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Invalid Social Media Policies

By Tanya Nardone, Esq.

The NLRA, which is enforced by the National Labor Relations Board (“NLRB”), guarantees employees the right to engage in “concerted activities for the purpose of collective bargaining or other mutual aid or protection.” Under certain circumstances, the NLRA protects “concerted activities” of union and non-union employees. “Concerted activities” include general discussions of working conditions and pay practices. The NLRA protects these activities as long as they are not characterized as being reckless, violent, or malicious. Recently, the NLRB has issued decisions invalidating some employers’ social media policies because they are overbroad and are causing unreasonable restrictions on an employees’ right to engage in concerted activity.

For example, the NLRB invalidated an employer’s social media policy, in September 2012, by reasoning that: (i) the policy contained generalized limitations on what employees could post online; and (ii) such limitations were overbroad and would unreasonably restrict an employee’s right to engage in concerted activity. The applicable portion of the employer’s policy that the NLRB found to be invalid was: Employees should be aware that statements posted electronically (such as to online message boards or discussion groups) that damage the Company, defame any individual or damage any person’s reputation or violate the policies outlined in [the Company’s] Employee Agreement, may be subject to discipline, up to and including termination of employment.



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In this decision, the NLRB suggested that the employer’s policy may have been saved by including a simple disclaimer that excluded protected conduct under the NLRA. Other helpful tips when drafting or updating your social media policy, to avoid the NLRB invalidating your social media policy:

- 1.) DO NOT include blanket prohibitions because they will likely be found unlawful;
- 2.) DO be as specific and limiting as possible when banning communications—only regulating extreme statements; and
- 3.) DO consult with a knowledgeable labor and employment attorney for review and revision of your social media policy.

The bottom line is that, if you are not cautious, you may ultimately be defending your Company in a claim before the NLRB if you terminate or take other adverse action against an employee for violating an invalid social media policy. In such a claim, the NLRB might reinstate and issue back pay for the employee. Due to these type of decisions, where the NLRB has dramatically increased its enforcement activity against non-union employers, the importance of an employer obtaining EPLI has never been greater.

Understanding Dental Practice Profitability

By Jim Boltz, President, Zimmerman, Boltz & Company

While some dental practices are profitable by chance, most successful practices prosper because the dentist has taken the time to understand the *business* of dentistry. Their success and profitability can often be credited to four key factors.

They learn to read and understand their financial statements. As a dental accountant for the past 30 years, I've spent countless hours with dentists at their kitchen tables reviewing dental practice numbers. If it seems overwhelming, start with the basics. Become familiar with your Income Statement, Balance Sheet, Break Even Report and Cashflow Statement.

They know industry benchmarks. Benchmarks fall into eight major categories including Revenue, Employee Costs, Cost of Services, Facilities, Marketing, Overhead, Break Even Point and Cashflow. If your practice is well above or below an industry benchmark, you'll want to know why and see if it is necessary to make changes.

They've simplified their thinking. Profit equals revenue minus expenses. A practice should collect 100% of collectible production and receivables should be between 1-1.5 times the average monthly production. Make sure this is monitored monthly and your staff understands the protocol for receivables and collections.

They study management principles and processes. It is critical that, as small business owners, we never stop learning. With the dental and economic landscape constantly changing, it is important to stay on top of issues that may impact your practice. Find books on leadership and management and encourage your staff to read them as well.

With so much time, energy and money spent on your education, it's tempting to want to do the dentistry and ignore the business. I encourage dentists to get to know their numbers, implement ways to measure and manage them, and watch their practice grow.



Why You Need an Estate Plan

By Pilar Puerto, Esq., LL.M

As a dentist, an estate plan should be a top priority and is both essential during your lifetime and after you pass away. Estate plans become crucial in the event that you become ill, disabled, or are unable to make financial or health-related decisions on your own. Further, as dentists, you must consider the possibility of facing unexpected liabilities. A comprehensive estate and financial plan can address these concerns by protecting your wishes and your practice. An estate plan can enable you to assign guardianship for your children, protect a beneficiary from making bad decisions with an inheritance, pay off large debts, dispose of or continue your practice, and minimize estate taxes and administrative costs. Thus, the burdens of carrying out your wishes will be lifted from the shoulders of your family.

Three elements compose an estate plan. The basic tools include:

- 1.) a will
- 2.) living will
- 3.) health care power of attorney
- 4.) financial power of attorney and
- 5.) trusts.

By incorporating these elements, executing an estate plan will preserve your wishes and ease the stress on your family in the event of an accident or illness.

Regulation of Dental Insurance

By Vincent Nardone, Esq., LL.M

H.B. 159's Regulation of Dental Insurance

The experienced dental law attorneys at Nardone Law Group follow recent developments in the field of dental law. To prevent dental insurers, dental benefit plans, and other contracting entities from instituting fee limitations on services not considered to be "covered dental services" for dental insurance plan enrollees, the Ohio General Assembly recently introduced H.B. 159, which aims to regulate the dental insurance industry in Ohio.

Three Primary Regulations

If adopted, H.B. 159 will regulate the dental insurance industry in three primary ways:

- 1.) First, unless certain conditions are met, it will outlaw dental insurers, dental benefit plans, and other contracting entities from requiring a dentist to provide services to enrollees of the dental insurance plan at a fee set by or subject to approval by the insurance company. This particular prohibition would become part of Ohio's Health Care Contract Law.

- 2.) Second, unless specific circumstances are met, the proposed law would make it an unfair or deceptive practice in the insurance industry to set or require the insurer's approval of fees for dental services that are not considered "covered dental services."
- 3.) Third, the new law would prohibit insurers from offering a health benefit plan that sets fees for dental services that are not "covered dental services" unless certain provisions are met.

These prohibitions cease to apply in cases in which they conflict with ERISA rules.

What This Means for Dentists

This law, if enacted, could greatly affect what a dentist is able to charge for various services. Insurance companies would not be able to restrict the amount that a dentist is able to charge for services and dentists would not be required to be granted approval by an insurer for fees set for services that are not "covered dental services." For dentists, this means greater freedom in setting fees for services.

Upcoming Events and Deadlines

December 17, 2013	Vincent Nardone speaking at Ohio Society of CPAs Mega Tax Conference
December 25, 2013	Nardone Law Group Office closed
January 1, 2014	Nardone Law Group Office closed
January 15, 2014	IRS Tax Deadline: Final date to make installment payment using Form 1040-ES for 2013 estimated tax payments for individuals who did not pay 2013 income tax via withholding.
January 31, 2014	IRS Tax Deadline: If you did not file a Form 1040-ES by January 15, you may file your 2013 Form 1040 by this date any pay any tax due to prevent any penalty for late payment of the final installment for 2013 estimated tax payments.
January 31, 2014	IRS Tax Deadline: All business must use Form 1099 to provide annual information statements to recipients of certain payments made during 2013.

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Nardone Dental Practice Advisor



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