purposes.
10. And as difficult as this is, continue to run your practice notwithstanding the divorce. As difficult or common sense as this may seem, you cannot let the divorce process interfere anymore than necessary with your dental practice.
11. Ask questions. Review the appraisal's report for any known errors. Accept that fact that this is an expensive process.

Going back to evaluations, if your dental practice has to be evaluated, an appraiser will investigate the books. A good appraiser won't stop there.

A good appraiser will also look at

1. Your underlying records & how well those records support your tax returns.
2. Your personal and business tax returns.
3. Your income, including contractual agreements with insurance providers and whether your income needs to be adjusted
4. Your profits & whether your profits might need to be adjusted.
5. Your assets, including your dental equipment. In looking at your assets, the appraisal will look at the net book value as indicated on your tax returns and fair market value or the resale value of your equipment.

6. Do you use advance or outdated technology?
7. Your practice area – are you a specialist or a general dentistry practice? Do you do a lot of cosmetic dentistry, preventative care, maintenance, repair or emergency care?
8. Your relationships with current patients; particularly for long-term care patients and your average number of new patients.
9. Your practice's physical location & target market. Are you in a city or rural neighborhood. Is it affluent or working class?
10. Your real estate – do you own the actual real estate where your office is located?
11. Standing non-competition agreements with past partners or employees. Have you locked out the competition?
12. Your staff?
13. Accounts receivable & uncollected income
14. Depreciation on assets
15. Discretionary cash flow
16. Furniture
17. Marketing efforts
18. Possibly Goodwill. Whether or not personal or professional good will applies depends on your state. There is personal goodwill – the goodwill associated with you – and professional goodwill – the goodwill associated with your practice. Some states consider both personal and professional good will. And other states consider only professional good will.

If your state considers professional or personal goodwill a non-marital asset, your practice can be discounted by 29 to 53%; with an average discount of 44%.

If you are in NY, this is not an issue. New York does not consider personal or professional good will in its valuations.

There are 3 primary appraisal methods. The 3 appraisal methods are the income approach, the asset approach and the market approach.

Appraisal Methods

1. Income Approach – in the income approach, you take the practice's income and multiply it against a capitalization or discount rate to arrive at the net income.
2. Asset Approach – you value your practice using your tangible and intangible assets. This would be the personal and professional good will we just described above.
3. Market Approach – you value your practice against the sales of other dental practices by using databases or brokers to find the sales price of other similarly situated dental practices. The most important comparative qualities for practices are the demand for the location, practice cash flow, quality and quantity of the equipment, office attractiveness, and the fee for service versus managed care.

In New York, the preferred methods for the appraisal of professional practices – including your dental practice – is the Price to Revenue method and the Excess Earnings Method.

NY Based Appraisal Methods

1. Price to Revenue (variant of the market approach) – In the Price to Revenue Method, the practice appraisal is based upon annual revenue, using charts of sales of comparable businesses, which are available to appraisers to determine the value of the business.
2. Excess Earnings Method (combination of the assets/income approach) – The excess earning method is based on Revenue Ruling 68-609, and involves the determination of two components of value: net tangible assets and goodwill. This is difference from the professional and personal good will I had described above. Consistent with I.R.S. Revenue Ruling 68-609, goodwill is determined by calculating normalized excess earnings after allowing for a reasonable return on net tangible assets, and then applying an appropriate multiple (discount or capitalization rate) to these excess earnings.
 - a. Tax impacting
 - b. Controlled vs. non-controlled interest in the dental practice

Your appraiser may need to make adjustments to your business' income. The adjustments include

- a. Discretionary income. An example of discretionary income is that income used to pay for the company car that is used to go grocery shopping.
- b. Excess earnings. Excess earning are those earnings above and beyond the normal earnings of a dentist if they did not own their own practice.
- c. Non-business related expenses. These are the expenses that your dental practice pays, but are not legitimate business expenses. This could a something like a timeshare payment for vacations.
- d. Extraordinary and unusual business expenses. This is any purchase that is not an ordinary purchase or your dental practice. Maybe it's a one time fine or a business incorporation expense.
- e. Extraordinary and unusual income. This is any income that is not in the normal course of employment.
- f. Third party expenses. A typical third party expense is something like including family members on payroll even though they don't work for the company.

Each approach has various methodologies that are applied, but the appraiser's experience, judgment, and study of the individual practice determines which approaches and methodologies to apply or discard in establishing the final value. Whenever evaluating a dental practice, the appraiser will touch upon each appraisal method and the smell test. The smell test simply asks the expert to take a look at the estimated value and ask if it believable.

Depending on your state, your practice and the appraiser, there are variations of the income approach, asset approach and market approach.

Because of the complexity in each appraisal method, I stress again that it is important to use an appraiser that knows what they are doing and to provide that appraiser with the information they need for an accurate evaluation.