

Chapter 11

FINDING AND RETAINING QUALITY EMPLOYEES

Certain of you are fortunate to employ long-term staff members who share your common objectives and the mission of the practice regarding the provision of dental care. Others of you have not been so fortunate and must go through the associated negative experiences and costs to protect your practice and personal assets.

As an observation, those practice owners who experience employee problems do not intentionally create them, but may not have done all things possible to minimize potential problems prior to their occurrence. However, to do so would minimize the legal risks associated with practice ownership.

For those of you who have never experienced employee difficulties, remember that one thing in life is certain—change. Sooner or later you will be faced with the prospect of hiring or replacing a staff member(s).

Hiring

Soliciting Applicants. Before advertising or soliciting applicants for the practice, formulate a detailed description of the available position, including all essential duties and required skills. This is more than a simple list of tasks—it should be inclusive of your expectations of how the tasks will be performed.¹ In addition to assisting you in minimizing the legal risks of practice ownership, e.g., employee lawsuits, a well designed job description will enable you to effectively evaluate the skills and attributes of a given applicant or candidate and to explain those duties for which the successful candidate will be accountable. Performance standards should be designed in advance, as well as the manner and method in which the job is performed. Beyond a mere listing of tasks, a thoroughly designed job description should set forth and identify the specific results and specific daily tasks which would be expected of employees for each position in the practice.² This will assist in minimizing the frequency of employee terminations for various reasons, including, but not limited to, the lack of training and difficulty in measuring employee performance against ascertainable standards. Additionally, complete and thorough job descriptions allow you to hire quality applicants who may not have prior experience in a dental practice.

As to any advertisement for locating candidates, it is advisable that the advertised summary of traits and skills of the position do not include legally-impermissible criteria. Avoid requests for photographs, which may disclose protected characteristics, and for submissions which could disclose the presence of a disability, such as a request for an applicant to submit a

¹ How to Hire Quality Employees, Pridemark Productions, Inc., 1991, p. 14.

² How to Hire Quality Employees, Pridemark Productions, Inc., 1991, p. 11; "Dale Carnegie Management Seminar", Dale Carnegie and Associates, inc., 1977

handwritten statement. Instead, limit the solicitation to job related criteria and advertise as an equal opportunity employer.

Employment Applications/Interviews. Employment applications can and should be structured to provide a substantial amount of useful information, such as education, prior work experience and personal references. However, it is inappropriate to ask questions on employment applications or in job interviews which are not job related, invade a person's privacy, disclose the applicant's membership in a legally protected group or unlawfully request information about the applicant's race, religion, age, sex, national origin, disability, ethnicity or other legally protected status. For example, in EEOC v. Community Coffee Co., C.A. No. H-94-1061 (S.D. Tex. 1995), a federal jury in Houston awarded \$45,000 to a job applicant whose prospective employer asked illegal questions about the applicant's disability, despite the determination that the disability did not motivate the prospective employer's rejection of the application.³ In addition to the obvious unlawful questions, i.e., how old are you?, avoid inquiries such as the following to screen applicants:

Suggesting that an applicant list his/her minister or pastor as a "reference" (tends to disclose religious affiliation);
Where do you go to church?
When did you graduate from high school? (tends to reveal age)
Are you married? Divorced? Separated? Single?
Have you ever filed a worker's compensation claim?
Do you have any physical or mental disabilities?
Are you pregnant?
Do you plan to have children while you are working here?
What is your mother's maiden name?
What is your maiden name?
Who resides with you?
Where do you do your banking?
What is your credit rating?
Do you speak, read or write a foreign language? (unless this is a job requirement)
Have you ever been arrested?
Do you owe anyone money?
In what clubs are you a member?
How will you get to work?
Have you ever missed work due to illness?
Have your wages ever been garnished?

Examples of acceptable inquiries include:

Information about previous employers.
Position held with former employer.
What did you like about your last job?

³ White, Daniel R., Employment Law Strategist, Vol. 3, No. 5, Leader Publications, September, 1995, p. 8.

What didn't you like about your job?
Why did you leave your former employer?
Why do you feel qualified for this job?
Why do you want to work for this office?
What do you view to be important for the job you are applying for?
What were your wages/fringe benefits in your prior job?
Are you under the age of 18?

Be careful to objectively assess reasons for not hiring someone. Statements such as, "You are overqualified for this position" may be interpreted to be age-related or to disguise another impermissible motive. If someone is "overqualified" then he or she certainly meets the basic requirements of the job position. The following are examples of acceptable reasons not to hire an applicant:

Applicant rejected job offer;
Applicant lacks specific necessary qualifications to perform essential job;
Applicant is under age - no work permit;
After offering the applicant employment, discovery that he or she is not legally permitted to work in United States under immigration and labor laws;
Applicant refused to take, or failed, a drug screen which the employer requires of all applicants;
Applicant's falsification of application or resume;
Applicant failed to appear for follow-up interview;
Employment interview disclosed that applicant has no real interest in the available position; and
Applicant failed to report to work.

Because there may be multiple applicants who appear equally qualified for a particular position, consider the use of applicant testing procedures for all positions. The hiring decision as to which candidate is best qualified for the position should be based upon all relevant, job related factors, including technical and interpersonal skills.⁴ For applicant testing to be a useful tool, it must be job related and not indiscriminately applied to some, but not all, candidates. In the event that a skill or language test was brought into contention, it would be the employer's burden to prove that the tested skills are reasonably necessary for the position sought.⁵

Releases. It is a good practice to include a release on the written employment application or in a free-standing document. Committing the applicant to a release serves three purposes. First, it refutes any allegation at a later date that the applicant was guaranteed employment or specific terms and conditions of employment. Second, the certification of truth and completeness provides a specific reason not to hire, or later fire, an applicant who lied on the employment application. Third, the applicant expressly authorizes release of information by prior employers,

⁴ "Checklist to Help You Avoid Mistakes in Hiring," Employment Law Strategist, Vol. 3, No. 3, Leader Publications, July, 1995, p. 5.

⁵ Kaplan, Andrew B., J.D., Beth C. Ackerman, J.D., "Personnel Policies in the Dental Office: What's Legal, What's Not?," Dental management, September, 1987, p. 32.

schools and references, which refutes a later claim of invasion of the applicant's privacy rights or other claim related to these inquiries. Because of fear of being sued for defamation, prior employers are reluctant to discuss a former employee's qualifications (especially negative traits), absent a release from the employee. Although you should not base references on your personal opinion, you can say almost anything about a former employee, so long as it is true and you can back it up with documentation, such as written annual performance appraisals or written records of tardiness or absenteeism.⁶

The release language should be in conspicuous print just above the applicant's signature. The following is sample language in this regard:⁷

I certify that the information presented in this Application is true and complete. I understand that, if hired, my continued employment is expressly conditioned upon the accuracy and completeness of the information I have provided. If I am offered, and I accept, employment, I agree to abide by all rules, regulations and policies which the company may institute from time to time, in its discretion.

I understand that this Application, copies of rules, regulations and policies, and any other company documents, are not contracts of employment, and that either I or the company may terminate my employment at any time, for any reason, or no reason. No representative of the company has made any oral or written statements to the contrary and I have not relied on any oral or written statements by a representative of the company regarding employment with the company.

I authorize the company to contact any of the schools, colleges, employers, and references which I have listed on this Application, as well as any other persons or institutions, and to inquire about my suitability and qualifications for employment with the company. In consideration for the opportunity to submit this application, I agree to indemnify and save harmless the company, all the aforementioned schools, colleges, employers and references, and any other person or institution contacted by the company with respect to this Application, from and against all liabilities, costs, expenses (including attorney fees), charges, claims, fines, actions, causes of action directly or indirectly related to this application and the company's acceptance or the rejection of the application. A copy of this authorization and release shall be considered the same as the original.

Committing the applicant to these statements serves several purposes. First, it refutes any allegation by the applicant later that she was guaranteed employment or specific terms and conditions of employment. Second, the applicant expressly authorizes release of information by prior employers, schools, and references, which refutes a later claim of invasion of the applicant's privacy rights or other claim related to these inquiries. Because of fear of being sued for

⁶ Schultzer, A. I., "Careless Job References Can Cost You a Bundle," Medical Economics, February 19, 1990, p. 220.

⁷ This language may or may not be appropriate for your particular situation, depending on your jurisdiction and the information you request on your application. A prudent employer should obtain legal review of the job applications and hiring practices from time-to-time, to keep current with employment laws.

defamation, prior employers are reluctant to discuss a former employee's qualifications, especially negative traits, absent a release from the employee. Even with the release some employers stick to a policy of silence, other than to confirm dates of employment. Third, the certification of truth and completeness provides a specific reason not to hire - or to later fire - an applicant who lied on the application.

Employment Policies

Wage and Hour Considerations. Unless an exemption applies, Federal law⁸ and most state laws require compliance with minimum wage, overtime, recordkeeping, and child labor standards. Employers must comply with wage and hour laws regardless of the number of employees they have or whether employees are in full or part-time positions.

Non-exempt employees must be paid according to minimum wage and overtime regulations. Overtime is computed as one-and-one-half times the hourly rate for actual hours worked in excess of 40 hours in a work week. An issue which often arises in this context is compensatory time off to avoid accrual of overtime. Compensatory time must be utilized in the same work week as the overtime would accrue. Overtime worked in one week cannot be compensated by time off in a later work week.

A frequent misconception of employers is that employees paid on a salary basis, e.g., not specifically "by the hour," are exempt from the restrictions of the wage and hour laws). It is not this simple. In reality this is a complex area of law. The most typical area of employer error is the exemption from minimum wage and overtime requirements. Unless a worker is a professional, e.g., dentist, the determination of whether the employee is exempt from the minimum wage and overtime provisions of wage and hour laws requires analysis of the employee's duties and responsibilities, as well as the salary he or she receives. An employee is considered paid on a "salary" basis if he or she regularly receives a predetermined amount which is not subject to reduction because of variations in the quality or quantity of the work performed, or number of days and hours worked.⁹ An employee who may otherwise be exempt will be considered nonexempt if the employer treats that employee as a nonexempt employee. Failure to structure an employee's compensation in accordance with wage and hour laws may expose an employer to employee claims for back wages and civil penalties. Administrative, executive, and professional employees are generally exempt if certain criteria are met.

An "administrative" employee may be exempt if he or she is paid on a salary basis of not less than \$155.00 a week and performs nonmanual work associated with general management. The administrative employee's duties must include the ability to exercise discretion in performing his or her duties, with not more than 20% of his time in the work week devoted to nonexempt work. If an administrative employee is paid at least \$250.00 a week he or she will be exempt if such employee primarily has responsibility (including use of discretion) for nonmanual work.

⁸ Fair Labor Standards Act of 1938. Unless an exception applies, the federal act covers all employees whose employment has the relationship to interstate or foreign commerce which the ACT specifies. *See* CFR §779.1, *et seq.* States also have concurrent wage and hour rules and regulations.

⁹ 29 CFR §541.118.

Executive employees are exempt under a similar test with the added feature of being responsible to supervise at least two or more other employees.

Professional employees in the field of dentistry are exempt if they do not spend more than 20% of their time in a work week on nonprofessional activities as part of their job and do not earn less than \$170.00 per week. If a professional employee earns at least \$250.00 per week, scrutiny of the percentage of time devoted to various types of work in the course of the work week is not required, so long as the employee is working in a capacity of his or her profession.

In a dental practice, the doctor(s) and possibly the office manager will typically be the salary-exempt employees. Clerical personnel (such as dental assistants or the receptionist) are not exempt. A dental hygienist may be considered exempt as a professional if he or she meets the general exempt requirements and has completed four years of college at an institution accredited by the American Dental Association. Otherwise a hygienist is not likely to qualify as exempt¹⁰. Generally, dental assistants are not exempt.

Regarding compensation of nonexempt employees, there are many situations where the employee is entitled to compensation, but where the employer may not have thought so. An example is an employee taking a lunch break at his or her desk. If the employee is expected or permitted to work during that lunch time at the desk, the lunch break is paid time, even though the practice office policy may be that lunches normally are not paid time. As a rule-of-thumb, if an employee is required to be at work, or at the disposal of the employer, that is paid time.

Written Policies. Every office has "policies", e.g., a way of doing things, whether written or not. If you have a relatively small office consisting of only one or two employees, you may not feel compelled to create a body of formal written policies governing every aspect of the expected workplace behavior. When there exist a small number of employees, it is relatively easy to communicate with each employee about such matters as the expected behavior, work hours, compensation, dress code, vacation, office demeanor (particularly with patients), and parking. It is also relatively easy to enforce your expectations in a consistent manner among a small number of employees. However, as the number of employees increase with practice growth, consistency through a one-on-one approach often becomes more difficult and inordinately time-consuming. Written policies are useful to clarify your expectations of employee behavior in the workplace in an efficient, consistent manner and to orient new employees. Written policies also provide an objective aid to assess and document employee job performance.

Certain policies should be in writing regardless of the size of the workplace. For example, OSHA requires written safety policies, such as the bloodborne pathogens plan¹¹ and hazard communications program.¹² Written policies prohibiting discrimination may also be useful as legal defenses to discrimination claims. Memorialization that an employer is an equal employment opportunity employer and has a policy against sexual and other harassment (with defined

¹⁰ See 5 Employment Coordinator ¶C-11, 174 (1/18/93, Warren Gorham Lamont)

¹¹ 29 CFR §1910.1030.

¹² 29 CFR §1910.1200.

enforcement mechanisms) evidences the employer's intent to comply with law and take a responsible approach to management of the workplace.

Workplace harassment, which has received increased media attention over the last few years, is a topic which should be addressed by a written policy. Sexual harassment and nonsexual harassment are prohibited workplace practices. Policies prohibiting workplace harassment should include definitions and examples of the prohibited conduct and the procedure to address complaints and take corrective action.

Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, national origin, age, disability, or that of his/her relatives, friends, or associates, and that: (a) has the purpose or effect of creating an intimidating, hostile, or offensive work environment; (b) has the purpose or effect of unreasonably interfering with an individual's performance; or (c) otherwise adversely affects an individual's employment opportunities.¹³ In this regard, harassing conduct includes (but is by no means limited to) the following behavior: epithets, slurs, negative stereotyping, or threatening, intimidating, or hostile acts, that relate to race, color, religion, gender, national origin, age, or disability; written or graphic material that denigrates or shows hostility or aversion to an individual or group because of race, color, religion, gender, national origin, age, or disability, and that is placed on walls, bulletin boards, or elsewhere on the employer's premises, or circulated in the workplace.¹⁴

The above description addresses nonsexual workplace harassment, i.e., harassment which is denigrating or discriminatory but which does not involve a sexual advance or sexual innuendo. Sexual harassment is also unlawful and is defined as an unwelcome sexual advance, request for sexual favors and/or other verbal or physical conduct of a sexual nature when: (a) submission to sexual conduct is an explicit or implicit term or condition of the individual's employment; (b) submission to, or rejection of, sexual conduct by an individual is the basis for any employment decision affecting that individual; or (c) sexual advances, request for sexual favors, or other verbal or physical conduct of a sexual nature have the purpose or effect of unreasonably interfering an individual's work performance or create an intimidating, hostile or offensive working environment.¹⁵

Harassment, particularly sexual harassment, is of an obviously sensitive nature for an employee who feels targeted by such harassment. Office procedure should include written policies which prohibit harassment in the workplace and which identify a person or persons to whom an employee should report harassment. Procedures should provide for immediate investigation of any harassment claim and guidelines for determining the appropriate corrective action if harassment is found to have occurred. Harassment may occur in a variety of combinations: co-worker to co-worker; supervisor to co-worker; patient to employee; employee

¹³ Proposed 29 CFR Part 1609, 58 Federal Register 51266 (October 1, 1993).

¹⁴ *Ibid.*

¹⁵ 29 CFR §1604.11 (Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex).

to patient; employee to other third parties (such as vendors) and vice versa. An employer who allows or ignores harassment in the workplace is legally liable. When a supervisor or other person who is an agent or principal of the employer is the offender, that person is deemed to have acted as the employer itself. Therefore, in addition to the written policy, investigation and corrective action procedures, harassment training of employees, particularly supervisors, is a recommended preventive measure.

In short, written policies can assist an employer in maintaining legal compliance as well as workplace efficiency and good employee relations. To ensure that your policies emphasize and preserve the positive reasons for having them, and to avoid legal traps, it is prudent to obtain a legal overview of your policies before issuing them with your employees. One potential pitfall is the inadvertent creation of a contract between employer and employees through a written policy, which gives the policy much greater legal significance than the employer may have intended. Employees have successfully sued for wrongful discharge on the basis of employers' written policies by arguing that the policies contained guarantees of employment. To avoid this potential problem include disclaimers in written policies as to their legal effect. For example, a policy manual should include a statement that it shall not be construed as a contract, that it does not modify the at-will employment relationship in any way, and that the employer unilaterally, in its discretion, may change the policies at any time without notice.

The following are examples of topics often covered in employee handbooks. For some topics, such as bloodborne pathogens program, health insurance plan, and technical procedures, the manual need state only that there are separate written plans governing these areas and refer the employee to the actual plans for specific information:

- Mission statement and introduction;
- Employee classifications;
- Number of offices or locations;
- Management employee responsible for personnel or human resources;
- Attendance policy;
- Breaks/rest periods;
- Company work rules;
- Confidentiality - patients;
- Confidentiality of personnel matters and other work-related information;
- Patient relations and service;
- Leaves of absence - military, medical or disability, pregnancy/parental/family;
- Insurance and other fringe benefits;
- Holidays;
- Sick leave - paid and unpaid;
- Personal leave;
- Jury duty;
- Bereavement leave;
- Employment of relatives;
- Employment at-will disclaimer;
- Equal employment opportunity statement;
- Workplace harassment statement;
- Alcohol and drug policy;

- Smoking policy;
- Safety;
- Uniforms/dress policy;
- Shifts/office hours;
- Personal use of company property;
- Personal appearance;
- Performance appraisal;
- Pay schedule;
- Working hours and schedules;
- Vacations;
- Work week, payday;
- Employee assistance program;
- Seminars, training, continuing education;
- Any incentive award programs;
- Termination of employment;
- Personnel records;
- On-the-job behavior;
- Time card/time sheets;
- Orientation and training programs; and
- Nonsolicitation of patients and/or referral sources

Having developed workplace policies, take care to apply and enforce the policies in a uniform consistent manner. Also, remember that the policies are living documents, which may need to change from time to time. Changes in law or in day-to-day practice may dictate modifying, adding or subtracting existing policies. For this reason, include an audit of your policies as part of the year-end planning agenda.

Performance Appraisals. Employers have a tendency to postpone performance appraisals of their employees. However, performance appraisals should be conducted in writing, at least annually, for two reasons. First, the performance appraisal creates a paper trail of the employee's performance, particularly where the employee's performance must improve or the employee will face termination. If an employee challenges or sues based on an employment decision, the documentation retained by the practice will provide important evidence for the decision. Second, employees desire to know how their employer grades them, both with respect to strengths and weaknesses. Utilize a written form with a rating scale (such as excellent - very good - acceptable - marginal - unacceptable, or a numeric rating scale) to evaluate components of performance based upon the employee's job description. Some areas that the performance appraisal may also assess are quality of work, quantity of work, attitude, punctuality, ability to deal with patients and ability to work well with other staff members. The performance appraisal would further provide for the interviewer's positive comments, constructive assessment in areas where improvement is needed and specific action for obtaining the desired improvement. When the performance interview is conducted, review and discuss the form with the employee and the time frame for future evaluation and follow up. You, as well as the employee, should sign the form as an indication that it has been read. Provide a space for the employee to add comments. Thereafter, file the form in the employee's personnel file.

Do not allow substandard work or unacceptable behavior on the part of the employee to continue without addressing the issue immediately. If an employee is not doing well according to the job requirements or office policy, do not wait until the formal performance review to address the problem. Progressive counseling and/or discipline for improvement can assist the employee in achieving the desired performance or behavioral results. After you discuss the performance and/or behavior with the employee, document the discussion and the fact that you have requested specific improvement within a predetermined period of time. Keep such documentation in the employee's personnel file for further reference, as needed. Termination of employment or an unfavorable performance appraisal should not come as a surprise to any employee where poor performance and/or behavior is addressed through the performance appraisal, progressive counseling or progressive discipline process, as the employee would have been provided a reasonable opportunity to correct unacceptable work.¹⁶

Recordkeeping - OSHA, Personnel Files and Employee Medical Records. Employers also must keep certain records by law. OSHA requires most employers to maintain material safety data sheets describing hazardous chemicals used or stored in a workplace, records of workplace injuries, bloodborne pathogens training and inoculation records, hazardous communication program records, and emergency evacuation plan.

The immigration laws require an employer to maintain Form I-9 on each employee for three years after the date of the person's hire or one year after the person's employment is terminated, whichever is longer. Payroll records must be kept for three years.¹⁷

Employee medical records must be kept in a separate confidential files, apart from regular personnel files. OSHA requires that employers provide notice to employees of their right of access to their medical records, and many state laws have similar provisions. Employee medical records must be kept for 30 years.¹⁸

Termination of Employment

Contract Issues. Practice owners should preserve an "at-will" employment relationship with their employees. This means that either the practice owner(s) or the employee can terminate the relationship at any time, without notice or cause. In general, if the employment relationship is for an indefinite term without an employment contract of a specific duration, the relationship is presumed to be at-will. However, the employment at-will doctrine is subject to a growing list of limitations. For example, California has allowed causes of action challenging dismissals of at-will employees based upon the employer's actions being contrary to public policy.¹⁹ For example, in Gould v. Maryland Sound Indus., Inc. 39 Cal. Rptr. 718 (Cal. Ct. App. 1995), it was held that an

¹⁶ Gerlin, Andrew, "Seminars Teach Managers Finer Points of Firing," Wall Street Journal, November, 1995, ps. B1, B11.

¹⁷ 9 CFR §516.5

¹⁸ 29 CFR §1910.20.

¹⁹ "Employment Coordinator," Research Institute of America, June 20, 1994, EP-22, 831.5.

employer could not discharge an employee in retaliation for reporting overtime violations where the discharged employee was not affected by or a beneficiary of the alleged violations.²⁰ Additionally, employers may abandon employment at-will without intending to do so by making verbal or written promises to employees, e.g., by inappropriately making a promise of continued employment through an employee manual.

Promissory Estoppel. Either at the time of hiring or during the course of an otherwise at-will employment relationship, an employer may make a statement which the employee interprets to be a promise upon which the employee relies to her or his detriment, thereby limiting the employer's ability to terminate the relationship to only for just cause. This is the concept of promissory estoppel. For example, the practice owner learns that an employee is interviewing for a position elsewhere. The practice owner discusses the situation with the employee and makes a statement that the employee has a position as long as the employee is able to work. Assuming that the employee gives up the job search and remains, the employee may later argue, if fired, that there was reliance upon the practice owner's promise of job security. This type of situation could be very costly for the practice owner, both from an economic and emotional perspective, as are most lawsuits. Alternatively, it may be appropriate to positively reinforce the employee's value to the employer with a statement like, "Your efforts in our practice allow us to provide quality care to our patients" rather than make a statement similar to the one referenced above.

Unlawful Practices. The employment at-will doctrine will not be an effective defense to a claim of discharge for an unlawful reason. Under federal and state discrimination laws, it is unlawful for an employer to discharge an employee on the basis of race, national origin, religion, gender, age, a disability, or any other group or status protected by law. Laws also prohibit discharge of employees who are "whistleblowers," reporters of unlawful employer conduct, or who have asserted legal rights in the course of their employment.

Just Cause Discharge. Just cause has been defined as a cause which must be based on reasonable grounds, and there must be a fair and honest cause or reason, regulated by good faith.²¹ Examples of just cause for discharges are: absenteeism, theft, antisocial behavior with co-workers or patients, insubordination, on-the-job drug or alcohol use, and violation of safety and other work rules. Documentation of such events, through consistent recordkeeping and disciplinary action, will serve you well in the event that a former employee challenges the discharge decision.

The Termination Interview. A termination interview should always be conducted with a departing employee, irrespective of whether the employee was fired or resigned. It is a good practice to conduct such an interview with a witness from management, e.g., another owner, dentist or office manager (assuming that such a position exists in the particular practice), not a co-worker of the employee. The purpose for the witness from management is to document and

²⁰ "Recent Developments From Around the States," Employment Law Strategist, Vol. 3, No. 4, Leader Publications, August, 1995, p. 6.

²¹ Black's Law Dictionary, Fifth Edition, West Publishing Company, 1979, p. 775; Dobois v. Gentry, 182 Tenn. 103, 184, S.W. 2d 369, 371.

preserve what was said during the termination interview for a later date, if necessary. At a minimum, a written summary of the interview should be placed in the employee's personnel file.

In order to minimize the legal risks associated with the employment of others, consider the following:

1. Do not engage in legally impermissible practices;
2. Prepare job descriptions for every position in your practice;
3. Utilize applicant testing procedures;
4. Obtain a written release from the applicant to contact former employers, educational institutions and references and always take the time to complete the background check;
5. Formalize practice policies and procedures through an employee manual;
6. Conduct written employee performance appraisals at least annually;
7. Immediately respond to and document unacceptable performance or behavior;
8. Implement and provide documentation of progressive counseling and discipline in the practice;
9. Preserve the at-will employment relationship with employees in the practice to the extent possible; and
10. Conduct a termination interview with any employee who leaves the practice for any reason.

To the extent that you hire, continually train and retain quality employees, your practice and life will be more rewarding than otherwise. Never compromise on the quality of patient care which you provide or the work product of those who assist you in the provision of such care. Remember, you need to be satisfied with your own performance and you can only maintain your own standards if the persons working with you share your objectives and practice philosophy.