

DENTAL EXPRESSIONS®

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Sound Human Resources Practices: Key to Reducing Risk

The following hypothetical claim scenario illustrates some of the liability risks associated with lax hiring and supervisory practices:

A 22-year-old woman who required restorative dental care for treatment of injuries sustained during an automobile accident was treated by a male associate dentist employed by the practice. A few weeks after the last treatment visit, the patient filed a complaint with the state dental board, claiming that the associate dentist had made sexual advances and touched her inappropriately. The dentist continued to work at the practice until his license was suspended by the state during the investigation.

One year after filing the complaint, the patient sued the practice owner, alleging negligent hiring and improper supervision. Discovery revealed that although the owner knew of similar accusations made against the dentist while employed by another practice, he was convinced of the dentist's innocence and had not performed a thorough background check prior to hiring him.

The owner-dentist and other staff members testified that they had never witnessed any inappropriate behavior by the associate dentist. However, they noted that he was sometimes alone with

patients in the surgical operatory with the privacy door closed, even though office policy dictated that there should always be another staff person present in the operatory whenever the door was shut. The parties eventually reached a settlement in the low six figures, including both damages and legal costs.

Sound human resources policies – such as careful staff screening and consistent enforcement of office rules – are critical to minimizing risk in dental practices. The following strategies can help enhance quality of care and patient satisfaction, while reducing the likelihood of patient claims alleging negligent hiring or supervision, or employee charges of discrimination, harassment or wrongful termination:

Job description. Prior to hiring a new employee, develop an accurate job description, encompassing the essential responsibilities of the position, as well as specific tasks; required education, training and experience; critical knowledge and skills; and physical demands. Stated requirements should be reasonable and reflect actual job functions.

Application. Require applicants to complete, sign and date a detailed application, which includes:

- Full legal name.
- Addresses for the past 10 years.
- Educational background.
- Detailed employment history, including reasons for leaving or considering leaving the most recent job and explanations for gaps in employment.
- References, both personal and professional.
- Availability for work.

Also request applicants to sign a statement that they can perform the essential functions of the job with or without accommodation, as well as another statement certifying that submitted answers are correct.

The application should contain a non-discrimination statement compliant with federal, state and local employment laws, as well as a notice that submission of any false information will lead to rejection of the applicant or termination if the falsehood is discovered subsequent to hiring.

The application should *not* include questions designed to elicit information that may lead to allegations of discrimination, such as:

- Maiden or previous name/title.
- Citizenship or birthplace.
- Information about children or other family commitments.
- Race, religion or ethnicity.
- Date of birth or high school graduation.
- Physical description or photograph.
- Whether English is the applicant's first language.
- Club or union memberships.

On another form, obtain applicants' written consent to confirm their stated employment, educational and professional licensing history; contact their references; and conduct a criminal background check. If a third party is retained to perform background checks, the process must comply with the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681-1681y, as well as with similar state and/or local laws. Applicants also should sign a statement acknowledging that they understand that employment is contingent upon successful completion of a drug test and/or criminal background check, as well as confirmation of credentials/licensure. (Note that it is unlawful in some states to ask applicants about their arrest

or conviction record on the application. Additionally, EEOC guidance recommends caution when conducting criminal background checks, as such a query may have a disparate impact on certain protected classes.)

Background checks. Inquiries should be thoroughly and consistently implemented and documented, verifying education, licensure, credentials and references. Criminal background checks, if determined to be relevant to the position, should query both conviction history and sex offender status. Credit checks should be conducted only if they are relevant to the position and are not prohibited by state or municipal law.

Exercise caution when screening prospective employees based upon criminal record or credit history. EEOC guidance discourages automatic rejection due to a criminal conviction, instead suggesting that employers individually assess each applicant to ensure that exclusions are job-related and consistent with business necessity. Similarly, EEOC guidance discourages the use of credit information in hiring decisions. Criminal background and credit checks are a complex issue requiring consultation with an attorney conversant with these aspects of employment practices law. (For additional information on criminal background checks, see [Use of Arrest and Conviction Records in Employment May Be Discriminatory](#), a CNA Risk Control Bulletin.)

Drug testing. If drug testing is part of the hiring process, establish a written policy and procedure addressing the following issues:

- Testing timetable.
- Positions to which testing applies.
- Targeted substances.
- Testing procedures.
- Consequences of positive test results.

Drug testing should be performed only after a contingent offer of employment has been tendered. As laws vary from state to state, consult with an attorney with expertise in employment issues to ensure compliance.

Orientation. Orientation should include a review of the written job description, as well as general information about the practice and its staff. The following subjects, among others, should be discussed with newly hired employees:

- Hours and work schedules.
- Workplace rules and behavioral expectations, including the practice's anti-harassment policy and complaint procedure.
- Patient safety and privacy regulations.
- Life safety and emergency response protocols.
- Documentation and incident reporting guidelines.
- Vacation and sick days/paid time off policy.
- Performance evaluation and disciplinary procedures.

Following orientation, request that employees sign and date a statement confirming that they understand and accept their responsibilities within the practice.

Continuing education (CE) and performance review. CE and other ongoing training opportunities should be aligned with license/certification requirements, and CE credits and annual performance appraisals should be documented and retained in personnel files.

Policy and procedure manual. Every dental practice should have an employee policy and procedure manual to be reviewed by staff members upon hire and periodically thereafter. Such a manual helps protect patients, employees and the practice by clarifying rules and enforcement mechanisms, delineating roles and responsibilities, and enhancing supervisory consistency. The manual also plays an important role in defending against potential allegations of negligence or discrimination. It should be updated regularly to ensure that it:

- Effectively addresses potential employee problems, such as disruptive behavior, harassment and other unacceptable conduct.
- Articulates expectations regarding such matters as patient safety and confidentiality, professionalism, punctuality, appropriate attire and incident reporting.
- Contains a general statement regarding compliance with federal, state and local statutes and regulations.
- States clearly that policies regarding professional behavior apply equally to everyone, including dentists, clinical and front-office staff, and other employees and contractors.
- Is consistent with actual organizational practices and responds to emerging concerns.

- Is dated, signed and approved by the practice owner and manager.
- Displays proof of annual review and approval date.
- Is well-organized and reader-friendly, with a table of contents for easy reference.

Alert staff to any additions or revisions made to the manual, and archive policies that have been revised or withdrawn for later reference in the event of litigation. (For more information, see [The ADA Practical Guide to Creating and Updating an Employee Policy Manual](#), which is available for purchase online.) For access to a model handbook and other workplace resources, including anti-harassment training tools, CNA policyholders may register for complimentary access to [Beyond HR](#).

Exit interviews. Exit interviews – also known as termination or separation interviews – may be scheduled with staff members who voluntarily end their employment. By eliciting information about the work experience of departing employees, these interviews help identify issues that may be adversely affecting the morale and performance of other staff members. In practices with rapid employee turnover, exit interviews can help improve staff retention, if comments and criticisms are taken seriously and acted upon.

For sample questions and additional information about the exit interview process, see [CNA Alert Bulletin® 2009 – Issue 3, Exit Interviews: Employee Perceptions Can Help Improve Morale, Reduce Liability](#), which is available at www.cna.com/riskcontrol.

Quality dental care depends upon a quality staff. Effective human resources policies and procedures, consistently implemented, are essential to enhancing patient safety and satisfaction, maintaining morale, reducing turnover, minimizing liability exposure and achieving long-term success.

Human Resources Self-assessment Questionnaire

These questions are designed to help dental offices evaluate and enhance their personnel policies and practices. For additional risk control tools and information, visit www.cna.com, www.hpsso.com and/or www.nso.com.

SELF-ASSESSMENT QUESTIONS	STATUS	COMMENTS
Are behavior-based questions and reliable personality profile assessment tools used in hiring interviews to determine whether candidates possess the requisite integrity, decision-making ability and communication skills, as well as a caring and respectful manner?		
Is a thorough pre-employment screening process consistently utilized, and does it include the following elements, among others:		
<ul style="list-style-type: none"> - Verification and documentation of references and licensure? 		
<ul style="list-style-type: none"> - Criminal background investigation, which is tailored to the specific job and encompasses all states where the applicant has lived or worked? 		
<ul style="list-style-type: none"> - Review of Office of Inspector General and sex abuse registries/employee disqualification lists? 		
<ul style="list-style-type: none"> - Drug screen, once a job offer has been made? 		
Are employee files carefully maintained to ensure that required documents and records are current and accessible, and are they secured to protect employee privacy?		
Are employee files continually updated and checked to ensure that they contain the following records:		
<ul style="list-style-type: none"> - Pre-employment screening documents (e.g., criminal background check, drug screen results, reference verifications)? 		
<ul style="list-style-type: none"> - Required employment documents completed by the employee (e.g., application, tax forms, contracts)? 		
<ul style="list-style-type: none"> - Current professional licensure/certification (electronic or hard-copy)? 		
<ul style="list-style-type: none"> - Position-specific skill certifications and/or licensure? 		
<ul style="list-style-type: none"> - Job description, signed by the employee? 		
<ul style="list-style-type: none"> - Copy of photo identification card? 		
<ul style="list-style-type: none"> - Current emergency contacts? 		
<ul style="list-style-type: none"> - Confidentiality statement, signed by the employee? 		
<ul style="list-style-type: none"> - Signed form indicating that the employee has read, understood and accepted the terms of employment as described in the employee handbook/policy and procedures manual? 		
<ul style="list-style-type: none"> - General orientation documentation, with a signed acknowledgement of completion by the employee? 		
<ul style="list-style-type: none"> - Performance evaluations, signed by the employee and his/her supervisor? 		
<ul style="list-style-type: none"> - Professional liability claims history, if applicable, including a list of both pending and closed claims? 		
<ul style="list-style-type: none"> - Reports of disciplinary licensing board actions, if applicable and available? 		

SELF-ASSESSMENT QUESTIONS	STATUS	COMMENTS
Are the following employment policies, among others, clearly conveyed to new staff members during the orientation process and regularly reviewed by supervisors:		
<ul style="list-style-type: none"> - Compensation, benefits, hours of operation, paid time off, holidays, and personal and professional leave? 		
<ul style="list-style-type: none"> - Code of conduct? 		
<ul style="list-style-type: none"> - Acceptable business and professional practices? 		
<ul style="list-style-type: none"> - Occupational health and safety issues? 		
<ul style="list-style-type: none"> - Disciplinary measures and warnings? 		
<ul style="list-style-type: none"> - Absenteeism and tardiness? 		
<ul style="list-style-type: none"> - Dress code? 		
<ul style="list-style-type: none"> - Rules governing conflicts of interest, workplace solicitation, outside employment and whistleblower protection? 		
<ul style="list-style-type: none"> - Smoking bans and drug-testing policies? 		
<ul style="list-style-type: none"> - Cell phone, Internet, email and social media limitations and expectations? 		
<ul style="list-style-type: none"> - Concealed weapons ban? 		
<ul style="list-style-type: none"> - Harassment definition and prohibition? 		
<ul style="list-style-type: none"> - Equal opportunity and diversity policies? 		
<ul style="list-style-type: none"> - Contract worker rules and regulations? 		
Are performance appraisals conducted annually, with findings acknowledged in writing by the employer and staff members?		
Is a “tickler system” in place to track due dates for performance appraisals and licensure recertification?		
Do exit interviews take place whenever staff members voluntarily end their employment at the practice?		

Effective human resources policies and procedures, consistently implemented, are essential to enhancing patient safety and satisfaction, maintaining morale, reducing turnover, minimizing liability exposure and achieving long-term success.

LOOKING FOR ADDITIONAL RISK MANAGEMENT INFORMATION?

Visit the Professional Protector Plan® for Dentists program website at www.protectorplan.com for additional resources. The site's Risk Management tab contains links to information about both our in-person CE seminars and our online self-study CE course.

Dental Risk Management Seminars

Dentists can obtain risk management information by attending any of the risk management seminars listed below, or by completing the CNA online self-study CE course (see above). For more information about our in-person seminars, please contact the nearest Professional Protector Plan state administrator agent.

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