Protect Your Practice From Employee Lawsuits

BY BETSY BATES
Los Angeles Bureau

PORTLAND, ORE. — As if it weren't aggravating enough to worry about frivolous lawsuits filed by patients, physicians, like all employers, also need to consider their legal liability with regard to their employees.

Fortunately, most employment lawsuits are eminently avoidable, said employment attorney Kathy A. Peck at the annual meeting of the Pacific Northwest Dermatological Society.

Supervisors should follow the "golden rules" of discipline, said Ms. Peck, a partner in the law firm of Williams, Zografos, and Peck in Lake Oswego, Ore.

These include immediacy, consistency, impersonality (targeting the behavior, not the person), and positivism, always remembering that the goal is to rehabilitate employees whenever possible, rather than to punish or ostracize them.

Physicians and office managers also need to watch their language. Ms. Peck said many cases may turn on remarks, perhaps unintentional, that might be interpreted as being derogatory or stereotypical with regard to a protected class of workers, such as older employees, women, or members of a racial or ethnic group.

Work environment harassment claims are on the rise, so practices should respond promptly and definitively to complaints of sexual, racial, ethnic, religious, age, and disability-related harassment. Just as physicians should monitor their own remarks and behavior, they are responsible for their office environment and should take immediate corrective action if that atmosphere is tainted by "unwelcome conduct," she said.

Require applicants to fill out an application form. Great interview skills do not necessarily reflect a solid employment history. "You can hide things in a resume," Ms. Peck said.

All employees (established and newly hired) should sign an employee handbook documenting policies and procedures. Include within the handbook an "at will" clause stating that the employee is free to resign at any time and that the practice is free to terminate the employee "at will." The manual also should state that this policy remains in effect unless it is changed in writing by the physician or another designated individual at the office.

"There are huge exceptions" to when an employee can be discharged and why—because of pregnancy, for example—but the clause protects employers from being sued by those who assert they were hired until they retired, or some other vague point in time, Ms. Peck said.

Another issue that needs to be addressed is when an employee has a bad attitude. It's a huge mistake to put up with "posturing princesses" or passive-aggressive manipulators who stir up trouble. These employees can sour morale very quickly, leading to turnover problems, excessive time off, stress claims, and grievances, she said.

If something happens that requires action, always listen to the employee's side of the story. Not only is this fair, it might change your perception.

Offenders should be reminded of policies that require polite and cooperative behavior, and their behaviors should be documented.

When it comes to employee performance, it is important to not allow "soft" evaluations. It will be very difficult to justify in court the dismissal of an employee who received above-average evaluations for the past 6 years.

Many times a supervisor will say, "I thought if I gave her positive feedback it might cause her to change," Ms. Peck explained. Although every evaluation should fairly point out positive performance examples, inflated praise generally does not compel an employee to work harder. Address shortcomings, establish goals for improvement, and then follow up, she advised.

Any decisions that are made regarding personnel must be documented. An employer who can present a record of fair, reasonable, and consistent evaluations and decisions will fare much better if an employment discrimination case makes it to court.

If something does happen that requires action, always listen to the employee's side of the story. Not only is this fair, it might change your perception of an event, and it also helps to establish an accurate line of documentation right away, Ms. Peck said.

A dismissed employee later may come up with a multitude of supposed claims against you, but if someone listened to and documented his or her initial story, it establishes these facts on the record.

When an employee needs to be discharged, do not call it a layoff. Softening the blow to an employee by falsely implying that their dismissal was a result of a reduction in the workforce is a good way to get "into trouble with employment law," she said. An incompetent 55-year-old employee who is laid off and immediately replaced with a 36-year-old employee has the makings of a successful age-discrimination suit, she explained.

It is also important to provide a "clean" reason when an employee is discharged. If an employee was caught embezzling money, that's a firing offense and it's enough. Piling on other minor offenses is unnecessary and may clutter up any resulting employment claim against the practice, particularly if other employees had also committed minor infractions without losing their jobs, Ms. Peck said. ■

Consensus Elusive on Financial Disclosure Issues, Survey Finds

BY MICHELE G. SULLIVAN
Mid-Atlantic Bureau

Officials in charge of disclosing financial interests in research agree that disclosure is important, but are confused about how to do so effectively and appropriately, Kevin P. Weinfurt, Ph.D., and his colleagues reported.

Their survey of 42 such officials revealed widely varying opinions on when disclosure should be made, the financial limits that should trigger it, and how much information to share with prospective research subjects, said Dr. Weinfurt of the department of psychiatry at Duke University, Durham, N.C., and his coinvestigators.

"Part of their struggle relates to a lack of clarity regarding the ultimate goals of disclosure," they wrote. "There is also a lack of systematic data regarding how potential research participants can and will use such information in their decision-making" (J. Law Med. Ethics 2006; 34:581-91).

The study was based on detailed personal interviews with 8 investigators, 23 review board chairs, and 14 conflict of interest committee chairs. The survey was designed to elicit respondents' understandings of how disclosure is done at their institutions and their thoughts on the importance of disclosure, including its risks and benefits for the institution and for research subjects.

More than half of those interviewed agreed that disclosure should occur under all circumstances; the rest said disclosure would depend on the degree of the financial relationship. The most commonly expressed reason for disclosing a financial relationship was to facilitate better-informed decision making for potential subjects. Other reasons included trust and transparency issues, reducing liability risk, and managing public perception of the institution.

About 80% of respondents said the disclosure should include the name of the funding source. But some said the name of the company or organization wasn't as important as a description—whether it was a nonprofit organization, pharmaceutical firm, or government body, for instance.

They also differed on whether the amount of financial interest should be disclosed. Conflict of interest committee chairs were most likely to want to share this information (93%), while investigators were least likely (63%). Those who expressed concern about disclosing the amount felt that such detail could become cumbersome or confusing in the informed consent statement, and that research subjects might overestimate the impact that particular amounts might actually have on research outcomes. There was no consensus on what amount should trigger disclosure—the lower limit ranged from $1 to $50,000.

There was general agreement that the nature of the relationship should be disclosed, but no agreement about whether the disclosure should explain the possible impact of those relationships. Again, concern about overcomplicating the consent statement semed to be at the root of these issues. Some respondents said the disclosure should include an explanation of how an unscrupulous investigator might alter the research results.

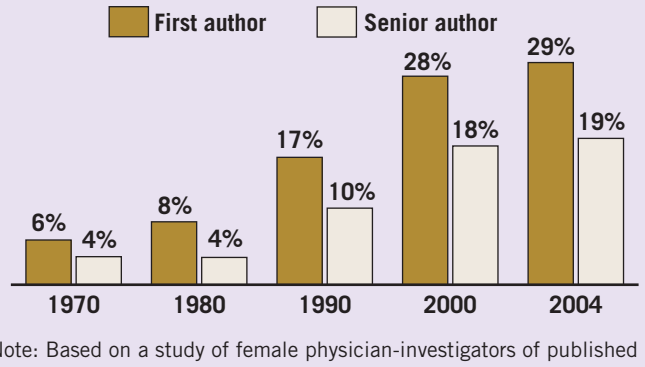
Most respondents dismissed the idea that disclosure could lower enrollment. There was little sympathy among the group for researchers who complained that full disclosure was an invasion of their financial privacy.

There was also concern about how to best highlight disclosure information without overemphasizing its importance or potential risk to a study's integrity. Some respondents said their consent form highlights the information in bold type, while others place it strategically in the document—at the very beginning, for example. Many also emphasized that the informed consent process should include a discussion of conflict of interest, not just a read-through of the document.

"Our data suggest that it will be difficult to achieve agreement on the issue of substantial understanding of financial interests," the researchers concluded. "Before we can resolve what counts as substantial understanding, there must be agreement about what risks are important for potential research participants to understand." ■

DATA WATCH

Percentage of Female Lead Authors in U.S. Medical Journals Still Lags



Note: Based on a study of female physician-investigators of published original research in six U.S. journals.
Source: N. Engl. J. Med. 2006;355:281-7