



What You Don't Know Can Really Hurt You™

WHAT EVERY DOCTOR SHOULD KNOW ABOUT HR LAW™



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What If They Say, "No"?

Dr. Sylvia Ha purchased a practice, and, like many dentists in that situation, she inherited the staff. As is also, unfortunately, still quite common in the health-care industry, none of the staff had written contracts. Dr. Ha maintained that status quo initially, but on the advice of her accountant and peers, she sought out specialized legal counsel to protect her practice by making the transition to written contracts.

At MBC Legal, we have been writing and speaking about employment law specifically for doctors since 2003. When we are speaking at CE conferences across the country, the question we are, by far, most frequently asked is, "What happens if I present a new contract to an employee and she refuses to sign it?" Feeling like a broken record (remember those?) we have been trying for over 15 years to tell anyone who would listen that any such employee is out of luck. The case of *Jackson v. Ha* (yet another case that MBC Legal just won for one of our doctors) makes it clear that answer is correct, and that you should be grateful to Dr. Ha for reducing your chance of being sued by a poorly advised employee.



"Since implementing a PPP™ 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

Transitioning long term employees to written contracts

Dr. Ha sought the expertise of MBC Legal, because we specialize in transitioning health care employees to written, enforceable employment contracts. To our knowledge, the gold standard contract and policy package (the PPP™) we have been implementing for doctors for 15 years is the only such package that is tested and approved by the courts. In the course of the 15+ years that MBC Legal has been successfully



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.

providing this transition service to medical professionals (as of the last time we polled our clients) over 99% of the employees in the practices for which we roll out a Practice Protection Package™ sign the new contracts they are offered before their deadline. Indeed, all of Dr. Ha's staff signed back their new contracts quite quickly, with one exception: Arlene Jackson. Ms. Jackson, the receptionist, was one of the employees inherited when Dr. Ha bought her practice. She had attended the February meeting where Dr. Ha presented the new contracts: she had no questions and gave no indication of having any issue with the proposed terms.

Given her age (52 years) and her nine years of service, Ms. Jackson was given 10 months' working notice of the termination of her existing (unwritten) contract, with her sign back date for the new contract set for November 26, 2016. By October, having not heard anything from Ms. Jackson about her contract, Dr. Ha reached out to remind her about it, in case she had forgotten.

However, Ms. Jackson had not forgotten; she had sought legal advice about the new contract. Unfortunately, the advice she received was misinformed. (This is a disturbingly common situation in our experience: either the employer or the employee consults a lawyer who is not sufficiently specialized, with typically expensive and stressful consequences for the unwitting client.) Despite the clear language used in the cover letter and contract, Ms. Jackson believed (presumably on the advice of counsel) that she was owed a lump sum payment equal to ten months' pay in order to sign the new contract. She was also prepared to sign it for a smaller lump sum if Dr. Ha gave her a raise. Dr. Ha wanted to preserve the employment relationship, but she knew, per our advice, that she did not owe Ms. Jackson any compensation. She suggested that her lawyer call Ms. Jackson's lawyer to clear up any confusion. Ms. Jackson refused. She promptly started an action in Small Claims Court for wrongful dismissal.

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The Small Claims Action

Ms. Jackson claimed that Dr. Ha's February 2016 presentation and cover letter did not give her working notice and was equivocal as to what would occur if she did not sign the new contract. She also claimed that she had no choice but to resign due to an intolerable work environment. Dr. Ha found this last allegation particularly shocking, as she and Ms. Jackson had always had a good and friendly working relationship. Unfortunately, it is not uncommon for a formerly happy employee to make baseless claims of an intolerable, toxic workplaces or sexual harassment, etc. once they decide to start a wrongful dismissal lawsuit.

Typically, if an employee hires a lawyer to review their transition to a written contract, we are able to explain the legal realities of the process to the opposing lawyer within one or two rounds or correspondence. How long it takes generally depends on how specialized (or not) the employee's lawyer is. Unfortunately, Ms. Jackson's lawyer would not accept the basic legal principles at play. As he had already advised his client to walk away from a well paid job with a boss she liked, he would not recommend that she settle for anything less than what Ms. Jackson believed she was owed. No reasonable settlement could be reached and Dr. Ha had no choice but to fight this lawsuit at trial.

In addition to her claim against Dr. Ha, Ms. Jackson applied for Employment Insurance. Her application for benefits was denied because even Service Canada (who in our experience regularly award EI even to employees for whom there are good legal grounds to deny it) found that she had voluntarily left her employment. Ms. Jackson appealed the decision all the way up to the Social Security Tribunal of Canada and lost at every step.

to walk away from her employment because Dr. Ha did not accede to her demand for compensation. Although Ms. Jackson was entitled to try to negotiate the terms of the new contract, Dr. Ha was not obligated to accept her proposed terms. The Deputy Judge found that the process that we had used on behalf of Dr. Ha to transition her staff to written contracts was lawful and hence no further compensation (or new consideration) was required. Not only did Ms. Jackson lose her case, but she was ordered to pay Dr. Ha \$3,750 in costs (the Small Claims Court maximum!)



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.

Lessons from the case

It never ceases to amaze us at MBC Legal how much misinformation pervades the health care industry about employment law. Among the biggest, most tenaciously held, myths is that transitioning staff to new, written contracts requires new "consideration" (such as a raise, a bonus, etc). Anyone who tells you that is not competent to advise you on employment law in our considered professional opinion. It is in everyone's best interests that both employer and employee clearly understand their respective rights and entitlements. When one side misunderstands or receives bad advice, it can be catastrophic.

In the last edition of this series, we presented to readers a similar case that we recently won for one of our clients, *Lancia v. Park*, in which the Court not only confirmed that we were right on this issue, the Court ordered the employee to pay our client \$52,000 in legal fees. In the *Jackson v. Ha* decision, the consequences to the employee of misunderstanding the law in the area were perhaps even more tragic. While it was unfortunate that Dr. Ha had to take this matter all the way to trial, she won, and now doctors across the country will benefit from this decision. As an employer, you can avail yourself of the protections offered by a high-quality, written contract (and, just as importantly, workplace policies) even when transitioning long-term employees. When done properly, no lump sum payment or raise is required.

As Ms. Jackson learned, following bad employment law advice, can be devastating. Be sure you get your employment law advice from a lawyer who practises exclusively in the area and knows what they are talking about. Contact us and we would be happy to help you too. And when you run into Dr. Sylvia Ha, be sure to say, "Thanks!"



"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. Prosthodontics, 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

The Trial

While it can be stressful and expensive to go to trial, it is worth it when the truth and law are on your side. Dr. Ha and her staff were impressive on the stand. Although Ms. Jackson clearly believed that she was entitled to severance, her claims of an intolerable work place and of uncertainty about what would happen if she did not sign the new contract quickly fell apart under cross-examination. The Deputy Judge did not even need to hear closing submissions from us before she dismissed the claim from the bench. The Deputy Judge concluded that Ms. Jackson was not wrongfully terminated; Ms. Jackson had chosen

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...



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Illness that advances to terminal illness

This situation is mentally and emotionally very difficult. We have had more clients than we wish to recall who have contacted us with a serious illness. Even worse, many were contacting us far too late when their illnesses had become terminal and the end was in sight. A common pattern is that when a doctor is initially diagnosed, they very typically have the instinct to hang on to their business, reduce their hours, try to hire an associate and/or locum, and ride out the loss of clients, gross revenue and cash-flow as they fight to recover. This is statistically a recipe for disaster.

Unfortunately, in many situations the practice becomes increasingly neglected as the owner's illness persists or even advances. As we all have experienced, no one cares for a practice or works as hard in a practice as the owner. The longer the illness persists, the more damage we see

typically done to the business. Unfortunately, not all doctors recover, and the illness moves into the terminal stages. It is at this time that the doctor generally realizes that they need to sell the business. However, at this point, the business is in a deep decline having lost much of its value and salability. Moreover, the concept of money is the furthest thing from the doctor's mind, as they are emotionally trying to come to terms with their very imminent mortality, and trying to enjoy the little time they have left with their family. This results in a fire sale situation that usually leaves the family with far less money than they deserve, or even worse, a debt that they must deal with afterwards, not to mention the loss of legacy carrying on the doctor's memory.

Every situation is different, but the one common element to the most successful and least tragic outcomes is advance planning. The single biggest variable in determining the outcome is when the doctor chose to involve us.

From speaking with the doctors who become terminal, we see a reoccurring trend. Many wish that they sold their business when they were initially diagnosed with their illness, selling on a high and achieving the maximum sale price and value for their practice. This would have allowed them to spend more time with their family, focus completely on getting better, while greatly reducing the stress level they experienced while helplessly seeing their business suffer and decline.

The moral of the story is this: it never hurts to plan ahead but failing to plan can be catastrophic. Many appraisers and brokers have a templated form to add to your will giving instructions on how to proceed. Your family and legacy are important and should be taken care of and given the time they need to grieve. It is tragic when the most salient thing the family remembers about a doctor is how poorly they planned their affairs. We can help, 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.

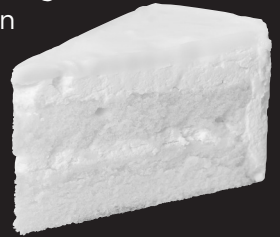
MBC Brokerage, the progressive, full service appraisal, legacy preservation and brokerage team is dedicated to standing by you, every step of the way.

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

Dear Jon

Dear Jon:

If I were to pass away or become terminally ill, what would happen to my practice legacy and my family?

Sincerely, Worried in Western Ontario

Dear Worried:

We are consistently instructed throughout our lives that we need to plan ahead. We plan our days, we plan our educational path, we plan our careers, vacations, we even plan what happens to our estate after we pass through a will. But what of our practice, possibly our largest and potentially most valuable asset? Although we all plan many things, many of us fail to plan for our practice should we die or become disabled.

Sudden Death

No matter how careful we are, accidents happen. At MBC, we often receive frantic calls from a doctor or their family after a major

accident. When it is the family calling, the situation is usually grim as it typically means the doctor passed away suddenly.

In one such situation, the doctor was traveling to an event to see colleagues, was hit in a catastrophic car accident, and passed away on the scene. The family, of course, was devastated and grieving. Fortunately for this doctor who passed and for his family, he had planned ahead in case something unforeseen occurred. Along with his will describing what should happen to his estate, he left instructions on whom to contact and what to do with his practice should he pass away suddenly. The instructions indicated to his executor (and family) immediately to contact the professional business appraisal and transition specialist company he had selected (in this case, MBC Brokerage). That is an extremely prudent thing to do as it allows us immediately to place a locum in the practice, typically only days after the death. This makes a dramatic difference in maintaining and servicing the

client base while keeping the gross revenue and cash-flow entering the business.

We then performed an emergency appraisal on the practice and a speedy sale cycle to ensure the client loss and revenue loss was extremely mitigated to non-existent. This resulted in a sale that achieved the full appraised value for the family, while carrying on the deceased doctor's legacy.

This is an example of how an extremely unfortunate situation can be handled properly. Many other times, we've seen more unfortunate (and mismanaged) situations where the doctor passes unexpectedly and the family was not left with a road map or plan. They are understandably in shock and mourning for months before they react to the needs of the business. This has devastating consequences to the value of the business, which, while the family was grieving, has hemorrhaged clients, seen its revenue plummet and its value in the market decimated.

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"When I decided that it was time to retire, I explored my options for selling my veterinary practice, both by myself and through a brokerage firm. I decided to go with MBC Brokerage, and I cannot say enough positive things about my experience with Jon Walton. He is thorough, knowledgeable, organized, and he answered all my questions, even the trivial ones, with great tact. His background gave me confidence in his abilities, and I enjoyed working with him on both a personal and professional level.

Prior to this, I had not realized the amount of work involved in the sale of a veterinary practice, all stages of which were handled by Jon in a very timely manner.

Jon did a very comprehensive evaluation of the practice, then marketed and showed it to prospective purchasers, forwarded the offers to me for my review, and acted as liaison between me and the purchasers. Through no fault of Jon's, my sale ran into a delay, but Jon put in the extra effort required to get the deal closed.

The level of service offered to me was worth every penny of his commission. I strongly recommend Jon to my colleagues in the veterinary profession who are looking to either sell or buy a practice."



Cheryl Yuill, DVM, MSc

Past President, CVO