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Tips for Dentist Employers When Dealing with

Substance Abuse in Your Dental Practice

By Judith Holmes, J.D.

Substance abuse in the workplace is a growing problem for employers and can lead to lower productivity, higher absenteeism, and an increased risk of workplace accidents and injuries. Substance abuse issues can present a difficult challenge to a dental practice and unfortunately failure to address abuse-related problems appropriately can lead to significant liability. The following is a brief discussion of problems commonly faced by dental practices.

What should we do if an employee comes to work impaired?

Mary, your dental assistant, arrives at work 30 minutes late and your irritated patient has been kept waiting. You observe that Mary's eyelids are droopy, she has slurred speech, and her responses to your questions are not appropriate. You think she might be under the influence of drugs, but you aren't sure. What should you do?

The most important goal is to prevent your patients from being put at risk. If the employee's conduct makes you concerned that patient care will be compromised or that she cannot perform her job duties competently, you should intervene. Although it is difficult, you are better off rescheduling a patient than disregarding your instincts and risking the consequences of allowing an impaired worker to remain on the job.

If you have a comprehensive substance abuse policy, your job is easier.

You will be able to send Mary for drug and alcohol testing, and proceed as your policy dictates. If you have a zero-tolerance drug policy and Mary's test results come back positive for alcohol or illegal drug use, she can be terminated.

If your dental practice does not have a comprehensive substance abuse policy, requiring a drug test is risky. However, you should still be proactive. Be careful about what you say to others in the office. At this stage, you should have a private, non-confrontational discussion with Mary. Focus on your factual observations of her workplace behavior and not on your unconfirmed assumptions as to why she is acting inappropriately.

When you discuss Mary's behavior with her, allow her to respond to your concerns and get her input. Some symptoms that can be interpreted as substance abuse may actually be signs of disability, such as a stroke or M.S. Her behavior may even be caused by legal medications prescribed by her physician.

After your discussion with Mary, carefully document your behavioral observations, your questions, and Mary's responses. If you smell alcohol on her breath, be sure to document that observation. Keep in mind that alcoholism is a disability, but you are not required to allow an employee to be under the influence of alcohol during business hours.

Regardless of the reason Mary gives you for her behavior, if you

have made the determination that she is not capable of performing her job, you should send her home. It is important that Mary not drive herself home, so offer to pay for a cab, or have her call a friend or family member to take her home. You can meet with her later to determine your course of action. The disciplinary response you decide to take will depend on the employee and the specific circumstances. Documentation of your actions and the reasons for your actions is essential.

If you determine that a disability may be involved, federal and state disability laws require you to have a dialog with Mary to discuss whether a "reasonable accommodation" is necessary in order for her to perform her job duties. For example, if Mary admits she has alcohol abuse issues, a leave of absence to attend an alcohol treatment program may be considered a reasonable accommodation. Situations involving disability issues can be complicated, so you should consider having a consultation with your employment counsel.

Now that marijuana use is legal, do we have to allow employees to use it?

The use of marijuana for medical or recreational purposes poses a risk to employers, especially those in the medical and dental fields. An employee under the influence of marijuana can pose a danger to patients and coworkers. Fortunately, even though marijuana is now legal

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in Colorado, you as an employer can protect your practice by adopting a comprehensive zero-tolerance substance abuse policy.

In 2000, an amendment to the Colorado constitution decriminalized marijuana use for medical purposes. However, that does not mean an employer must allow an employee to use marijuana simply because it was prescribed for medical use. That same constitutional amendment included a statement that nothing in the amendment “requires an employer to accommodate the medical use of marijuana in the workplace.” In short, although you are not required to allow marijuana use, you must take proactive steps to prevent its use in your dental practice.

What if an employee uses marijuana during off-duty hours and then comes to work under the influence of the drug?


Colorado has a statute prohibiting employers from discharging an employee who engages “in any lawful activity off the premises of the employer during nonworking hours.” However, employers may still place drug-use restrictions on their employees, even if the drugs are consumed during nonworking hours. Recent Colorado case law has recognized that, although marijuana use is legal under state law, it is still unlawful under federal law. Therefore, if you have a well-written, zero-tolerance substance abuse policy, you may terminate an employee who has tested positive for marijuana use even though the drug was consumed during off-duty hours.

How can we protect our practice against problems arising from substance abuse?

Do you have a zero-tolerance policy? Is it updated to include marijuana issues? Does your policy

identify who may be tested, when, under what circumstances, and the consequences of testing positive for alcohol or illegal drugs? Does it deal with use of behavioral effects of prescription drug use? Do you have a policy that takes into account disability discrimination laws? Does your policy conform to all federal, state and local laws? Boulder, for instance, places more restrictions on the use of drug testing by employers.

If your practice does not have a set of policies to deal with issues relating to substance abuse, make a New Year's resolution to be proactive and protect your practice before you are faced with a difficult situation.

This article is for informational purposes and does not constitute legal advice. 

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