



What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT HR LAW™



Patti Latimer
Associate Litigation Lawyer



Cheryl Hutchings-Sharron
Legal Services Manager



Mariana Bracic
Founding Lawyer



Dirk de Lint
Partner



Amanda DeGeer
Paralegal



Maria Turner
Director, Health & Safety Programs and Training

It's none of your business...or is it?

One of your staff has posted some unsavoury stuff online. Maybe it's about you; maybe it's got nothing to do with you or your practice. Maybe it's unpopular political opinions which, technically, don't relate to your business, yet would affect your reputation if seen by your patients. Can you do anything if an employee's posts on social media negatively impact your business in a real and substantial way? Can you discipline the employee for off-duty conduct? It is not at all uncommon for a disgruntled former employee to post fake negative reviews of the practice. We have had great success (and written formerly about) suing for defamation in such circumstances. For the purposes of this article, we are focusing on existing (rather than former, disgruntled) staff.



"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

Many employers believe their employee's off-duty conduct should not be their concern. However, if the employee's off-duty conduct has a real and material connection to the workplace then you may have the right to discipline your employee. Each case will have different circumstances, including the severity of the employee's conduct, which will determine the acceptable level of discipline, if any. You must also take into account any mitigating factors, including the length of employment, any expressed remorse, and the employee's disciplinary record. Where we can prove the social media use had the following effects on you or your practice, we are more likely to be permitted to discipline the employee:

- harmed your reputation or product;
- rendered the employee unable to perform their duties to your satisfaction;
- lead to the refusal, reluctance or inability of your other



"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

employees to work with the employee;

- breached the Criminal Code, applicable human rights legislation, etc., which rendered the employee's conduct injurious to your general reputation and your employees; or
- made it difficult for you efficiently to manage your work and direct your work forces.

For example,

- your other employees are upset by the employee's social media posts leading to disruptions and conflict within your workplace;
- the social media post identified their workplace, co-workers, managers, or individual clients; and
- the social media post disparaged your main clientele.

The circumstances of each case and the severity of the employee's conduct will determine the level of discipline you can impose, if any. Factors to determine the level of discipline include, but are not limited to:

- What is the nature of the comments made? Were they hateful, threatening or racist?
- How frequently are the comments being made? How often did the employee make them?
- Were the comments deliberate or impulsive?
- Were the comments motivated by malice?
- Were the comments disparaging towards you, your clientele, your management, or your employees?
- Did the comments identify you or the practice?
- Did the comments reasonably affect your reputation or business interests?

Continued on pg. 2



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.**

Continued from pg. 1

- When did the employee admit to conduct?
- Did they apologize? If so, was it appropriate and sincere? and;
- What was the impact of the comments in the workplace generally and the specific impact on any persons to whom the posting referred?

Having a social media policy in place will guide your process and procedure once you become aware of an employee's negative social media use while off-duty. If you don't already have a social media policy in place, you should consider implementing one at this time. A well-drafted social media policy can protect you, your staff, your patients and your practice. It can be a preventative measure as it will set out the acceptable standard of conduct to your employees and will set out the consequences if your employees do not follow the policy. In some circumstances, what your staff do online, like their other off-duty conduct in the real world, is none of your business. But in many circumstances, your staff's social media use is something you can and should regulate. In this, like so much of HR law, an ounce of prevention is worth a pound of cure. Contact us if we can help with this or any other HR law issue you have.



Know What Your Colleagues Know

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



Love MBC Legal? Flip over for our Brokerage Division...



Continued from pg. 1

free and open competitive market) during this potentially long and costly negotiation period. Meanwhile, the BC has the freedom and leisure to change whatever terms they would like in their eventual offer (including price) over this long commitment period, while you are unable to explore any other options that may be out there with respect to the sale of your practice.

Step 2: Consider the market and what practices are actually selling for today

The major corporations do have a reputation to maintain, so we generally see that these specific corps do not typically insult the owner with the amount “appraised and offered”. However many owners fail to take into account the open market and what they could actually achieve regarding not only the sale price, but also the conditions within the offer that could impact the net amount a seller would keep, as well as level of transition they would be required to offer. In our experience, when a sale is performed properly on the open market, it is not uncommon for a quality practice (which is what all the corporations are typically looking to purchase) to sell for above appraised value

due to supply and demand, particularly in a desirable area and even to a non-corporate buyer. Allowing one buyer to be the “only game in town” allows for that buyer to have the upper hand in negotiations. This often allows for certain terms and conditions to be dictated to you that may have potentially been avoided in a true open market sale, even if the eventual sale is to a BC. Remember that there are typically multiple groups or corporations wanting to purchase your practice and you can make your practice available to the best offer available to you through an open market sale. Each corporation or group has their own preferred structure for a sale: some want you to maintain a percentage ownership, while others offer different fee structures, as examples.

Step 3 – Decide if the corporate option is right for you.

This point is fairly self-explanatory. A corporation certainly wants your business to continue to succeed; otherwise they would not be purchasing it. It is up to you to decide if you would like to pass your legacy off to a corporate model or transfer your legacy

to an independent owner/operator doctor. For some, this not only comes down to the dollar amount offered, but also the conditions in place, a holdback period of funds tied to certain targets after the closing of the sale, etc.

Buying corporations are here to stay, and there seem to be more and more emerging every day. The decision to sell to a BC has certainly been the best option for some doctors over the years. From our experience, those who do their homework and proceed properly with the sale process, even when dealing with a BC, achieve the absolute best results when it come to the sale of their practice and transfer of their hard-earned legacy. Those who get flattered into dancing with just one partner (in business as in life) have often made one of the most costly mistakes of their lives.

You have many different options out there, whether it is a BC, a group of doctors, or private sale to an individual doctor. Educate yourself before making a decision that will impact the rest of your life.

Knowledge is power.

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.mcbrokerage.ca and click on the “register now” button.



Love MBC Brokerage? Flip over for our Legal Division...



What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT
APPRAISING AND SELLING PRACTICES™



Jon Walton
General Manager
Sales Representative



Tom Schramm
Broker



Irv Handler
Sales Representative



Mariana Bracic
Founding Lawyer



Dirk de Lint
Director, Legal Affairs



Maria Turner
Sales Representative



David Schramm
Sales Representative



Eric Humes
Sales Representative

Don't be flattered into the biggest mistake of your life

Dear Jon:

A buying corporation has approached me and indicated they may be interested in purchasing my practice. I feel flattered by their interest. And I have heard rumours that buying corporations pay significantly more for practices. However they are approaching me before I have even considered selling. Furthermore, I have no idea what my practice is actually worth, other than what they have told me they may be willing to offer in a Letter of Intent (LOI). What should I do?

Yours truly, Flattered in Flamborough

Dear Flattered:

Buying corporations or groups ("BC"s) are certainly out there in record numbers these days approaching practice owners across Canada to see if their practice(s) are the right fit for their business model. We have helped many business owners sell their practices successfully to BCs over our many years of service, and we can certainly say that selling to a BC might be the best option for you as it is for some owners. However, there are many circumstances where selling to a BC may not be the best option. As far as a BC paying more than the open market

buyer for a practice, this could absolutely be the case in certain instances as most BCs have access to large amounts of funds. However, it is important to remember that BCs are in the business of acquiring practices. Accordingly, their business model requires that they purchase any practice at the best (lowest) possible price that they can, without insulting the owner, to maximize their EBITDA (Cash-flow) from day one, just as any other buyer would.

When approached by a BC, you should always, at the very least, do your homework to ensure you fully understand the offer and commitment you will be bound to. This will allow you to speak "apples to apples" with a BC. Remember, purchasing practices is part of the raison d'être of these highly specialized corporations; they are very good at what they do.

Step 1: Get (or update) a professional appraisal

Your question posits that you have not yet considered sale and therefore have not begun the planning process in any way at this point. An absolutely essential first step is to ascertain the market value of your practice. We cannot stress strongly enough how vital it is that you contact a

professional practice appraiser to understand the sale price your practice could obtain in the open market before you sign any offer or letter of intent with which the BC presents you.

Have your practice independently appraised or your appraisal updated to ensure the general offer amount being made by the BC is within the ballpark of what your practice is actually worth. Folks, we know this sounds like common sense, but we are frequently surprised at how many people allow this buyer (a sophisticated corporation) to come in and tell them what their practice is worth, and not question the BC's value or (just as importantly) the conditions of their offer. One thing we commonly see is some BCs presenting an owner with a mere Letter of Intent ("LOI") which is non-binding such that all the terms, including price, can change. However, some BCs commonly include in their LOI a 6-month exclusivity period meaning the owner is tied up for half a year and cannot discuss the sale of the practice with anyone but this BC. The poor owner is then trapped and bound to the BC exclusively (without the benefit of a

continued on pg. 2

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