



What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT HR LAW™



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Don't take it lying down

What's your most valuable asset? Your house? Your practice? When I used to teach Professional Ethics at law schools, I would start the class by asking students to write their names across a sheet of paper. They would generally think I did that so that I could grill them like John Houseman's Professor Kingsfield in *The Paper Chase* fashion (am I dating myself?). Instead, I would tell them to turn the paper toward themselves, and I'd say: "What you are looking at—*your name*—is the single most valuable professional asset you will ever have. Guard it jealously!" Never before this internet age, has a professional reputation been so vulnerable nor so important to protect, as was demonstrated by another case we recently won for one of our dentists.

Dr. Matthew Gewarges terminated one of his employees, Charlee Adams. She received pay in lieu of notice per her contract. Dr. Gewarges' practice, Small Town Family Dental ("STF Dental") maintained a Facebook page that could be accessed by anyone with a Facebook account. Shortly after Charlee was fired, very disparaging posts were made to STF Dental's Facebook page, as well as to *ratemds.com* about Dr. Gewarges.



"My PPP™ saved me over **\$100,000** I would have had to pay to employees who left or got fired. It happened on two occasions and MBC destroyed their lawyers with incredible back up and case law. Guess what: we never heard back from their lawyers. Pay a little now to save a ***t load later - not to mention the aggravation."
— Dr. Eric Rouah

Most readers will likely identify with the helpless feeling of having "reviews" (a term which sounds independent, impartial and fair, none of which is actually a given) posted about their work and practice that are not accurate nor representative. Many online reviews are posted by competitors, disgruntled former employees, estranged spouses, or litigants.



"Since implementing a PPPTM in my practice a few years ago, I have obtained a **12 times return** on my investment thus far."

Jordan L Soll, BSc. (Hon), DDS, Dip. ABAD

Co Chairman, Editorial Board, Oral Health Journal
Principal, Central Dental Group, Toronto, Ontario

Many lay people do not realize that Canadian defamation law actually imposes very considerable restraints on "free speech". The right to free speech, like most rights, often conflicts with other rights and the law must reconcile the conflicts. To paraphrase John B. Finch, my liberty to swing my fists in any direction ends where your nose begins. While a(n online) reviewer has a right to free speech, the person being reviewed has a right to their reputation. The law presumes that statements which bring opprobrium onto a person (i.e. which tend to lessen the respect or reputation of a person) are untrue. And when such statements are spoken or published to third parties, the subject of them may sue and the defendant then must prove they are true.

Dr. G called us and we wrote a cease and desist letter to Charlee and her brother, Peter (whom the Court found had posted the material) explaining that unless all the defamatory material was removed by the next day, we would commence legal proceedings. Rather than stopping, Peter actually posted the cease and desist letter online (!) along with the following comment on STF Dental's Facebook page:

"I was declined service when I was in pain due to a broken tooth with the nerve exposed after I had been a patient in the past. I had complications on previous extractions and remained a trusting patient til [sic] now. I was approached by his lawyer this week for my previous review and they are trying to bully me into removing my review."

The Court found Dr. G was entitled to stop treating Peter because there had been a breakdown in trust between them following Charlee's firing that rendered the continuation of the doctor-patient relationship untenable.

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No Excuses.

There is no excuse for not transitioning all staff to bullet-proof contracts and policies (unless you have a strong desire to inflict an expensive, stressful mess on yourself and your family). When you get a demand letter from an employee-side lawyer for several hundred thousand dollars, you will wake up in the middle of the night and pray that your contracts are enforceable. Statistically, your prayer is unlikely to be answered. When we are asked to provide a second opinion on other "contracts", over 90% of the time they are not worth the paper they are written on. Don't wait for an HR disaster before you call us. **Contact us today.**

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The Court found Peter had defamed Dr. G and ordered him to pay Dr. G \$18,000 (which is especially significant given that Peter appears to be in his early twenties and is believed to live at home with his parents). Even more importantly, we were able to persuade the Court to grant Dr. G an injunction restraining Peter from disseminating, posting on the internet or publishing further defamatory statements concerning Dr. G or his practice. If you have been defamed (online or elsewhere) consider whether you should pursue the matter legally. Bear in mind that defamation is a particularly specialized area of law (because it has special time limitations and special rules around what must be pleaded, among other things). At MBC, we are fortunate to have a star litigator, Patti Latimer, with particular expertise in defamation able to represent our clients. Her work in the Courtroom was instrumental in obtaining this great victory for Dr. G.

If someone is sullyng your good name, don't take it lying down. Give us a call: 905-825-2268 or email us: mbc@mbclegal.ca.



Know What Your Colleagues Know

To be included in our hugely popular monthly e-lert (with three times the industry average readership) send an email (saying: "Add me to the MBC Legal e-lert roster") to mbc@mbclegal.ca.

Friends Don't Let Friends Suffer HR Disasters

For many professionals who are committed to excellence, one of the most gratifying things about practising is the number of referrals we get from happy clients. So many of our delighted Practice Protection Package™ clients are helping to spread the important information to their friends and colleagues that having Court-approved contracts and policies with all staff is life changing. If you already have a PPP™, tell a friend or colleague how it has changed your practice life today. We thank you, and once your peers learn what every doctor should know about employment law, they will thank you too!



"A Practice Protection Package™ will pay for itself many times over and help you sleep at night. A must for any practice! Very professional people to work with."

Dr. Izchak Barzilay DDS, Cert. Prosth., MS, FRCD(C)

Head, Division of Prosthodontics and Restorative Dentistry, Mount Sinai Hospital
Associate in Dentistry, University of Toronto, Faculty of Dentistry
Private Practice limited to prosthodontics and implant dentistry



Congratulations to MBC's Patti Latimer...

...on being elected Vice-Chair of the Council of College of Respiratory Therapists of Ontario. This role adds further dimension to Patti's already outstanding litigation prowess. We would be pleased to put ourselves at your service for any of your employment litigation needs. Just contact us.

Turnkey Workplace Programs & Training

Most doctors have neither the time, nor the inclination, to develop workplace programs to train their staff on the myriad issues on which the law now requires that staff must be trained.

When doctors delegate the task to an employee, they find almost invariably that the end product is not sufficient to meet legislative requirements. Everyone is then frustrated that all that staff time and effort (and the wasted payroll) was all for naught. The regulatory requirements are complex so it is understandable that a medical or dental office employee will extremely rarely have the requisite knowledge, training or experience to produce a program and training that is legally compliant.

We can help. If your staff have not been trained on Health and Safety, IPAC, Accessibility or Anti-Violence, we have programs that will do it all for you:

i. Workplace Infection Control Program

ii. Workplace Health and Safety Program

Both programs are turnkey solutions. When shopping for programs, ensure that you are comparing apples to apples: how much of the program will you end up having to do yourself? MBC programs do it all for you and include everything you need: assessments, posters, forms, compliance checklists, comprehensive manuals and training of your staff.

For more information or to reserve one of the remaining spots in our roster, contact Maria at 905-464-2545 or mct@mbclegal.ca.



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speaks to the landlord about this clause before signing, the landlord takes advantage of the long-term relationship and minimizes the significance, calling it a mere formality, assuring the doctor there is nothing to worry about and that they have no plans ever to demolish the building. We have noticed some doctors act far too trustingly and do not seek proper advice when presented with an extension document; they take the landlord's word for it to avoid disrupting their current relationship and lease. Although this may not affect you today, it certainly will impact your ability to sell, or even your future in the unit should the landlord sell the real estate, get an offer they can't refuse, or otherwise change their minds.

Renewal options

Recently we represented a client who believed everything in his lease was in order, the practice had been in the plaza for over 40 years, and there were many other professional tenants and no dark spaces in the plaza. The client had just one-and-a-half years remaining

on his lease but was supremely confident that the landlord would provide further renewal options as he had successfully renewed the lease many times in the past. What the doctor failed to take into account was that the plaza had been sold multiple times over the prior two years to a number of different number corporations. As nothing changed for the doctor, he assumed everything was business as usual and he did not wish to cause waves with the landlord and ask questions about this sale. This was a thriving plaza after all. In fact, the owner, when pressed, had no idea who the new landlord actually was.

Much to this doctor's dismay, this new landlord turned out to be a shell company for a developer who had plans to develop the property. When approached to grant further renewal options, the landlord's answer was a blunt and firm "NO". We pleaded, we begged, we called in hefty favours and our client even tried to pay a sizable sum of money to the landlord to grant the renewals he needed. Again, the answer was an unwavering "NO". This meant the doctor had only one and a half years

remaining on his lease before his practice, staff, and client base were homeless! To add further detriment to this situation, his practice was practically unsellable as it stood, since banks would no longer finance the purchase because of the short time remaining on the lease. Banks loan on a ten-year term. If a bank does not see a ten-year term, including renewal options, during their financing due diligence, they will generally not finance the sale of the practice. There are very few exceptions to this particularly if you expect to achieve anywhere close to the appraised and actual value of your practice.

Folks, this is far more common than you may think. We encounter countless doctors placing blind faith in their landlord and their own ability to continue on in their leased space. This can be a very costly mistake. Do not leave the health and value of your practice to chance.

To learn more about this, or any other issue affecting the value and sale of your practice, contact us today.

Have your cake and eat it too!

Enhance your practice value while solidifying the transfer of your legacy with the help of our expert team. Contact us for an appraisal now.

MBC Brokerage, the progressive, full service appraisal, legacy preservation and brokerage team is dedicated to standing by you, every step of the way.

Our many years of experience in finance, management, on-site professional practice consultation and business-system management allow our team to provide expert advice and

guidance during the performance of professional practice appraisals and custom brokerage services tailored to your specific practice and goals.

We pride ourselves on providing an invaluable service, every step of the way, to professionals looking to improve, plan and prepare their legacy for an eventual transition from ownership for any reason.

Call us to learn why so many of your colleagues love and trust us.



How can we help you?

- Professional practice appraisal
- Professional practice sales and legacy preservation and transfer
- Practice purchasing preparation and advice
- Business, financial and day-to-day practice consulting

**Want to get the latest news and new practice purchase opportunities?
Visit www.mbcbrokerage.ca and click on the "register now" button.**



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What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT
APPRAISING AND SELLING PRACTICES™



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Dirk de Lint
Director, Legal Affairs



Maria Turner
Sales Representative



David Schramm
Sales Representative



Eric Humes
Sales Representative

Can Your Landlord Render Your Practice Worthless?

Dear Jon:

The plaza in which my practice occupies a unit was sold to a new landlord over a year ago. We have not experienced any change, and everything seems to be “business as usual”. We have 4 years remaining on the lease and we are approaching retirement age. We are wondering if there is anything we should be concerned about with this change in ownership or if we should avoid stirring the pot with the landlord?

Sincerely, Worried in Whitby

Dear Worried:

As space becomes limited and competition continues to increase, we are seeing landlords pose a growing issue to our clients both during practice ownership, and at the time of sale. Know what is in your lease! Your original lease and all renewals are critical, particularly when your landlord changes.

As a doctor, it is important for you to remain in the same location for the duration of your

career (particularly when you are in areas of higher competition). Given that fact, we find we are often advising clients who have not thought about their original lease in over 30 years, and who cannot remember what they initially agreed to all those years ago. It is critical that you understand this document is the mother document on which all renewals are based and still fully applies (unless you have successfully negotiated new terms in a renewal and amendment agreement). Items that may not have concerned you when signing the lease could be of great concern to your practice health today and to your ability to sell your business.

Demolition clauses

We are seeing demolition clauses become far more prevalent in leases recently. Although you might have agreed to a clause like this when signing your lease because the building was recently constructed or the landlord gave you a guarantee not to invoke this clause for a ten-year period, this clause is particularly

troublesome when:

- a) your landlord changes, or
- b) you are planning on selling your business and transferring your legacy (vs. simply closing up shop and transferring your patient charts).

Occasionally, there are strategic maneuvers we can implement to mitigate the devastation that this clause can cause and thereby still achieve a successful sale. Far more often, however, this clause renders the business virtually unsellable as it stands, leaving the owner with few, and complicated, options to retain any real value. These lack-luster options include moving to a new facility and re-establishing the practice or selling the patient charts at a deep discount to a surrounding practice.

Furthermore, one must be cautious when requesting (or receiving from the landlord) a lease extension and/or assignment. The landlord's lawyer can easily slip in a demolition clause, and we often see that, when the doctor

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Dear Colleague,

It is with great pleasure and sincerity that I write this letter of recommendation for Jon Walton, because we have just finalized the sale of my practice and he was instrumental in the success of the whole process.

He has been working with us from prior to his valuation of the clinic, throughout the sale and even after the closing to help make sure all the loose ends were tied up to my satisfaction.

Jon explained all fees and processes upfront so there were no surprises. He was always punctual, got things done in a timely manner and adapted to our schedule.

He was invariably highly professional, very friendly, personable and willing to go the extra mile to keep our minds at rest through thick and thin, being able to make good decisions at stressful moments and keep us calm in the process.

I found him to be very easy to talk to and he explains things in clear, simple English.

He put together a first-class sale package, held a busy open house and introduced a number of prospective buyers from his contacts list, one of which subsequently bought the practice. I was very pleased with how fast things proceeded and would have had a less successful and more stressful time doing things on my own despite previously having attended seminars and lectures on selling a practice.

Having had lots of experience selling clinics, Jon has a comprehensive knowledge base and a large network of independent professionals available to choose from to make up your team. We chose a lawyer and an accountant that we were comfortable with, and Jon worked to make sure everyone was always on the same page.

He did a great job of telling us what to do and when to do it (and what not to do). His whole service was thorough, effective and efficient and I would have no reservations using his services again and recommend him highly.

— Dr. Jeff Hurd