

Hiring & Firing

A Risky Business



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Background

- ✓ General Counsel for Multiple Hospital Medical Staffs and Medical Societies
- ✓ Nearly two decades of experience exclusively representing physicians and other licensed healthcare professionals
- ✓ Licensure actions; investigations, audits, fee and reimbursement disputes; fee negotiations; litigation; employment issues & counseling; online reputation services; coding guidance; medical malpractice defense; HIPAA & regulatory compliance; policy & compliance manuals; white collar criminal defense; DEA, OIFP and OIG investigation defense



Hiring & Firing

The Good . . . The Bad . . . The Ugly



Expanding the Scope of the Practice? Beware!

Can a non-MD or non-DO hire a MD or DO to work for him or her?

NO. PTs, PA's, APNs, DDSs, and DCs cannot expand the scope of a practice that way. It is illegal. They cannot attempt to broaden or expand the scope of the field of practice beyond that of the specialties of the owners.



Can PTs, PA's, APNs, DDSs, and DCs Hire Others of the Same Specialty?

Of Course!

If the professional to be hired is licensed in the same state they are practicing in.



Factors to Consider When Hiring Another Professional of the Same Specialty

- ✓ Is the professional compatible with the other professionals of the practice?
 - ✓ Is his or her philosophy of practice similar?
 - ✓ Socially compatible?
- ✓ Enough work to keep him/her busy?
- ✓ Will adding this professional be profitable to the practice?
- ✓ Can the professionals of the practice tolerate another opinion?
- ✓ Can the professional of the practice tolerate the potential decrease in autonomy?



More Factors to Consider...

- ✓ Can egos tolerate some patients preferring the newly-added professional over them?
- ✓ Can office personnel be shared between existing and the new professional?
- ✓ Costs (supplies / machines)?
- ✓ Potential enhanced liability risks?



Restrictive Covenants for Newly-Hired Professionals

- ✓ Permissible in Most States (Courts will “blue pencil”)
- ✓ Must be reasonable time and space restrictions
- ✓ No one owns patients!
- ✓ Balancing act between protecting business interests and the public right to choose their own healthcare provider



Ancillary Personnel

- ✓ If the practice is located in an area where another primary language is spoken, it is wise to hire individual(s) who speak that language.
- ✓ If the practice is located in an area where another culture is predominant, it is wise to hire personnel who are aware and respectful of that culture.
- ✓ This will decrease potential liability
- ✓ Beware - The deaf patient community



Americans with Disabilities Act

- ✓ You do NOT have to hire someone if their disability will interfere with the performance of their job duties.
- ✓ Written job descriptions at the time of hire are key!
- ✓ If the job applicant's disability will not permit them to do the job, even with "reasonable accommodations", then NO violation of the ADA.
- ✓ Examples of Reasonable Accommodations:
 - ✓ Installing a ramp
 - ✓ Tactile labels for visually impaired
 - ✓ Modifying certain equipment



ADA Part 2: Undue Hardship

- ✓ This is a Balancing Test decided by the EEOC on a case by case basis.
- ✓ The cost of accommodation?
- ✓ The difficulty of the accommodation for the disabled person to perform his or her **ESSENTIAL** job functions.
- ✓ The EEOC can find against you and force you to reinstate the employee with back pay and may also award attorneys' fees.



The Importance of Good Documentation

- ✓ The Old Adage: “The best defense is a good . . .”
- ✓ Keep well-documented personnel files for all employees
- ✓ Be overly specific (almost annoyingly so)
- ✓ Write now or forever hold your peace
- ✓ Employee Handbooks (Policy & Procedure Manuals)!



Background Check on All Professionals

- ✓ Check to see if the license is valid and unrestricted.
- ✓ Check to see if there are any prior license restrictions or discipline.
- ✓ Check to see if CV is accurate.
- ✓ Call prior employers to verify employment.
- ✓ Run a DataBank, State Board, and OIG searches.
- ✓ Social media!!
- ✓ Inquire about pending or recent audits.



Background Check on Non-Medical Employees

- ✓ Check the veracity of his or her CV.
- ✓ Call prior employers to verify employment.
- ✓ Check litigation background.
- ✓ Feel comfortable with the longevity they have spent with prior employers.
- ✓ Social media!!
- ✓ Take the time to speak with them to see if your gut tells you that “they will fit in” with your practice.



HIPAA & OSHA

- ✓ Make sure all new hires are aware of HIPAA and OSHA regulations.
- ✓ Make sure they are trained in those regulations.
- ✓ Keep proof that they underwent this training in designated binders in case of inspections or complaints.



Firing an Employee

- ✓ Personnel File is **CRUCIAL!**
- ✓ Try to play nice and to minimize any negativity.
- ✓ Do not let it descend to name calling. You cannot control your employee's actions, but you **CAN** control **YOURS!**
- ✓ Prepare a letter
- ✓ Having counsel do it is always recommended.



Disgruntled Former Employees

- ✓ Be Careful
- ✓ Can Cost You Money & Reputation
- ✓ File Complaints:
 1. Lawsuits
 2. Administrative (State Board; Hospital)
 3. Insurance
 4. DEA
 5. OIG
 6. OIFP
 7. Police



Sexual Harassment

- ✓ Make sure all employees sign off on your policy concerning Sexual Harassment.
- ✓ Best practice is to have a written policy in your employee manual.
- ✓ Have them sign, date, and agree to comply with it.
- ✓ Enforce a Zero Tolerance policy on it.



RECAP

- ✓ Be judicious and contemplative before you hire.
- ✓ Have an employee handbook (policy & procedure manual).
- ✓ Maintain detailed personnel files on all employees.
- ✓ Ensure and document proper employee training.
- ✓ Tip: Buy a pizza for the staff every now and then, and say Thank You.
- ✓ If Ending the Employment Relationship, Do So Properly, Timely, and Appropriately

Questions?



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