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## Dentistry and the Law: Ex-Employees Who Solicit Patients Using Stolen Information

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# Ex-Employees Who Solicit Patients Using Stolen Information



By Dan Schulte, JD  
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**Q**uestion: A front desk employee left my practice and is now working for another practice close by. Following her departure, I've received

several requests from patients that their records be transferred to this former employee's new practice. I believe this former employee is contacting my patients directly using a list of patient names, phone numbers, etc., taken from my office, and soliciting them to join this new practice. What I can I do about this?

**Answer:** Your employment agreements and employee handbook are your first line of defense. You should include an obligation to not misappropriate information both in the employee handbook and specifically in any employment contract you have. Any employee who has access to your patients' contact information should have an employment agreement containing an obligation to not misappropriate, use, or disclose this information, and to maintain its confidentiality. Those employees not having an employment agreement should be subject to the same obligations contained in your employee handbook, which they have agreed are binding on them as a condition of their employment. This should be documented by each of these employees in a written acknowledgement signed by them.

These obligations, whether contained in an employment agreement or employee handbook acknowledgement, will enable you to sue this former employee for breach of contract and seek damages for the loss of business resulting from this illegal use of your patient contact information. You should also consider pursuing other claims, including tortious interference, unfair competition, conversion, misappropriation, etc.

Michigan's Uniform Trade Secrets Act ("MUTSA") (MCL 445.1901 et. seq.) may also provide a remedy if you are able to establish that your patient contact information is a "trade secret." MUTSA provides injunctive relief (a court order preventing the use of the patient contact

information) in addition to money damages for your loss of business. MUTSA only applies to a "trade secret" defined by MUTSA as information having been "the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Courts interpreting this definition will consider the extent to which: (1) the information is known outside your practice; (2) which information is known by your employees; (3) measures were taken to guard the secrecy of the information; (4) the value of the information to you and your competitors; (5) the amount of effort and money expended in developing the information; and (6) the information could be legally acquired or duplicated. Therefore, if MUTSA is to be an option in pursuing a former employee who has stolen and is using your patient contact information, you must be able to establish that strict limits were placed on access to the information (such as password-protecting computer files, limiting access to only employees with a need to know, etc.).

You should know that MUTSA "displaces" conflicting legal claims that may be applicable to a misappropriation of a trade secret. The Legislature intended that claims arising from misappropriation of trade secrets (as defined by the MUTSA) would be consolidated and filed only as violations of MUTSA. This means that the other legal claims mentioned above (tortious interference, unfair competition, conversion, misappropriation, and others) could be dismissed by a court if you also sought a remedy under MUTSA. Your risk in alleging both a violation of the MUTSA and seeking damages under these other claims is that the other claims may be dismissed. If it is later found by the court that your patient contact information is not a trade secret as defined by MUTSA, that claim may also be dismissed, leaving you with no case.

The best practice is to utilize employment agreements and an employee handbook/acknowledgement with confidentiality and nondisclosure provisions. Litigation arising from the scenario you describe can be complex. You should seek advice and representation from an attorney experienced in litigating these matters. ●