

Canadian Dental Protective Association

Dealing with Employee Misconduct of a Criminal Nature

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JUSTICE AT WORK

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Overview

- Dealing with Staff Misconduct of a Criminal Nature
 - What are your obligations to patients, the public, the profession, the insurers and to other employees?
 - What are your obligations to the employee?
 - Are you required to inform the police and/or the insurer if you suspect that your employee has committed theft or insurance fraud?

Professional Obligations

- When dealing with employee misconduct, be mindful of the legal framework that governs the employment relationship:
 - *Employment Standards Act, 2000*
 - *Human Rights Code of Ontario*
 - *Workplace Safety & Insurance Act*
 - *Occupational Health and Safety Act*
 - *Regulated Health Professionals Act*

Professional Responsibilities

- To maintain a safe and healthy office environment for both patients and staff
- To take responsibility for the care provided by authorized dental personnel and other staff

Duty to Supervise

- Duty to supervise your staff in relation to billing, providing statements of account, and record keeping.
 - Although you can delegate these tasks, it is your responsibility to ensure the standards of practice are maintained
 - As a professional, regulated by the RHPA, you may be subject to professional discipline and/or civil liability if you or your staff fails to adequately meet the standards of practice

Obligations to your Patients

- Investigate whether there has been any breach of your obligations to your patients, including:
 - Breach of patient confidentiality
 - Illegal/improper use of patient information
 - Fraud or theft in relation to a patient
 - Improper billing that has occurred by design or by accident
 - Abuse of a patient

Obligations to your Employees

- Treat employees fairly, and with civility, decency, respect and dignity
- Avoid jumping to conclusions about any potential misconduct of employees, and ensure you conduct a thorough investigation first

Obligations to Employees cont'd

- Ensure that you provide a safe work environment and protect all workers from the impact of misconduct/criminal conduct to the best of your ability and in a timely manner
- Uphold employees' rights under relevant legislation
- Create and provide access to policies on workplace violence and harassment, as required by the *Occupational Health and Safety Act*

Obligations to Employees cont'd

- If you conclude that an employee has engaged in wrongdoing, ensure that any discipline given is proportionate to the misconduct
- prior to terminating an employee with cause, get legal advice, and ensure you can prove the misconduct

What should you do if you suspect find out that your employee has engaged in misconduct of a criminal nature?

- In certain circumstances you should consider doing the following:
 - **Seek legal advice**
 - Conduct a reasonable investigation
 - Consider calling the police
 - Consider whether you need to advise your liability insurer
 - Report to affected patients
 - Return any funds you may have wrongly received as a result of the misconduct

Reasons for Conducting an Investigation

- Conducting a reasonable, fair and impartial investigation will be important if you intend to discipline/terminate your employee for cause
- Conducting this investigation allows you to assess your liability and take necessary steps to prevent further misconduct

Conducting an Investigation

- Respond to concerns raised through a fair, thorough and well-conducted workplace investigation
- For minor complaints, an “ad hoc” investigation may suffice
- In certain circumstances, you should advise affected employees of the steps that shall be taken in an investigation
- This will ensure a well-reasoned and sustainable decision concerning dismissal/discipline

Conducting an Investigation cont'd

- Where allegations of criminal or other serious wrongdoing are concerned, or where there is more than one employee involved, it may be appropriate to use an external investigator or call the police

External versus Internal Investigator

- Depending upon the background and qualifications of your staff, your own skill set, the degree of sensitivity to the matter at hand and the parties involved, it may be better to have an impartial external investigator conduct or assist in the investigation
- External investigators should probably be used when there is any hint of conflict of interest, senior staff or partners are involved, the allegation is made by one employee against another or other employees, and/or the allegations are serious, such as physical violence or serious criminal conduct

Conducting an Investigation

- what has happened
- who was involved
- the extent of the misconduct
- who may have been affected

Conducting an Investigation cont'd

- If you conduct an investigation, you should:
 - Interview the individual suspected of misconduct
 - Interview all potential witnesses separately
 - Advise the individual suspected of wrongdoing of any conflicting accounts of what occurred, and give him or her a chance to respond
 - Ask all individuals you interview for relevant documents
 - Keep notes of your interviews

Conducting an Investigation cont'd

- If you conclude there has been wrongdoing by an employee, get legal advice prior to taking any other action
- Provide your lawyer with any documents and/or statements you have obtained
- Where there is potential criminal conduct, you may be required to provide documents and/or interview notes to the police

Call your Insurer

- Consider obtaining legal advice about whether contacting your insurer is necessary
- Depending on the nature of the misconduct, you may be vicariously liable for your employee's misconduct, where that misconduct was conducted in the course of his/her normal employment duties
- You should consider whether you are required to advise your liability insurer of a potential claim

Report to Your Patient

- If your patient's privacy has been breached or if they have been billed incorrectly, you will likely be required to report to the patient

Discipline Your Employee for Wrong-Doing

- Depending on the seriousness, this could range from a warning letter to termination of employment
- Failure to discipline your employee may be considered condonation
- Be aware that if you terminate your employee, you will be required to either prove cause or provide your employee with notice
- Consider seeking legal advice prior to disciplining and employee, especially if you are considering termination
- Keep a written record of any discipline given, along with the documents gathered in the investigation

Consider Calling Police

- When is there a duty to call the police or otherwise report the misconduct?
- Depending on the circumstances, failure to report could:
 - Expose you to criminal liability as a party to an offence
 - Result in a finding of professional misconduct

Child Protection Considerations

- Under the *Child and Family Services Act*, dentists are required to report to the Children's Aid Society if they believe that a child is in need of protection, including (but not limited to) where:
 - The child has or is likely to suffer physical harm
 - The child has been or is likely to be sexually molested or exploited
 - The child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment
 - The child has suffered serious emotional harm
- You must report directly and cannot have another person report on your behalf

Regulated Health Professions Act

- **The Health Professions Procedural Code requires Employers to report professional misconduct of other members (s. 85.5)**
 - **If**, for reasons of professional misconduct, incompetence or incapacity :
 - **You** terminate the employment or revoke, suspend or impose restrictions on the privileges of a member or who dissolves a partnership, a health profession corporation or association with a member **OR**
 - Your employee resigns
 - **You must** file with the Registrar within thirty days after the termination, revocation, suspension, imposition or dissolution a written report setting out the reasons.

Questions?

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