

# HEALTHCARE PERSPECTIVE

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## Sound Human Resources Practices: Key to Quality Care

The following claim scenario illustrates some of the liability risks associated with lax human resources practices:

*A 22-year-old woman required physical therapy for neck pain due to injuries sustained during an automobile accident. The patient was treated by an employed, male physical therapist on six occasions. A few weeks after the last treatment, the patient filed a complaint with the local police, asserting sexual battery and inappropriate touching by the therapist. The therapist continued to work at the center until his license was suspended by the state, at which time his employment was terminated.*

*One year after filing the complaint, the patient sued the business owner, alleging negligent hiring and improper supervision. Discovery revealed that although the owner knew of similar accusations made against the therapist while employed by another clinic, he was personally convinced of the therapist's innocence, and had not performed adequate background checks prior to hiring him. The owner and other staff members testified that they had never witnessed any inappropriate behavior by the employee, but observed that he routinely closed treatment room doors when treating female patients, despite being told that company policy required him to leave the doors open. The parties eventually reached a settlement of approximately \$160,000, including legal costs and related expenses.*

As this case history demonstrates, failing to screen job applicants or enforce protocols can lead to disaster. The following human resources strategies can help enhance quality of care and patient satisfaction, while reducing the likelihood of patient claims alleging negligent hiring, or of employee lawsuits charging discrimination, invasion of privacy or wrongful termination:

**Job description.** Begin the hiring process by drafting an accurate and detailed job description, encompassing the essential responsibilities of the position, as well as specific tasks, required education/training and experience, critical knowledge and skills, and physical demands. Stated requirements should be reasonable and reflect actual job functions.

**Application.** Require applicants to complete, sign and date a detailed application, which includes:

- Full legal name.
- Addresses for past 10 years.
- Educational background.
- Detailed employment history, including reasons for leaving or considering leaving the most recent job and explanations for gaps in employment.
- Availability for work.
- Driving record, if relevant.
- Statement that applicant can perform the essential functions of the job, with or without accommodation.
- Disclosure of whether the applicant has worked at or applied to the organization previously.
- References, both personal and professional.
- Non-discrimination statement compliant with the Equal Employment Opportunity Commission (EEOC) and the Americans with Disabilities Act (ADA).
- Statement certifying that answers submitted are correct, including notification that any false information will lead to rejection of the applicant or termination if the falsehood is discovered subsequent to hiring.

Conversely, do not include questions designed to elicit information that may lead to allegations of discrimination, such as:

- Maiden or previous name/title.
- Citizenship or birthplace.
- Information about children or other family commitments.
- Race, religion or ethnicity.
- Date of birth or high school graduation.
- Physical description or photo.
- Whether English is first language.
- Club or union memberships.

On another form, obtain applicants' written consent to confirm their stated job and educational history, contact references and conduct a criminal background check. Applicants also should sign a statement acknowledging that they understand that employment is contingent upon successful completion of a drug test and criminal background check, as well as confirmation of credentials/licensure. (Note that in some states, it is unlawful to ask about an applicant's arrest or conviction record on the application. EEOC guidance recommends caution when inquiring about conviction records, as such a query may have a disparate impact on certain protected classes.)

**Background checks.** Inquiries should be thoroughly and consistently implemented and documented, verifying education, licensure, credentials and references. Criminal background checks should query both conviction history and sex offender status. In addition, consult relevant employment disqualification lists, if available. Credit checks should be conducted only if they are relevant to the position and are not prohibited by state or municipal law.

Exercise caution when screening prospective employees based upon criminal record or credit history. EEOC guidance discourages automatic rejection due to a criminal conviction, instead suggesting that employers individually assess each applicant to ensure that exclusions are job-related and consistent with business necessity. Similarly, EEOC guidance discourages the use of credit information in hiring decisions. Criminal background and credit checks are a complex issue requiring consultation with an attorney conversant with these aspects of employment practices law. (For additional information on criminal background checks, see the CNA Risk Control Bulletin from January 2013, titled "Use of Arrest and Conviction Records in Employment May Be Discriminatory," at <http://www.hpso.com/business-owners/resources/claim-reports.jsp>.)

**Drug testing.** If drug testing is part of the hiring process, establish a policy addressing the following issues:

- Testing timetable.
- Positions to which testing applies.
- Specific "target" substances.
- Testing procedures.
- Consequences of a positive result.

Drug testing should be performed only after a contingent offer of employment has been tendered. As laws vary from state to state, consult with an employment attorney to ensure compliance.

**Orientation.** Orientation should include basic information about the practice, organizational mission and vision, clinical practice standards, work schedules, emergency protocols and behavioral expectations. Also address such relevant issues as workplace rules, vacation time, and health insurance and other benefits, as well as staff responsibilities regarding patient safety and incident reporting. Orientation sessions should be tailored to the roles and duties of newly hired staff, and should include:

- Review of the job description.
- Discussion of the performance evaluation process.
- Signed confirmation that the employee understands and accepts his/her responsibilities.

**Continuing education (CE) and performance review.** CE and other ongoing training opportunities should be aligned with license/certification requirements, and CE credits and annual performance appraisals should be documented and stored in personnel files.

**Policy and procedure manual.** Every healthcare enterprise should have a policy and procedure manual, to be reviewed by staff members upon hire and periodically thereafter. Such a manual helps protect patients, employees and the organization by clarifying rules and enforcement mechanisms, defining roles and responsibilities, and enhancing supervisory consistency. The manual also plays an important role in defending against potential allegations of negligence. Among other functions, the policy and procedure manual should:

- *Effectively address potential employee problems, such as disruptive behavior, harassment and other unacceptable conduct.*
- *Delineate expectations regarding such matters as patient safety and confidentiality, professionalism, appropriate attire and incident reporting.*
- *Contain a general statement regarding compliance with federal, state, and local statutes and regulations.*
- *State clearly that policies regarding professional behavior apply equally to everyone, including leadership, healthcare providers, employees and vendors.*
- *Reflect actual organizational practices and respond to emerging concerns.*
- *Be dated, signed and approved by the designated manager and officer of the practice.*
- *Display proof of annual review and approval date on the cover page, and include a table of contents for easy reference.*

Update the manual regularly, alerting staff to any additions or revisions. Archive policies that have been revised or withdrawn for later reference in the event of litigation.

**Exit interviews.** Exit interviews – also known as termination or separation interviews – occur whenever staff members voluntarily end their employment. By eliciting information about the work experience of departing employees, these interviews help identify issues that may be adversely affecting the morale and performance of other staff members. In a facility with rapid employee turnover, exit interviews can help improve staff retention, if comments and criticisms are taken seriously and acted upon. In addition, well-documented exit interviews may help refute damaging testimony about facility conditions presented by disgruntled former employees.

The exit interview should be an organized and respectful process conducted by a trained and trusted individual who did not have a reporting relationship with the departing employee. For additional information about the exit interview process and sample questions, see *CNA Alert Bulletin*® 2009 – Issue 3, “Exit Interviews: Employee Perceptions Can Help Improve Morale, Reduce Liability,” available at <http://www.hpsso.com/business-owners/resources/claim-reports.jsp>.

When staff are held accountable and treated with respect by their employer, they are more likely to treat the patients and clients in their care in a conscientious and compassionate manner. For this reason, sound human resources policies and procedures, as outlined here, are essential to enhancing quality and safety, maintaining morale, reducing risk and achieving long-term success.

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## Human Resources Self-assessment Checklist

This resource is designed to help healthcare business owners evaluate their human resources policies and practices. For additional risk control tools and information, visit [www.cna.com](http://www.cna.com), [www.hpsoc.com](http://www.hpsoc.com) and/or [www.nso.com](http://www.nso.com).

RISK CONTROL MEASURES	(Y/N)	ACTION(S) NEEDED TO REDUCE RISKS
<i>Behavior-based questions and reliable personality profile assessment tools are used in hiring interviews to determine whether candidates possess the requisite integrity, decision-making ability and communication skills, as well as a caring and respectful manner.</i>		
<i>A thorough pre-employment screening process is consistently utilized and includes the following elements, among others:</i>		
<ul style="list-style-type: none"> <li>▪ Verification and documentation of references and licensure.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Criminal background investigation, encompassing all states where the applicant has lived or worked.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Review of Office of Inspector General and sex abuse registries/employee disqualification lists.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Check of credit history, if relevant and legally permissible in the jurisdiction.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Drug screen, once a job offer has been made.</li> </ul>		
<i>Employee files are regularly reviewed and carefully organized to ensure that required documents and records are current and accessible.</i>		
<i>Employee files, whether electronic or paper, are secured to protect privacy.</i>		
<i>Employee files are continually updated, and include the following documents:</i>		
<ul style="list-style-type: none"> <li>▪ Pre-employment screening documents (e.g., criminal background check, drug screen results, reference verifications).</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Required employment documents completed by the employee (e.g., application, tax forms, contracts).</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Current professional licensure/certification.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Position-specific skill certifications (e.g., CPR, ACLS, fetal monitoring).</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Job description, signed by employee and supervisor.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Copy of photo identification card.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Emergency contacts.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Confidentiality statement, signed by employee.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Signed form indicating that the employee has read, understood and accepted the terms of employment as described in the employee handbook.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ General orientation documentation, with a signed acknowledgement of completion by the employee and a human resources representative.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Department orientation documentation, with a signed acknowledgement of completion by the employee and his/her supervisor.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Performance evaluations, signed by the employee and his/her supervisor.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Professional liability claims history, if applicable, including a list of both pending and closed claims.</li> </ul>		
<ul style="list-style-type: none"> <li>▪ Reports of disciplinary licensing board actions, if any.</li> </ul>		

RISK CONTROL MEASURES	(Y/N)	ACTION(S) NEEDED TO REDUCE RISKS
<i>Employment policies are clearly conveyed to new staff members during the orientation process and are regularly reviewed thereafter. Issues to discuss include the following, among others:</i>		
<ul style="list-style-type: none"> <li>■ Compensation, benefits, hours of operation, paid time off, holidays, and personal and professional leave.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Code of conduct.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Acceptable business and professional practices.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Occupational health and safety issues.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Disciplinary measures and warnings.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Absenteeism and tardiness.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Dress code.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Rules governing conflicts of interest, workplace solicitation, outside employment and whistleblower protection.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Smoking bans and drug-testing policies.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Cell phone, Internet, email and social media rules.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Concealed weapons ban.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Harassment definition and prohibition.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Equal opportunity and diversity policies.</li> </ul>		
<ul style="list-style-type: none"> <li>■ Contract worker rules and regulations.</li> </ul>		
<p><i>Performance appraisals are conducted annually, with results acknowledged in writing by the supervisor and employee.</i></p>		
<p><i>A "tickler system" is established to track due dates for appraisals and licensure recertification.</i></p>		
<p><i>Exit interviews take place whenever staff members voluntarily end their employment.</i></p>		



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