
BVR's GUIDE TO VALUING DENTAL PRACTICES

FIRST EDITION

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EDITOR



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Table of Contents

INTRODUCTION	vii
<i>By Stuart Weiss, CPA/ABV, CVA, ABAR, PFS</i>	
Chapter 1. The Art of Dental Practice Appraisal	1
<i>By Stanley L. Pollock, BS, DMD, MS, PHD, JD, MCBA, MCMEA, ABAR</i>	
Normalization	5
Normalizing the Balance Sheet	5
Normalizing Operating Expenses	6
Fixed Asset Appraisal	7
Normalizing Income & Expenses	10
Trend Analysis	13
Ratios	14
Income Approach: Capitalization of Income Method	16
Income Approach: Discounted Future Cash Flow Method	17
Asset Approach: Adjusted Net Asset Value Method	18
Excess Earnings Method.	19
Market Approach	19
Direct Market Data Method (DMDM).	20
Outline of the DMDM Method	20
Price To Earnings (P/E)	21
Price/Revenues (P/R, P/REV)	22
Revenue Multiplier Method.	22
Summary of Values	24
Buy-Sell Method	24
Weighting of Values	26
Justification of Valuation	27
Discounts & Premiums.	28
Summary.	30
Chapter 2. The Value of a Dental Practice	31
<i>By L. Norton Hindley III, ASA</i>	
Valuation Disparity	31
Fair Market Value	32
Market.	32
Compulsion	33
Reasonable Knowledge	34
“Present Value” and the Determination of Fair Market Value	36
Essential Analysis and Adjustments	39
Capitalized Excess Earnings.	41

Price-To-Revenue Methodology . . . . .	.44
Price-To-Earnings Methodology . . . . .	.45
Qualitative Factors . . . . .	.48
Formulating the Fair Market Value . . . . .	.48
Operating Expenses . . . . .	.49
Determining Margins . . . . .	.52
Compensation-Return To Labor . . . . .	.52
Marketplace Compensation . . . . .	.53
Profit Margin Impact . . . . .	.54
Excess-Return to Capital. . . . .	.54
Wage Plus Investment Value. . . . .	.56
Managing Expenses . . . . .	.57
Chapter 3.Dental Practice Valuations: Beyond the Numbers . . . . .	.59
<i>By Sarah K. Lynch, Managing Partner, Jim Kasper Associates, LLC</i>	
The Pediatric Dental Practice . . . . .	.61
Chapter 4.The Orthodontic Practice Appraisal . . . . .	.67
<i>By Thomas F. Ziegler, DDS, MS, JD</i>	
Valuing an Orthodontic Practice . . . . .	.67
Tax Allocation of the Sale Price . . . . .	.70
Chapter 5.Valuing Goodwill In Dental Practices . . . . .	.73
<i>By Robert James Cimasi, MHA, ASA, MCBA, AVA, CM&AA</i>	
Introduction. . . . .	.73
Identification and Classification of Intangible Assets. . . . .	.74
Goodwill and Patient-Related Intangible Assets . . . . .	.74
Accounting v. Appraisal Definition of Goodwill . . . . .	.77
Goodwill in Divorce Proceedings . . . . .	.78
Conclusion . . . . .	.79
Chapter 6.Recent Cases on Dental Valuation. . . . .	.81
<i>Rhodes v. Rhodes</i>	.81
<i>In re Marriage of Bruns.</i>	.85
<i>Banchefsky v. Banchefsky</i>	.86
<i>McReath v. McReath.</i>	.88
<i>McKee v. McKee</i>	.92
<i>Howard v. United States</i>	.95
<i>In re Marriage of Theurer</i>	.97
<i>Schneider v. Schneider</i>	101
<i>Daniela David v. Dr. Aurel David</i>	103
<i>In re the Marriage of Davis.</i>	104

Chapter 7. The Art of the Appraisal	109
<i>By Timothy A. Brown, President & CEO, ROI Corporation</i>	
The Process	110
Current Users of Appraisals	110
Seven Uses of Professional Appraisal	111
Additional Notes	112
 Appendix A: Appraisal of a Dental Practice—Sample Valuation Report	 115
 Appendix B: Valuation of a Sole Proprietor Dental Practice: Sample Report	 235
 Appendix C: Valuing Dental Practices: A BVR Teleconference	 353
<i>Presenters: Jim Anderson, Ron Seigneur, Stephen Persichetti</i>	
<i>Business Valuation Resources, May 14, 2009/10:00 a.m. PDT</i>	

Introduction

Welcome to *BVR's Guide to Valuing Dental Practices*. This reference includes overviews of the dental practice valuation process by two leading practitioners, an essay on the qualitative factors that go into valuation—complete with checklist—a chapter focusing on the special requirements of orthodontic valuations, a chapter on goodwill from a leading healthcare valuation practitioner, and a summary of recent legal cases involving dental practice valuations, as well as two full dental practice valuation reports.

Our first overview was written by Dr. Stanley Pollock, a dentist and oral surgeon based in Pittsburgh, Pennsylvania, who also holds degrees in hospital administration, law, and business, as well as credentials in business valuation. His perspective is followed by another author, L. Norton Hindley, ASA, who has been a business appraiser for 40 years with a specialty in healthcare. His approach is somewhat different from Dr. Pollock's, but that's what makes this field interesting.

The essay on the qualitative aspects of dental practice appraisal and accompanying checklist was written by Sarah K. Lynch, a managing partner at Jim Kasper Associates LLC in New England, who specializes in appraisals and sales of dental practices. The chapter on orthodontic practice valuations was written by Dr. Thomas Ziegler, who was a practicing orthodontist before attending law school and founding Ziegler Practice Transitions, one of the leading practice transition companies in the nation.

The chapter on goodwill was written by Robert J. Cimasi, president of Health Capital Consultants in St. Louis, a leader in the field of healthcare appraisals. From our own files, BVR shares a series of 10 recent valuation cases involving dental practices—most of them in a divorce context. The abstracts presented here are based on our coverage of the valuation world in *BV Update*.

We present two real dental practice valuations. In Chapter 7, Timothy Brown, a dental appraiser and broker based in Vancouver, B.C., introduces his valuation report, shown in Appendix A. This report has been set up to be used as a valuation template. The second valuation, in Appendix B, was produced by Bill Sipes, who has more than 40 years of experience in business valuation, management consulting, and accounting and tax work. We have changed the names in both reports to protect the confidentiality of the clients.

Finally, Appendix C is a BVU teleconference and accompanying slides on the valuation of dental practices.

Stuart Weiss, CPA/ABV, CVA, ABAR, PFS

The Art of Dental Practice Appraisal

By Stanley L. Pollock, BS, DMD, MS, PHD, JD, MCBA, MCMEA, ABAR

The appraisal or valuation of dental practices has become increasingly widespread during the past few decades and the number of appraisers involved in professional practice appraisal has increased accordingly. During this time, professional practice appraisal has developed from a rather crude, formula-driven art form into a mature, multi-method process. In the 1970s and '80s, dental practices were valued and sold at 100% of the latest 12 months' gross revenues. In the 1990s, when large corporations believed they could manage dental practices efficiently—at the very least, better than doctors—practices were valued and sold at inflated numbers.

But then the dental practice bubble began to leak. Dental practices, as a rule, sold at only 65%¹ of collected revenues in the 2000s. As reported in the 2006 and 2007 supplements of *Valuing Professional Practices & Licenses*,² general dental practices sold in arm's length deals at 57% of the latest annual gross revenues. Gross revenues, of course, were higher than in previous decades and certain pockets across the United States saw prices remain strong while other areas were negatively affected. The same situation holds true today.

What became apparent during those decades was that many appraisers and individuals were still seeking simple guideline formulas while other, more studious ones gathered a great deal of relevant and applicable appraisal information. Organizations began to compile important and much-needed data, most notably the Institute of Business Appraisers (IBA) Market Database, Pratt's Stats,[®] BIZCOMPS,[®] Done Deals, the Goodwill Registry, the American Dental Association, the Risk Management Association, and trade organizations. Brokers of all types began to market their services and realized the necessity for reliable data and the magnitude of the task of accumulating it. Authors published significant articles and treatises. Seasoned appraisers provided training programs and new and established organizations launched them for enthusiastic, neophyte appraisers.

On April 27, 1987, the Ad Hoc Committee on Uniform Standards of the Appraisal Standards Board (ASB) of The Appraisal Foundation developed and copyrighted the *Uniform Standards of Professional Appraisal Practice (USPAP)*.³ USPAP, adopted by the major appraisal organizations in North America, represents the generally accepted and recognized standards of appraisal practice in the United States. Today, there are four recognized, legally constituted professional appraisal associations in the United States and one in Canada: the Institute of

1. Cox, H. A., *Are You Prepared to Retire?* Dent. Econ. 1995:85(7) 36-45.

2. Pollock, Stanley L., DMD, JD, MCBA, *Valuing Professional Practices & A Guide for the Matrimonial Practitioner*, Wolters Kluwer, Austin, TX, Third Edition, 2008 Supplement.

3. Appraisal Standards Board. *Uniform Standards of Professional Appraisal Practice*, 155 15th Street, NW, Washington, DC 20005.

Chapter 1: The Art of Dental Practice Appraisal

Business Appraisers (IBA), the National Association of Certified Valuation Analysts (NACVA), the American Institute of Certified Public Accountants (AICPA), the American Society of Appraisers (ASA), and the Canadian Institute of Chartered Business Valuators (CICBV). The CFA Institute also offers a respected and applicable Chartered Financial Analysts designation (CFA), although the CFA focuses on the analysis of publicly traded companies. At this time, the IBA, NACVA and AICPA have reached accord in the long standards unification process.

Although most dental practices would be considered small businesses under any definition of revenues or earnings, they typically generate profitability rivaling that of almost any industry. In the following 2010 statistics presented by the Virginia-based National Society of Certified Healthcare Business Consultants,⁴ profitability ranged from 34% to 52% depending on specialty.

Figure 1. Profitability of Dental Practices by Specialty

Practice Type	Gross Receipts	Overhead	Cash Flow	Cash Flow
General dentistry with hygienist	\$772,677	-\$511,841	\$260,836	34%
Endodontia	752,901	-362,743	390,158	52%
Oral & maxillofacial surgery	1,230,035	-621,253	608,782	49%
Orthodontics	1,085,327	-679,248	406,079	37%
Pediatric dentistry	974,100	-595,284	378,816	39%
Periodontia	823,438	-512,906	310,532	38%
AVERAGE	\$939,746	-\$547,213	\$392,534	42%

Because of the degree of profitability, dental practices are highly desirable to own. The American Dental Association's 2008 Survey of New Dentists⁵ reports that of new dentists buying practices, 24.5% purchased an existing practice as a partner, 37.7% purchased an existing practice as the sole owner, and 37.7% started a new practice. There was little variation in the amount spent to establish or purchase a practice. Among new dentists who purchased an existing practice as a partner, as a sole owner, and who started a new practice, the average amount spent was \$472,390, \$471,930 and \$457,600, respectively.

Robert J. Cimasi, CBA, AVA, FCBI,⁶ president of Health Capital Consultants, LLC in St. Louis, Mo., clearly outlines pertinent differences between medical, dental, and other professional business valuations. In his publications and presentations, Cimasi lists certain differences which specifically impact dental practice valuations. A few are:

4. *Statistics*, National Society of Certified Healthcare Consultants & Academy of Dental CPAs, Suite 130, 12100 Sunset Hills Road, Reston, VA 20190.

5. 2008 Survey of New Dentists, American Dental Association, 210 East Chicago Avenue, Chicago, IL 60611.

6. Cimasi, Robert J., MHA, ASA, CBA, AVA, CM&AA, CMP, Health Capital Consultants, 1143 Olivette Executive Parkway, St. Louis, MO 63212.

Recent Cases on Dental Valuation

Rhodes v. Rhodes

Mississippi Gets Two Chances to Value Business Goodwill

Citation: 2011 WL 80222 (Miss. App.)

Date of decision: Jan. 11, 2011

Country: US

State or Federal: State

State/Jurisdiction: Mississippi

Court: Court of Appeals

Type of action: Marital Dissolution

Experts: James Angle (wife)

Judge: Maxwell

Mississippi is one of only two states that still decline to assign any value to the goodwill of a marital business in divorce. (Kansas is the other; see “Goodwill Hunting,” the free state-by-state summary of valuing goodwill in marital dissolution cases, available at BVResources.com.) Three cases establish the Mississippi precedent:

1. In *Singley v. Singley*, 846 So.2d 1004 (Miss. 2002), the state Supreme Court considered the value of a solo dental practice and ruled that “goodwill is simply not property; thus it cannot be deemed a divisible marital asset in a divorce.” Fair market appraisals should exclude goodwill, because it leads to inaccurate and unreliable values. Trying to distinguish and determine “enterprise goodwill” from “personal goodwill” is just as objectionable, the court said, because the two concepts “are simply too interwoven.”

Notably, in making its decision of “first impression,” the court cited several of its “sister states” that also precluded any goodwill from the valuation of marital businesses, including Kansas, Texas, and Wisconsin. Since then, both Texas and Wisconsin have adopted the majority rule recognizing the distinction between enterprise goodwill (divisible) and personal goodwill (non-divisible). Kansas relies on precedent that goes back 30 years.

2. In *Watson v. Watson*, 882 So.2d 95 (Miss. 2004), the Supreme Court confirmed and clarified *Singley*. In precluding goodwill value from the appraisal of a solo veterinary practice, it found that goodwill “is a nebulous term” that depends on the continued presence of the particular professional as a personal asset. In particular:

Chapter 6: Recent Cases on Dental Valuation

In a furniture or appliance business with several owners, it would be difficult to assess the value . . . attributable to one of the owners. Customers go to the business looking for furniture or appliances. However, in the context of a single-owner professional practice, it becomes less difficult. Patients (including pet owners) go there looking for their doctors.

By precluding any goodwill value from the appraisal, courts will avoid the “glaring inequity” that results from using the professional’s income to calculate spousal support and also to calculate the value of the “business,” the court explained.

3. In *Yelverton v. Yelverton*, 961 So.2d 19 (Miss. 2007), the court revisited the issue in valuing a car dealership. It remanded the case with the instruction to the lower court that “‘goodwill,’ whether ‘personal goodwill’ or ‘business enterprise goodwill’ shall not be included in the value” of the dealership. In a footnote, the court expressly found that *Watson* applied, even though “*Watson* involved a ‘solo professional practice’ as opposed to [the auto dealership], which involves two shareholders.”

Husband owns 100% of a flooring store. Now come two recent Mississippi cases to muddy the goodwill waters. In the first, which recalls the distinction by the *Watson* decision between a solo professional practice and a “furniture or appliance business,” the husband was the sole shareholder of his family’s carpet and drapery business. His parents had gifted him (and his brother) equal shares just after the parties’ marriage, in 2003. Just one week later, the husband bought out his brother for cash.

The parties’ marriage started to deteriorate within a year, and at their divorce, the husband argued the business was his separate property. He presented a valuation, prepared by a business valuation expert in connection with the redemption of his brother’s shares, showing the business was worth approximately \$1.6 million. The husband claimed the business had not appreciated in the five years since then.

The wife also presented a BV expert, but the husband challenged his report under the state’s analogue to Rule 702 of the Federal Rules of Evidence and *Daubert*. The expert failed to distinguish the tangible assets of the business from its intangible assets, including goodwill. The analyst had also never appeared as an expert in court, the husband asserted, and had not performed a business valuation “other than what was required for one of his certifications.” The court ultimately precluded the expert on both grounds, finding that he lacked sufficient qualifications and his methodology was unreliable because it considered the goodwill value of the business.

After losing her expert evidence, the wife attempted to show the appreciation of the business during the marriage by way of financial statements, which showed income increasing substantially in 2006. The husband countered by saying that his flooring business received a surge of orders after Hurricane Katrina, due to the many flood-damaged homes in the area, but that its income “plummeted” the following year, due to general market factors. Based on this evidence, the court found that the business value had not appreciated during the “fairly short” marriage and the wife appealed both rulings, the exclusion of her expert and the finding of no increased value.

Chapter 6: Recent Cases on Dental Valuation

The Mississippi Court of Appeals first found that the lower court erred by excluding the wife's expert based on his lack of testifying experience. "We have no qualms with [his] qualification as an expert in business valuation," it said. The test is whether the expert possesses particular knowledge that will help the trier-of-fact. "Every expert witness has a first time," one of the justices noted in a concurring opinion. To hold otherwise would establish an insurmountable "Catch-22," in which "no witness could ever qualify as an expert for the first time because that would require being retained previously as an expert."

At the same time, the court also found the expert had neither excluded goodwill, nor assigned a separate value to it. Although he "may have performed calculations under other methods that did not include goodwill," the expert failed to use these methods as the basis for his opinion, the court said, and sustained his exclusion for failing to follow state precedent. "Our Supreme Court recently made clear that, in a divorce action, goodwill should not be utilized in performing a valuation of a business," the court held, citing *Yelverton*. It repeated the rule in both *Singley* and *Watson* that "goodwill is simply not property; thus it cannot be deemed a divisible marital asset."

Accordingly, the court also confirmed the lower court's finding that the business had not appreciated in value during the marriage, based largely on the \$1.6 million redemption valuation at the beginning and the financial statements that showed overall flat income levels at the end.

A strong dissent says the Supreme Court got it wrong. The decision on the exclusion of the wife's expert was split among the justices, with six agreeing with the result, one disagreeing but calling it "harmless error," and three registering a strong dissent. In particular, the dissent disputed the majority's assertion that "there is no Mississippi case that excludes 'goodwill' to a 'service business.'" Even if there were such authority, the husband's business in this case was not a professional service firm but a retail sales business that installs its products. "We must carefully examine the Supreme Court precedent," the dissent said.

In *Singley*, the court considered the value of a small dental practice; in *Watson*, it considered a solo veterinary practice. In particular, the dissent called attention to the language the court used in *Watson* to differentiate a business that sold furniture or appliances from a firm that offered professional services. The dissent also highlighted the footnote in *Yelverton*, where the court specifically said *Watson* applied even though it involved a "solo professional practice" as opposed to the car dealership, "which involve[d] two shareholders."

The dissent concluded, "It appears that the Supreme Court mistakenly considered [the car dealership] a professional practice" when it made its ruling prohibiting the consideration of goodwill. (*Note:* In the majority opinion, the court found no mistake or inconsistencies in the precedent. "We fail to see how [the husband's] flooring business, wholly owned by him, should be treated differently than the car-dealership interest involved in *Yelverton*.) The three-judge dissent would have reversed the decision to exclude the wife's expert and remand the case for a new trial on valuation—a strong enough vote to perhaps encourage the wife to

Chapter 6: Recent Cases on Dental Valuation

appeal. It is not yet known whether the wife in *Rhodes* decided to petition the state Supreme Court. However, less than a month later, the court decided *Lewis v. Lewis* (113 Wis. 2d 172, 336 N.W.2d 171, 1983 Wisc. App. LEXIS 3546).

In *Lewis*, the husband and wife owned a residential real estate development company in equal shares. As part of the operations, they bought and sold property together, with one or the other taking title to the property. During the parties' difficult divorce, however, the husband diverted corporate assets for his own use, including setting himself up in a separate building company. He refused to respond to the wife's discovery demands concerning the value of the various assets and told the trial court the real estate company was "worthless."

The wife did not retain a business valuation expert. Instead, she submitted financial documentation that was admittedly incomplete and out of date, but was the best she could find. After the close of evidence, the trial court complained that each side had given him "way too much" in this "complicated matter financially." Nevertheless, it valued the business at roughly \$1.2 million and the husband appealed.

The Court of Appeals agreed, finding "manifest errors" in the trial court's valuation. It remanded the case with the specific instruction to value the real estate business using all relevant data, including "any goodwill equity." This time, the wife appealed to the state Supreme Court.

Precedent rules. The Supreme Court reversed the appellate instruction. Citing *Singley*, *Watson*, and *Yelverton*, it confirmed the hard and fast rule that, in Mississippi, the goodwill value of any business is not marital property. Despite the dissents in those decisions, the law of the state was "clear and comprehensive," the court said. "*Stare decisis* demands this result." It remanded the case for a valuation of the business, with the exception of considering goodwill equity.

The issue may yet be fully settled in the state, however. Two justices on the *Lewis* panel dissented, arguing that *Watson* limited "the blanket rule in *Singley* to those cases either involving a solo professional practice" or close analogues. In support, the dissent also cited the current majority rule among states, which recognizes the distinction between personal goodwill and enterprise goodwill. "This rule is in line with the principle that a professional license held by a spouse is not itself marital property, even where the practice dependent on that license may be . . . a marital asset subject to equitable distribution."

General accounting principles also support valuing of goodwill along with other intangibles, the dissent pointed out, citing FAS 142 (issued in 2001). "Furthermore, goodwill is treated alongside other intangible assets such as patents, customer lists, or licenses under the Internal Revenue Code as a depreciable asset subject to taxation or as a deductible and amortizable cost," it observed. "Goodwill, at its core, represents the excess value of a business enterprise after subtraction of the value of all other assets from its fair market value, and, despite its seeming nebulousness as a term of art, is well recognized as an intangible business asset."

Chapter 6: Recent Cases on Dental Valuation

In this case, the parties jointly owned and operated the business, at least until the husband began diverting its assets. Applying the “blanket rule” inappropriately restricts a trial court’s discretion to assign a fair value to the parties’ actual assets, the dissent said, particularly when the enterprise is not a professional practice and is not dependent on just one of the spouses’ efforts. For these reasons, the dissent would have affirmed the appellate court’s instructions and remanded the case to the trial court for “a full determination of the market value of [the marital business], including an evaluation of [its] enterprise goodwill, as well as whatever personal goodwill, if any, is attributable to either or both of the parties.

In re Marriage of Bruns

Broker and BV Expert Battle Goodwill Value of Dental Practice in Divorce

Citation: 2011 WL 237969 (Iowa App.)(unpublished)

Date of decision: Jan. 20, 2011

Country: US

State or Federal: State

State/Jurisdiction: Iowa

Court: Court of Appeals

Type of action: Marital Dissolution

Experts: John Trask (husband); Cyril Mandelbaum (wife)

Judge: Tabor

Thirty years ago, an Iowa dentist bought his practice for roughly \$75,000. By the end of his 40-year marriage, he employed a staff of three and was earning \$150,000 per year working only three days a week.

At the parties’ divorce trial, the husband presented a management consultant and business broker who’d been selling dental practices for over three decades and had performed over 500 related appraisals. He valued the tangible assets of the husband’s practice at \$77,000, including equipment, supplies, and accounts receivable. If he included the goodwill value of the practice, it was worth just over \$198,000.

The wife retained a CPA and accredited senior appraiser who had more than 20 years of business valuation experience, including appraising several dental practices. In her opinion, the total value of the practice amounted to \$241,000. This included a normalizing adjustment to the salary of the receptionist (with whom the dentist was having a romantic relationship), asserting her wages were higher than market value.

Dentist wouldn’t sell for stated value. The trial court remarked the “dueling experts” and conceded that it could not determine the precise fair market value of the practice without a sale. At the same time, it noted that the husband bought the practice 30 years before for more or less

Chapter 6: Recent Cases on Dental Valuation

the same value that his broker said it was worth at trial. Moreover, the husband testified that he would not sell his practice for \$77,000. After reviewing all the evidence, the trial court valued the practice, excluding goodwill, at \$115,450.

Both parties appealed. The husband claimed the trial court's value "must have" included goodwill, and the wife argued that the value was too low, brought down by the broker's "questionable" methodology. The appellate court acknowledged the difficulty of valuing professional practices, "because their income flows almost exclusively from the efforts of the professional who owns the business."

At the same time, it found the trial court had correctly followed longstanding state precedent, which holds that the "goodwill of a professional practice bears on the professional's earning capacity (for the purposes of determining alimony), but should not be additionally listed as an asset in the valuation of a professional practice." Further, the trial court had the discretion to discount the value placed on the practice by the wife's expert, "based on her more limited experience in appraising dental practices and her opinion that a non-compete agreement would make no difference in valuation," the appellate court held. Because the \$115,450 valuation fell within the range of permissible evidence, the appellate court confirmed the same.

Banchefsky v. Banchefsky

Divorce Court Limits Professional Goodwill to Value of Non-Compete

Citation: 2010 WL 3527578 (Ohio App.)

Date of decision: Sept. 9, 2010

Country: US

State or Federal: State

State/Jurisdiction: Ohio

Court: Court of Appeals

Type of action: Marital Dissolution

Experts: Brian Russell (husband)

Judge: Sadler

SIC: 8021 Offices and Clinics of Dentists

This is the third case in as many months to decide the value of a dental practice in divorce. First came *McReath v. McReath*, 2010 WL 2943198 (Wis. App.)(July 29, 2010), in which the Wisconsin Court of Appeals ruled that all *salable* goodwill is a marital asset and subject to division, whether it is corporate or professional. Key to the court's ruling was its finding that both parties (and their valuation experts) agreed that a non-compete agreement would effectively transfer a "lion's share" of the spouse-practitioner's professional goodwill to a prospective buyer, thereby evidencing its salable nature.

Chapter 6: Recent Cases on Dental Valuation

By contrast, in *McKee v. McKee*, 2010 WL 3245246 (Tenn. Ct. App.) (Aug. 17, 2010), the Tennessee Court of Appeals valued the wife's one-third interest in her longstanding dental practice at only \$97,000 (net asset value), despite evidence that one of her partners had recently bought into the practice at \$749,000. In that particular sale, the parties had allocated 45% of the buy-in price to the professional goodwill of the wife and her partner and 34% to the patient files and records. Nevertheless, the court found the patient records "had no value" in the wife's divorce—that is, they constituted professional goodwill and were non-divisible.

Dentist sells his practice during divorce. In the *Banchefsky* case—and for reasons the Ohio Court of Appeal's opinion does not reveal, the husband sold his solo cosmetic dentistry practice for \$580,000 during the proceedings. In the purchase agreement, the parties allocated specific amounts to the tangible assets (\$126K), patient records (\$20K), agreement not to compete (\$15K), and unspecified "goodwill" (\$416K). The husband and wife agreed the sale was arm's length and the price reflected the current fair market value for the dental practice.

For purposes of divorce, however, the husband's valuation expert said that the value attributed to the non-compete in the purchase agreement was "arbitrary." To find its appropriate value, he subtracted the tangible asset value from the total sale price and allocated the remainder (\$431,000) to professional and enterprise goodwill. Specifically, the husband's expert defined "professional goodwill" as a direct function of earnings from patients who patronized the husband for his individual and personal attributes. He characterized enterprise goodwill as "goodwill that would go along with the business practice itself and could be sold with or without" the husband. To distinguish the components in this case, he applied the Multiattribute Utility Model (MUM), developed by valuation and forensic analyst David Wood, CPA/ABV, CVA (Mt. Vernon, IL). Using MUM, the expert found that the appropriate value for the husband's willingness not to compete was \$215,000 and constituted professional, non-divisible goodwill. *Note:* For more on MUM, see "Multiattribute Utility Model' Accepted in Allocating Enterprise/Personal Goodwill," in the Dec. 2006 *BVU*; "MUM's the Word': A Formal Method to Allocate Blue Sky Value in Divorce," by David Wood in the March 2007 *BVU*; and "Still Hunting: In Search of Consistent, Functional Definition for Personal Goodwill," by David Wood in the April 2010 *BVU*.

The trial court expressly acknowledged MUM's utility in determining the fair market value of a professional practice, but in this case, it found the model was neither necessary nor appropriate due to the arm's length sale of the business. Accordingly, it determined the husband's personal goodwill was worth no more than the value assigned to the non-compete in the purchase agreement (\$15K), and it divided the remainder of the sale proceeds (\$565,000) equally between the parties.

The husband appealed, arguing that the trial court should have deferred to his expert's opinion and his application of MUM. The appellate court confirmed the utility of MUM in "determining the impact an individual's departure might have on the fair market value of a business." However, like the trial court, it also found that "it was simply unnecessary to determine the value of the covenant-not-to-compete through the use of a business model