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RIGHTFUL TERMINATIONS: HOW TO FIRE AND EMPLOYEE LEGALLY AND ETHICALLY.



by Ali Edwards¹

Becoming great at firing people is not a skill many would aspire to. It certainly was not on my bucket list when we started CEDR, even knowing that termination is 100% the riskiest time of employment. Now that we support over 1600 dental offices across the country in handling employee matters, our knowledge of how to strategically, tactfully, and legally separate employees is a matter of daily guidance for our members. And if I do say so myself, we're extremely good at it.

Invariably, terminations are a stressful experience for an employer, and a painful experience for the employee. Even when it is the right thing to do for your organization and the employee, it can trigger some serious emotional drama on both sides – feelings of anger, resentment, self-doubt, guilt.

The good news is that most of the time, these emotions pass fairly quickly for both employer and employee and the sun rises again. When they don't, and things get ugly, it's not usually because of a single decision or what happened right before termination. It's often due to a systemic lack of action and/or lack of understanding of how to hire and keep

great employees. That's a lot to bite off, though, especially when all you need right now is to get this \$#@! person off your team without getting sued.

In this article we are going to focus on the termination itself. The good news is that the steps you take right before a termination are the most critical to avoiding problems down the road.

BEFORE YOU TERMINATE: ASSESS YOUR RISK

In deciding whether to terminate, it is critical to fully assess your risk. First, check that you do not have any contractual notice obligations to this employee (i.e., they are at-will, and you haven't signed any agreement otherwise). Next, consider any protected class or activity issues. Being an at-will employer means you can fire with or without notice, for any lawful reason, or for no reason. But you may not terminate for an illegal reason, and there are many: race, religion, ethnic origin, mental or physical disability, pregnancy, age, gender, sexual orientation, marital status, and more. You also may not fire someone as retaliation for participating in a protected activity: discussing wages, complaining about harassment, filing a workers'

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compensation claim or OSHA report, taking mandatory paid sick leave, and many more.

If any of these protections are present, it doesn't mean you can't fire the person. It does mean that you better have clear cause, have treated all your employees consistently, and have a well-documented file. Otherwise, you may want to think twice. If the individual is on a medical leave or is pregnant, think thrice.

DAY OF TERMINATION: DUCKS IN A ROW

Once you've assessed the risk and decided termination is the best course of action, here's what else you'll need to do:

- **Prepare the final paycheck.** In some states you're required to issue the final check, including payout of unused earned vacation, on the day of termination, or within a specific number of days. Departing employees will be concerned about their loss of income, so providing the paycheck on the day of release relieves anxiety that could otherwise provoke confrontations. Better yet, include two weeks' pay in lieu of notice to soften the blow. This will simply delay their ability to collect unemployment benefits, and the good will is usually worth the cost. Check your state's laws for specific deadlines and requirements, and don't ever withhold a final paycheck for any reason.
- **Prepare a termination letter.** Give a brief but accurate reason for termination. You don't have to go into any brutal detail. You could say, "Your employment is being terminated as of today due to ... excessive absenteeism, or violation of our cell phone policy, or failure to meet our productivity standards," etc. The term letter is also a good place to reinforce any confidentiality obligations, and address termination or continuation of health insurance benefits (i.e., COBRA). If they are a patient of the practice, you may also want to address whether they should look for a new provider. Finally, remind them to update their contact information for end-of-year tax forms. End with a positive: Wish them luck in their future endeavors.
- **Prepare an exit interview form.** In-person exit interviews are awkward and can make what should be a very short conversation unbearable. But giving the employee one last chance to report their concerns before their story changes is a great defensive tool, especially if they later try to make a claim but can't show they ever reported the issue. Accomplish the same goal by simply giving the employee a form for them to report any concerns or feedback about their employment. You can include an SASE or invite them to respond via email. Either way, be sure you record the

fact that you gave them this opportunity, even after their employment was over.

- **Choose your timing and location carefully.** Schedule the termination meeting at the very beginning or very end of a workday, in a private setting to minimize disruption. There is no day of the week that is best, just be sure no patients will be in the office. Plan to have a witness present, or at least very close by. It is rarely a good idea to fire someone over the phone. A rare exception would be if it is a very new employee who has a long commute, and you want to avoid having them come in just to be fired.
- **Secure your systems and building access.** Be sure to terminate any access to your software and systems before the meeting, or plan for someone else to do it simultaneously. During the meeting, you will ask for the person's keys or access cards before they leave. Be sure to collect any company equipment they may have in their possession. Don't get caught up on a few uniforms if they are not returned.
- **Prepare what you'll say.** This is probably the most stressful part of the process, and the thing we are asked about most. No matter how smoothly it goes, the meeting is likely to leave you drained and upset. Knowing what to say can help. You can simply say, "After careful consideration, we've decided today will be your last day." Or, "As you know, we've had problems with _____. At this time we feel it's best to end your employment." There may be tears, yelling, argument, pleading, or even silence. Don't engage in a discussion. Don't defend your decision or apologize. Be kind, but firm. Say, "I understand this is difficult, but my decision is final."
- **Wrap it up quickly.** After delivering the news, move directly into the administration end. Hand them the letter and let them know their final paperwork and check is enclosed. Ask them to pack their things and hand in their keys, and stand to walk them out. Do not leave them un-monitored as they depart.

A few final words of warning. Whenever you're in doubt about a tricky situation in your office - consult an HR expert first. Preparation like this is critical to mitigating your risks when terminating employment.

AU Edwards is the Chief Counsel of CEDR HR Solutions (www.cedrsolutions.com), which provides individually customized employee handbooks and HR solutions to dental offices of all sizes across the United States. Ali has over 15 years' experience as an attorney, manager, and owner, and has helped thousands of dental offices solve employee issues. AU or one of the CEDR Solution Center Advisors can be reached at info@cedrsolutions.com or (866) 414-6056.



THE 2 MINUTE CHANGE THAT WILL DOUBLE YOUR CASE ACCEPTANCE

by Dr. Mike Abernathy

When it comes to work and challenges, I love to have an advantage going in. If you could add a black and white strategy that never fails and is completely fool-proof, you have a can't lose protocol. No grey here, just a straight up common sense case acceptance strategy that works every time and gets the consumer acceptance nod for excellence.

The biggest mistake I see in case acceptance and financial arrangements occurs in the last two minutes that the patient is in your office. You have done everything perfect up to this point. Then, as you finish explaining what that patient needs, you turn to your computer to print out a "super bill" that outlines all of the treatment, and the cost of each, with a total at the bottom right corner of the page you blow it. We as humans are taught to take that paper and look at the top line, slide all the way across the page to the right hand side, and then slide all the way down to the bottom of the page where we find a huge sum of money for a lot of treatment we don't really understand or want. This innocuous step will spell failure with almost every patient. It creates the dreaded "they vote with their feet" symptom of a donor practice. If you keep seeing the back of people's heads, you are doing something wrong.

So what's missing, and what is the simple change that each of us needs to make tomorrow morning to double our case acceptance? It all boils down to listening to the patient. Whether it is an assistant with an emergency patient or a hygienist with a new or recall patient that needs treatment, we need to find out what the patient wants, what their dental IQ is, and what their budget will allow. It boils down to finding out what the patient wants and telling them what they need. The trick here is to only do the financial arrangement for the work they "want" to do first. Patients will always say yes and pay for anything they want. If you can create something that looks good, feels good, and lasts a long time without hurting them or keeping them waiting while fitting it into their budget, then they will always say yes. Try to get them to go for the whole enchilada and you are doomed to have a case acceptance rate below 60%.

Here is what we do every day to get a 90% plus case acceptance. After listening to the patient and finding out what they want, we are very careful and intentional to verify what that is and begin our financial arrangements with: *"It sounds like you want to _____ (you repeat exactly what they said they wanted to do) and wait on the _____ (the other treatment they need for a later date). Is that correct?"* For the first time they have a doctor that actually listened to them and followed through by offering to actually do what they are most concerned about.

The final step is the simplest but the most important.

Never use your computer to create a detailed print out of all their needed treatment. Instead, we use a pre-printed financial arrangement sheet that details our financial policies on one side and summarizes the cost for their next appointment for the treatment they actually want to do. The extent of what the patient receives is a verbal recitation of the treatment they wanted along with a summary of what they wanted to start with on our financial sheet. Example: *"It sounds like you want to do the lower crown on the bottom right along with the two fillings just in front of that tooth."* She then turns over the financial treatment sheet and just fills in the blanks, and says: *"The cost for your crown and fillings will be \$XXX.XX,"* and writes that down as a lump sum. *"Your insurance will cover approximately \$XX.XX, and writes that down and subtracts it from the total. Leaving your portion at \$XX.XX. How would you like to take care of that?"*

Super simple, always consistent and it always works to get your patients to show up for their treatment, pay for it, and refer everyone they know. This is how you Summit.

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Are You Doing an Adequate Oral Cancer Screening?

by Dr. Michael R. Dorociak³

Cancers of the oral cavity and pharynx (throat) are the sixth most common cause of cancer in the world, even greater than cervical cancer. The use of diagnostic aids in early detection is controversial. What is not controversial however, is the low survival rate (38%) associated with delayed diagnosis. The challenge is to detect and diagnose oral cancer earlier in order to improve the prognosis. When identified at early stages, patients with oral cancer have dramatically higher survival rate (83%) (NIH: National Cancer Institute 5 year relative survival (2007-2013) by stage at diagnosis.)

- **Thorough systematic visual and tactile examination** of the entire oral cavity remains the standard of care. Use good lighting and examine the oropharynx including the soft palate, and tonsillar pillars. The tongue, floor of mouth, and pharynx combine for 93% of oral cavity cancers.
- **Do an extraoral exam:** include lips and external bi-manual palpation of lymph nodes and glands of the head and neck region. (Oral Cancer Exam DVD/Quick Guide, www.dentalemergencykits.com).
- **Take thorough health history.** Risk factors include tobacco use, alcohol consumption, and excessive exposure to sunlight. HPV (human papilloma virus) related oral/ pharyngeal cancers are on the rise changing the epidemiology of the disease.
- **Use 14 day rule.** Evaluate any suspicious lesion that does not heal in 14 days for biopsy. Histological examination remains the only tool for definitive diagnosis.
- **Diagnostic aids** may serve as an important adjunct to a good clinical exam and represent an effort at earlier diagnosis. These include autofluorescent imaging (VELscope VX by LED Dental, Bio/Screen by AdDent, Identafi by DentalEZ) and chemiluminescence (ViziLite TBlue by Den Mat).
- **Salivary biomarkers** are a potential breakthrough for non-invasive cancer detection. More development and standardization is required before it becomes a reliable method.