



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.

If you suspect that employee embezzlement has taken place, conduct an investigation with an attorney and CPA in private, and proceed with extreme confidentiality for two reasons: (1) to avoid exposure to defamation claims, and (2) to avoid premature disclosure of information to the wrong party. Next, identify employees (at every level of the practice) that had access to financial information and the opportunity to commit the theft. Also, identify employees that may have known that embezzlement was taking place, but failed to disclose it. All employees should be included in the investigation, regardless of their employment record, length of employment, or position. No one should be exempt from investigation, including a partner in the practice, if you have one.

If you suspect that the loss is potentially large or complex, you should seek the advice of legal counsel, a CPA, a computer data retrieval specialist, and other experts to assist in the investigation. Such experts may be hired by outside legal counsel in order to maintain privileged communication with the experts, and 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 to determine whether you have employee dishonesty coverage. Most insurance policies have strict time requirements for reporting dishonesty claims. An attorney may assist the owner of the practice in determining whether insurance coverage exists, and how much coverage may be available. Depending on the type of embezzlement, you may wish to interview employees. However, you must ensure that the interview is conducted with regard for confidentiality and without undue coercion or duress, to avoid a false imprisonment claim and other state law tort claims. Employees should never be interviewed without seeking the advice of legal counsel.

Appropriate Disciplinary Action

Once the investigation has been thoroughly completed, and if you have determined that embezzlement has actually occurred, you must decide what actions to take, including termination of the suspected employee. As with any investigation, the employer's rights and abilities to investigate are intertwined with the rights and protections conferred upon employees by federal and state law. An often discussed issue is whether an employee's pension or profit sharing plan may be seized to repay the amount embezzled. The Employee Retirement Income Security Act ("ERISA") may prohibit any type of garnishment, attachment, or constructive trust, even if an employee is terminated for embezzlement. However, an employee "may" voluntarily request distribution of his or her plan to repay the amount that was stolen. Extreme care must be used to avoid any type of undue coercion or duress.

In today's market place, employee embezzlement is rampant. However, with proper employee screening, proper control and oversight, as well as prudent financial controls, a devastating financial loss can be avoided.

New Office Opens in South Carolina

The Law Office of Stuart Oberman is pleased to announce the opening of its Columbia, South Carolina law office.

Located in the Capital Center Tower, this satellite office allows the Law Office of Stuart Oberman to expand beyond its Georgia reach and assist new clients in South Carolina.

For more information on our South Carolina office, please visit our web site at www.ScDentalAttorney.com.

Dental Seminar

We are pleased to be sponsoring a free dental seminar at the Capital City Club in Columbia, South Carolina on May 8 from 10 a.m. to noon. "The Wisdom Beneath The Teeth" features four dynamic speakers who are industry leaders in their field. A complimentary buffet lunch is included. For more info or to register, call 1-888-OBERMAN.

Upcoming Events

April 30-May 3, 2009

South Carolina Dental Association (SCDA)

May 8, 2009

Free Dental Seminar- "The Wisdom Beneath the Teeth"
Columbia, South Carolina

Online Presence

Corporate Web Site:

www.ObermanLaw.com

Dental Web Site- Georgia:

www.GaDentalAttorney.com

Dental Web Site- S. Carolina:

www.ScDentalAttorney.com



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Employee Embezzlement- Don't Let it Happen to You

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 their staff members who manage their dental practice. In this type of atmosphere, embezzlement can thrive.

According to industry statistics, approximately forty percent (40%) of dental offices have been or will become the victim of employee embezzlement. Recent studies indicate that employee embezzlement in a dental office has become so rampant that it accounts for a majority of ordinary business losses suffered by dentists. The average amount of employee embezzlement from a dental office is approximately \$105,000 per incident, which is a staggering number.

Listed below are signs employee embezzlement 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 perform a practice audit, or hire 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, which should include working closely with your CPA, or an outside forensic accountant.

When you are first confronted with the prospect of employee embezzlement, there are four primary objectives: (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.

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