

How to Fire a Staff Member

Gino J. Benedetti, JD

Following clear guidelines will help you handle this sensitive situation efficiently and professionally.

Delivering bad news is not easy for anyone. It is natural to feel uncomfortable looking someone in the eyes and imparting news that will cause pain or anger. Yet this is an unavoidable part of taking care of patients and an unavoidable part of managing a staff.

Good instincts and hiring skills, as well as a thorough understanding of your office processes and culture, will help you make solid personnel choices; however, you can never know exactly how people will perform until they begin the job. There is no magic, painless formula for firing an employee, but you can take steps that will help reduce the occurrence of this unpleasant event. When firing someone is unavoidable, having fair, consistent policies in place will minimize the disruption to your practice's daily operations and to your staff's morale.

Communicate your expectations

Employees can fail for many reasons. Some simply turn out to be a bad fit for the position or the practice. Some fail because of poor communication. To help prevent this, communicate early and often with your employees about what you expect of them and what they need from you to be successful. Here are some keys to establishing good communication before your employee starts and during the first few days of employment:

Put it in writing. Put the terms of employment in a letter and require the employee to sign the document before the effective date of the hire. This letter should describe the position title, salary, health benefits, vacation and sick time, any probationary period and the company's policy on raises or bonuses. The letter should also identify the new employee's supervisor by name and title. Invite and encourage the employee to ask any questions regarding the terms of employment, and modify the letter as necessary to improve clarity and achieve a mutual understanding. Include with the letter any additional paperwork that the employee needs to review or sign, such as the job description for the position, as well as a schedule for the employee's first day. ➤



Communicate early and often with your employees about what you expect of them.

Be prepared. Plan an effective orientation for the employee's first day that follows the schedule described in the employment letter. This orientation should include introductions to everyone in your office, or at least those with whom the employee will have the most contact. If possible or appropriate, take your new employee to lunch or ask members of your staff to do so.

If your office has an employee manual, review it with your new employee and have him or her sign a memorandum to acknowledge receiving it. If you do not have an employee manual, review with the employee some of the basic policies under which your practice operates. For example, explain

when lunch breaks are permitted or whether personal phone calls are allowed.

Before the employee arrives, make sure to attend to the little things that show your interest in his or her success, such as a clean and well-stocked workspace. It is very impressive to an employee to arrive on the first day and find that you have prepared for him or her. This takes some of the nervous anticipation out of that first day in the office.

Check in regularly. Making the employee's first day a good one is just the beginning. You must routinely communicate with each other both formally and informally. Formal communications could involve regularly scheduled meetings or performance appraisals. Informal

communications could be as simple as sincerely asking, "How are you doing?" or sending a friendly e-mail.

If you observe any deficiencies in your employee's performance, do not dismiss them. Use them as an opportunity to constructively teach the employee about the job. This should help him or her to avoid repeating the same mistakes.

When all else fails, plan for termination

If ample communication and encouragement are not sufficient to improve an employee's performance, ask yourself whether there is anything else you can do to help this person succeed. If you are confident that the only solution is to fire the employee, it's time to make preparations. First you'll need to address some basic questions:

- **Who should attend the meeting?** You or your office

■ Firing employees is never easy, but proper office policies can reduce your need to terminate employees, or at least make the process less disruptive to your practice.

■ By taking the time to explain your expectations to employees, you will provide them with ample opportunity to succeed in their jobs.

■ Maintain formal and informal communication with employees, and schedule regular performance appraisals to monitor their progress.

SAMPLE TERMINATION MESSAGES

For a termination that is not for cause:

Mr. Smith, we have decided to terminate your employment, effective today. Our practice no longer requires your services. We will pay you for the next two weeks and will not oppose any application that you make for unemployment benefits. You may take a few moments before leaving to pack your personal items without disturbing others who are now working. If you are disruptive in any way, we will not pay you for the next two weeks, and we will oppose your unemployment application. After you've left, we will inform the staff of our decision without providing any details.

For a termination for cause:

Mr. Smith, we have decided to terminate your employment immediately because you stole from our practice. We will return to your workspace now to allow you to retrieve your personal items before we escort you out of the building. Here is a check for your salary through today. We will not be making any further salary payments to you. We will pay your benefits through the end of the month, at which time you will be eligible for benefits under COBRA (the Consolidated Omnibus Budget Reconciliation Act). If you decide to apply for unemployment benefits, we will oppose your application.

POTENTIAL LEGAL PROBLEMS

Terminating employees can create legal hassles for your practice, so it's best to be prepared to address them. When you hire new staff members, remind them in writing that they are "at will" employees and can be terminated or may choose to terminate their own employment at any time, for any reason or no reason. You should also check with your attorney about any state laws concerning employment status that you or your employees should be aware of.

Before you make the decision to terminate an employee, it may be wise to consult your attorney, particularly if the employee has done any of the following:

- Complained that your practice is violating anti-discrimination laws;
- Complained about your practice's compliance with safety or working conditions;
- Recently took leave for jury duty or will do so soon;
- Filed for bankruptcy protection;
- Requested an accommodation under disability or family leave laws.

If you are sued by your former employee, notify your attorney immediately because there are deadlines that you are required to meet. For example, you must file a written response to the lawsuit within a specific amount of time, generally 20 or 30 days. Your attorney can ensure that your response is properly filed to reserve all of your rights and defenses. If the response is not filed on time or with all defenses asserted, you risk waiving certain rights and may have to litigate your ability to assert them. This adds cost and uncertainty to the process.

Your attorney can also help you determine whether you have insurance coverage for the claim asserted against you. For example, if the claim is for discrimination, then your employers' practice liability coverage may apply. In some cases, the insurance company may be required to retain legal counsel for you and pay for that counsel. Reviewing your policies with your attorney and your insurance agent will help protect your rights.

If you receive a subpoena for the employee's file, you must produce the information or risk being fined or held in contempt of court. Ask your attorney to determine whether the subpoena is proper both in form and in the scope of its request. If you respond to an improper subpoena, you may be exposing yourself to unnecessary liability.

Finally, be sure to inform your staff of the lawsuit and the names of the lawyers representing you and the employee. This is better than leaving your employees to speculate about the unknown. At the same time, remind them not to talk about the termination or the lawsuit among themselves. Anything pertinent that your staff needs to share should be shared in the presence of counsel to protect the confidentiality of the information.

■ If an employee fails to meet expectations despite your best efforts, it's time to plan a termination meeting.

■ Before the termination meeting, consult with your attorney, who will help you protect yourself and your practice from unnecessary liability.

■ Hold the termination meeting during a time of day when the fewest number of staff members are present.

manager should be present when you speak with the employee, along with another management employee as a witness.

• **When should you meet?** Determine the date and time when you will deliver the message to the employee. The employee's last day should be the same day as the termination meeting. If the employee is disgruntled, keeping him or her in the office could negatively affect practice productivity or, in the worst cases, put staff and patients in harm's way. In most cases, you should provide the employee with pay for the remainder of the current pay period regardless of the date of the employee's

last day of work. This will give the employee time to make the transition to a new job or to begin receiving unemployment benefits.

Friday is generally a bad day to deliver the message because unemployment and recruiting offices are closed over the weekend, which leaves the employee with job uncertainty for more days than necessary. Deliver the message during a time when the fewest number of staff are present to minimize the embarrassment to your employee. This might be around the lunch hour or near the end of the day. You should anticipate changes in the practice's daily operations that might result from the employee's

departure and be prepared to address them following the termination meeting.

- **Where should you meet?** Conduct the meeting in a private meeting room or office that does not have windows that might allow others to see into the room. Again, this will minimize the embarrassment to the employee or the disruption to others if he or she becomes emotional.

- **What should you say about the reason for termination?** The content of your message and how you phrase it depends on the reason for termination. Prepare a script or an outline that explains the basis for your decision and what to expect after the meeting ends. (See some examples of termination messages on page 38.) You should keep the message simple to avoid inviting a debate about the merit of your decision. Your tone should be firm but compassionate, and your message should clearly indicate that you have made your decision and it will not be changed.

Be sure to outline the details of your meeting in the employee's file. Thorough documentation of your conversation may help you protect your practice later on, should the employee decide to take legal action. (See "Potential legal problems" on page 39 for information about the legal issues associated with firing an employee.)

Your employees are likely at-will employees, meaning they do not have a contract defining the conditions of termination. At-will employees can quit at any time, with or without a reason, and you may terminate their employment at any time, with or without a reason. Firing someone without a reason is considered terminating not for cause; firing someone for a specific reason is called terminating for cause.

When you fire an employee not for cause, you do not need to provide a reason because the employee will be entitled to unemployment benefits. Even so, it is good practice to provide a brief explanation for your decision

and to record it in the employee's file. Firing someone for cause is more complicated because it indicates that the employee was violating a rule or performing poorly. For example, you should terminate for cause if an employee is consistently late for work and refuses to correct this behavior despite your warnings. Your action will remind other employees that there are consequences for not following practice rules.

You should also terminate for cause if the employee commits a more serious infraction, such as actions that undermine the integrity of your practice or the safety of your employees or patients. For example, stealing, mishandling patient records or harassing other employees are reasons to fire an employee for cause. If you believe laws have been broken, you should contact authorities. In such cases, it's a good idea to consult with your attorney because you may be held partially responsible for the actions of your employees. Your attorney can make sure that you are protected.

When you fire for cause, let the employee know whether you intend to oppose an application for unemployment. (You are not required to oppose unemployment benefits, but allowing the terminated employee to receive these benefits would be rewarding bad behavior.) Notifying the employee up front may save you, the employee and the unemployment office some time and effort. Of course, the employee may file for unemployment benefits anyway. At that time, he or she will probably be asked whether you are likely to contest the benefits. If the employee answers honestly, the state unemployment representatives will know that you are serious and concerned about the circumstances surrounding the termination. In the event that you do not choose to contest the application for unemployment benefits, you should notify the employee of this as well. It may provide some relief to the employee in this difficult situation.

Address the details

Regardless of the type of termination, you need to be prepared to address the following issues with your employee during the meeting:

1. **The last paycheck.** Tell the employee when he or she will receive the last paycheck and what period of time the check will cover. ►

■ Deliver a simple and firm but compassionate message to the employee that indicates your decision is final.

■ If you decide to fire not for cause, you do not need to provide the employee with a reason for the firing, and the employee is eligible for unemployment.

■ A termination for cause indicates that you are firing for a specific reason, such as poor performance or a rule violation; this usually means you will oppose an application for unemployment.

About the Author

Gino Benedetti is a trial lawyer and shareholder at the law firm of Miller, Alfano & Raspanti, PC, in Philadelphia. His areas of practice include employment disputes, commercial disputes and white-collar criminal defense. Author disclosure: nothing to disclose.

Your tone should be firm but compassionate, and your message should clearly indicate that you have made your decision.

If you will be mailing the check, confirm the employee's address and telephone number to avoid complications.

2. Personal items. Place boxes at the employee's workspace so that personal items can be quickly packed immediately following the termination meeting.

3. Getting home. Provide the employee with enough cash to take a taxi home if he or she normally relies on public transportation. You may want to have someone help take the employee's personal items to the car. If the termination is due to potentially unlawful or disruptive behavior, you should plan to have the employee escorted from the building as soon as his or her belongings have been collected.

4. References. Explain how your office will respond to future phone calls asking for a reference. Your policy should be to disclose only the dates of employment, position title and last salary for all former employees, and you should assign one person in your office to be in charge of reference-related phone calls to ensure that the information you provide is consistent.

5. Practice assets. Be sure to obtain from the employee any keys, passes or passwords that allow access to your office or systems. Immediately change any passwords that were shared with the employee and take other technological measures to ensure that he or she cannot access your systems. If the employee works off site, make arrangements for the employee to return all appropriate items to you. You can arrange for a courier service to pick up these items from the employee's home. Also, be sure to emphasize the employee's continued obligation not to compromise the confidences of your practice or its patients.

Tie up loose ends

Before you conclude the meeting, allow your employee to express anything on his or her

mind, provided it is done professionally. Listen carefully to the employee's words. Although the tone or the message may be the product of the bad news, in some cases a departing employee might provide valuable insight into your practice. Be sure to document this conversation for your file.

Your final step is to present the employee with a letter that confirms the terms of the termination to avoid any confusion. The letter should simply review the important issues addressed during the termination meeting. You should deliver the letter by hand at the termination meeting to ensure the employee receives it. You can ask the employee to sign a copy of the letter to acknowledge receipt.

Once the employee leaves the office, inform your staff of the decision immediately. Waiting to deliver the message only creates anxiety and lengthens the disruption to your staff. Sending an e-mail will be sufficient. Simply state that the employee is no longer with the practice and that you wish him or her well in future endeavors. If you receive inquiries for more details, explain that it was a private personnel decision made between you and the employee. Your staff should respect this response and understand that nothing further will be said about the situation.

Keep your perspective

There is nothing easy about firing an employee, but clear and effective communication, along with a well-planned termination process, can go a long way toward making this difficult situation a little less uncomfortable for everyone involved. Most important, remember that you have a practice to protect. It is your responsibility to maintain a staff of qualified, dedicated and honorable people who will make your practice a great place to work. **FPM**

Send comments to fpmedit@aafp.org.

Be sure to address details such as how the employee's last paycheck will be calculated and how your office will handle future requests for references.

Before you conclude the meeting, allow employees to express their thoughts, and present them with a letter that reviews the key points.

Inform your staff of the termination in a brief message, keeping details to a minimum.