Employee embezzlement: Don’t let it happen to you

By Stuart Oberman, Esq.

The day-to-day pressure in running a dental practice is enormous, especially in today’s economy when every dollar counts. Unfortunately, dentists spend most of their day practicing dentistry instead of supervising the staff members who manage their dental practice. In this type of atmosphere, embezzlement can thrive.

According to industry statistics, approximately 40 percent of dental offices have been or will become the victim of employee embezzlement. Recent studies indicate that the average amount of employee embezzlement from a dental office is $105,000 per incident, which is a staggering amount.

Listed below are signs employees may be taking place:

- You fail to receive financial information in a timely manner.
- Employees are resistant to any type of change in the present accounting system.
- You have large numbers of unexplained accounting adjustments.
- Your collections have slowed.
- Your cash deposits have declined.
- An employee refuses to take a vacation.
- A staff member resents your income or lifestyle.
- An employee always works late and/or takes work home.
- You have employees who always seem to have cash on hand, and/or appear to live above their means.
- An employee treats office procedures as an annoyance.

Perform an embezzlement audit of your practice

If you suspect that an employee is embezzling funds, there are three ways to initiate a practice audit.

1) Request that your accountant performs a practice audit or hires a forensic accountant that specializes in employee embezzlement;

2) Ask your accountant to design a brief self-audit process for you to follow; or

3) Perform an immediate, cursory, on-the-spot random audit by pulling approximately 15 to 20 patient charts from the past week’s schedule in order to confirm that the treatment performed has actually been posted to each patient’s account.

If you suspect embezzlement in your practice

Anytime you suspect that you are the victim of embezzlement, you should seek legal advice immediately. Your attorney should prepare an investigation strategy that should include working closely with your practice CPA or an outside forensic accountant.

When the owner of a dental practice is first confronted with the prospect of employee embezzlement, there are four primary objectives, which are:

1) to determine whether employee embezzlement has actually taken place,
2) to determine the total amount and method(s) of the theft,
3) to remove the dishonest employee from the workplace (and take remedial actions to prevent employee embezzlement in the future), and
4) to recover the money or property lost.

Conducting the investigation

It is extremely rare that an employee is actually caught embezzling funds by direct observation. Most embezzlement cases are detected based upon initial circumstantial evidence, such as an inconsistent practice financial report or through a random audit.

If you suspect that employee embezzlement has taken place, the first thing you should do is conduct an investigation with an attorney and CPA in private, and proceed with extreme confidentiality.

The reason for this is two-fold: to avoid exposure to defamation claims and to avoid premature disclosure of information to the wrong party.

The next step is to identify employees at every level of the practice that had access to financial information and the opportunity to commit the theft. In addition, it is important that you identify employees that may have known that embezzlement was taking place, but failed to disclose it.

All employees with access to financial information and the opportunity to commit the theft should be included in the investigation regardless of their employment record, length of employment or position within the practice.

When the theft is potentially large, or the theft appears to be complex, you should always seek the advice of legal counsel, a CPA, a computer-data-retrieval specialist and other experts to assist in the investigation.

It may be appropriate for such experts to be hired by outside legal counsel in order to maintain privileged communication with the experts and to avoid any appearance of a conflict of interest.

At the early stages of an employee embezzlement claim, and depending on the extent of the theft, you may wish to contact your insurance agent in order to determine whether you have employee dishonesty coverage. Most insurance policies have strict time requirements for reporting an employee dishonesty claim.

For substantial losses, an attorney should assist the owner of a dental practice in determining whether insurance coverage may exist, and how much coverage may be available.

Depending on the type of employee embezzlement, you may wish to interview employees. However, you must ensure that the interview is conducted with appropriate regard for confidentiality and without undue coercion or duress in order to avoid a false imprisonment claim and other state law tort claims.

The owner of a dental practice or the office manager should never interview any employee without seeking the advice of legal counsel.

Appropriate disciplinary action

Once the investigation has been thoroughly completed, and if you have determined that employee embezzlement has actually occurred, you must decide what action you should take, including termination of the suspected employee.

In certain ways, investigating suspected embezzlement is similar to investigating other employ-
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The scope and manner of the investigation will depend in part on the size and complexity of the theft.

Of course, as with any investigation, the employer’s rights and abilities to investigate the facts and circumstances surrounding the incident are intertwined with the myriad of rights and protections conferred upon employees by federal and state law.

An often-discussed issue is whether a dishonest employee’s pension or profit-sharing plan may be seized in order to repay the amount of money that was embezzled.

The Employee Retirement Income Security Act (ERISA), as construed by the courts, may very well prohibit any type of garnishment, attachment or constructive trust regarding an employee’s pension or profit-sharing plan, even if an employee is terminated for embezzlement.

However, an employee may voluntarily request distribution of his or her plan in order to repay the amount that was stolen. Extreme care must be used in order to avoid any type of undue coercion or duress should this path be undertaken.

Recovering the losses

Depending on whether the loss is covered by your insurance policy, and if so, the amount of the deductible, the owner of a dental practice may wish to file a civil action against the dishonest employee in order to recover any type of loss.

However, the prospects of recovery (depending on the wrongdoer’s assets) may not justify the costs of litigation.

Another avenue to consider is criminal prosecution, which can be a very slow process. It is important to note that civil lawsuits and criminal prosecution are matters of public record, and as a result, you must weigh the consequences of any adverse publicity.

Summary

In today’s marketplace, employee embezzlement is rampant. However, with a little precaution, the financial hardship of employee embezzlement can be avoided.

In addition, with proper employee screening, proper control and oversight, as well as prudent financial control, a devastating financial loss can be avoided.

The average amount of employee embezzlement from a dental office is approximately $105,000 per incident.

About the author

Stuart J. Oberman, Esq., has extensive experience in representing dentists during dental partnership agreements, partnership buy-ins, dental MSOs, commercial leasing, entity formation (professional corporations, limited liability companies), real estate transactions, employment law, dental board defense, estate planning and other business transactions that a dentist will face during his or her career.

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