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Unpaid Internships in Your Office: What You Should Know



By Dan Schulte, JD
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Question: I am considering having one or two unpaid interns in my office at different times this summer. Are there restrictions on the type of tasks that I am legally able to have them perform? Are there other legal concerns I should be aware of when having interns in the office?

Answer: Bringing interns into your office does raise legal issues. The first is whether state and/or federal laws will require you to pay them. If you intend for the internship to be unpaid you will have to carefully consider the activities and tasks that the interns will engage in and be expected to perform. It is possible that, despite your agreement with an intern to the contrary, the law will deem your intern to be an employee whom you are required to pay and otherwise treat as an employee.

The unpaid intern vs. employee distinction depends on a variety of factors. The most important factor is who benefits from the tasks performed by the intern. If an intern is required to perform office work (such as answering phone calls, reception desk duties, filing, and similar tasks) that an employee of the practice would otherwise be performing, then your practice would be the primary beneficiary and your intern would be deemed by the law to be an employee. If instead, your intern will be in the office to obtain an educational experience (such as shadowing a dentist, a hygienist or dental assistant, observing their work, and discussing how they go about it, etc.) and not performing tasks that would otherwise be performed by one of your employees, then the primary beneficiary would be the intern and the law would not deem him or her to be an employee entitled to compensation.

The second issue is when and whether your practice is required to obtain the consent of patients as a result of having interns present in the office. You should inform the patient prior to allowing an intern to observe a dental procedure. The patient's consent should be obtained and documented in the patient's record. You are not required to

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obtain the patient's signature on an authorization form or to enter into a business associate agreement with an intern.

HIPAA does not have any special provisions applicable to interns. Instead, an intern should be treated for HIPAA purposes the same as your employees. Interns should be provided with training regarding confidentiality of patient records, when disclosures of patient record information may be disclosed, and should be subject to appropriate restrictions on their access to patient records.

A third issue would be whether and to what extent your practice should have an intern perform tasks involving possible exposure to bloodborne pathogens, dental waste, contaminated instruments, and other materials or equipment. Michigan's Occupational Safety and Health Act, Michigan's Youth Employment Standards Act, the federal Fair Labor Standards Act, and other laws contain various prohibitions on exposing minors and employees generally to these types of hazardous materials and activities. The best practice would be to not put an intern in the position of being exposed to or performing tasks that would be considered hazardous pursuant to these laws.

Unpaid internships can be very beneficial experiences. However, you should carefully limit what an intern will be doing, provide appropriate training, and obtain patient consent when necessary to make sure you are in compliance with the law. ●

The foregoing article has been previously published in the MDA Journal.

Send legal questions of interest to "Dentistry and the Law," MDA Journal, 3657 Okemos Road, Suite 200, Okemos, MI 48864-3927 or email Journal Managing Editor Dave Foe at dfoe@michigandental.org.