



LEGAL

# Protecting Your Dental Office from Fraud



**ADA** Center for  
Professional Success™

## Acknowledgments

This publication was developed by the Division of Legal Affairs, Council on Dental Practice and the Department of Salable Materials.

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### **DISCLAIMER**

This ADA publication is designed especially for dentists and the dental team and provides helpful information about fraud and embezzlement issues that may arise in dental offices. The publication is not intended or offered as legal or other professional advice. Readers must consult their own legal counsel for such advice. We hope that the publication streamlines your consultation with your counsel.

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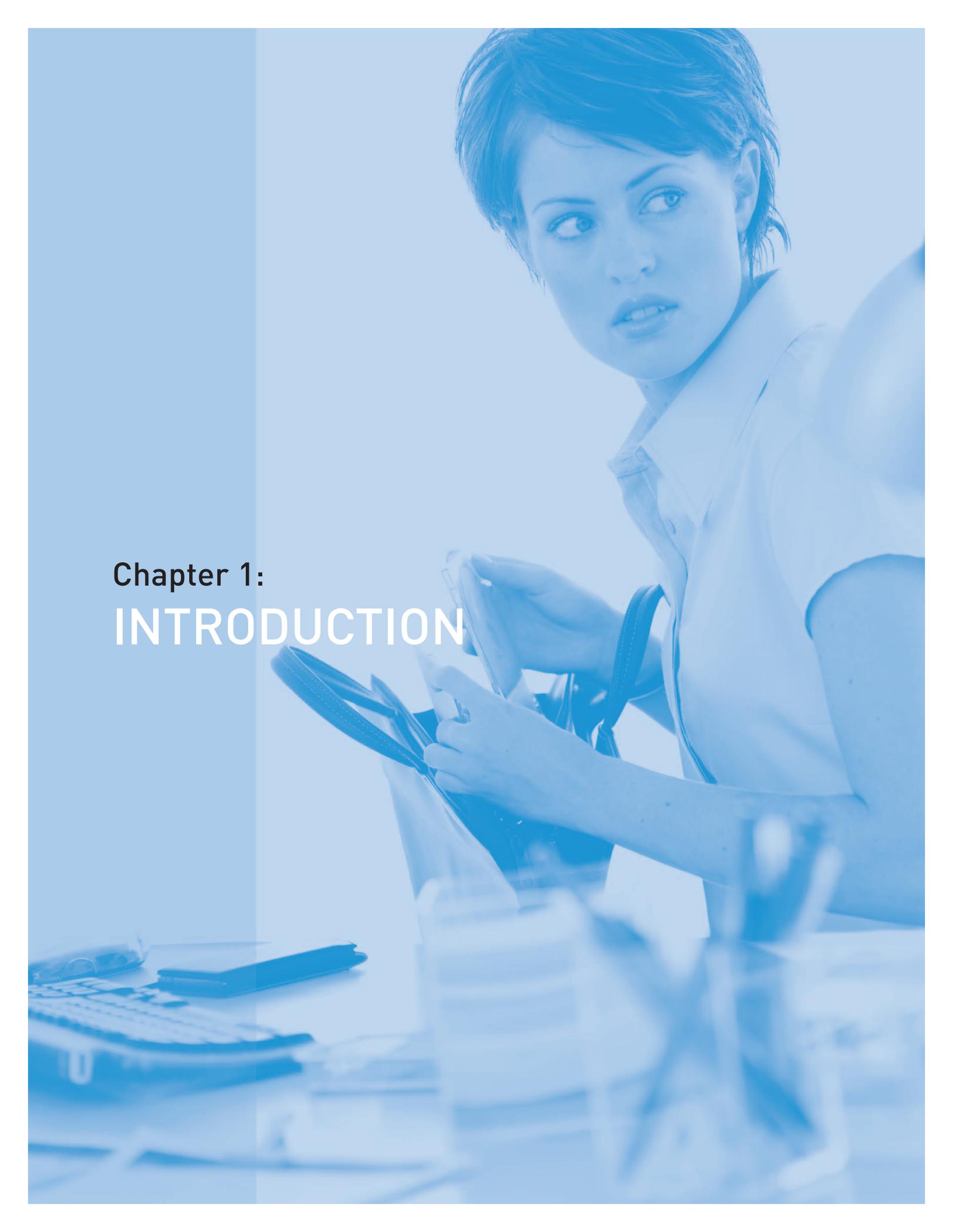
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A woman with short dark hair, wearing a white button-down shirt, is looking over her right shoulder towards the camera. She is holding a dark-colored bag with both hands. The background is a light blue gradient. In the foreground, there is a desk with a keyboard, a mouse, and some papers, all slightly out of focus.

**Chapter 1:**  
**INTRODUCTION**

# Chapter 1: Introduction

## Purpose of publication

This publication is designed to educate you about the legal issues surrounding embezzlement, and to ensure that you are in the best position possible to exercise your legal rights if an employee ever embezzles from you. You cannot afford to think that your office is immune from embezzlement! Indeed, a primary motivation for this publication was the number of inquiries received by the American Dental Association from member dentists seeking legal assistance with respect to employees who had embezzled from their dental practices and for guidance on how to prevent it from happening. Based upon our communications with members, it's clear to us here at the ADA that embezzlement is a real problem for dental offices.

In addition, outside sources confirm the prevalence of embezzlement. Roger Levin, DDS, MBA, chief executive officer of Levin Group, has surveyed hundreds of dental offices. The data from questionnaires with his clients indicates that 35% of dental offices have been embezzled once, and 17% more than once — and these are just the offices that are aware that embezzlement has even occurred! With this ADA publication, we want to help minimize your chances of embezzlement and to put you in the best position possible to pursue all of your legal options should you become the unfortunate victim of embezzlement.

## What is embezzlement?

While many people loosely use the word “embezzlement” to describe different types of theft, “embezzlement” is actually a legal term to describe a particular type of crime in the workplace. As discussed in Chapter 8, while every state has its own definition, a general definition of embezzlement is: *the intentional and fraudulent taking of another person's property by one who has been entrusted with the property for his/her or another's own use*. What makes embezzlement different from ordinary theft is that the embezzler is, by definition, someone you trust, such as an office manager, supervisor or some other employee.

For instance, imagine that the very employee you trust the most, who works extra hours and rarely if ever takes a vacation, has been secretly misappropriating funds from your practice for months or even years. Your initial reaction may include anger and hurt, a sense of wanting revenge, and to prosecute the offender. Later, your feelings may change to embarrassment, shame and not wanting to publicly admit that the embezzlement occurred. This type of scenario frequently happens in dental offices.

# 35%

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## Think like a lawyer

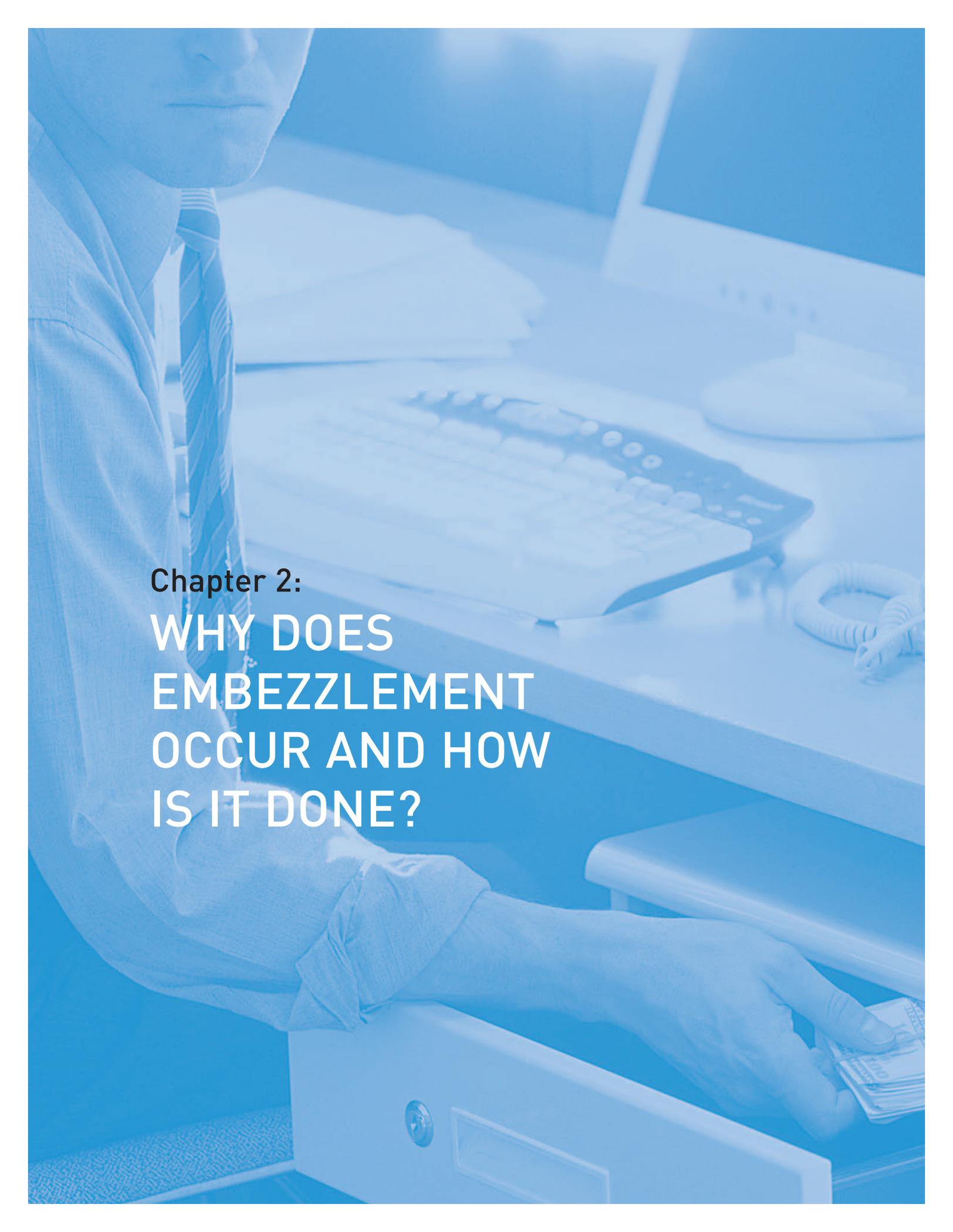
Regardless of how you feel, you must keep in mind that embezzlement is a crime; therefore, if you suspect an employee of embezzlement, you must immediately start to think like a lawyer. What this means is that you must be aware of your various legal options so that you can take all necessary steps to maximize them. For instance, you may decide to prosecute the embezzler criminally or sue the embezzler civilly (or both). Any of these approaches requires you to first undertake a thorough investigation of the embezzlement because you must provide sufficient evidence to advance your position legally and succeed at trial. However, if you do not perform a proper investigation, you may be unable to successfully exercise your legal options, even if you know what these options are.

If you decide not to undertake a detailed investigation — which we do not recommend — you may nonetheless immediately want to fire the employee whom you suspect of embezzlement. However, terminating your employee is fraught with peril if you are not cognizant of the numerous legal issues surrounding termination. We tell you about these legal issues in Chapter 7 of this book. The last thing you want, for instance, is for your terminated employee to sue you for wrongful discharge.

Accordingly, this publication will provide you with the necessary legal tools to take control of the situation and plan how you wish to proceed against the embezzler. In addition, this publication will discuss various other legal aspects of embezzlement, as well as provide you with information on how to prevent and safeguard your practice to minimize your chances of being a victim of embezzlement. After all, prevention is a concept well known to dentists!



***If you decide not to undertake a detailed investigation — which we do not recommend — you may nonetheless immediately want to fire the employee whom you suspect of embezzlement. However, terminating your employee is fraught with peril if you are not cognizant of the numerous legal issues surrounding termination.***

A blue-tinted photograph of a man in a suit sitting at a desk with a computer. He is holding a stack of cash in his hand. The image is used as a background for the chapter title.

**Chapter 2:**  
**WHY DOES  
EMBEZZLEMENT  
OCCUR AND HOW  
IS IT DONE?**

## Chapter 2: Why does embezzlement occur and how is it done?

### Why does embezzlement occur?

Simply put, embezzlement happens because it can — it is a crime of opportunity. The employee's first act may be to "borrow" \$10 from petty cash because he/she forgot to go to the cash station. The employee may initially intend to pay the money back, but ultimately keeps it. Why doesn't the employee return the money? Because no one noticed that the \$10 was missing (or if it was missed, nothing was said).

### Opportunities for fraud

**According to the Institute of Financial Crime Prevention<sup>2</sup>, there are four conditions in a workplace that provide the opportunities for fraud.**

**These are:**

- **Poor internal controls;**
- **Too much control limited to specific employees;**
- **Lack of supervision by management; and**
- **Failure to prescreen employees adequately.**

Most experts in the field of accounting agree that it is almost impossible to estimate how much fraud costs companies because so much is undetected or unreported. Additionally, no one agency is charged with accumulating data on fraud offenses.

Nonetheless, the American Dental Association (ADA) surveyed its members in 1996<sup>3</sup>, asking survey recipients whether they were aware of any past embezzlement by an employee and, if so, to report the dollar value of the loss. The embezzlement losses among the 11.9% of dental practices that reported being embezzled showed that 55.2% experienced a loss of less than \$5,000, while 16.4% suffered losses of more than \$20,000. The mean amount embezzled was \$9,247, while the amount embezzled ranged from \$25 to \$100,000.

Why are small business owners, in particular professional practices, such as dentists, physicians, lawyers and veterinarians, so susceptible to fraud? First, because all are professionals who want to practice the skills they trained for — dentistry, medicine, law and animal medicine. More often than not, the dentist does not want to deal with the day-to-day, mundane details of running a dental practice and is quite content to let competent staff take charge (and control) of these duties.

<sup>2</sup> "Fraud/Embezzlement," Boston College, [www.bc/offices/audit/ethics/fraud/](http://www.bc/offices/audit/ethics/fraud/).

<sup>3</sup> American Dental Association, Survey Center, *1996 3rd Quarter, Quarterly Survey of Dental Practice*, page 10, 1996.

Small businesses suffer disproportionately large losses due to occupational fraud and abuse<sup>4</sup>. The median cost experienced by small businesses in our study was \$98,000. This was higher than the median loss experienced by all but the very largest organizations. Small businesses are less likely to be able to survive such losses and should better protect themselves from fraud.

This same report includes a chart titled “Frequency and Median Loss of Occupational Frauds Based on Industry.” Health care is listed as having 7.3% of all cases examined in this study, with a median loss of \$105,000.<sup>5</sup>

**What types of fraud are most common in health care, according to this report?<sup>6</sup>**

- **Billing** .....**35.1%**
- **Cash larceny** .....**29.7%**
- **Skimming** .....**21.6%**
- **Payroll** .....**13.5%**
- **Expense reimbursement** .....**5.4%**

Secondly, a dentist is a small business owner with a limited number of staff to segregate these duties and often might not closely supervise managerial staff. Lastly, most of the dentist’s professional education did not prepare or train the dentist on how to run a practice or where to obtain resources. Preventing embezzlement is likely to have been a very low priority on the dentist’s list of critical skills to learn, behind issues such as dealing with dental benefit plans, OSHA, HIPAA, infection control, federal laws such as the Americans with Disabilities Act — and a long list of other issues.

## How does an employee<sup>7</sup> embezzle?

While this publication will deal with commonly known methods of embezzlement, be forewarned that the ways in which an entrusted, creative employee can misappropriate funds is unlimited— as shown by almost daily newspaper articles on the subject.

As you’ll see in Figure 1 titled “Uniform Occupational Fraud Classification System,” all occupational frauds fall into one of three categories: asset misappropriations, corruption or fraudulent statements. Over 80% of occupational frauds involve asset misappropriations, and cash is the targeted asset 90% of the time<sup>8</sup>.



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<sup>4</sup> 2004 Report to the Nation on Occupational Fraud and Abuse, Association of Certified Fraud Examiners, Austin, TX, 2004.

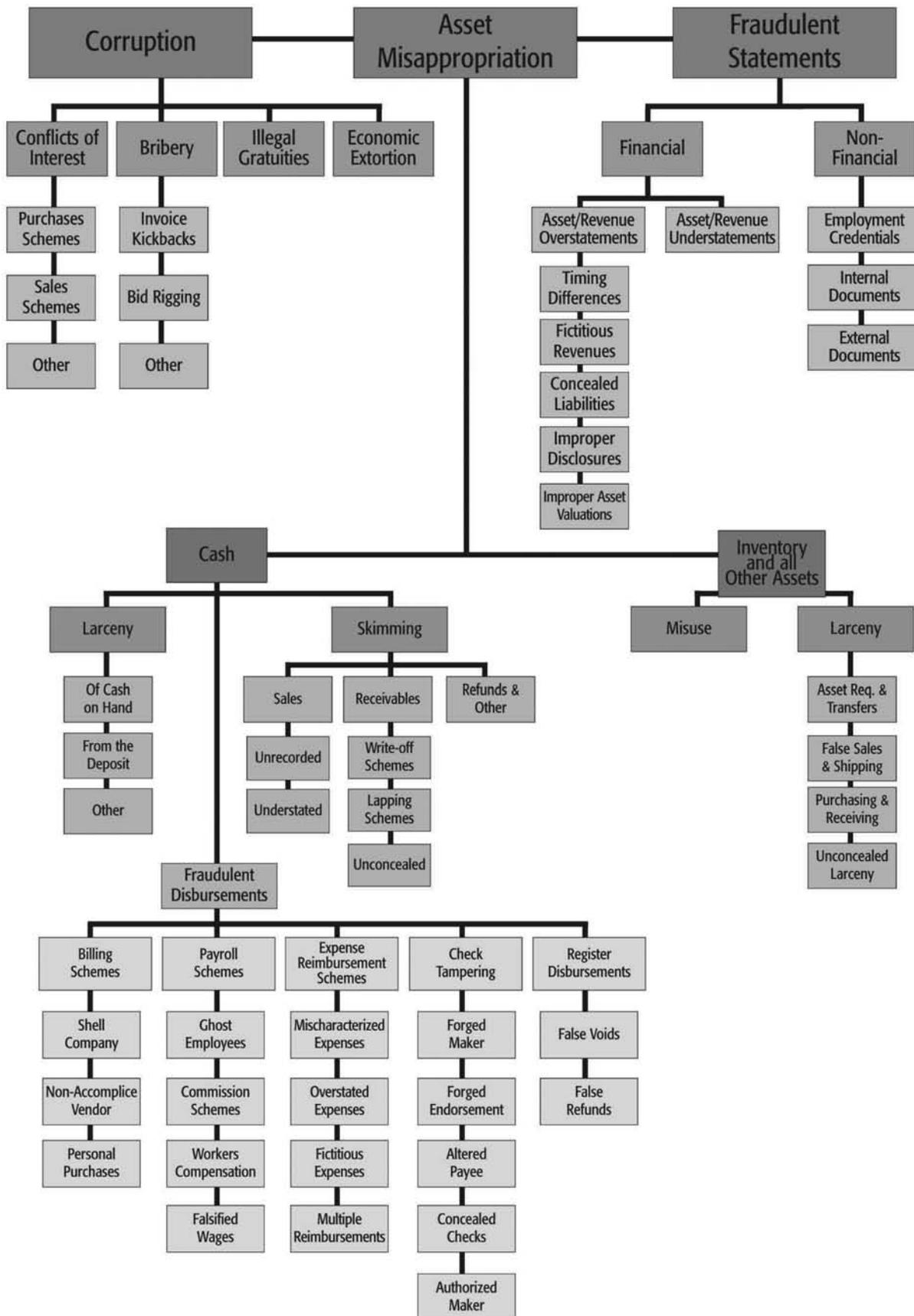
<sup>5</sup> Ibid., page 7.

<sup>6</sup> Ibid., page 16.

<sup>7</sup> That employee who steals or embezzles might be anyone in the practice, even a partner! However, to simplify the content of this publication, the term “office manager” is used in this publication for staff that might have been classified as front desk, receptionist or some similar title.

<sup>8</sup> 2002 Report to the Nation, Association of Certified Fraud Examiners, Austin, TX, 2002.

**FIGURE 1: UNIFORM OCCUPATIONAL FRAUD CLASSIFICATION SYSTEM**



In the following paragraphs, we'll detail the different methods of embezzlement, using "Mary" as our fictitious dental office manager.

## Cash

- **Petty cash**

Petty cash can be like a candy dish filled with money in a practice, with amounts of up to \$500 available in some offices. It may be maintained without the use of receipts. Because no one monitors or notices the steady flow of money, petty cash is often the asset that an embezzler first uses to see if he/she can "borrow" the money without detection. Any discrepancy can be easily explained with plausible excuses.

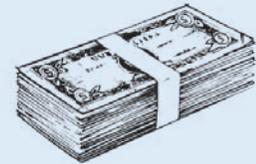
- **Cash payments**

A patient pays \$150 in cash for treatment. Mary, the fictitious administrator who handles patient finances, "deposits" the money in her purse, rather than in the practice's bank account. How does she get away with this?

- If Mary also is responsible for handling the bank deposits, she alters the deposit slip and does not list the payment.
- If someone else makes out the deposit slip, Mary alters the deposit slip by the \$150 amount she pockets.

However, what about the patient record – won't the \$150 payment be missed? Not if a daily and/or monthly report showing the amount posted to patients' accounts and comparing it to the bank statement total amount is never printed and reconciled. No duplicate receipt forms are used in this instance. Here are a few of the ways this scheme might play out:

- The patient visit is never entered into the computer, leaving no trail to hide or clean up. No statement is ever mailed.
- Mary accepts Mr. Smith's \$150 payment and posts it to his account.
- Mary posts the cash as a credit to Mr. Smith's account, rather than as a payment. No adjustment log is printed, nor is a reason for the adjustment noted (or required by the dentist).
- Mary takes the cash and covers it with a \$150 insurance check. She posts the cash payment but not the insurance check. Insurance accounts are often behind and no one notices or cares.



*Because no one monitors or notices the steady flow of money, petty cash is often the asset that an embezzler first uses to see if he/she can "borrow" the money without detection. Any discrepancy can be easily explained with plausible excuses.*



***A telltale sign of short-changing or altering of transactions is an unusual number of patient complaints about errors on monthly statements, especially unrecorded cash payments.***

### **ADA Case Study Examples:**

*(See also Chapter 4 on payroll schemes and Case Studies in Chapter 9.)*

- The embezzler changed the amount on the check after signature, transforming a \$50 check into a \$950 check.
- The front desk employee used whiteout to change the name of the payee on practice checks from that of a vendor to her own name.
- The office manager made the bank deposits for the practice, using deposit slips with a carbon copy. On the office copy of the deposit slip, the correct amount of money was shown for the deposit. However, on the bank copy, less money was deposited. Deposit slips were created each day but it was discovered after the office manager was fired that she held the deposit slips for 10-12 days and then turned in all the deposits in one day rather than on a daily basis, allowing her ample time to juggle the money.

### **Short changing or altering transactions**

If Mary handles receivables, she has many ways to skim funds. The real trick is to hide this activity because the practice will be expecting payment on the account.

If Mary has the responsibility to enter both receipts and post payments, she can keep the receivable account from aging by posting the payment but not depositing the funds. Overstating (falsifying) the total on the cash account to match the total postings hides this imbalance.

How will Mary cover her tracks? One way is simply a *write-off*, marking the account as uncollectible. In this scenario, the patient may continue to make payments, which Mary pockets, and no one is the wiser. The payments are not even missed since the account is listed as uncollectible.

How about simply giving Mr. Smith a fake \$100 “discount” or “allowance”? Once again, unless someone is really monitoring the accounts, small false discounts are likely to go undetected.

Insurance adjustments give Mary another easy opportunity to “earn” some extra money. The co-pay is collected from the patient and the amount is written-off as the negotiated portion. Constant changes in dental benefit plan payment structures and/or the dentist’s lack of knowledge make this plan very workable. A telltale sign of short-changing or altering of transactions is an unusual number of patient complaints about errors on monthly statements, especially unrecorded cash payments.

### **Stealing statements**

Mary may take a payment mailed into the practice and keep it without posting it. To keep the patient from complaining and to avoid detection, Mary either intercepts the patient’s account statement and does not mail it to the patient or changes the

address on the account so the patient never receives the bill. (Maybe Mary even mails the statement to herself). The patient may still complain unless Mary produces a bogus statement indicating that the payment was posted.

### **Falsification of expense accounts**

This type of asset misappropriation needs little explanation because it is so easy. For instance, the employee may submit a bogus receipt, inflate mileage driven to a seminar, use a company cell phone for unauthorized calls, get reimbursed for personal items, and so on.

### **Forged signatures and/or checks (or unauthorized use of signature stamp)**

Mary merely writes out checks and either signs for the dentist or uses a signature stamp. However, in an office where no one is paying attention, there may not even be the need to go to this much work to steal assets. In one ADA Case Study, the embezzler merely paid her own bills right out of the practice account, and the dentist signed the checks without requiring documentation.

#### *ADA Case Study Examples*

- **The office manager forged the doctor's signatures on checks, and over time did not even attempt to disguise the signature (multiple examples on this method).**
- **The doctor would sign blank checks or allow a signature stamp to be used (this is an extremely common practice, according to case studies).**

### **Lapping**

*Lapping* occurs when a person steals cash from payment of accounts receivable, and continuously uses cash from other payments of accounts receivables to conceal the initial theft ("laps" two consecutive accounts).

Exactly how does lapping work? Mary receives a \$100 cash payment from Mr. Smith on July 1 and pockets the money. To avoid getting caught, another \$100 is taken from a \$200 cash payment made by Mrs. Jones on July 5. From Mrs. Jones' \$200 cash payment, \$100 is paid into Mr. Smith's account and the other \$100 is pocketed.

As this "borrowing" procedure continues, the employee steals increasingly larger amounts of money involving more and more accounts. A fraud of this nature can run on for years. Of course, it requires detailed record keeping by the embezzler in order to keep track of the shortage, and transfer it from one account to another to avoid suspicion. This control over details is one reason why the typical embezzler appears to be such a loyal, hard-working person. If the embezzler were to take time off, and thus lose temporary control over the computer and accounts payable and receivable, the chance that someone would discover the fraud would greatly increase.



*In one ADA Case Study, the embezzler merely paid her own bills right out of the practice account, and the dentist signed the checks without requiring documentation.*

*Control over details is one reason why the typical embezzler appears to be such a loyal, hard-working person. If the embezzler were to take time off, and thus lose temporary control over the computer and accounts payable and receivable, the chance that someone would discover the fraud would greatly increase.*

**ADA Case Study Example:**

One ADA case study participant said that he had employed an office manager who constantly carried a yellow legal pad around with her; she was never without it. When a second front desk employee was added to handle patient money, the office manager asked the dentist numerous times to fire this new person. Later it was discovered that the office manager had used “lapping” to embezzle \$19,000.

## Dental insurance fraud

Dental insurance fraud<sup>9</sup> is any crime where an individual receives insurance money for filing a false claim, inflating a claim or billing for services not rendered. Insurance fraud takes many forms. Following is a real-life example of dental insurance fraud:

**15-month prison term in dental insurance scam<sup>10</sup>**

*The former manager of a Mundelein dental office was sentenced Wednesday to 15 months in prison for bilking insurers out of about \$250,000 over 14 years by billing mostly for work never performed on patients.*

*“I’ve never even had a parking ticket,” Denise L. Sullivan, 43, of Wadsworth told U.S. District Judge Harry Leinenweber before he imposed the sentence. “This is a crisis beyond all my wildest imagination.”*

*To buttress the phone claims, Sullivan mailed insurers copies of X-rays of patients who had previously undergone legitimate work, according to prosecutors Scott Lewis and Jacqueline Stern.*

Other specific examples include:

- Billing for services not provided.

**ADA Case Study Example:**

A dentist who managed a large dental center for a corporation was convicted of a felony, fined and sent to jail, although he was not involved in the crime. A staff member committed billing fraud by adding procedures not done to patients’ bills. The dentist manager was not involved with the fraud, did not know about it and did not profit from it. However, he was held accountable as the employee in charge of the dental center. Since the U.S. Postal Service was used to mail the fraudulent bills, the dentist was convicted of a federal offense.

- Reporting a higher level of dental service than was actually performed. This is often called “upcoding.”

<sup>9</sup> United Concordia web site, [http://www.ucci.com/was/uccweb/info/fraud\\_examples.jsp](http://www.ucci.com/was/uccweb/info/fraud_examples.jsp).

<sup>10</sup> “15 –month prison term in dental insurance scam,” *Chicago Tribune*, March 16, 2004.

- Submitting a dental claim under one patient's name when services were actually provided to another person (even a *fictitious* patient).
- Altering claim forms and dental records.

### **ADA Case Study Example:**

**According to an ADA case study, a patient came into the office early in the month and his dental claim was submitted electronically. The doctor signed off on each daily schedule, confirming that the patients were all seen and procedures were billed correctly. When the check arrived, the office manager filed the Explanation of Benefits (EOB) in the patient's chart, deleted the entire visit from the computer (as if the patient was never there), took the check to the bank, endorsed the doctor's name and then wrote "Pay to the order of [her name]." This was the same bank used by the practice, the doctor, and also the payer (local business). The doctor never saw the checks.**

- Billing for non-covered services as if they were covered services.
- Routine waiver of a patient's co-payment or deductible, if applicable.

This publication is not going to deal with insurance fraud in detail, but rather only how the embezzler might use this as yet another means to misappropriate assets from a practice. In particular, once Mary has altered claims or billed for patients not even covered by insurance, she may go into the office's records and erase the fraud or change the transaction to cover her tracks. Multiple adjustments to patients' accounts may be a warning sign that an employee is "skimming" funds.

## **Supplies/vendors**

Some employees may creatively embezzle by forming fake supply/vendor companies. Here are some examples of supply/vendor embezzlement:

- Mary becomes a business owner herself by creating a company called XYZ Dental Supplies and writes her company a check whenever she feels she's worked especially hard (but not often enough to arouse suspicion).
- Mary's company, XYZ Dental Supplies, actually buys supplies and then sells them to the practice for 10% more than was paid.<sup>11</sup>
- Mary pays an actual vendor invoice twice, claiming clerical error. She contacts the vendor and requests that the duplicate check be returned (to her, of course). She cashes the check.
- Mary may order more supplies than are needed, return the overstock for a refund and then forge and cash the check.

<sup>11</sup> "Embezzled: When it happens to you," Page, Leight, *American Medical News*, April 2, 2001.



*In one ADA Case Study, the employee's husband was hired to clean the dental office. Once the initial embezzlement scheme was discovered, it was also found that the husband was paid more frequently than he worked – his wife just issued extra paychecks.*

### **ADA Case Study Examples:**

*(See also Chapter 4 on payroll and Case Studies in Chapter 9.)*

- The office manager's scheme was to write checks to pay whatever personal bill she wanted, delete the patient record of the visit, then go into the practice's financial software and change the payee on that particular check to a vendor that the practice used. The doctor never checked the bank statements or cancelled checks against practice records or invoices.
- The office manager created a phantom supply company, then changed the name of the payee on checks. The phantom company cashed checks that should have paid the practice's invoices.

## Payroll

Payroll offers yet another way for fraud to occur.

- For instance, Mary may add either "ghost" employees or relatives to the payroll and issue them paychecks. In one ADA Case Study, the employee's husband was hired to clean the dental office. Once the initial embezzlement scheme was discovered, it was also found that the husband was paid more frequently than he worked – his wife just issued extra paychecks.
- Another scheme Mary may employ is to increase her gross pay but keep the net pay the same. The dentist signs the payroll check without ever noticing the difference.
- Mary also may pay herself extra vacation and sick days in every paycheck or simply lie about the number of hours she worked.

### **ADA Case Study Example:**

*(See also Chapter 4 on payroll schemes and Case Studies in Chapter 9.)*

- The office manager altered payroll by tripling the FICA withholding on several employees' checks, then did not pay FICA at all, merely pocketed this amount. (The dentist is likely to be held liable for the unpaid FICA, including penalties, regardless of the fact that he was unaware of it.)

## Credit cards

This is an area where an embezzling employee can really have fun; for example, using the company credit card to make personal purchases. The dentist routinely signs or approves checks without even looking at the charges. An employee in a two-physician office was quite creative.<sup>12</sup> She had Doctor A approve and sign a check for payment for the company's American Express bill. Then Doctor B was shown the same bill and he also approved and signed a check for payment. However, this second check paid the employee's personal credit card bill. Why did neither Doctor A nor B notice? This employee baby-sat with the doctors' children and was practically considered a member of the family.



*An employee in a two-physician office was quite creative.<sup>12</sup> She had Doctor A approve and sign a check for payment for the company's American Express bill. Then Doctor B was shown the same bill and he also approved and signed a check for payment. However, this second check paid the employee's personal credit card bill. Why did neither Doctor A nor B notice? This employee baby-sat with the doctors' children and was practically considered a member of the family.*

### **ADA Case Study Examples:**

*(See also Chapter 4 on credit card statements and Case Studies in Chapter 9.)*

- **The office manager stole the identity of a dentist in the practice. She used pertinent information (Social Security number and mother's maiden name) to fill out unsolicited credit card applications that arrived in the mail. A P.O. Box address was set up for the bills to be sent to, and then she applied for a card on the accounts in her own name.**
- **The office manager used the doctor's personal credit card number to make personal purchases and charge thousands of dollars. (This scenario is fairly common. The embezzler does not make any attempt to even hide the theft, and statements/invoices were never carefully reviewed for accuracy or matched to expenses).**
- **The office manager had two credit cards with the doctor's name but with two different account numbers issued by the same bank. Every month, he would sign the check made out to "XYZ Bank." There was no account number on the check and he never reviewed his account statements. The office manager was (alternating) paying each account every other month. She would then place the account number of the legitimate credit card in the memo section of each month's check when she received the canceled checks. One account was the legitimate office account. The other account, also in the doctor's name, was used solely by the office manager who took cash advances against the account. Bank records showed they even called the doctor a number of times to question the repeated cash advances. The office manager, of course, answered the phone each time and told the bank that the doctor was a dental specialist (which was true), and was constantly taking generalists out to lunch. The office manager would explain that it was difficult to meet and eat in the limited amount of time available for lunch, so the doctor would often take cash, estimate the bill, and leave cash so the general dentist would not be late returning to work.**
- **In one office, the office manager used the patients' credit card numbers to purchase personal items.**

<sup>12</sup> "Catch them if you can: Don't let staff steal from your practice," Kazel, Robert, *American Medical News*, Nov. 24, 2003.



***Embezzlers are well liked by other staff and patients.***

## Computer crime

To understand how a computer-savvy employee can “cook the books,” you need to be familiar with how payments to patient accounts are managed in your practice’s financial software. Be sure to have an electronic audit trail set up and check it periodically for suspicious activity.

### ***ADA Case Study Example***

- **The office manager crashed the office computer system, put in a new system and set herself up as the administrator of the system. This, of course, gave her complete control over all entries. She somehow disengaged the audit trail function. (It should be noted that the dentist later realized that this employee’s degree in computer science was a “red flag.”) This employee ended up embezzling \$230,000.**

## What traits does the embezzler exhibit?

Does all of this seem a little overwhelming? It should, because the average person cannot begin to imagine how someone like Mary could dream up these complex schemes to commit fraud from your practice. A study of the personality types and rationalizations that exemplify such people is well beyond the scope of this publication. The case studies included throughout this publication and in Chapter 9 will give you a glimpse of common traits that members have listed for the embezzler in their office.

Almost uniformly, employees who embezzled were described as:

- Extremely well liked, by other staff and patients.
- “One of the family” — the employee routinely invited the entire office to family events such as weddings.
- Very proficient at their job and hard-working, often to the point of working extra hours and taking work home.
- Rarely took vacations or even days off.
- Given responsibility for numerous functions related to handling practice finances, including patient payments and accounts, bank deposits, and balancing/reconciling the practice checking account.
- Took total control of their area of job responsibility, were protective/possessive of their “turf,” and became “the general” in the office.
- Extremely defensive when questioned about irregularities and always had a good or plausible excuse for missing funds or imbalances.
- Living beyond their means/salary level.

**FIGURE 2 : “RED FLAGS”\* FROM ADA CASE STUDIES OF MEMBER DENTISTS\*\***

<i>Commonly reported behavior of employees who embezzled:</i>
• Employee was living beyond their means — evident in most of the case studies.
• Patient complaints about irregularities in their accounts/billing.
• Day sheets and/or accounts rarely balanced (but a good reason was always offered!)
• Employee did not take vacations and/or days off.
• Employee was overly protective of work area and responsibilities (front desk “general”).
• Employee became defensive and/or angry when questioned about any discrepancies.
• Employee worked extra hours, especially when there was no supervision.
• Employee was resistant to giving up or sharing duties with another employee.
• A negative reference from a former employer — even as weak as “you won’t be happy with this employee.” If there was not enough evidence to prosecute, this former employer may be protecting him/herself legally by not saying more.
• Employee had problems handling personal finances (debt, bankruptcy, credit cards, gambling, etc.).
• Change in personal circumstances may cause change in behavior (illness, divorce, or drug use, for example).

\* **“Red Flags” is a subjective term and will be used throughout this publication to denote suspicious actions or behaviors that the interviewed ADA member dentists attributed to their embezzling employees.**

\*\* The list above contains quotes pulled from the **Case Studies** shown in Chapter 9 and represents the feelings/advice from those who have experienced fraud/embezzlement.

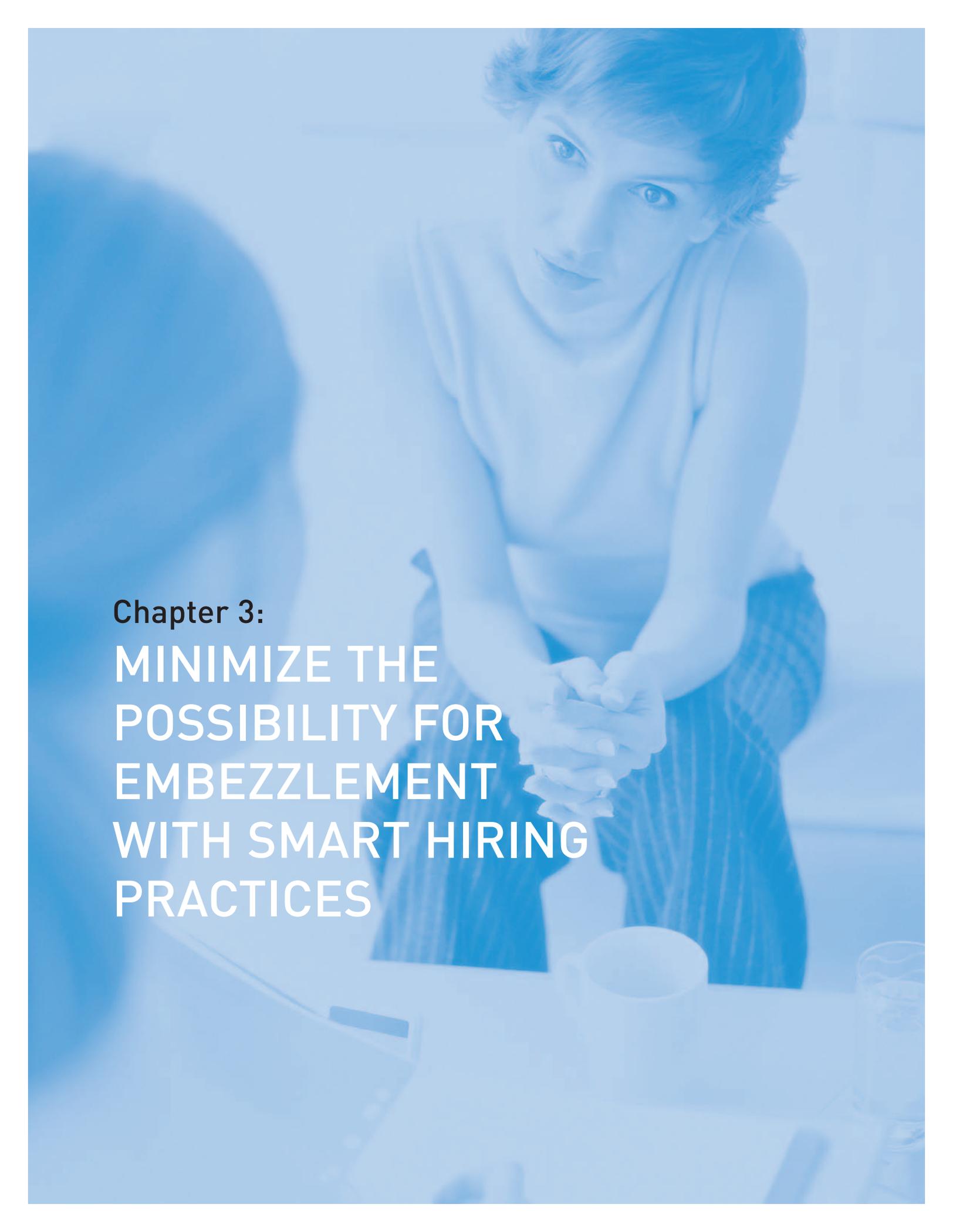
Below is additional pertinent information on how the fraud was detected, as described in ADA Case Studies.

<b>FIGURE 3: HOW WAS THE EMBEZZLEMENT/THEFT DISCOVERED?*</b>
<ul style="list-style-type: none"> <li>• The doctor was alone in the office and received a phone call about an irregularity — an extremely common scenario.</li> </ul>
<ul style="list-style-type: none"> <li>• The embezzler was out of the office (or just away from the desk). Another employee dealt with a patient complaint/irregularity.</li> </ul>
<ul style="list-style-type: none"> <li>• The accountant or auditor noticed irregularities.</li> </ul>
<ul style="list-style-type: none"> <li>• The dentist changed accountants and/or monitoring of practice reports.</li> </ul>
<ul style="list-style-type: none"> <li>• After termination, the embezzlement became obvious as soon as someone else handled the accounts.</li> </ul>
<ul style="list-style-type: none"> <li>• The doctor was turned down for a credit card because of unpaid debt (accounts had been opened without the dentist's knowledge).</li> </ul>
<ul style="list-style-type: none"> <li>• Practice was sold and the new dentist noticed irregularities.</li> </ul>

\* The list above contains quotes pulled from the **Case Studies** shown in Chapter 9 and represents the feeling/advice from those who have experienced fraud/embezzlement.

You may wish to review the reading list, bibliography and web sites listed in the back of this book if you want to learn more about this topic.

Now that you are thoroughly concerned that your practice might be a victim of embezzlement or fraud, you want to know what you can do to prevent and protect yourself. The following chapters will guide you through prevention, investigation, handling financial losses, employee termination and prosecutions.



**Chapter 3:**

**MINIMIZE THE  
POSSIBILITY FOR  
EMBEZZLEMENT  
WITH SMART HIRING  
PRACTICES**

## Chapter 3: Minimize the possibility for embezzlement with smart hiring practices

The hiring process provides you with an opportunity to minimize your exposure to embezzlement. The ADA has a number of employee publications that may be useful during this process, such as the *Employee Office Manual* and *Smart Hiring: A Guide for the Dental Office*. You can order these publications by calling 1-800-947-4746 or by logging on to [www.adacatalog.org](http://www.adacatalog.org). Use these tools, including background checks, to help you make better-informed hiring choices.

### Benefits of background checks

If you are in the process of hiring a new staff person for your office, conducting a background check — or hiring a third party to perform a background check — may help minimize your exposure to embezzlement. Since embezzlement is a crime of opportunity, it makes good business sense to give some thought to prevention. Just because an applicant has worked for another reputable employer doesn't mean that the applicant is an appropriate hire for your dental practice.

For example, the *Chicago Sun-Times* reported that on April 10, 2004, the Des Plaines (Illinois) economic development director was placed on administrative leave after city officials learned that the director was convicted 10 years ago of embezzling \$170,000 from JMB Realty, a previous employer. Des Plaines officials acknowledged that no criminal background check was done on the economic development director when he was hired by Des Plaines. In addition, the Des Plaines officials advised that he had previously worked for the City of Chicago. [*Chicago Sun-Times*, Sunday, April 11, 2004, METRO, 13A.]

While performing background checks on potential employees is extremely important in an attempt to avoid hiring people who may embezzle from you, an equally important reason is to ensure those people whom you hire are not likely to threaten the personal safety of your employees and patients. Failure to perform a background check could potentially expose you to a negligent hiring lawsuit.

For instance, in the case *Dean v. Oppenheim Davidson Enterprises Inc.*, Alameda Superior Court No. 80923101, 2000, a carpet cleaner with seven previous armed-robbery convictions fatally stabbed a woman in her home after cleaning her carpets.<sup>13</sup> The victim's husband received an approximately \$11 million award against the carpet cleaning company after the jury determined that the company

***While performing background checks on potential employees is extremely important in an attempt to avoid hiring people who may embezzle from you, an equally important reason is to ensure those people whom you hire are not likely to threaten the personal safety of your employees and patients. Failure to perform a background check could potentially expose you to a negligent hiring lawsuit.***

<sup>13</sup> Greg Burns, *\$10 Online Services Often Don't Reveal Criminal History*, Chi. Trib., April 11, 2004; Joanne S. Lublin, *Firms Give Candidates a Much Closer Look*, Wall Street Journal Online; *Employment Screening Package*, Abika.com.

negligently hired the carpet cleaner by failing to perform any background check. (The parties subsequently settled out of court for an undisclosed amount.)

Do not needlessly risk a lawsuit that could bankrupt your practice by failing to perform a thorough background check. Both your personal and financial security may depend on it.

### ***ADA Case Study Example***

- **In one member case study, the doctor hired her front desk employee through an employment service. After hiring this employee, three different people called the doctor and told her that this employee was an embezzler. The employee had an excuse for each instance. The doctor advised the employee that if these reports were not true, that she had a case for slander. The doctor also stated that if an employee ever embezzled from her, she would prosecute to the full extent of the law (which the doctor eventually was forced to do). The moral to this story is obvious – pay attention to what your background check reveals!**

Background checks are one of several ways to screen out potential employees who may not be suitable for a job in your practice. So what exactly are background checks? Quite simply, background checks are examinations into the many background sources that are available to employers about applicants. Some background checks may be very cursory, whereas others may be quite exhaustive.

#### **Examples of some of the more typical background check resources include:**

- **the applicant;**
- **former employers;**
- **educational institutions;**
- **governmental sources;**
- **consumer credit agencies;**
- **Internet databases; and**
- **personal references.**

Computer technology has greatly increased the information available to employers as well as enhanced the ease in obtaining such information. However, many employers choose to use professional background check companies because of their expertise and convenience. As you might expect, doing a thorough background check takes time, and depending upon your circumstances, background checks may be a project that you would simply prefer to hand off to a professional company.

You should strongly consider having a background check run when you get down to a final applicant for your dental practice. The background check may reveal important information that you need in order to make quality hiring decisions for your practice.

*You should strongly consider having a background check run when you get down to a final applicant for your dental practice. The background check may reveal important information that you need in order to make quality hiring decisions for your practice.*

First, background checks may help reduce the risk of theft and embezzlement. Now that more and more employers have realized that embezzlement can happen to them and it is prevalent in dental offices, background checks on prospective employees have become increasingly popular over the last few years.

Second, background checks may limit your liability arising from claims of negligent hiring. Negligent hiring is a cause of action whereby a court may hold an employer responsible for injuries caused by one employee to other employees, patients and the public at large if the employer failed to make a reasonable inquiry into the employee's background. In other words, as an employer, you have a legal duty to provide a safe work environment for all your employees. Accordingly, investigating the background of prospective employees helps satisfy that legal duty.

Finally, background checks may decrease the likelihood of discipline-related problems at the office, as well as workplace violence.

Although there is no general rule in connection with the level of detail associated with a reasonable background check, the scope of the background check should reflect the specifics of the position available. Details about a prospective employee's work history, educational experience, prior addresses, and references should be confirmed and any gaps in employment should be explained. Indeed, if the position requires interaction with others, involves access to sensitive information, or otherwise constitutes a position of confidence and trust, a detailed background check — including inquiry into the prospective employee's criminal past — will likely be appropriate. You want to make an informed hiring decision and a criminal background check will reveal if you are considering a prospective employee who has a history of theft, embezzlement or fraud. A conviction does not automatically disqualify someone from all jobs in the workplace, but such information may be relevant to particular job responsibilities. Some criminal backgrounds could conceivably present a greater risk to the assets of your practice.

You should also consider performing a *credit check* on any prospective employee who will have contact with the office finances, including handling large sums of money or exercising financial discretion. (Credit checks reveal the applicant's work history, debts and other monetary-related records.)

As noted above, as a busy practice owner, you may want to hire an outside company to perform your background checks on prospective employees, as opposed to conducting the background checks internally. Many pre-employment background-screening companies provide a vast array of screening options and will generate a report for you based upon the options that you select. But beware, there are some very inexpensive background checks out there that may not deliver much in return to you. Some of the critics claim that the cheapest background checks are very superficial and fail to identify criminals. The bottom line is to see what you get in terms of a background check. For example, if your applicant has recently moved into your state, then a criminal background check in your state may have limited usefulness. In order to assist you in your hiring process, as well as to minimize your legal exposure, a background check should be thorough and provide you with accurate information.

*You should also consider performing a **credit check** on any prospective employee who will have contact with the office finances, including handling large sums of money or exercising financial discretion. (Credit checks reveal the applicant's work history, debts and other monetary-related records.)*

Background checks by an independent third party are considered to make good business sense for several reasons. First, you may be able to reduce liability in a lawsuit alleging negligent hiring if you employ a company in the business of conducting background screenings. In addition, as noted above, background checks can be quite time consuming. For instance, in performing a criminal background check, a minimal search would include an inquiry in the applicant's county of residence, along with counties where the applicant worked, went to school, and previously lived (a Social Security number trace will provide a list of the applicant's former addresses.) Because not all states have reliable criminal-record repositories, a county-by-county search is the most accurate. (While a national criminal-record database does exist, it is primarily for law enforcement use and is not typically available to employers and background checkers.)

Keep in mind that as an employer, you do not possess an unfettered right to investigate all aspects of an applicant's criminal background. In fact, the Equal Employment Opportunity Commission ("EEOC") prohibits an employer from automatically disqualifying an applicant because of a prior conviction. Rather, in determining whether to reject an applicant based on a conviction, the EEOC recommends that the employer take into account 1) the nature and gravity of the offense, 2) the time that has passed since the conviction or the completion of the sentence, and 3) the nature of the job for which the applicant has applied. Additionally, some states limit employers from inquiring into arrests at all or convictions that occurred well into the past. Other states only allow employers to consider convictions if the crimes are relevant to the position at issue. Accordingly, because state law varies widely regarding whether an employer can investigate the possible arrests and convictions of a prospective employee, a dentist should consult with an attorney or the dentist's State Department of Labor before inquiring into an applicant's criminal background.

A dentist who hires a third party to perform background checks on prospective employees should also be mindful of the Fair Credit Reporting Act ("FCRA"). The FCRA imposes various requirements on employers who rely on "consumer reporting agencies" to conduct background investigations in connection with prospective employees. The term "consumer-reporting agency" is defined quite broadly, such that any dentist who hires a third party (e.g., private detective, employment screening company, on-line data broker, etc.) to investigate an applicant's background will be subject to the terms of the statute. On November 19, 2004, the Federal Trade Commission issued final regulations that provide guidance on background checks. (See generally, <http://www.ftc.gov/opa/2004/11/facta.htm>.) A copy of the "Notice to Users of Consumer Reports: Obligations of Users Under the FCRA" can be viewed at <http://www.ftc.gov/os/2004/11/041119factaapph.pdf>. These final rules are helpful to employers because they include a new set of model notices that define the rights and responsibilities of employers that use consumer reports for employment purposes.

***Background checks by an independent third party are considered to make good business sense for several reasons.***

***You must obtain the written authorization of the individual prior to seeking the background check.***

First, you must provide the prospective employee with a notice that you are seeking a background report concerning the individual. This notice must be in writing, clear and conspicuous, and in a document that solely consists of the disclosure.

Second, you must obtain the written authorization of the individual prior to seeking the background check. This authorization may be included in the employment application itself. (You may also want to include a stipulation that states that the furnishing of any false information in the application is grounds for denial of employment.) If the applicant refuses to consent to a reasonable request for information, some jurisdictions may allow you legally to decide not to hire the person on that ground. A sample information release waiver and indemnity form appears on page 28.

Thus, background checks on prospective employees are a good tool to help minimize your exposure to embezzlement. However, because federal and state law governs the procedures and scope of background checks, it's best to consult with an attorney familiar with federal and state law in this area before undertaking this process.

## Drug testing

Drug testing is another option you may wish to consider in the hiring process, as these tests may help identify individuals who are dependent on alcohol and drugs. However, state laws govern whether drug testing may be conducted on prospective employees, and such laws vary considerably, with some states having specific guidelines for when you may test applicants and employees, as well as the procedures that must be followed by employers. Accordingly, before you request that a prospective employee take a drug test, you should consult with the Department of Labor in your state. (Using a drug test may also minimize your exposure to negligent hiring claims.)

## “Honesty” tests

Written “honesty” tests are a further way to screen employees. These tests may have multiple choice or true/false questions. However, you should be aware that there is considerable controversy with respect to whether these types of tests are an accurate way to actually determine an applicant's honesty. Many human resource professionals prefer conducting a full background check and verifying the accuracy of the information given by the applicant, rather than using an “honesty” test.

### ***ADA Case Study Example***

**One ADA case study participant asks all potential employees to list everything on the employment application for his practice, even traffic violations. If the doctor finds that the applicant has lied about ANYTHING on their application, he considers this a sign of dishonesty.**

**FIGURE 4: SAMPLE INFORMATION RELEASE WAIVER AND INDEMNITY**

### Information Release Waiver and Indemnity

As an applicant for a position with [dental practice], I realize that a thorough background investigation will be conducted to qualify me for employment. I understand and agree that this background investigation may include, but is not limited to, interviews with and requests for information from my former employers and references, a check with duly constituted law enforcement agencies and/or judicial officers regarding criminal convictions pertaining to me, interviews with and requests for information from any education institutions which I have attended or I am attending, and requests for information regarding my driving record.

I hereby authorize the release of any information related to my previous employment, criminal convictions (excluding sealed or expunged records of conviction or arrest), education, driving record, residence, or character, unless such information is restricted by law. I understand that only such information as is pertinent to the position for which I have applied shall be considered. I request that this document serve as my authorization to any persons, companies, government agencies, or other entities to furnish [dental practice], any and all such information pertaining to me which may be in their possession. I hereby release [dental practice], all of its affiliated companies, their employees, offices, and agents, and any such person, company, government agency, or other entity from any liability arising directly or indirectly from the disclosure of any such information obtained in connection with such investigation. I agree to indemnify and hold harmless [dental practice], all of its affiliated companies, and their employees, officers and agents for all costs, damages, and expenses (including, but not limited to, reasonable attorney's fee) incurred as a direct or indirect result of any lawsuit or administrative proceeding brought against [dental practice], any of its affiliated companies, or their employees, officers or agents which is related directly or indirectly to the disclosure of any such information or to such investigation.

**\* Note: The existence of a criminal conviction does not constitute an automatic bar to employment and will be considered only as it relates to the position(s) for which the applicant has applied and will be evaluated with respect to time, seriousness, and circumstances.**

Full Name \_\_\_\_\_ Other Names Known By \_\_\_\_\_

Current Address \_\_\_\_\_

Current Telephone Number \_\_\_\_\_

Social Security Number \_\_\_\_\_

Driver's License Number \_\_\_\_\_

State Issued \_\_\_\_\_

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

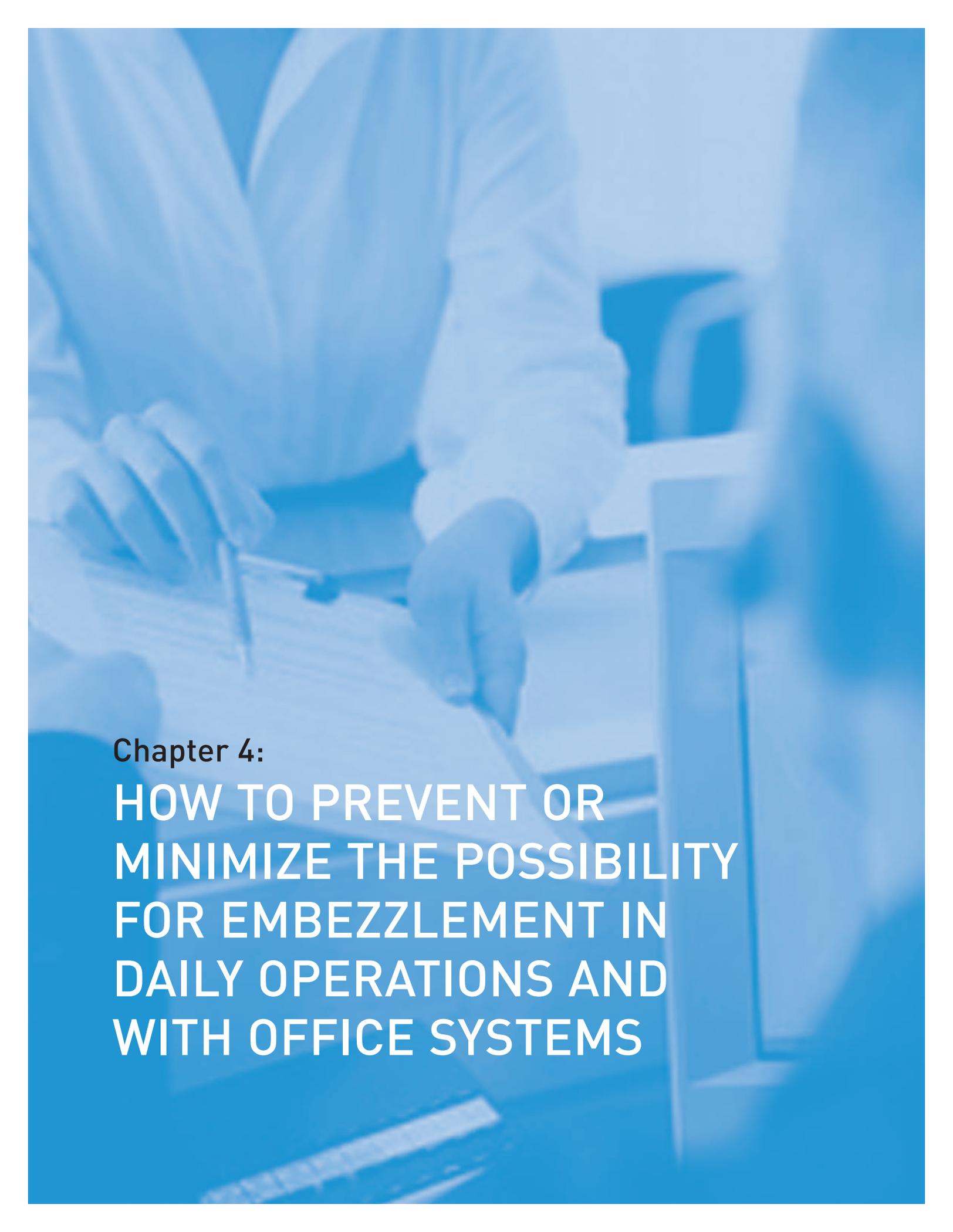
Date of Birth\* \_\_\_\_\_

\* Date of birth is necessary to verify criminal and driving history. (Note: The Age Discrimination in Employment Act of 1967, as amended prohibits discrimination on the basis of age with respect to individuals who are at least 40 years of age.)

## Insuring against the risk of embezzlement

The steps mentioned above to prevent or minimize the possibility of embezzlement are very important, but will not, of course, guarantee that embezzlement can't happen. Embezzlement is no different from a variety of other risks in your practice, such as accidents, lawsuits, and death; it is a loss risk that can be insured against. Specifically, for a premium payment, you can purchase insurance that will pay off any losses you incur, less any deductible amount, to give you peace of mind regarding this potentially very disruptive event.

Chapter 6 discusses in detail what fidelity or crime insurance is, what to look for in purchasing it, and some other tips regarding this coverage. And if you implement the preventive steps discussed above and in other chapters, you'll want to be sure to let your agent know that. Taking precautions can reduce your premiums!



**Chapter 4:**

**HOW TO PREVENT OR  
MINIMIZE THE POSSIBILITY  
FOR EMBEZZLEMENT IN  
DAILY OPERATIONS AND  
WITH OFFICE SYSTEMS**

## Chapter 4: How to prevent or minimize the possibility for embezzlement in daily operations and with office systems

You have already learned in Chapter 3 one of the most important methods to protect your office from embezzlement and fraud — employee screening. Unfortunately, you more than likely have a fully staffed office that you hired prior to reading this publication. What can you do now to protect your office?

**FIGURE 5: REAL-LIFE PREVENTION ADVICE FROM ADA CASE STUDIES\***

<b>General:</b>
<ul style="list-style-type: none"> <li>• Be involved, pay attention.</li> <li>• Look for suspicious activity.</li> <li>• Set a good example.</li> <li>• Create a climate of accountability.</li> <li>• Prosecute if you are the embezzled. Prevent this person from moving on to another office.</li> <li>• Listen carefully to patient complaints.</li> </ul>
<b>Day-to-day operations:</b>
<ul style="list-style-type: none"> <li>• Separate duties – no one person should handle both patient payments and bank deposits.</li> <li>• Learn your software management system.</li> <li>• Run a daily schedule and check it against all payments and charges.</li> <li>• Do daily audits – look at every check, EOB and patient visit.</li> <li>• Review every posted transaction on the day sheet.</li> <li>• Run a check register daily and compare it to the daily deposit slip.</li> <li>• Have the doctor make all bank deposits.</li> <li>• Maintain a small amount in petty cash and a good tracking system.</li> <li>• Make sure all patients are billed.</li> </ul>
<b>Employee Management:</b>
<ul style="list-style-type: none"> <li>• Make all employees accountable; let them know you are watching.</li> <li>• Do a full background check on every employee – disclose that you will do this on the employment application form.</li> <li>• Share financial information about the practice with the staff. The staff is usually surprised to learn what portion of the money coming into the practice was actually left after expenses are paid.</li> <li>• Require employees to take time off and to cross-train.</li> </ul>

<b>Financial Management:</b>
<ul style="list-style-type: none"> <li>• Have an outside accounting firm do the check reconciliation if you do not wish to do it yourself.</li> </ul>
<ul style="list-style-type: none"> <li>• Mail bank statements directly to the doctor's home or accounting firm – not to the practice!</li> </ul>
<ul style="list-style-type: none"> <li>• Pay close attention to the practice's finances and do not turn control totally over to staff.</li> </ul>
<ul style="list-style-type: none"> <li>• Pay your own bills, after carefully reviewing each item.</li> </ul>
<ul style="list-style-type: none"> <li>• Utilize Quicken or other financial software programs to track office finances and create an audit trail.</li> </ul>

\* The list above contains quotes pulled from the **Case Studies** shown in Chapter 9 and represents the feeling/advice from those who have experienced fraud/embezzlement.

## Policies and procedures in day-to-day operations

- *Set a good example* — It is amazing how employees notice every action of the owner of a business. Have you ever taken money from petty cash for personal use or used office postage to pay a personal bill? That's just small stuff — how about writing off car expenses or an expensive trip to the business? What message does this convey to staff? Staff rationalizes that if the doctor mails personal bills using office postage, it must be acceptable for them to do that, too.
- *Educate employees* — Employees need to know that fraud will not be tolerated, the consequences of being caught and the damaging effects of embezzlement on the entire dental practice. Assets taken from the practice affect raises, bonuses, profits and even jobs. It affects everyone in the practice.
- *Treat employees well* and give them a fair, competitive salary. Employees who hold some kind of grudge against their employer are more likely to use fraud as revenge. Low employee morale creates a fertile atmosphere for fraud. Stay “in the loop” on office gossip to gauge what is happening in your employees’ home situations.
- *A reporting program* that allows employees to tell you about suspicious behavior should be in place. Many cases of fraud are discovered by accident because the embezzler is out of the office for a day or possibly just at lunch. All employees need to know what procedure to follow if they suspect a fellow employee of embezzlement.
- *Hotline* — If your office is large enough, you might consider a hotline. Employees themselves are usually in the best position to observe violations of control, poor ethics or excessive spending by others in the office. Set up a mechanism that will permit reporting of fraud without reprisals. Employees often “sense” that something is not right but are afraid to say anything about a coworker.
- *Use a lock and key* — A practical, affordable way to protect such valuable office

*Set a good example — It is amazing how employees notice every action of the owner of a business. Have you ever taken money from petty cash for personal use or used office postage to pay a personal bill? That's just small stuff — how about writing off car expenses or an expensive trip to the business? What message does this convey to staff? Staff rationalizes that if the doctor mails personal bills using office postage, it must be acceptable for them to do that, too.*



resources as blank checks, receipts, prescription pads and accounting records is to lock them up. Restrict access to trusted employees during office hours.

- *Termination Procedures* — Be sure that you follow proper termination procedures in your state and work with your lawyer to draw up a termination policy that is acceptable according to your state’s laws. We have included a general “Termination of Employment Checklist” in the following pages. In addition, you can find more termination information in the ADA’s *Employee Office Manual* and *Smart Hiring* publications. You can call 1-800-947-4746 or log on to [www.adacatalog.org](http://www.adacatalog.org) to order.

### **ADA Case Study Example:**

**This case is not embezzlement but theft. An employee was going through other employees’ wallets, recording credit card numbers and selling the numbers. The credit cards were returned to the wallets so the employees did not miss them. Only when unauthorized charges started appearing did the people in the office realize there was a problem. Special marking dye was used (placed on credit cards). The employee that was stealing suddenly left work, never to return, when she could not wash the dye off.**

**Solution: Provide secure lockers for all employees’ personal belongings.**

*Note that your monitoring system must be random. While the dentist may consider a regularly scheduled audit to be a deterrent to theft, such an audit may not be effective. When the “sticky fingered” employee knows when the audit is going to take place, everything may miraculously balance.*

## **Create a climate of accountability**

It’s important to create a climate of accountability in your practice, so your employees know that you are using monitoring systems to ensure the integrity of their work. Following are two ways to create this accountability.

- *Monitoring system (random)* — Employees need to understand their job responsibilities and feel they are trusted. However, if they know that you, the business owner, never monitor or check the petty cash or accounts receivable, or that you do not carefully compare invoices before signing the check written to pay them, you invite them to take advantage of your lax business practices.

US Justice Department statistics<sup>14</sup> on the subject are chilling – it is estimated that as many as 80% of the nation’s employees will steal from their place of employment when no active monitoring system is in effect.

An article in the *American Journal of Orthodontics and Dentofacial Orthopedics*<sup>15</sup> reported an “epidemic” of embezzlement in orthodontic practices. The author estimated that more than half of seasoned practices have experienced significant embezzlement. That figure only represents half of those who even know they have been embezzled.

<sup>14</sup> “Can you judge crooks by their cover?”; *Chicago Dental Society Review*, May, 1995.

<sup>15</sup> “The ABC’s of computer embezzlement,” *American Journal of Orthodontics and Dentofacial Orthopedics*, July 1996.

Note that your monitoring system must be random. While the dentist may consider a regularly scheduled audit to be a deterrent to theft, such an audit may not be effective. When the “sticky fingered” employee knows when the audit is going to take place, everything may miraculously balance. Accordingly, in addition to your accountant’s audits, you should conduct your own audits at irregular intervals by requesting such practice records as the appointment book, accounts receivable records, day sheets or bank deposit slips. (Also have your bank statements sent to your home.) Let employees know you do such audits, and by doing so you can help discourage embezzlement.

- **Office Policy** — Your employee office manual should clearly state which internal steps, up to and including termination, will be taken if an employee is caught stealing or committing fraud in any way, manner or form, including:
  - Falsifying time sheets or expense reports;
  - Taking office supplies; and
  - Personally using company assets, including the telephone, postage, office supplies, etc.

In a related manner, you should disseminate a strong policy denouncing any employee theft or fraud and declaring the practice’s intention to pursue such offenses, both criminally and civilly, to the fullest extent of the law.<sup>16</sup> You should also have written policies on ethical behavior signed by all employees (see reporting policy and hotline discussed earlier in this chapter).

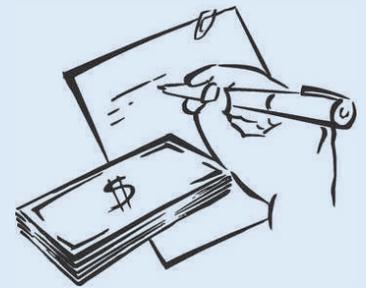
## Install a system of checks and balances

An integral aspect of cash management is maintaining the security of cash while it is in the system. Since cash is a highly liquid asset, it is important to establish controls over its recording, maintenance and disbursement to prevent embezzlement. Simple controls built into the accounting system can often forestall common fraudulent practices in your office. In any case, the proper internal controls may help document incriminating evidence, without which it is difficult to estimate your loss for insurance purposes or even to prove that the loss resulted from a crime.

Below is a list of checks and balances that every business should have in place to prevent/minimize embezzlement. It cannot be emphasized enough how important each of these steps is.

### Separation of employee duties

- Responsibility for all aspects of cash management should be assigned to different staff members, where possible. For example, the person responsible for reconciling bank balances to account balances should not be assigned functions relating to receipt or disbursement of cash or preparation or approval



***An integral aspect of cash management is maintaining the security of cash while it is in the system. Since cash is a highly liquid asset, it is important to establish controls over its recording, maintenance and disbursement to prevent embezzlement.***

<sup>16</sup> “Embezzlement – is it happening to you?”; Mason, Belle C.; Benardo, Stephen M., Esq.; [www.silver-freeman.com](http://www.silver-freeman.com).

**Require vacations — at least one full week every year and not just when the dentist is on vacation. During that vacation time, have another employee perform the work of the absent employee. An embezzling employee fears discovery, and thus may never be absent from the practice. Ask all employees to adhere to the work hours and vacation times as described in your employee manual.**



**Do not sign blank checks.**

of payment vouchers. If this is not possible, the dentist should alternate staff responsibilities in the various processing aspects of cash management.

- Rotate personnel who handle cash transactions and cross-train employees.
- Require vacations — at least one full week every year and not just when the dentist is on vacation. During that vacation time, have another employee perform the work of the absent employee. An embezzling employee fears discovery, and thus may never be absent from the practice. Ask all employees to adhere to the work hours and vacation times as described in your employee manual.
- Be aware of an employee who is overly protective of day sheets, ledgers, or computer records or who volunteers too eagerly and protectively to open mail and go to the bank.
- Closely monitor accounts paid with cash.

### **Cash and check controls**

- Petty cash should be kept small (normally between \$25-\$50), and balanced with receipts. Do not use petty cash for personal items and never commingle it with daily office collections.
- Have your canceled checks mailed to your home address or review them online. Most banks have convenient internet services that allow you to view your daily financial transactions as well.
- Sign all your own checks; a signature stamp invites theft. If someone other than the dentist has authority to sign checks, require two signatures.
- Do not sign blank checks.
- Limit the endorsement of checks to deposits (by anyone other than the owner), and stamp checks immediately with "for deposit only."
- Sign checks only when supporting documentation (such as purchase orders, payroll forms, invoices) is attached and examine that documentation.
- Use pre-numbered checks and duplicate, preprinted deposit slips.<sup>17</sup>
  - Use "tamper-proof" checks (i.e., the checks must have a watermark, or they display the word "void" when copied, etc.). Check with your bank or check manufacturer for options.
  - Reconcile deposit dates and amounts to ensure there are no alterations or missing slips.
  - Divide bookkeeping responsibilities. Examples: Check disbursements should never be prepared by the bookkeeper. Or, within the accounts receivable function, have one person write deposit slips for checks, but

<sup>17</sup> Your Roadmap to Financial Integrity in the Dental Practice, Donald P. Lewis, Jr., D.D.S., CFE, Lexi-Comp, Hudson, OH, 2003.

have another person take deposits with slips to the bank. Cross-train these positions, and shift responsibilities from time to time. This affords coverage in times of sickness and vacations and reduces the “comfort level” that invites theft or embezzlement. If none of these options work in your office due to the size of your staff, consider using a part-time outside bookkeeper to handle some of these responsibilities.

If an embezzling employee forges and deposits your practice’s checks (such checks that are not properly payable), then the bank is usually responsible for resulting losses. However, your practice can be held responsible instead if it does not take reasonable care in dealing with or monitoring the account. For example, you may suffer the loss if you do not notify the bank in a timely fashion that your checks have been forged/lost by failing to review account statements on a regular basis. Accordingly, it is very important that you always pay close attention to the business side of your practice.

#### **ADA Case Study Example:**

**An Oregon dentist<sup>18</sup>, only weeks out of dental school, took over an existing dental practice. Retaining existing staff seemed like the perfect solution to the new dentist — they were experienced and knew the patients. On the very first day of assuming the new duty of “keeping the books,” an employee added a nine (9) in front of \$50 on a check signed by the doctor for petty cash and netted herself \$950. Over the next three years, the dentist documented losses of \$65,000 and estimates that another \$35,000 to \$40,000 was taken.**

- Make deposits daily.
- Perform a monthly reconciliation of the bank balance. This will assure recognition of all items recorded in the accounts. The reconciliation procedure should include examining checks for appropriate signatures and endorsements and reconciling bank transfers. Deposit slips should be numbered (by hand, if necessary), and examined for a break in the sequence. Verify that the ending number on last month’s checks and deposit slips corresponds with this month’s beginning number. Lock up blank checks when not in use. Keep voided checks with canceled checks in appropriate sequence.

### **Accounts receivable**

- Send patient statements out monthly on any unpaid balances.
- It is extremely important to personally approve unusual discounts, debt write-offs and adjustments. There should be a clear explanation for each transaction.

<sup>18</sup> “Embezzlement...Benefits beyond the fringe,” Ratliff, Marion S., D.D.S.; *Journal of the Oregon Dental Association*, Spring 1994.

***The healthcare profession is particularly vulnerable to fraud because of procedures for insurance reimbursement.<sup>19</sup> A practice bills at a standard rate, knowing that the dental benefit plan will only pay a portion of the fee. When the money is received, the unpaid balance is either billed to the patient or written off of the accounts receivable. It is when these write-offs are not properly monitored or approved that the embezzler is given a real opportunity to steal. The complexity and constant changes to the insurance claim process make the accounts receivable difficult to monitor.***

- Review all aged accounts on a regular basis and discuss individual accounts with staff.
- Get information a regular basis, including:
  - Daily, weekly and monthly billing statements;
  - Daily, weekly and monthly receipts categorized by cash, check or credit card;
  - Monthly expense listings; and
  - Regular samplings of daily ledger sheets or printouts to compare to day sheets. Vary the time and day of week when you do this.

The healthcare profession is particularly vulnerable to fraud because of procedures for insurance reimbursement.<sup>19</sup> A practice bills at a standard rate, knowing that the dental benefit plan will only pay a portion of the fee. When the money is received, the unpaid balance is either billed to the patient or written off of the accounts receivable. *It is when these write-offs are not properly monitored or approved that the embezzler is given a real opportunity to steal.* The complexity and constant changes to the insurance claim process make the accounts receivable difficult to monitor.

According to the book *Preventing Corporate Embezzlement*, the most commonly reported types of tampering (fraud) involving patient accounts are<sup>20</sup>:

1. Patient statements that do not reflect existing credit balances.
2. Patient statements that show proper credit balance but are never mailed to the patients.
3. All credit balances are deleted when the account is inactive for one year.
4. A credit balance is maintained in a patient's account until it appears certain the patient will not ask for a refund, and then the balance is written off.
5. The mixing of various categories of charges and payments to create confusion as to the exact amount owed to or by the patient.
6. The failure to notify patients of errors that favor the patient.
7. Adjustments are created that remove credit balances without the knowledge of the patient.

<sup>19</sup> "Preventing and handling fraud in medical offices," Jarow, Sidney F.; C.P.A., C.F.E.; Journal of Medical Practice Management, Vol 9, N1, July 1993.

<sup>20</sup> *Preventing Corporate Embezzlement*, Shaw, Paul and Bologna, Jack; Butterworth Heinemann, Woburn, MA, 2000.

## Purchases/supplies

- Make sure that employees responsible for ordering goods and supplies are not the same ones responsible for receiving them or paying for them.
- Invoices should be carefully matched to the packing slip and provided with the check for signature and payment. Never sign a vendor check without proper documentation.
- An inventory of all stock should be maintained and a yearly physical inventory performed to verify that amounts on the shelves match what the records show. In many dental offices, computer software tracks and even orders supplies and equipment.
- Carefully check each vendor invoice. Creation of a fictitious company with a name similar to an existing supply company is a commonly used ploy by embezzlers. XYZ Dental Supply invoices may create payments directly into an employee's own non-existent company.
- Scrutinize returns and refunds from vendors, especially if they occur frequently. Watch for employees who are very "chummy" with a vendor. Kickback schemes and gift giving to influence purchases occur in every industry.



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## Drugs

Prescription drugs are a particularly valuable asset, and very easy to sell illegally for cash. Errant employees may be drug users themselves or may see drugs as a ready source of cash.

- Keep all drugs and prescription pads under lock and key.
- Keep an accurate inventory and examine containers for possible tampering.

## Payroll Fraud

- Do not let an employee be added to the practice payroll without your written approval. Fictitious individuals and/or a relative of an employee have been added by enterprising embezzlers and received paychecks.
- Examine payroll details carefully; the embezzler may increase gross pay but keep the net pay the same. If you only look at the dollar amount of the check, you will miss this detail.
- The person who prepared the payroll should not sign the payroll checks.
- If someone else does payroll, make sure you have access to payroll data on the computer, and that no one changes the passwords or access requirements for that data.<sup>21</sup>

<sup>21</sup> From US Chamber of Commerce web site, [http://www.uschamber.com/sb/business/p04/p04\\_8250.asp](http://www.uschamber.com/sb/business/p04/p04_8250.asp).

- If you really don't have time to be this diligent, consider hiring an outside payroll system. There are many laws and regulations that relate to payroll, involving complex and punitive IRS regulations. A theft from your payroll account can result in fines and penalties. You, the owner, are responsible even though you did not know about the theft.
- Have IRS statements sent to your home address.

#### ***ADA Case Study Example:***

**An Indiana dentist<sup>22</sup> was preparing for a meeting with a new accountant, who needed more figures to complete the doctor's tax return. Imagine the doctor's surprise when he went searching for payroll information and found \$17,000 in unopened bills, numerous IRS notices, uncashed insurance checks and \$26,000 in checks written but never mailed. Which long-term employee from his dental team was responsible? A 52-year-old grandmother who was named as executor of his will! As a result of the embezzlement, the dentist owed approximately \$130,000 in back FICA, withholding and personal income taxes, along with penalties and interest. The dentist's lack of knowledge of his employee's conduct did not negate his financial responsibility to the government.**

***Juggling patient account ledgers is a common trick of the extremely conscientious, "stay-out-of-my-space" embezzler.***

#### **Day sheets**

As mentioned in Chapter 2, juggling patient account ledgers is a common trick of the extremely conscientious, "stay-out-of-my-space" embezzler.

- Your day sheet should comport with the patient sign-in sheet and appointment book.<sup>23</sup> If a patient that was seen is not listed, something is wrong. Also watch for fictitious patient accounts (they won't complain about billing irregularities).
- Day sheets should be posted/reconciled daily and matched to the daily bank deposit slip.
- The total on individual ledger cards or computer statements should be consistent with the accounts receivable day sheet or printout.
- Every patient should receive a printed "walk-out" statement, showing the amount and type of payment made or owed at that visit. In most dental offices today, that statement is computer generated. Regardless of the method used, duplicate receipts should be created — one given to the patient and the other used to reconcile the bank deposit slip on a daily basis.

<sup>22</sup> "More than money," Buyer, Diane M., D.D.S.; *Indiana Dental Association Journal*, Summer 1995.

<sup>23</sup> "Safeguards help avoid embezzlement," Hall, Susan K.; *JNJDA*, Vol. 7, N1, Win, 1996.

## Credit card statements

- Chapter 2 discussed how an employee could abuse practice credit cards. To prevent this, scrutinize every credit card statement and each line item on the bill. Ideally, there is a receipt that can be matched to each expenditure listed.
- Destroy (shred) credit card applications that arrive in the mail. Request that the three large credit-reporting agencies remove your practice's name from lists to receive new credit card solicitations. Shredding these applications is crucial because the thief outside your office may sift through your office trash and do exactly what the dishonest employee did – steal your identity and open an account in your name. (Identity theft is beyond the scope of this publication. Because the literature on identity theft is continually updated, you should first review information concerning this topic on the website of the Federal Trade Commission at <http://www.consumer.gov/idtheft/>.)

It is important that at some point the cycle is interrupted so that no one person is responsible for all the activities. In this manner, another person may be able to provide a necessary check and balance to the system. Figure 11 at the end of this chapter illustrates the typical accounting cycle in a dental office.

## Computers

An ever-increasing number of dental practices depend on computer software systems for tasks from scheduling to electronic claims submission. It is therefore very important to be knowledgeable about your practice system. A computer makes it possible to steal more money more quickly and to hide the evidence more easily! No practice owner/dentist can prudently turn over total control of his practice software system to staff and claim ignorance of how to access information, particularly the audit log, access reports and security tracking reports. This issue is of even greater importance now that the Health Information Portability and Accountability Act's (HIPAA) new security regulations have taken effect.

All employees should have unique computer user names (IDs) and passwords. These passwords should be closely guarded and not shared, or even worse, stuck on the computer with a post-it note. These unique IDs allow the dentist and/or accountant to track all activity on the practice software system and verify who made each entry. Systems should have a limit to the number of log-in attempts to access confidential information. For example, after three (3) unsuccessful attempts, the system could lock out that particular user's name.

Other password tips include:<sup>24</sup>

- Passwords should be difficult to guess but easy to remember.
- Passwords should be changed regularly.

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<sup>24</sup> *Preventing Corporate Embezzlement*, Shaw, Paul and Bologna, Jack; Butterworth Heinemann, Woburn, MA, 2000.  
<sup>25</sup> 2003-2004 WEDI/SNIP Security and Privacy Workgroup, Small Practice Security Implementation.

***Employees should not have access to the office computer system during unsupervised hours. That super-dedicated, loyal, hardworking employee who says they will work an extra hour to catch up may be “cooking the books,” a sure recipe for disaster.***

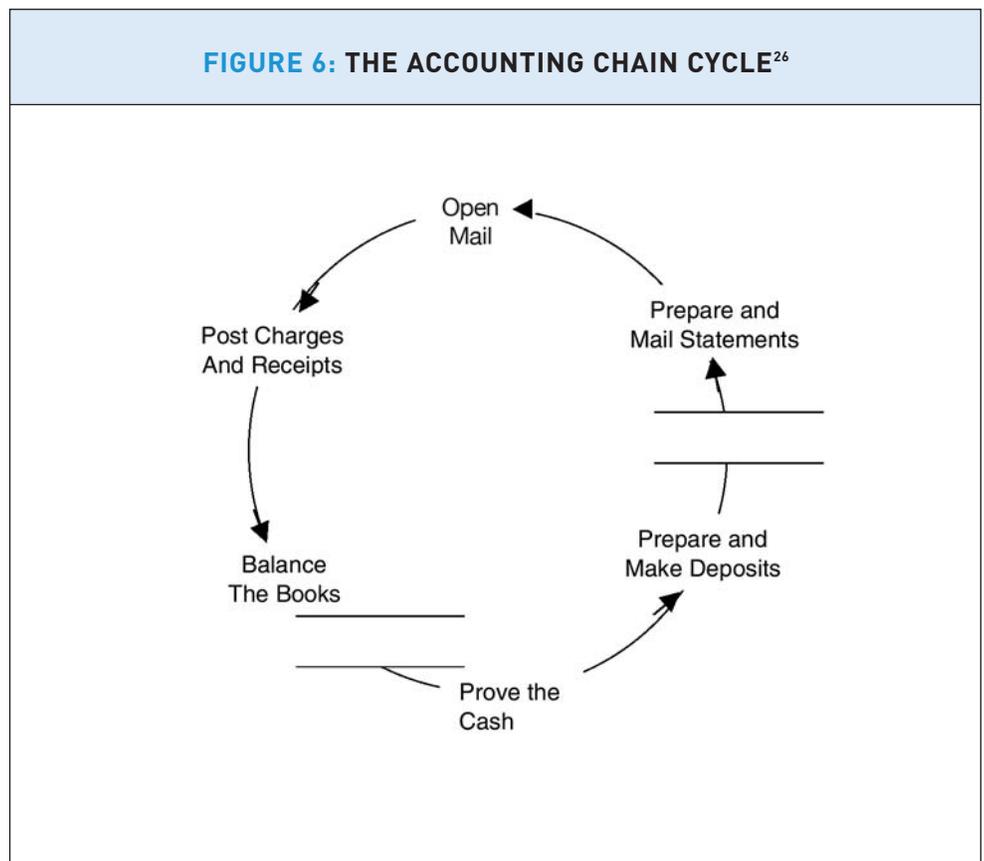
- Passwords and other access codes, such as an office security system code, should be changed immediately whenever an employee leaves the practice.
- A periodic audit of password usage should be performed.

The practice may need to define the information a user can access by granting or limiting access to systems, workstations, applications, files, records, fields, etc.<sup>25</sup>

Employees should not have access to the office computer system during unsupervised hours. That super-dedicated, loyal, hardworking employee who says they will work an extra hour to catch up may be “cooking the books,” a sure recipe for disaster.

Though not directly related to computer fraud, your practice’s data system should be backed up (data transferred to a storage medium other than the hard drive of your main computer) at the end of each day and the backups taken to an off-site location. The backups themselves should be checked occasionally to make sure that the data is accessible and accurate.

**FIGURE 6: THE ACCOUNTING CHAIN CYCLE<sup>26</sup>**



<sup>26</sup> *Starting Your Dental Practice, Success Seminar Manual, Council on Dental Practice, American Dental Association, 2003.*

**FIGURE 7: ARE YOU A SITTING DUCK?**

**Answer YES or NO to the following items, then score your chances of becoming a victim of employee theft.**

• Do you treat all employees with respect and fairness, including fair pay?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Do you believe you have a strong system of internal controls?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Do you verify employee experience and background?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Have you asked a CPA to review and check the adequacy of your internal controls?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Has it occurred to you that some employees might be dishonest?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Does someone other than the bookkeeper open the bank statement (allowing another set of eyes to help ensure honesty)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Does a physician member of the practice sign all checks (instead of an employee signing)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Do two different people make bank deposits and post collections from patients?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Are employees who handle receipts covered under an employee dishonesty insurance policy?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
• Does your bookkeeper take at least five consecutive days of vacation each year so that others can scan the books from time to time?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Source: Cal Klausner, CPA, Klausner Dubinsky & Associates, P.C., Bethesda



Chapter 5:  
**INVESTIGATIONS**

## Chapter 5: Investigations



***Many dentists who contributed case studies for this publication expressed how emotionally draining and time-consuming prosecuting the embezzler is. However, several of those who did not prosecute had the very uncomfortable experience of seeing their former employee at a dental meeting, now employed by another dentist. With no criminal record, this person just moves on to the next office.***

Before rushing forward to consider what sort of legal remedy is available to you as a victim of embezzlement, we need to slow down and consider how you will build your case. How will you conduct an investigation? This is important because it will lay the foundation for all of your future rights. For example, the thoroughness and manner of your investigation may directly impact whether you pursue criminal or civil proceedings against the defendant, and whether you will ultimately prevail at trial. Because you will require solid documentation of the embezzlement and the amount stolen to assist with either pursuing a civil or criminal action, you need to ensure evidence is properly acquired and preserved during the investigation.

Why is a thorough and proper investigation so important? Without having gathered sufficient evidence to establish that a particular employee has embezzled from your office, you may not be able to 1) persuade the police to arrest the suspect if you choose to pursue criminal proceedings, or 2) successfully prosecute a civil lawsuit. For example, if your own personal investigation is incomplete or shoddy, the police may never make an arrest to jumpstart the criminal process. If you do have fidelity insurance coverage, you may also not be able to collect without proving that the crime occurred.

Many dentists who contributed case studies for this publication expressed how emotionally draining and time-consuming prosecuting the embezzler is. However, several of those who did not prosecute had the very uncomfortable experience of seeing their former employee at a dental meeting, now employed by another dentist. With no criminal record, this person just moves on to the next office.

### Starting the investigation

So you think there may be a problem. What do you do? Where do you begin? The starting point is what aroused your suspicions in the first place. Whatever it was, that is where you begin.

Let's take an example: At your office, your receptionist maintains sole control over your petty cash. Usually, you keep four or five hundred dollars in a small locked drawer to make change and cover some minor cash purchases. Lately, you have begun to realize that these funds need replenishing more often than usual. So you'll begin with the petty cash. Do you have an accounting system that deals with petty cash? Review the details. Have the personal habits of your receptionist — the only person with direct access to the petty cash — changed? Has your receptionist started acting suspiciously?

But you should do more than make haphazard observations. Once you have narrowed the grounds for your suspicion, start gathering evidence. How to do this effectively will be discussed in greater detail later, but for now, print out relevant accounting records and make notes (signed and dated) of your other observations. The idea is to be able to document your final case, even if your initial suspect is replaced with a later one. Whatever evidence you develop, keep a log that is useful to you, your attorney and the police.

First, this sort of record will help you make the correct decisions: Can I, or should I, terminate the suspect? Do I go to the police? By forcing yourself to collect evidence in this way, you are forcing yourself to slow down and be both careful and methodical.

Second, these records will help your attorney build your case, in the event you end up in litigation. You must keep in mind that this litigation may be brought not only by you against a former employee to recover stolen funds, but also by your former employee against you for wrongful discharge. In either case, you will want your attorney to be able to present a convincing story.

Third, if the police become involved, you will want to make their job as simple as possible by providing them with good evidence. This will speed the process along and help to minimize even further disruptions to your practice.

It is also important to be careful in collecting these records and recording your observations because your employee may also use such records against you. How can you minimize this risk? Keep your observations simple and factual. Avoid characterizations: Do not simply describe your receptionist's behavior as irritable. Avoiding characterizations will force you to be more precise and descriptive.

## Choosing an advisor

You were initially suspicious. Then you did some basic investigation that confirmed your suspicions. What next?

First, contact your attorney. The legal system, even for those who have merely been wronged, is a complicated one, with many opportunities for the unwary to wander off the proper path. For example, you do not want to inadvertently do something which will make it harder to recover your losses, much less expose yourself to a lawsuit. You need someone familiar with the system to assist you.

Let your attorney guide you through the process of deciding if and when to call the police. Your attorney can also discuss some of the potential consequences of bringing the police into the investigation. These may include practice disruption and a criminal record for your employee. Also, you and your attorney should discuss how a police investigation affects your primary goals, whether they are to simply discharge the employee, recover lost funds or to seek justice through the criminal system.

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You might be thinking that your attorney only handles business and wills; however, if your attorney is not experienced in employment matters and litigation, you may be able to gain a referral to an attorney who is. If you do not have an attorney, you can ask other professionals or friends in your area for referrals. If that does not work, contact the local or state bar associations. The point is that you need professional guidance.

## Who else can help?

In addition to your attorney and the police, you may also want to consider hiring a private investigator to assist with the investigation. A good private investigator will be able to collect evidence in a confidential manner to establish that someone has embezzled from your office, and to identify the culprit. A private investigator will also ensure that the fact gathering is done promptly. Furthermore, a private investigator will likely be better trained than you in confidentially interviewing your employees to gather additional information.

If you suspect the loss is large, you should also give serious thought to hiring an outside forensic auditor or accountant to do a complete audit of your books and records, as well as hiring an expert in computer data retrieval.

Obviously, the type of outside expertise you need will depend on the extent of your losses and the complexities of the embezzlement scheme and your own records. Whomever you hire, you should work through your attorney for several reasons. First, your attorney will have access to more resources, so you will be able to hire the correct experts or investigators. Second, it may be useful for your attorney to hire the outside help directly, rather than for you to do so. Be sure to discuss this issue with your attorney, as it involves questions of protecting information under the attorney-client privilege or the attorney work-product doctrine. The details on the privilege or doctrine are beyond the scope of this publication, but they may be important factors for you to consider.

Finally, you should definitely contact your insurance agent (probably through your attorney) during the early stages of an embezzlement investigation not only to assist with identifying the scope of coverage and any deductibles, but also to assist with pointing out the procedures that you must follow so as to not forfeit coverage. (For example, many policies require that you file a notice of claim within a particular time after discovering the embezzlement.)

## Key documents and how to handle them

When investigating possible embezzlement, identifying and preserving key documents is essential. These documents may help you, your advisors and law enforcement to determine the existence of an embezzlement scheme, its scope and the likely perpetrators. They will also help you repair the damage.

***You should definitely contact your insurance agent (probably through your attorney) during the early stages of an embezzlement investigation not only to assist with identifying the scope of coverage and any deductibles, but also to assist with pointing out the procedures that you must follow so as to not forfeit coverage.***

Certainly, key documents will include those tied directly to the scheme. If the embezzlement relates to petty cash, the petty cash ledger and receipts would likely be key. For larger schemes, your entire accounting system may be essential. It is important to seek guidance on this question from your attorney and law enforcement.

Computer records present some unique problems. By their nature, they may often be written over, thereby damaging some potentially key evidence. Or, as time passes, it may be difficult to reconstruct the records and situations as they existed at a specific point in the past.

Can you download your accounting system onto a backup file to retain the accounting status as of a certain day? You may wish to check with your accounting software vendors. An alternative may be to print out accounting data and note the date of the printing. Of course, the practicality of this may depend on the number of documents to be printed.

Will your carefully gathered documents be admissible as evidence in court? Maybe not. Courts are only permitted to rely on documents that meet certain tests of admissibility. These tests apply to computerized records as well. What is or is not admissible in court is beyond the scope of this publication. The point is that you need guidance from your attorney so the evidence you gather will be useful further down the road.

Now that you have identified and gathered key documents, what do you do? It is likely you will need to find out who had access to those records. Unfortunately, it may be more than one person, but you may still be able to narrow the list of suspects. For example, if more than one type of document was altered to accomplish or cover up an embezzlement scheme, did the same person or persons have access to each type of document? Another way to narrow the list of people who may be involved in the problem is to look at the dates the documents were created or altered. (Sometimes your computer program can help determine date(s) a document was altered.) Which employees had access on those dates?

For written documents, handwriting may provide important clues. Do you recognize the handwriting? Compare it to other documents containing handwriting that you can identify.

As you can see, documents are essential to unraveling (and possibly prosecuting) an embezzlement scheme. Each document may offer a clue. Together, these clues may identify the embezzler. As discussed above, however, that won't help if the documents cannot be used in court. Work with your attorney to help guide you through the maze of evidentiary rules.

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## Should employee witnesses and suspects be interviewed?

***Before employees are interviewed, you and/or the private investigator should gather your facts and records. You should also consult with your attorney. In general, it is best to delay interviews until you are ready to take action against the embezzling employee.***

If you suspect embezzlement, should you or a private investigator interview employees to help find out what happened? These sort of interviews can be very important. But you also need to understand how word spreads in an office atmosphere. Once interviews begin, you need to know that the actual culprit will soon learn of your investigation. For that reason, timing is everything.

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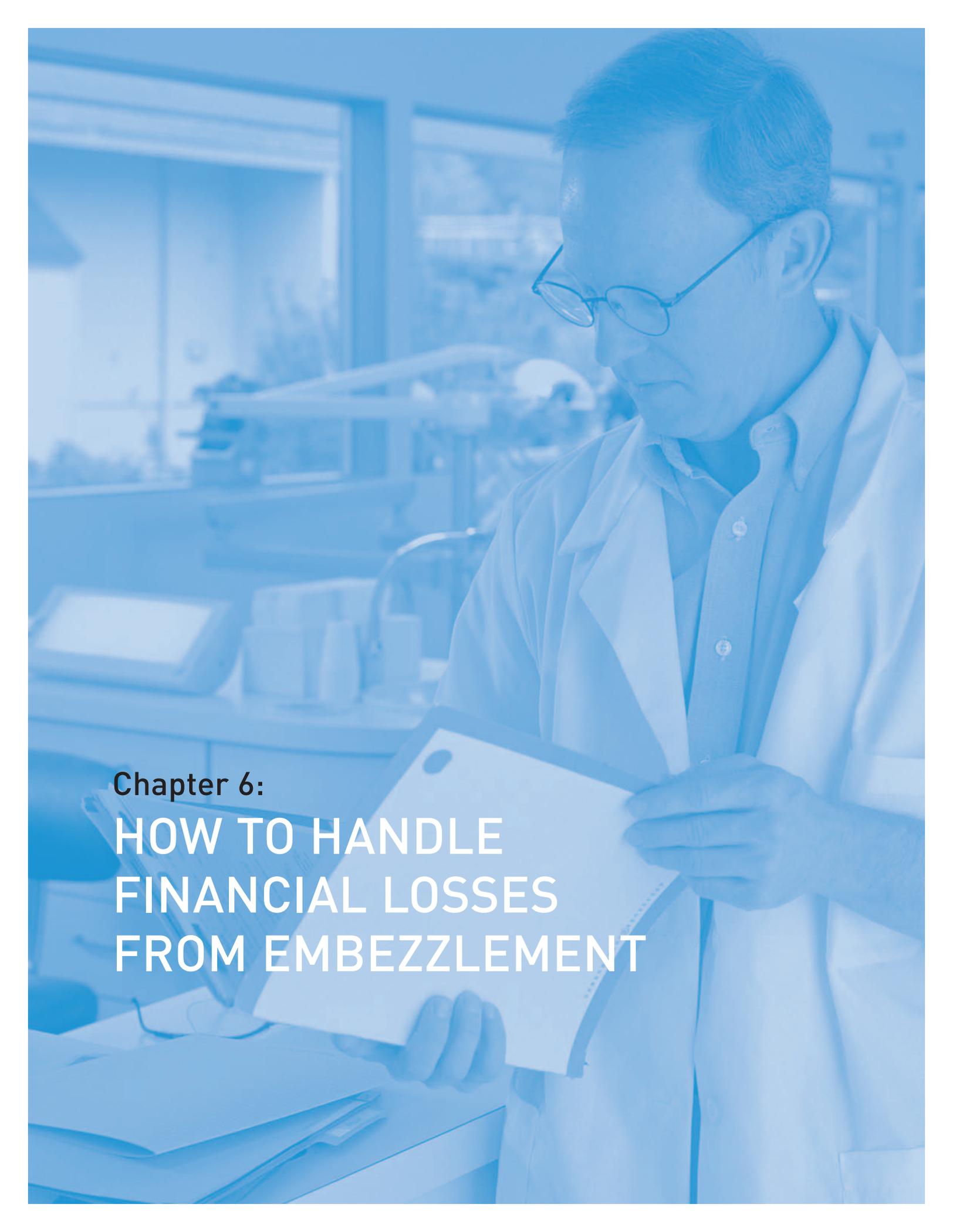
There is another reason to take your time. The employee whom you believe will have useful information for you may actually be working with the embezzler as part of the scheme.

Once you or the private investigator are ready to start talking to employees, ensure that these interviews are conducted with another person present. This could be your attorney or another trusted employee who already knows about the problem. The purpose of having this “prover” with you or the private investigator is to verify what was said and by whom. Also, it often helps to have two people hear an interview to fully grasp what was said and to compare impressions. (In addition, do not accuse anyone of theft during these interviews. It will not help and, especially if you are wrong, it could do a great deal of harm.)

Take good, accurate notes, and simply try to record the key facts. In general, a statement by a person against his or her own interest (i.e., “I confess, I did it.”) may be used in court. Watch for any statements like these, or even those that are less dramatic. Any admissions of facts important to proving the case need to be noted. You may even be able to get the suspect to write down a confession. Once the interview is done, save these notes. They will be important later on. Just as important, loss of the notes may be used against you, to suggest you are trying to hide something.

Finally, if you believe the employee may change his or her story, consider asking the employee to write down, date and sign a basic statement detailing the facts that the employee communicated.

Interviewing witnesses is an important part of the investigation into embezzlement. So is the timing for the interviews. The key here is that the interview is near the end of the process, not the beginning.

A man wearing glasses and a white lab coat is looking down at a clipboard he is holding. He is in a laboratory or office setting with various pieces of equipment and papers visible in the background. The entire image has a blue tint.

**Chapter 6:**

# **HOW TO HANDLE FINANCIAL LOSSES FROM EMBEZZLEMENT**

## Chapter 6: How to handle financial losses from embezzlement



*From a tax perspective, however, embezzlement is simply one form of theft, no different from burglary, robbery, extortion, larceny, fraud or misrepresentation, and any other unlawful taking of money or property. All are treated the same as far as entitlement to a tax deduction is concerned. In all instances, these are theft losses for tax purposes.*

Perhaps the employee that has embezzled funds from your practice has been caught and even sentenced. Maybe you've even been able to recover some of the funds taken. This should not be the end of the trail for you in determining how to recoup at least some of the remaining financial losses you have incurred as a result of the embezzlement. You may well be able to deduct a large portion of the loss you have incurred on your practice's tax return, and thereby recover at least a portion of your loss by reducing your tax bill. Not only that, if you have purchased crime insurance for your practice, you will want to promptly make a claim for your loss and recover the amount of the embezzled funds, excluding any deductible amount. You can't double up on your recovery, though — what you receive in insurance proceeds for your loss can't be deducted for tax purposes. Tax deductions and crime insurance are discussed here.

### Deducting embezzlement losses on your tax return

In Chapter 8, we will discuss what constitutes embezzlement from a legal standpoint. From a tax perspective, however, embezzlement is simply one form of theft, no different from burglary, robbery, extortion, larceny, fraud or misrepresentation, and any other unlawful taking of money or property. All are treated the same as far as entitlement to a tax deduction is concerned. In all instances, these are theft losses for tax purposes. Being able to deduct your losses resulting from embezzlement will to some extent mitigate your financial loss at the end of the day. This section will discuss theft loss in general, and the rules that apply to embezzlement.

Not surprisingly, there are many complicated tax rules when dealing with the theft loss deduction. The rules vary depending on whether the property was personal or used in business. If used in business, it further depends on whether the loss was to business or income producing property, or instead was to employee property.

We start with Internal Revenue Code Section 165(a), which allows a taxpayer to deduct "any loss sustained during the taxable year and not compensated by insurance or otherwise." Code Section 165(e) goes on to provide that any loss from theft, including embezzlement, is deemed to occur in the taxable year that the theft is discovered. A host of factual issues then arises from this simple statement, allowing a tax deduction for theft losses. The most important ones are:

1. Identifying the person who sustained the loss and who is the proper taxpayer to claim the deduction.

2. Determining whether the alleged loss arose from a closed transaction or instead reflects only a temporary fluctuation in the value of property or a financial setback that may be reversed by future events.
3. Ascertaining whether the loss is compensated for by insurance or otherwise.
4. Computing the deductible amount.

We should take these issues one by one to understand how an embezzlement loss can be deducted to reduce its financial impact on your practice.

## Proper claimant

The deduction may only be claimed by the real party in interest – the taxpayer who actually sustained the loss. The business affairs of a family or “one person” dental professional corporation is often conducted without all the technical formalities, and you will often refer to the practice as “my” business. But the corporation is nonetheless a separate entity, and the shareholder is very rarely entitled to deduct the losses on his or her own personal income tax return. Even if corporate expenditures resulting from the embezzlement are covered with personal funds, the expense is not converted to a personal loss, since the payment into the corporate business will usually be characterized as a contribution to capital of the corporation or maybe as a loan. In either case, the individual dentist sustains no deductible loss. Similarly, a dentist extending financial assistance to family or friends cannot deduct theft losses incurred in another business or investment financed with the funds advanced. The deduction for any theft loss belongs to the party actually incurring the loss.

The point here is that when embezzlement occurs, you need to determine whether the loss is of practice assets, *i.e.* from business funds. If so, the practice (organized as a separate entity, such as a corporation, partnership or LLC) is entitled to the deduction, and not you personally. If the practice is a proprietorship, the loss gets reported on a Schedule C, and not as an itemized personal deduction.

## Timing of the theft loss

A theft loss must be claimed in the year of *discovery* (and then only to the extent of no reasonable prospect of recovery), regardless of the year the loss is *sustained*. The year of discovery is the year in which a “reasonable person” in similar circumstances would have discovered the fact of the theft loss. For example, your dental assistant might have embezzled \$10,000 each year since 2001 but you don’t learn of the theft until your accountant points out to you financial discrepancies in 2004. Your practice is entitled to a \$40,000 theft loss deduction in 2004, not a \$10,000 deduction in each of those years. On the other hand, if your accountant had been warning you of problems in the records for years but you ignored his warnings unreasonably, you could lose some of that deduction and instead need to amend your earlier years’ returns.

***When embezzlement occurs, you need to determine whether the loss is of practice assets, i.e. from business funds. If so, the practice (organized as a separate entity, such as a corporation, partnership or LLC) is entitled to the deduction, and not you personally.***

***If the identity of the thief is known and he does not appear judgment-proof, your failure to seek recovery, through demands for repayment and even a lawsuit if necessary, will often prevent a theft loss deduction.***

Note that there must not be a reasonable prospect of recovery. The existence of a reasonable prospect of recovery postpones the deduction until the prospect no longer exists. If the identity of the thief is known and he does not appear judgment-proof, your failure to seek recovery, through demands for repayment and even a lawsuit if necessary, will often prevent a theft loss deduction. On the flip side, when the thief is solvent (and his identity known), failure to seek restitution may not prevent your deduction if the thief is judgment-proof for reasons other than insolvency (e.g., when he has hidden the stolen property and his other assets are insignificant in value). The IRS once ruled that a theft victim did not lose his right to claim a loss by choosing to accept the thief's settlement offer, rather than sue him, where counsel advised that a judgment against the thief would be uncollectible because he had hidden the assets in offshore trusts that would be very difficult to attack.

While litigating a claim against the wrongdoer may indicate the existence of a prospect of recovery, it will not completely bar the deduction in the year of discovery if the likelihood of recovery can be shown to be remote. Thus, a theft loss deduction is allowable where the person being sued is shown not to have sufficient assets to satisfy the judgment or liquidate the claim. However, a settlement agreement with the thief as to the amount due or an agreement on his part to return the property, or its value, will bar the deduction if the thief appears financially responsible at that time. If the thief later becomes insolvent, the resulting loss will usually be classified as a bad debt.

The reasonableness of the prospect of recovery is to be judged at the time of the loss, not later on the basis of hindsight. If the taxpayer deducts a theft loss in the year of discovery because no reasonable prospect of recovery exists at that time and he later receives compensation or reimbursement, the compensation or reimbursement does not cause a recomputation of the tax in the year of the deduction. Instead, the regulations require the compensation or reimbursement to be included in gross income for the year received.

## Insurance or other compensation

Code Section 165 (a) provides that losses can be deducted only if "not compensated for by insurance or otherwise." For a deduction to be allowable, there must be a financial loss actually suffered by the taxpayer. This restriction is most frequently encountered when insured property is damaged by fire or other casualty, but it also disallows a deduction where fidelity or crime insurance has been in place to provide a recovery. Such insurance will be discussed in the next section. In disallowing any deduction for losses compensated for by "insurance or otherwise," this includes reimbursement by the thief, whether in cash or in some other form.

Whether you are entitled to an insurance recovery is usually straightforward enough. The principal problem in applying Internal Revenue Code Section 165(a) to insured losses involves timing. Under the regulations, taxpayers having "a reasonable prospect of recovery" cannot deduct the loss unless and until "it can be

ascertained with reasonable certainty whether or not such reimbursement covers only part of the loss.” Therefore, while an insurance claim is being adjusted, you will need to make a good faith determination of what you may recover. You then can deduct the rest of your embezzlement loss in a later year if insurance proceeds fall short of expectations, or include in income any unexpected recovery amount.

## Amount deductible

The deduction in the case of business property such as cash embezzled is the excess of the adjusted cost basis of the stolen property (in the case of cash stolen, this will be the amount itself) over the amount of any insurance reimbursement or other compensation. However, if the theft is of cash or property that was never included in income, no theft loss will be allowed. In such a case, there should be no deduction because the property would have a zero tax basis. So for example, in one case the court denied any loss for embezzled property where the taxpayer had already received a tax benefit from the loss through an inflated cost of goods sold. All the embezzlements were accomplished through fictitious charges to the taxpayer’s supplies purchases, thereby increasing the taxpayer’s cost of goods and reducing its taxable income by the amount embezzled each year. The court concluded that a “theft loss deduction should be disallowed where the proceeds embezzled were never reported as income and, accordingly, no tax was paid on them.”

In another case, the taxpayer, an attorney, was denied a deduction for stolen bank funds because he never included them in income and thus did not have a basis in the funds to be eligible for a theft loss.

The question of proving the amount of your loss is also an important consideration. Merely showing that your property was taken as a result of theft, without any evidence as to the value of the items in question and their cost, is insufficient to carry your burden of proof as a taxpayer asserting a deduction. However, if you are in a position to produce some testimony as to cost and can show through some records a reasonable estimate of the amount embezzled, this should go a long way to supporting your deduction.

A taxpayer’s burden technically requires a showing of both (i) fair market value on the date of the theft, and (ii) the adjusted basis at that time. However, it is clear that in many cases involving personal property and for small businesses, the prevailing taxpayer’s evidence falls short of this mark. The courts, undoubtedly recognizing the difficulties presented to the taxpayer in meeting this burden, have tended to adopt a circumstantial evidence approach.

Embezzlement losses will generally be of cash from accounts related to payroll, expenses payable, cash receipts for services, and the like. These are income-related, so the loss will be an ordinary loss. Very occasionally, property embezzled might be a capital asset to the practice, in which case the loss is a capital loss. Therefore, the proper characterization of losses may be an issue to be considered as well.

***The question of proving the amount of your loss is also an important consideration. Merely showing that your property was taken as a result of theft, without any evidence as to the value of the items in question and their cost, is insufficient to carry your burden of proof as a taxpayer asserting a deduction. However, if you are in a position to produce some testimony as to cost and can show through some records a reasonable estimate of the amount embezzled, this should go a long way to supporting your deduction.***

***Dental offices are not immune to employee fraud, including embezzlement. For this reason, it is important for dental office employers to consider purchasing crime insurance, also referred to as “fidelity” insurance or a crime or fidelity “bond,” to address this risk. It is important to realize that most general insurance policies exempt employee dishonesty from its coverages entirely, or provide only very limited amounts, such as \$10,000 per employee.***

In the event you sustain a significantly-sized embezzlement loss in your practice, you will want to work with your accountant to pull together all your records that support the amount of the losses you have sustained. These records will be crucial in determining the loss amount you may include as a deduction on your practice’s tax return. Accurate records will also help verify the amount of deduction taken in the event you happen to get audited by the IRS, and provide the information needed to make a claim under any crime insurance policy you may have in place for your practice. Such crime insurance is the next topic of discussion.

## What is Crime/Fidelity insurance?

Employee fraud is a growing problem, and is no longer limited to manual workers or shop assistants stealing stock or petty cash, but increasingly features sophisticated frauds by well-paid and sometimes long-serving employees in trusted positions.

Dental offices are not immune to employee fraud, including embezzlement. For this reason, it is important for dental office employers to consider purchasing crime insurance, also referred to as “fidelity” insurance or a crime or fidelity “bond,” to address this risk. It is important to realize that most general insurance policies exempt employee dishonesty from its coverages entirely, or provide only very limited amounts, such as \$10,000 per employee.

Crime or fidelity insurance indemnifies a dental practice for losses arising out of employee dishonesty, and for many other risks entailing crime as well. The scope of crime insurance is broader than employee theft.

Crime/Fidelity insurance can cover losses from:

- Employee dishonesty;
- Forgery or alterations;
- Theft, disappearance and destruction;
- Robbery and safe burglary;
- Money orders and counterfeit paper currency coverage;
- Computer fraud and funds transfer fraud; and
- Corporate credit card fraud.

In addition to the actual losses resulting from the embezzlement, certain expenses are covered which arise in the course of adjusting any claim, including investigation expenses, computer clean-up costs arising in connection with a computer violation of fraud, and attorney fees that may be involved.

## A Glossary of Terms

Insurance lingo can be daunting, so a glossary of a few definitions might be useful when reviewing a crime insurance policy with your insurance agent.

**Blanket Bond** - Fidelity bond that covers losses resulting from the dishonesty of all employees, without regard to which specific employee has committed a crime.

**Blanket Crime** – Broader than a blanket bond, a crime policy that not only covers all kinds of employee dishonesty, but also loss of money, forgery, and counterfeiting. Such coverage is included in special Multi-Peril policies.

**Burglary** - Insurance against burglary or robbery losses of property and merchandise, including thefts when the business is closed.

**Combination Crime** - Broad coverage against crimes committed by employees and others.

**Commercial Forgery** - Policy covering losses from forgeries of checks from others.

**Credit Card Forgery** - Coverage against forgery or alteration of credit cards.

**Crime Coverage** – Narrower than blanket crime coverage, crime coverage covers the theft and disappearance of company property.

**Fidelity Bond** - A bond that protects a business from the dishonest acts of a covered employee. Takes the form of a bond on specified employees.

**Vandalism and Malicious Mischief (V&MM)** - Coverage against losses resulting from deliberate damage to property by others. Now typically included in many property insurance policies.

## How do I buy crime insurance?

Work with your commercial insurance agent. Go over the coverage, if any, you now have and alternatives available for additional crime insurance coverage.

Frequently, you can buy crime insurance as part of a “package” policy that includes other coverage such as property or as part of your malpractice insurance. You may well be able to add it as an endorsement to an existing coverage on your practice for relatively little additional premium. Limits for a package policy tend to be lower than under a “mono-line” policy, which is specialized coverage aimed specifically at the different risks outlined above. The package policy approach is usually adequate for most dental professionals. As with any other insurance, get multiple quotes if possible and review aggregate loss limits, per employee limits, reporting requirements and deductibles.

*Frequently, you can buy crime insurance as part of a “package” policy that includes other coverage such as property or as part of your malpractice insurance. You may well be able to add it as an endorsement to an existing coverage on your practice for relatively little additional premium.*

***Report the theft to your insurance company promptly. Crime insurance is written on a discovery basis, which means that the policy covers losses discovered during the policy period or the extension period, frequently 90 days, regardless of when the loss event actually occurred. The most common ground for denial of a claim by an insurer is that the loss was actually known to the insured prior to the policy inception.***

## What to do if you have discovered a theft or loss

Report the theft to your insurance company promptly. Crime insurance is written on a discovery basis, which means that the policy covers losses discovered during the policy period or the extension period, frequently 90 days, regardless of when the loss event actually occurred. The most common ground for denial of a claim by an insurer is that the loss was actually known to the insured prior to the policy inception. Another frequent reason for denial is delaying reporting the event. The insured's reporting procedures and the adherence to such procedures are critical for ensuring that the insurance is effective in case of a loss. And do not forget to keep evidence that you have reported your loss, ideally in writing.

A man in a white lab coat is shown in profile, talking on a black telephone. He is looking down and to the right. The background is a blurred office setting. The entire image has a blue color overlay.

**Chapter 7:**

**TERMINATION ISSUES  
AND THE SUSPECTED  
EMPLOYEE**

## Chapter 7: Termination issues and the suspected employee

### The decision to terminate

The decision to terminate one of your employees as a result of embezzlement may or may not be an easy decision for you to make. If your suspected employee confesses to embezzlement, then most practice owners want to immediately terminate the employment relationship. It can't happen quickly enough! In other situations, the embezzlement investigation may look like it is going to take on a life of its own and you may just want the suspected employee out of the office. However, in both of these scenarios there are still a number of things for you to consider and some important details to take care of.

**Below are some issues to consider when you are going to terminate an employee:**

- **Are you an at-will employer or do you have an employment contract with the employee?**
- **How are you going to characterize the termination? In other words, is this termination “for cause”?**
- **Are you going to give the employee a memorandum in writing setting forth your reason(s) for termination?**
- **Have you considered the unemployment compensation issues?**
- **Have you remembered the final paycheck for the terminated employee?**
- **What do you plan to tell your remaining staff about the departing employee?**
- **If you get a phone call and are asked for a reference on this terminated employee, what are you going to say?**

**These are all good questions to think about *before* rather than *after* you actually fire an employee.**

### At-will employment

If you have an employee office manual (and hopefully you do), pull it out and review the sections on employment status and termination. In most states, you can fire an employee without a contract for any reason — or for no reason at all, with or without notice. In legal terms, this is called “at-will” employment. (Consult with your attorney regarding individual state law interpretations of the “at-will”

doctrine.) However, as might be suspected with the law, there are some limits to firing employees. Under a variety of state and federal human rights acts, employees cannot be terminated on the basis of such characteristics as race, gender, religion, age, or disability. For instance, Title VII, covering all private employers with 15 or more workers, prohibits discrimination based on race, color, religion, sex, or national origin with respect to firing and compensation. Workers aged 40 and over are protected under the Age Discrimination in Employment Act for employers with 20 or more employees. The Americans with Disabilities Act, effective for employers with 15 or more employees, prohibits discrimination against a qualified person with a disability in firing, promoting, or other decisions affecting employment. So even if you are an at-will employer, it may prove to be very useful to have some documentation indicating that the termination is a result of legitimate business decisions and not for discriminatory reasons.

## Employment contracts

An employer may have a written contract or oral contract with the employee. This express contract usually specifies certain terms and conditions of employment. Employment contracts generally contain a provision permitting the employee to be terminated immediately in the event of conduct including, but not limited to: insubordination (someone who is insubordinate refuses to recognize your authority as an employer); theft (which would include embezzlement); violence; or criminal activity.

Sometimes employers *inadvertently* create an employment contract called an implied contract, which is another exception to the employment-at-will doctrine. Some courts have held that an implied contract of employment may exist when an employer provides a worker with an employee handbook or manual. It is important to have a well-written employee handbook or manual that has been carefully reviewed by your lawyer *prior* to terminating an employee to make sure that it has not created either an expressed or implied contract.

However, most employee handbooks or manuals do specify that immediate termination may occur upon the discovery of certain unacceptable conduct such as theft. The ADA offers an excellent *Employee Office Manual* to assist you in this process; it can be ordered by calling 1-800-947-4746 or by logging on to [www.adacatalog.org](http://www.adacatalog.org).

Implied contracts may also be *inadvertently* created by oral promises or written documentation that alter the at-will employment status. When you are deciding whether to fire an employee, or even if you have made the decision to fire an employee, you should thus consider whether there have been any oral promises or written documentation that might affect your employee's at-will employment status. The point is that it is better to think about many of these legal considerations before, rather than after, you end the employment relationship.

*Sometimes employers inadvertently create an employment contract called an implied contract, which is another exception to the employment-at-will doctrine. Some courts have held that an implied contract of employment may exist when an employer provides a worker with an employee handbook or manual. It is important to have a well-written employee handbook or manual that has been carefully reviewed by your lawyer prior to terminating an employee to make sure that it has not created either an expressed or implied contract.*

## “For cause” termination

If you have solid proof of embezzlement (for example, a confession is made in front of you and a witness), then you will likely be terminating employment “for cause.” Oftentimes however, an embezzlement investigation is time-consuming and at some point, you just may want to terminate the suspected employee’s employment. There is often the temptation to confront the suspected employee and say, “I know you did it and I’m going to prove it.” You are strongly urged NOT to do this. Unless you have strong proof of embezzlement, you may be buying yourself a lawsuit if you accuse your employee of stealing from the dental practice. In the absence of such proof, you should not accuse your employee of embezzlement and then fire him or her. Rather, you can approach the termination from the standpoint of job performance (as opposed to stealing).

*A written script can be helpful, and role-play the script before the actual termination. Know exactly what you want to say. Be direct, and clearly state the reasons for the dismissal. It is generally best to avoid discharging an employee without giving him or her a reason for the discharge. However, unless you have strong proof/documentation of embezzlement, don’t accuse your employee of embezzlement but rather phrase the termination in terms of poor performance. If you don’t give a reason for the termination, your employee may assume the worst – that the discharge is for discriminatory reasons.*

## Guidelines for a Termination Meeting

At the termination meeting, you should have someone other than yourself present when you meet with the employee. Below are some guidelines to help you with a termination.

- **Keep the meeting brief.** Keep the meeting as brief as possible—about 10 to 15 minutes.
- **Treat your employee fairly.** A good rule of thumb to remember is this: treat people fairly. They’ll usually act accordingly.
- **Hold the meeting in private.** Never fire an employee “in public.” This can be perceived as being cruel and excessive. However, you should not meet alone either, but rather have two managers present during the termination.
- **A written script can be helpful, and role-play the script before the actual termination.** Know exactly what you want to say. Be direct, and clearly state the reasons for the dismissal. It is generally best to avoid discharging an employee without giving him or her a reason for the discharge. However, unless you have strong proof/documentation of embezzlement, don’t accuse your employee of embezzlement but rather phrase the termination in terms of poor performance. If you don’t give a reason for the termination, your employee may assume the worst – that the discharge is for discriminatory reasons.
- **Let emotions fly.** If the employee begins to cry, acknowledge the emotion. Offer a tissue, but remain direct. If the employee becomes angry and abusive, do not react accordingly.
- **Tell the employee the decision is final.** Make sure he or she knows that it cannot be reversed.
- **Have documentation ready.** You might want to bring paperwork with you to use as documentation as to why you are letting the employee go. These documents

may include evaluations, warnings, notes of complaints, and other summaries of discussions.

- **Allow the employee to maintain self-esteem.** Even as you discuss the reason for the firing, acknowledge the employee's strengths and contributions.
- **Collect items that belong to the practice.** Collect building keys, practice charge cards, phone cards, or other items of significance.
- **Have the last paycheck ready.** Give the employee his/her last paycheck.
- **Offer the employee a written summary of benefits.** You can include information on compensation for vacation and sick time, health insurance, or other benefit payments.
- **Tie up loose ends.** Get the employee's address for his/her final W-2 Form.
- **Be gracious.** Express well wishes to the employee and his or her future. Allow the employee to leave with dignity. Offer him/her the opportunity to return after work hours to collect any personal belongings.
- **Be available.** Keep the lines of communication open. If the employee calls with any questions, answer them promptly.

## The termination letter

In the event that the employee does sue you, it may be helpful to have someone else present to confirm what you did say and sometimes more importantly, what you didn't say. In addition, you may wish to consider handing your employee a written termination letter. A termination letter should be factual, brief and direct. This document could be useful for a number of reasons. First, human resources personnel often discover that terminated employees don't hear much of what is being said at the meeting after the employee realizes that termination is occurring. In addition, a termination letter can set forth the reason(s) for termination, which is important for employment compensation purposes. Finally, such a letter can cover topics such as the final paycheck and continuation of group health insurance coverage, if applicable. (An employment or labor attorney should review your proposed termination letter because terminations in general increase a practice owner's legal exposure.)

*Human resources personnel often discover that terminated employees don't hear much of what is being said at the meeting after the employee realizes that termination is occurring. In addition, a termination letter can set forth the reason(s) for termination, which is important for employment compensation purposes.*

**FIGURE 8: SAMPLE TERMINATION LETTER**

Date  
Employee  
Street Address  
City, State, Zip Code

Dear [Name]:

As discussed during our past meetings, you have not satisfactorily met the expectations set for you as office manager. As a result, we are terminating your employment, effective [date].

Enclosed in this letter are your final wages, minus normal withholdings. [Insert info here.]

You can continue your medical coverage, through COBRA. The choice to continue must be made within sixty (60) days of your termination. For more information regarding your benefits, contact [name] in the office at [number].

I express well wishes to you and success in your job search.

Sincerely,

Dentist

Terminations in general tend to be stressful events and one involving embezzlement or suspected embezzlement can be even more stressful. In these circumstances, a Termination of Employment Check-List is often very helpful for practice owners.

**FIGURE 9: TERMINATION OF EMPLOYMENT CHECKLIST**

## Termination of Employment Checklist

Employee Name \_\_\_\_\_

Social Security Number \_\_\_\_\_

**To Do**

- Consider whether to consult with an employment/labor attorney prior to actually terminating the employee. Even if you are an at-will employer, it is often useful to have written documentation confirming that the termination has taken place for non-discriminatory reasons (e.g., performance problems).
- Provide the terminated employee with COBRA information, if applicable.
- Obtain the office key from the terminated employee and cancel key-card access. The employee should turn in keys, tokens, or cards that allow access to property or equipment, preferably before termination of employment.
- Locks or combinations of locking mechanisms should be changed upon a termination. You should change the password for any office security (alarm) system as well as any other access codes.
- If your terminated employee signed a list acknowledging receipt of equipment and office-related items when employment began, retrieve that list and verify that all equipment and office-related items have been returned.
- Cancel terminated employee's voicemail and e-mail account, if applicable.
- If the terminated employee had check writing and/or any banking responsibilities, cancel these authorizations with the institution.
- Explain to other employees what has taken place and how to handle phone calls or patient inquiries about the terminated employee.

**Note: Dentists who are required to comply with the HIPAA security regulations will have to implement certain termination procedures by April 21, 2005. The following procedures are advisable for HIPAA compliance and useful for all dentists:**

- If the practice has a security officer (dentists covered by HIPAA will need to appoint someone to this role), document and provide communication of each employee's termination in a timely manner to the **security officer**.
- The terminated employee should be removed from the access list upon termination.
- The terminated employee's user accounts and access privileges should be terminated, suspended, or deleted upon termination.
- Review all suspended accounts for activity or attempted activity and report any such activity for investigation as a potential breach.
- Audit termination procedures periodically to ensure effectiveness.

## Unemployment compensation issues

Not all employees who are terminated are entitled to unemployment compensation. The state, not you, makes this decision. However, how the termination takes place typically has a big impact on whether or not the terminated employee will be able to collect unemployment compensation. Terminated employees can generally claim unemployment benefits if the dental practice needed to make some financial cutbacks or if the employee has some job performance issues (for example, if your dental assistant has low productivity, doesn't get along that well with your patients, or has poor judgment.)

In most states, terminated employees will not be able to collect unemployment if they are fired for "misconduct." Many states' definitions of "misconduct" are very similar to the definitions of "for cause" in employee manuals and employment contracts. However, there may be some variances from state to state in the definition of "misconduct." Examples of "misconduct" recognized by some states include harassment, felony convictions, intoxication on the job, and theft crimes such as embezzlement.

From the standpoint of dealing with the unemployment compensation system, if you terminate employment based upon "misconduct" or "cause," it may be very helpful to have a memorandum (reviewed by your attorney) that is given to the terminated employee specifying the reason(s) for termination. Generally what happens is that if the terminated employee subsequently files for unemployment, the state will send you a written notice of the claim for benefits. You then will have a certain period of time to file a written objection to the claim. The memorandum given to the former employee at the time of termination can be attached to your written objection. The state agency will make an initial determination as to whether or not the former employee is deemed eligible to receive unemployment benefits. Should the initial decision be unfavorable to you, most states provide several levels of appeal for the eligibility decisions. Again, it is important for you and your lawyer to be aware of your state's unemployment laws.

### Final paycheck

You may think that your terminated employee isn't entitled to a dime more. However, most states have strict "wage and hour rules" that require employers to give terminated employees their final paychecks and in a relatively short period of time. In other words, it may not be legally acceptable to wait until the next payday.

You may think that the terminated employee is not entitled to any special accommodations such as the inconvenience of cutting a paycheck off-cycle. However, it is important to understand that a number of states require that the employees be given final paychecks *immediately* if they are fired. You can contact your local wage and hour division for guidance on this issue. In fact, many states now have their wage and hour laws on the Internet for easy reference. Depending upon the state where your dental practice is located, you may also need to pay out any accrued vacation time that has not yet been taken.

***You may think that your terminated employee isn't entitled to a dime more. However, most states have strict "wage and hour rules" that require employers to give terminated employees their final paychecks and in a relatively short period of time. In other words, it may not be legally acceptable to wait until the next payday.***

Failing to comply with the wage and hour rules can be costly. In the event that you are challenged on your wage and hour practices and there is a problem, you may have to pay a penalty and incur the cost of attorneys' fees. You also want to avoid triggering a wage and hour audit of your dental practice.

## Staff communication issues regarding the termination

It is important to consider what you plan to tell your remaining staff about the departing employee. Whenever you fire an employee, the possibility exists that the former employee may sue you and allege wrongful termination, or that the termination was based upon discriminatory reasons such as age (over 40), race, religion, sexual orientation, etc. However, you don't want to add to the already present legal exposure by inadvertently defaming the former employee.

Legal opinions from litigated cases define defamation and ultimately decide what constitutes defamation. It is very much fact specific. Generally, if you make an intentionally false communication that causes injury to the former employee's good name or reputation, that communication would likely constitute defamation. To be defamatory, the communication needs to be published or spoken to someone and most states require a showing of damages (for example, the fired employee was unable to get a job based upon the false communication that was made about him or her). Truth is typically an absolute defense to defamation allegations. However, even though you often know what is the "truth," if you are sued for alleged defamation, you have to be able to legally prove the "truth" of whatever you said. You will also probably have to show that you had reasonable cause to believe that your employee was stealing from you. So be very careful what you say about your departing employees.

It is very important to provide some type of communication to your office staff when an employee is terminated. From the standpoint of employee morale, employees typically like to hear an official communication from their boss. In addition, from the practical standpoint, your staff needs to know what to say when telephone callers request to speak with the former employee.

Many employers find it effective to call the staff together for a brief meeting. From the legal perspective, it is safest to:

- Explain that [name of former employee] is no longer with the office.
- Advise that anyone who calls for [former employee] should be informed that [former employee] is no longer with the dental practice.
- Explain that for privacy reasons, they should not discuss what they might perceive to be the reasons behind his/her departure from the office.

***It is very important to provide some type of communication to your office staff when an employee is terminated. From the standpoint of employee morale, employees typically like to hear an official communication from their boss. In addition, from the practical standpoint, your staff needs to know what to say when telephone callers request to speak with the former employee.***

- Explain how the job responsibilities of the former employee will be handled. If anyone appears uncomfortable with their workloads, follow-up with them after the meeting. There may also be some concerns among existing employees about their risk of being terminated, also. Remember, if you are an at-will employer, you don't want to destroy that status by promising continued employment. You could perhaps assure them that they are doing well and that you are looking at each individual's performance. You just don't want to say anything that comes close to a promise of permanent employment.

Even though you may *really want* to share the details and talk about “how you did the right thing,” avoid this temptation. If the conversation gets conveyed back to the former employee, things may get twisted and the former employee may sue you for defamation or even wrongful termination. (Which, even if you win, will cost you money).

## References for the former employee

There may be no doubt in your mind that you are going to give your former employee a bad reference. However, once again there are some legal considerations to keep in mind. The most prudent approach from the legal perspective is to have a reference policy wherein you simply confirm (that means “confirm” not volunteer) dates of employment, job title, and salary. If you are in a situation where you decide to fire the employee but you haven't completed the audit or investigation, you really don't have any business accusing the former employee of embezzlement. Ultimately, if you are wrong about the embezzlement, or if you are not able to legally prove the elements of embezzlement, then telling a prospective employer that your former employee embezzled from you could expose you to significant legal liability. In other words, you may buy yourself a lawsuit if you speak out of turn.

In the context of references, some states have enacted laws that give you significant protection from lawsuits for defamation or other civil actions. For example, the Illinois Employment Record Disclosure Act (745 ILCS 46/1) presumes that the employer was acting in good faith so long as the reference information is:

- Provided upon inquiry from a prospective employer;
- Truthful or believed in good faith to be truthful; and
- Concerns only the employee's job performance.

Now the terminated employee is not likely to put your name down as a reference. However, you need to be prepared in the event that the prospective employer simply decides to give you a telephone call. Ask your attorney if your state law provides any guidance on employment references.

## “Wrongful termination” lawsuits

Some terminations may be found to be unlawful at the end of the day but many people have different ideas about what constitutes a wrongful termination. From the legal perspective, there really is not “one” legal definition. These lawsuits tend to be filed in state courts and the outcomes may vary from state to state.

Sometimes employers fire employees under the at-will employment doctrine (“I can fire anyone for any reason or no reason....”) but later the former employee is able to establish that the firing was based upon unlawful reasons. That is why it is important (even if you are an at-will employer) for you to be able to show that you fired someone for non-discriminatory reasons.

Thus, a wrongful termination may result if an employee is fired based upon race, religion, age, gender, sexual orientation, disability, national origin, etc. Documenting the reasons for termination (without overstating them) may be very helpful if you ever find yourself the target of one of these lawsuits. If you don’t have solid proof of embezzlement, then you may want to characterize the termination as some type of unsatisfactory performance to minimize your exposure to wrongful termination lawsuits.

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A blue-tinted photograph of a wooden gavel resting on a stack of papers. The gavel is positioned diagonally, with its head in the upper right and its handle extending towards the lower left. The papers are stacked and slightly blurred, suggesting a focus on the gavel. The overall image has a strong blue color cast.

Chapter 8:

# PURSUING YOUR LEGAL RIGHTS

## Chapter 8: Pursuing your legal rights

Preceding chapters have discussed how to prevent, investigate and identify embezzlement in your dental office. However, what happens after you determine which of your employees has embezzled from you and you have decided to terminate the offending employee? Some questions to consider are:

- Do you prosecute the embezzler criminally or sue the person civilly?
- What are the steps involved in each approach?
- Alternatively, do you attempt to avoid the legal system altogether, and settle the matter privately?
- How does your insurance policy impact your options?
- How does ERISA affect your options?
- What are your rights if the embezzler declares bankruptcy?
- What is the IRS' role if the embezzler fails to disclose the embezzled funds as income on his/her tax returns?

Before tackling these questions, however, it is important to understand the legal definition of embezzlement, and the impact your investigation will have on your legal options.

### Legal definition of embezzlement

Embezzlement is a crime, and while every state has its own statutory definition of embezzlement, not all definitions are identical. Nonetheless, a good working definition is the intentional and fraudulent taking of another person's property by one who has been entrusted with the property for his/her or another's own use. What makes embezzlement different from ordinary theft is that the embezzler is, by definition, someone you trust, such as an office manager, supervisor or some other employee. The embezzler initially comes into possession of your property legally, but later misappropriates it. It is important to keep in mind that the law does not usually require that the embezzler acquire the property for his/her own benefit. Rather, the embezzler is just as liable under the law if he/she misappropriates the property for someone else. Moreover, it is no defense to embezzlement that the employee subsequently decides to return the property to your office.

***What makes embezzlement different from ordinary theft is that the embezzler is, by definition, someone you trust, such as an office manager, supervisor or some other employee.***

## Investigation and its legal impacts

The thoroughness and manner of your investigation may directly impact whether you pursue criminal or civil proceedings against the defendant, and whether you will ultimately prevail at trial. If you suspect embezzlement, first immediately contact your attorney for assistance. Your attorney will be able to guide you through the “do’s” and “don’ts” of conducting an investigation, as discussed in Chapter 5. Because you will require solid documentation of the embezzlement and the amount stolen to assist with either pursuing a civil or criminal action, your attorney will also help ensure that evidence is properly acquired and preserved during the investigation.

As discussed in Chapter 5, you may also want to consider hiring a private investigator to assist with the investigation. A good private investigator will be able to collect evidence in a confidential manner to establish that someone has embezzled from your office, and to identify the culprit. A private investigator will also ensure that the fact gathering is done promptly. Furthermore, a private investigator will likely be better trained than you in confidentially interviewing your employees to gather additional information. (Regardless of who performs the questioning, ensure that all persons who are questioned are informed that the investigation is confidential in order to avoid a defamation suit, as well as to avoid the possibility of disclosing relevant information to the wrong individuals. You should also assure that these persons do not feel pressured or coerced during the interview. If so, they could file a claim of false imprisonment against you or your office.) If you suspect the loss is large, you should also give serious thought to hiring an outside forensic auditor or accountant to do a complete audit of your books and records, as well as an expert in computer data retrieval.

Why is a thorough and proper investigation so important? Without having gathered sufficient evidence to establish that a particular employee has embezzled from your office, you may not be able to 1) persuade the police to arrest the suspect if you choose to pursue criminal proceedings, or 2) successfully prosecute a civil lawsuit. First, as discussed below, while the police may conduct their own investigation to determine whether they will arrest a specific employee for embezzlement, they may often rely on the investigation that you have performed to assist them. This is quite often the case if the police are busy with other matters or simply lack the resources to devote much attention to your matter. If your own personal investigation is incomplete or shoddy, the police may never make an arrest to jumpstart the criminal process.

Moreover, even if a criminal matter does go to trial, and the prosecution is able to obtain a conviction, an appellate court may nonetheless reverse the conviction, holding that a lack of evidence existed to bring the case to trial in the first place. In one case, a defendant was convicted of embezzling money from his hospital employer. The defendant had been director of support services at the hospital, and one of his duties was to count the money the food service cashiers deposited into a safe at the hospital. The defendant shared this responsibility with two other persons.

***You may also want to consider hiring a private investigator to assist with the investigation. A good private investigator will be able to collect evidence in a confidential manner to establish that someone has embezzled from your office, and to identify the culprit.***

On appeal, the court reversed the conviction, holding that the evidence did not establish beyond a reasonable doubt that the defendant was responsible for embezzling money from the hospital. The court noted that the defendant was not the only employee with access to the safe, and that there were internal discrepancies in the amount of money reported by the cashiers themselves. Accordingly, the court stated that the prosecution failed to establish the defendant's guilt beyond a reasonable doubt.

This case reinforces the point that your investigation ought to contain sufficient evidence to support the guilt of the person charged with embezzlement beyond a reasonable doubt. If you cannot demonstrate which employee embezzled funds from your office, you will have a very difficult time convincing law enforcement to take your case seriously, let alone securing a conviction that will survive an appeal.

Similarly, if you choose to file a civil suit against the employee whom you suspect of embezzlement, insufficient evidence to support your claim will prompt the court to rule in favor of the employee. Accordingly, if you believe the employee has embezzled a large sum from your office, it is quite often worth the time and expense to conduct a thorough and complete investigation.

*A civil suit may pose less of a deterrent effect on both the embezzler and others in your office who are inclined to embezzle from you. A criminal prosecution emphasizes to your other employees that you will not tolerate theft in the workplace.*

## Choosing civil or criminal proceedings

There is no automatic answer with respect to whether you should pursue criminal or civil proceedings against an employee you believe has embezzled from your office. Both procedurally and strategically, each approach has its pros and cons.

### **Benefits of pursuing criminal proceedings:**

- The state pays the cost of litigation in a criminal case. In contrast, in a civil suit, you bear the expense of litigation, including paying your attorney's fees. Even if legal expenses are not an issue for you, the cost of litigation may outweigh filing a civil lawsuit if the alleged embezzler has minimal assets with which to satisfy a court judgment in your favor. Under such circumstances, pursuing criminal proceedings may be more advantageous.
- A defendant convicted of a crime may be forced to pay a fine, face a prison sentence, or both, whereas a defendant who is liable in a civil case will only have to pay monetary damages — the civil defendant cannot be sent to jail. Accordingly, a civil suit may pose less of a deterrent effect on both the embezzler and others in your office who are inclined to embezzle from you. A criminal prosecution emphasizes to your other employees that you will not tolerate theft in the workplace.
- A criminal conviction allows you to be honest with prospective employers of the embezzler by reporting the conviction without fear of a defamation suit by the embezzler. Also, while prospective employers generally cannot refuse to hire someone based solely on that applicant's criminal record, if the employers

run a thorough background check (see Chapter 3), they will nonetheless learn of the conviction.

### **Benefits of pursuing civil proceedings:**

- You, as the plaintiff, control the progression of a civil lawsuit from beginning to end. However, in a criminal case, the prosecutor controls the matter without your involvement. Indeed, the prosecutor will likely continue to prosecute the case even if you were to request that the prosecutor drop the charges (such as when the embezzler has agreed to repay you for the amount stolen).
- A defendant in a civil case either has to pay for his/her own attorney, or represent himself/herself. In a criminal case, however, the state will pay for the defendant's attorney if the defendant cannot afford to pay for his/her own. Accordingly, an embezzler with few assets may have to represent him/herself in civil court as a defendant, providing you with a tactical advantage.
- In order to prevail in a civil case, the plaintiff must establish that the defendant is liable to the plaintiff only by a "preponderance of the evidence," a much more lenient standard to meet than its criminal counterpart. Indeed, the prosecutor in a criminal case has to prove that the defendant is guilty of the crime charged beyond a reasonable doubt. This standard is extremely difficult to meet, and means that judges and juries must resolve all doubts about particular evidence in favor of the defendant. Accordingly, if you believe that your evidence is not strong enough to meet the criminal evidentiary standard, you may want to pursue a civil lawsuit against the embezzler instead.

### **Steps involved in a criminal proceeding**

If you decide to pursue a criminal proceeding against an embezzler, you should first contact the police. Generally, the police will initiate the criminal process with an investigation of your office to determine who, if anyone, has embezzled. (Depending on the jurisdiction and the complexity of the embezzlement, the financial crimes unit of the police department or other law enforcement agency may handle your matter.) The police will then arrest a suspect if they gather sufficient evidence. However, it is entirely possible that the police will look to you first to provide them with an extensively documented file to support an arrest. This is especially true if the police lack the resources to conduct a thorough investigation on their own. As discussed above, you should thus conduct your own investigation first, with the assistance of counsel and, ideally, a private investigator and/or forensic accountant.

Once the police investigate the matter, their report is sent to the office of the state's attorney. Prosecutors who staff this office will then decide what charges, if any, should be filed. Prosecutors have much discretion in this matter. For instance, they can file charges more or less serious than those initially by the police, or not file any charges at all.

Most states categorize their crimes as either misdemeanors or felonies. Which category a crime such as embezzlement falls under is dependent on the severity of the punishment. For instance, if the potential punishment is prison for more than one year, the crime may be considered a felony. In contrast, if the potential punishment is one year of prison or less (or occasionally a fine), then the crime may be characterized as a misdemeanor. These definitions of felony and misdemeanor are not uniform, however, but vary from state to state.

If an employee is alleged to have embezzled a sufficient amount that the crime is no longer a misdemeanor, but rather a felony, the prosecutor may rely on a grand jury to decide whether to charge the employee with embezzlement. Grand juries are comprised of individuals who listen to evidence presented by the prosecution and decide whether to bring charges against a suspect in the form of an indictment. Not only are grand jury proceedings secret, it is quite common for the prosecutor to have witnesses testify against the suspect without the suspect even being present. Needless to say, it is considered extremely easy to indict a suspect. Moreover, even if the grand jury refuses to indict, the prosecutor may be able to later appear before the same grand jury with additional evidence, or even present the same evidence before a second grand jury in order to secure an indictment.

Less frequently, if the embezzlement charge is a felony, the prosecutor may decide to skip the grand jury process altogether, and file a complaint. Pursuant to this process, the defendant is entitled to a preliminary hearing, where the prosecutor must convince a judge that the state has sufficient evidence of the crime to convict the defendant.

Ultimately, the case will go to trial if the defendant does not first enter into a plea bargain with the prosecution. A plea bargain is an agreement whereby the defendant offers to plead guilty in exchange for the prosecution reducing the charge and/or recommending a lighter punishment to the court.

If there is no plea bargain, and the defendant is found guilty of committing embezzlement, the court will impose a punishment fixed by statute. However, punishments vary from state to state. Many state statutes base the punishment on the value of the property embezzled. Additionally, a court may have the discretion by statute to suspend or reduce a prison sentence if the defendant agrees to reimburse the employer for the full amount embezzled. However, if the defendant does not fulfill this commitment, the court may re-impose the original prison sentence. Some states may also allow the court to take additional factors into account when determining the proper punishment. For example, courts may consider the defendant's past criminal record, age, and whether the defendant feels regret or remorse for the crime committed.

Representative punishments include:

- An Illinois court sentenced a defendant who had embezzled \$1.7 million from his employer to 13 years in prison, and ordered him to pay restitution in the amount embezzled. The defendant had been employed for sixteen years as a

scale house operator at a scrap metal and steel business company. He was responsible for using an electronic scale to weigh incoming shipments, and was given \$11,000 each day to pay vendors who sold scrap metal to the embezzler's employer. The defendant eventually learned how to manipulate the scale to produce a ticket without weighing any shipment, and would pocket the money corresponding to each ticket. In justifying the defendant's punishment, the court noted that, despite the fact that the defendant was a first time offender, the defendant carried out the embezzlement on a daily basis over several years.

- A Louisiana court sentenced an accountant to 10 years of hard labor for embezzling hundreds of thousands of dollars of company funds over a 10-year period by issuing checks he had set up under a false name. In determining the sentence, the court noted that the accountant had a previous criminal record, and that the embezzlement was comprised of an ongoing series of criminal acts for which the state could have brought several individual charges.
- A Massachusetts court sentenced a defendant to 15 months in prison and \$400,000 in restitution for embezzling the same amount from her employer. The defendant had pled guilty, stating that she had manipulated the claims system computer database of her employer to issue fraudulent insurance policy checks. She then directed the checks to a third party who deposited the money into a bank account, and later returned it to the defendant.<sup>27</sup>
- A Kentucky court sentenced the defendant, a receptionist for an ophthalmologist, to 90 days in jail and five years on probation for stealing \$226,571 from the office checking account by writing checks to herself and for personal bills. The court also ordered the defendant to pay \$485 a month in restitution.<sup>28</sup>
- An Arizona court sentenced a payroll and employee benefits administrator to eight years in prison for embezzling nearly \$1.9 million from her former employer by signing and cashing fake insurance checks into her own bank account, weekly over an eight year period.<sup>29</sup>

The statute of limitations for prosecuting embezzlement will also vary by state. For instance, while the limitations period usually begins at the time the misappropriation occurs (or if the offense is ongoing, at the time of the last act), some states may legislate that the period does not begin until the date the embezzlement is discovered, or when an unsuccessful demand for repayment is made upon the embezzler. Additionally, the statute of limitations may be temporarily suspended if the embezzler takes affirmative steps to conceal the embezzlement from others. Because the law is not uniform, it is very important that you consult with an attorney to determine the applicable limitations period in your own state.

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<sup>27</sup> Worcester Woman Sentenced for Embezzlement From Insurance Company, insurancejournal.com, Jan. 23, 2001.

<sup>28</sup> Grace Schneider, Gambling blamed in more embezzlement cases, courier-journal.com, Dec. 23, 2002.

<sup>29</sup> Katie Rotella, How a Contractor Lost \$1.9 Million to Embezzlement, pmmag.com, March 29, 2000.

### Steps involved in a civil proceeding

Instead of pursuing criminal prosecution (or in addition to), you may decide to sue your embezzler civilly for the amount stolen, as well as for costs associated with the investigation (i.e., private investigator and forensic accountant fees), especially if your insurance policy will not cover your loss, or the deductible is too high in relation to the amount embezzled. If you pursue this route, you should hire a litigation attorney who will file a complaint on your behalf with the court against the embezzler. Common causes of action your attorney will discuss with you include fraud, conversion and breach of fiduciary duty.

As discussed above, the success of your case will largely be dependent on the thoroughness of your investigation, and whether you have gathered sufficient documentation to demonstrate to a judge and/or jury by a preponderance of the evidence that the defendant engaged in wrongful conduct against you and your office. In addition to relying on the facts learned from your investigation, you will be able to undertake a process called “discovery” to gather additional information on any issue that relates in some way to the lawsuit (the defendant can also use discovery to obtain information related to the case from you and your office).

There are primarily four different types of discovery tools that a party can use to obtain information from the other side. These tools are 1) requests for the production of documents, 2) interrogatories, 3) depositions, and 4) requests for admission.

- **Requests for the production of documents** are used by a party to obtain documents related to the underlying facts of a lawsuit from an opposing party. For instance, you may ask the defendant to produce all of his/her bank account statements to determine if the defendant has made any large deposits, and if so, for what amounts.
- **Interrogatories** usually consist of written questions that are directed to the other side in discovery. For instance, the defendant may serve interrogatories on you, asking you to explain in detail how you have determined the amount of damages the defendant allegedly owes you as a result of the embezzlement.
- **Depositions** consist of the questioning of a party by the opposing party’s attorney. The questioning is usually face-to-face, and can last hours or even days. The person answering the questions is called a deponent, and must answer the questions under oath. Each question and answer is transcribed by a court reporter. You will likely want to depose the defendant to gather additional information about the embezzlement.
- **Requests for admission** is a discovery tool whereby one party asks the other party to admit under oath that certain facts are true or certain documents are genuine.

A party can also seek discovery from a nonparty to gather additional information related to the case. Usually, a party can only obtain discovery from a nonparty by first sending the nonparty an official document called a “subpoena.” A subpoena is issued by a court (usually either by the court where the complaint was filed, or where the nonparty is located), and informs the nonparty that one of the parties in the lawsuit seeks discovery from the nonparty. The subpoena will also indicate what kind of discovery the party is seeking. However, the party can usually only seek 1) documents from the nonparty and/or 2) the nonparty’s deposition. The subpoena itself will list the document requests and deposition topics.

You should think about serving nonparty discovery in your civil case against the defendant. For instance, once you learn the location of the defendant’s bank account(s), you may want to serve a subpoena on the bank(s) in order to obtain additional bank statements, and/or uncover information on any additional accounts previously undisclosed. You may also want to serve a subpoena on any entities administering the credit cards used by the defendant. By doing so, you can obtain the defendant’s credit card statements to determine if the defendant has made any big ticket purchases that are not commensurate with the defendant’s salary.

If you sue an embezzler civilly over the same facts that underlie a prior criminal proceeding against the embezzler, you can introduce in the civil case a plea or verdict of guilt against the embezzler from the criminal case as proof that the defendant engaged in the particular acts of embezzlement. Sometimes, however, a defendant in a criminal case will plead “no contest,” which means that the defendant accepts the punishment for embezzlement without formally admitting his/her guilt. Unlike a guilty verdict or plea, a “no contest” plea cannot be used as evidence of liability in the civil trial.

If you win at trial, you may be able to freeze the defendants’ assets to ensure the defendant does not attempt to squander his funds to avoid paying you for the full recovery. If you have reason to believe that the defendant will spend his assets during the course of the civil proceeding, you also may want to consider whether the court will freeze the defendant’s assets prior to a verdict. Your attorney will assist you in discussing these and any other matters related to the case.

## Private settlement

Can you avoid both criminal and civil proceedings altogether, and settle the matter privately with the embezzler? Nothing prevents you from doing so, especially when your evidence against the embezzler is weak or when you desire as little publicity as possible. However, keep in mind that what may appear as an inexpensive, easy way out may prove detrimental in the long term. In particular, a decision not to pursue legal action may send the wrong message to your other employees that you do not take embezzlement seriously, even if you decide to terminate the offending employee. Such a message may have the effect of lowering office morale, or worse, of encouraging other employees to engage in dishonest conduct under the belief that the consequences of getting caught are not that severe.

***If you win at trial, you may be able to freeze the defendants’ assets to ensure the defendant does not attempt to squander his funds to avoid paying you for the full recovery. If you have reason to believe that the defendant will spend his assets during the course of the civil proceeding, you also may want to consider whether the court will freeze the defendant’s assets prior to a verdict. Your attorney will assist you in discussing these and any other matters related to the case.***

***The adverse consequences of conditioning an agreement for restitution on a promise not to seek criminal prosecution cannot be overstated.***

In addition, if you agree to accept restitution from the embezzler and decide not to pursue criminal prosecution, many courts will not allow you to pursue criminal charges at a later time if the embezzler reneges on repaying the debt. You will have to sue the embezzler civilly for the amount owed.

Nonetheless, if you truly prefer to avoid any legal proceedings, an agreement on the part of the embezzler to repay your stolen funds is entirely valid (usually accompanied by a promissory note and security agreement if possible). However, it is generally illegal and contrary to public policy for you to condition the agreement on a promise not to seek criminal prosecution. Conversely, you are generally prohibited from entering into an agreement for repayment by threatening the embezzler with prosecution. (Moreover, you may change your mind about prosecuting if you discover that the embezzler stole more money from your office than you first believed.)

The adverse consequences of conditioning an agreement for restitution on a promise not to seek criminal prosecution cannot be overstated. In one case, an employer entered into a contract with both its employee, who had embezzled \$54,000 from the employer, and the employee's parents. The contract stated that, in exchange for the employer agreeing not to pursue civil or criminal proceedings, the employee and his parents would pay the employer \$25,000 over a period of time. The contract also stated that if the employee or his parents failed to make timely payments, the employer was free to pursue any legal remedies. The parents also executed a promissory note in the amount of \$25,000 in favor of the employer. The employer was additionally the beneficiary of a deed of trust executed by the parents to secure the debt. After the parents had made thirty-one payments totaling over \$10,000, the parents were notified that unless they made all past due payments, foreclosure proceedings would commence.

The parents then filed suit, requesting to have the contract, note and deed of trust cancelled, as well as seeking damages under a state statute prohibiting unfair and deceptive practices. The appellate court affirmed the trial court's granting of partial summary judgment in favor of the parents. Specifically, the appellate court first held that the contract, note, and deed of trust were void as against public policy. The appellate court then held that these documents constituted unfair practices under the state statute prohibiting such conduct.

The appellate court also observed that the trial court had not only awarded the parents compensatory damages under the statute, but had tripled these damages as well. The appellate court held that, if the parents were successful in their attempt to recover punitive damages, the parents would be then required to elect between these two amounts of recovery. Thus, regardless of which type of recovery the parents opted for, the employer would incur a huge financial penalty for entering into the settlement agreement.

This case should serve as a stern warning that you should never enter into an agreement with an employee who has embezzled from you, stating that you will not seek prosecution if he/she agrees to repay you for your loss. You may not

only regret it upon further reflection, but you could end up paying a very large damage award in the process. Avoid this expensive lesson at all costs.

## Insurance policies and your legal options

As discussed in Chapter 6, you should obtain crime insurance to protect you and your dental office from embezzlement. Your regular insurance for a dental practice may already include such protection. You may also possess a separate crime loss policy or similar policy that covers your office's loss due to embezzlement.

Regardless of which type of policy you possess, you should definitely contact both your insurance agent and attorney during the early stages of an embezzlement investigation not only to assist with identifying the scope of coverage and any deductibles, but also to assist with pointing out the procedures that you must follow so as to not forfeit coverage. (For example, many policies require that you file a notice of claim within a particular time after discovering the embezzlement.)

*Your insurance policy may also directly impact which legal options you pursue against the embezzler.* For instance, some policies require you specifically to report the embezzlement to the police and prosecute the embezzler. You do not have the option of only filing a civil suit or settling the matter privately. Other policies may mandate that the carrier itself initiate criminal prosecution after the carrier has investigated the incident. The bottom line is that you should read your policy carefully, in consultation with your attorney and insurance agent, to determine if the policy limits your legal options or otherwise prescribes what legal procedures to follow. You do not want to be in a position, for example, where you have waived coverage because you have failed to prosecute the embezzler.

## ERISA and your legal options

The Employee Retirement Income Security Act ("ERISA") prohibits you from seizing your embezzler's pension benefits to recoup your losses. However, no law prohibits the embezzling employee from voluntarily providing to you the money resulting from a voluntary distribution of the employee's benefits. You must ensure, though, that such a turnover is not the result of coercion or duress.

In addition, the fact that your employee has embezzled from you does not give you the right to withhold your employee's benefit plan account statement. In one case, a dentist had discovered that one of his employees had embezzled funds in excess of \$50,000. The dentist had initially thought that the employee would use the money from her benefit plan to repay the dentist for the loss. However, the embezzler wrote a letter to the dentist (she had previously ceased working for the dentist), requesting her individual benefit statement and also for distribution of the funds from her plan. After receiving the letter, the dentist reported the theft to the police, but did not provide the benefit statement to the embezzler for over a year after she first requested it. Six months after sending her letter, the embezzler sued the dentist

***You should never enter into an agreement with an employee who has embezzled from you, stating that you will not seek prosecution if he/she agrees to repay you for your loss. You may not only regret it upon further reflection, but you could end up paying a very large damage award in the process. Avoid this expensive lesson at all costs.***

***Do not let your anger get the better of you and refuse to provide a benefit statement to an employee who has embezzled from you. By doing so, you will violate ERISA and possibly subject your office to a fine.***

office, the plan administrators and the benefit plan in federal court, alleging among other things that the dentist's failure to provide her with a timely account statement violated ERISA.

The court agreed. First, the court stated that, pursuant to ERISA, the administrator of an employee pension benefit plan was required upon written request to furnish a benefit statement within 30 days. Failure to comply can result in a fine up to \$100 per day. The court stated that it was undisputed that the defendants violated ERISA by failing to provide the embezzler with a copy of her statement. The court also rejected the defendants' request not to impose any statutory penalties. Rather, the court fined the defendants \$10 per day, running from the date that the defendants were in default of their disclosure obligations through the date that they ultimately provided the statement, approximately a 14-month period.

Do not let your anger get the better of you and refuse to provide a benefit statement to an employee who has embezzled from you. By doing so, you will violate ERISA and possibly subject your office to a fine.

## Employee bankruptcy and your legal rights

An embezzler may usually declare bankruptcy either under Chapter 7 or Chapter 13 of the Federal Bankruptcy Code. If an embezzler opts to file bankruptcy under Chapter 7, the bankruptcy court will issue an automatic stay to the embezzler's creditors, prohibiting them from collecting on the embezzler's debts outside of the bankruptcy case. (However, the stay does not affect criminal proceedings against the embezzler.) While the bankruptcy court has the authority to discharge, or eliminate, many of these debts, the court will not discharge a debt stemming from criminal restitution or a fine, such as in connection with an embezzlement conviction. The bankruptcy court will also not discharge an embezzlement-related debt so long as the creditor, i.e., the dentist from whom the embezzler stole, objects during the bankruptcy case.

Accordingly, if an embezzler declares bankruptcy under Chapter 7, you should definitely object to the bankruptcy court discharging the embezzler's debt to you. The embezzler will continue to owe you for the amount stolen, despite filing bankruptcy under Chapter 7. Similarly, the embezzler cannot avoid paying you criminal restitution should you successfully prosecute the embezzler.

In a related manner, if the embezzler files for bankruptcy under Chapter 13, the bankruptcy court is similarly barred from discharging an embezzlement-related debt arising from a criminal conviction. However, unlike pursuant to Chapter 7, the bankruptcy court may discharge other debts stemming from embezzlement under Chapter 13. Regardless of which bankruptcy route an embezzler takes, you should definitely consult with a bankruptcy attorney for assistance to protect your rights as a creditor.

## Tax penalties for embezzlement and the IRS

If an employee has embezzled from you, this employee not only runs the risk of paying a large fine or going to prison, but may also face heavy tax penalties imposed by the Internal Revenue Service (“IRS”). The IRS considers embezzled money to be income. As a result, the embezzler is required to include embezzled funds as income on his/her income tax return (no different from salary, dividends, gambling winnings or any other type of “income”). Failing to do so triggers civil and possibly criminal tax penalties against the embezzler that the IRS can assert. In other words, the IRS can dramatically assist you in pursuing an employee who has embezzled from your office.

First, the IRS’ Criminal Investigation Division can assert criminal tax penalties if it determines that it will be able to prove beyond a reasonable doubt the embezzler intentionally is concealing income and thereby “evading” tax. Such a crime is a felony punishable by a fine up to \$100,000 and 5 years in prison. However, intentional concealment of income is different from a mistake, carelessness or negligence, and generally requires that the IRS find affirmative acts of concealment, such as false statements made to an agent or phony documents provided in the course of an investigation. Because an embezzler will typically assert that he/she did not know stolen money must be reported as income, intentional concealment of income may be difficult to prove. Another criminal avenue for the IRS is to assert an intentional failure to file a return or provide requested information, which is a misdemeanor punishable by a fine up to \$25,000 and one year in prison.

In one case, a California office manager for a podiatrist allegedly embezzled more than \$360,000 from her employer from 1995 through 1998, but failed to report this income on her 1997 and 1998 state income tax returns. As a result, the office manager faced trial for two counts of filing false state income tax returns, two counts of grand theft, and one count of embezzlement. If the charges against her were proven, the office manager would owe the state of California more than \$18,000 in tax, penalties and interest for these tax years. In addition, each count of filing a false income tax return carried a maximum penalty of three years in prison.

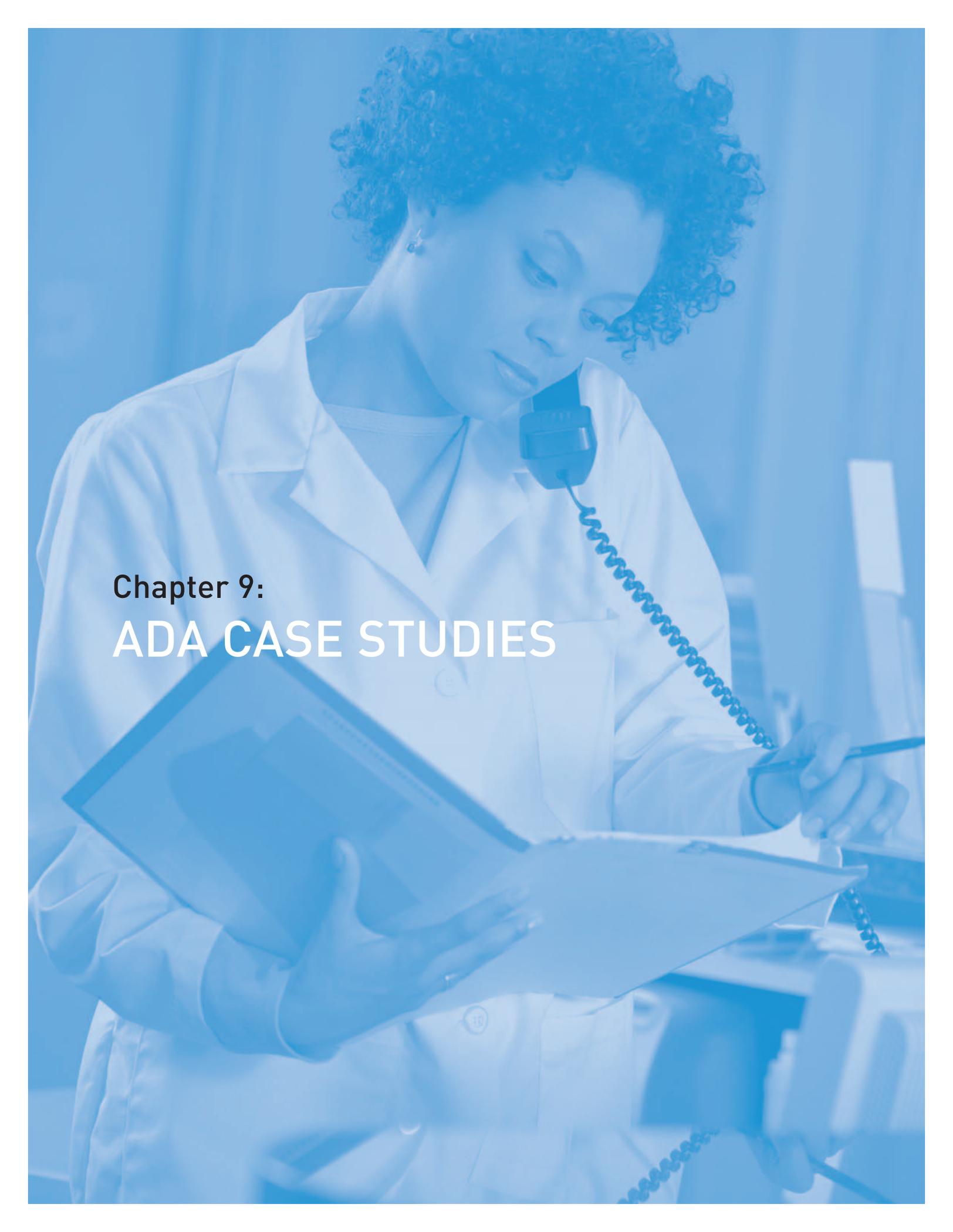
Assuming the Criminal Investigation Division is unable to pursue a case criminally because of the difficulty of proof involved in demonstrating that the embezzler willfully concealed income, the IRS is still able to impose substantial civil penalties on the embezzler who fails to file a return, or files it negligently or fraudulently. For instance, if the embezzler does not file a return at all when required, a penalty of up to 25% of the tax otherwise due can be asserted in all events, and up to 75% if the failure is fraudulent. If a return is filed, but the embezzled amount is not included, the same 25% and 75% penalties can be imposed on the tax underpayment, depending on whether fraud is found to occur in the omission. If negligence, short of fraud, is determined, an accuracy-related penalty of 20% on the understatement of tax can also be asserted. On top of the penalties, interest will always be payable at a prescribed rate three percentage points higher than federal market rate on underpayments of tax. If, as is often the situation, the IRS does not actually assert

***The IRS’ Criminal Investigation Division can assert criminal tax penalties if it determines that it will be able to prove beyond a reasonable doubt the embezzler intentionally is concealing income and thereby “evading” tax. Such a crime is a felony punishable by a fine up to \$100,000 and 5 years in prison.***

***As you can see, the IRS can be an important ally in ensuring an employee who has embezzled from you is punished, regardless of whether you are ultimately successful in prosecuting the employee civilly and/or criminally. Indeed, because the IRS will put your tax dollars to hard work, do not hesitate to notify the IRS of your employee's embezzlement – you may be surprised to learn that the IRS can be quite a good friend throughout this process.***

the total liability for a few years after the actual embezzlement, the monies owing are frequently double or more what the tax would have been had it been properly reported and paid on time.

As you can see, the IRS can be an important ally in ensuring an employee who has embezzled from you is punished, regardless of whether you are ultimately successful in prosecuting the employee civilly and/or criminally. Indeed, because the IRS will put your tax dollars to hard work, do not hesitate to notify the IRS of your employee's embezzlement – you may be surprised to learn that the IRS can be quite a good friend throughout this process.

A woman with curly hair, wearing a white lab coat, is talking on a black corded telephone. She is looking down at a folder she is holding in her left hand. The entire image has a blue tint. The text "Chapter 9: ADA CASE STUDIES" is overlaid on the left side of the image.

**Chapter 9:**  
**ADA CASE STUDIES**

## Chapter 9: ADA Case Studies

Dentists were asked to share their stories of being the victim of fraud and/or embezzlement. Eleven dentists were interviewed by phone and willingly shared their stories. The intent, of course, is to prevent other dentists from becoming victims. So if you think that you could not possibly have this happen in your office, please read on and learn from your colleagues.

No names are being used in these case studies, though many dentists interviewed wanted their names to be included. In the case studies where the employee was prosecuted, the results are a matter of public record. Of the nine ADA Case Studies where the embezzler was taken to court, 100% resulted in a conviction. As stated previously, the job title of “office manager” is used here for consistency, though many doctors said the title was “front desk,” receptionist or business manager. Most of the employees were paid hourly, rather than salaried.

# Case Study 1

## **Background and Situation:**

In this case study, the office manager, who was employed for a year, embezzled \$230,000 from the member dentist's practice over a three-month period beginning in June of 1999. The office manager had responsibility for handling incoming funds, patient accounts and depositing funds.

The office manager took \$40,000 in cash, \$40,000 in forged checks and the remaining balance was credit card fraud. She was a well-educated, professional embezzler, and had various schemes running simultaneously.

Here are a few of the ways the office manager embezzled from the dentist:

- The office manager crashed the office computer system, put in a new system and set herself up as the administrator of the system. This gave her complete control over all entries. She also disengaged the audit trail function.
- She stole the identity of an associate dentist in the practice and used pertinent information (Social Security number and mother's maiden name) to fill out unsolicited credit card applications that arrived in the mail. A P.O. Box address was set up for the bills to go to, and then the employee applied for a card on each account in her own name.
- The office manager stole cash from patient payments and forged the doctor's signature on checks.
- The office manager altered payroll by tripling the FICA withholding on several employees, then did not pay FICA at all and merely pocketed this amount.
- In a final step, the office manager took over collections for the practice by telling the owner doctor she could save him money by charging a smaller percentage than the service he was then using. She then proceeded to submit fraudulent reports on collections to get her percentage of collections (not actually received, of course).

Two events occurred that alerted the dentist to the fraudulent activities. The practice accountant called because he did not receive cancelled checks for 48 days, and the office manager claimed they were "lost in the mail." In a separate twist, the employee doctor (whose identity had been stolen) applied for a new credit card and was turned down because of a large amount of unpaid debt. At this point, the address that fraudulent credit card bills were mailed to was obtained and the fraud came to light.

### **The Outcome**

Once the credit card scheme was discovered, the postal authorities were contacted, notified of the problem and the federal government (FBI) became involved because this was considered mail order fraud, which is a federal offense.

After a year of fact gathering, the office manager was prosecuted criminally and was sentenced to a two-year work release program because she had teenaged children. She was also required to make restitution of \$175,000, payable in increments of \$100 per month for 343 years.

This dentist was fortunate; his insurance covered \$20,000 and the dentist's bank paid \$40,000 (\$.80 on the dollar) for the forged checks.

Because of the excessive amount stolen, the dentist was asked what the office manager did with all of the money she embezzled. The office manager had remodeled her kitchen, bought jewelry, paid for her daughter's wedding, reception and honeymoon. She bought a dragster race car, two motorcycles, two dogs, new windows for the house, four mountain bikes, cell phones for her entire family and her children's friend (12 total), a new fence, entertainment center, two plasma televisions and a new home computer.

### **References and Red Flags**

Looking back on the hiring procedures, the dentist did check the office manager's reference but later discovered that they were friends posing as former employers. In addition, the employee never took days off work.

### **Resulting changes to dental practice**

- The doctor changed his entire staff over a one-year period of time.
- A new software system was installed.
- The dentist is now the administrator of the accounting system, and he uses passwords, changing them frequently and limiting staff access to certain functions.
- Only the dentist writes checks.

### **Advice for other practice owners**

- The dentist should personally handle bank deposits.
- Look at each day sheet and match it to the deposit.
- Make sure all patients are billed.

## Case Study 2

### **Background and Situation**

In this case, the office manager/front desk employee was employed for five years, and began embezzling in 1995. In addition to other duties, she deposited funds and balanced/reconciled the practice's checking account. The owner-dentist documented that that employee embezzled \$19,000 but suspects the amount was much greater since profits for the practice rose dramatically in the year after the employee was terminated. A complete chart audit was not done so the exact amount taken remains unknown.

The office manager utilized multiple methods to embezzle, but mainly cash was taken. Her schemes are listed below:

- The office manager made the bank deposits for the practice, using deposit slips with a carbon copy. On the office copy of the deposit slip, the correct amount of money was shown for the deposit. However, on the bank copy, less money was deposited. Deposit slips were created each day, but it was discovered after the office manager was fired that she held the deposit slips for 10-12 days and then turned in all the deposits on one day rather than on a daily basis. This gave her ample time to juggle the money.
- The office manager also had responsibility for reconciling the bank statement. Patient payments were held to cover cash deposits.

The dentist discovered the embezzlement after the office manager quit, since she was not completing her normal front desk duties; all her time was spent in the dentist's office. She constantly carried a yellow legal pad around the office with her; apparently it was how she kept track of her fraudulent activities. During her 5-year employment at the practice, a second front desk person was added who handled patient money. The first office manager asked the dentist at least seven times to fire the new front desk person. When the books started balancing daily after the employee quit, the doctor became suspicious and hired an outside CPA to do an investigation.

### **The Outcome**

After the embezzlement was discovered, the office manager was criminally prosecuted, and the case took five years to conclude. The judge in the case would not accept a misdemeanor plea, so the office manager was convicted of a Class III felony. The office manager agreed to this conviction as long as no jail time was required. She also pled guilty to a Class I misdemeanor and may be required to make restitution (at press time this was still to be determined).

### **References and Red Flags**

The dentist did not check references on this office manager, mainly because the practice is in a small town (pop. 10,000) and the dentist knew the office manager's family. The office manager was also a dental assistant, had experience working in a dental office and was considered a great person, with a good relationship with all staff, patients and particularly the doctor.

"Red Flags" in this case study included:

- The books (day sheets) never balanced, but the office manager always had a good excuse for it. During one of her few one-week vacations, the books balanced perfectly.
- The office manager took pay rather than vacation time, and she would take vacation at a time when the dentist was not in the office.
- The office manager's insistence on getting rid of the new front desk employee.
- The employee and her husband appeared to be living beyond their means — they had purchased a new camper, new boat, etc. Her husband told a friend that his wife's employer-dentist was so wonderful that she frequently was paid cash bonuses. His own salary was just "spending money."

### **Long-term effects**

According to the dentist, the embezzlement was very stressful for all employees in the practice; in fact, one employee had to be questioned by the police and took a polygraph test. Since this case was originally going to be judged by a jury, the doctor booked a week out of the practice at least five times to deal with the court case; however, the defendant always got a continuance. This required the doctor and staff to then try to fill a week's schedule on last-minute notice. Obviously, this caused dissatisfaction and inconvenience with patients and lost revenue to the practice.

### **Resulting changes to dental practice**

- The dentist is more aware of daily activities in the practice and requires that the books balance each month.
- The process for handling petty cash has been changed.

### **Advice for other practice owners**

- Establish that making deposits and handling patient payments are two separate duties.
- Pay attention to practice finances, and do not turn control totally over to staff.

## Case Study 3

### **Background and Situation**

The front desk employee, who was employed for approximately four years, began embezzling in 1990-1991 over a 24-month period. She was responsible for all financial transactions, including handling incoming funds, patient accounts, depositing funds and balancing/reconciling the checking account.

The front desk employee took an estimated \$100,000 through the following methods:

- Lapping, which is a very complicated scheme of using payment from one patient to cover on the account of another patient. The front desk employee was always trying to stay ahead of aging accounts.
- Petty cash was almost certainly being taken too, but this was difficult to prove. Plus, the employee was so skilled at the embezzlement that she continued stealing even while both the doctor and accountants were monitoring the accounts.

The embezzlement was discovered when the employee took three months off to have a baby and the person who handled patient accounts in her absence caught on to the scheme. On the advice of attorneys and the insurance company, the employee returned to work after her three-month leave, but her job responsibilities and duties were changed. She was not able to fulfill the requirements of the new position and was eventually terminated. (The employee being on pregnancy leave when the scheme was discovered complicated the investigation and termination process).

### **The Outcome**

Three sources outside the dental office aided the dentist in investigating and researching the embezzlement — accountants, the insurance company and attorneys. This process took countless hours over a 14-15 month period of time.

After completing their research, the dentist's insurance company and attorneys did not feel that they could definitely win the case. They thought it would cost much more in court fees to prosecute than could possibly be recovered. In the end, business insurance covered only \$10,000 of the dentist's loss and with no court case, the employee did not have to pay restitution.

### **References and Red Flags**

The dentist did check references on the front desk employee and did not receive any negative reports. The only red flag the dentist remembers was this employee's denial to admit fault when confronted with discrepancies in the finances. In fact, this employee moved on to another dental office and acted as if nothing had happened when she saw the doctor at a dental meeting.

### **Long term-effects**

According to the dentist, this experience "opened his eyes," and made him less trusting of people in general. It also changed his philosophy of business, and prompted him to grow his practice into a larger one, diversifying and creating multi-task positions and separating duties for staff. The experience has also made the doctor second-guess himself and his ability to judge people.

### **Resulting changes to dental practice**

- The dentist added in-house bookkeepers, separate from those employees handling patient payments.
- The office now has three front desk staff members and duties are broken down so the staff can multi-task. No one person is totally in charge of the financial activities.

### **Advice for other practice owners**

- Anyone that really wants to steal will find a way to do it – employees who embezzle feel they deserve the money.
- Create a climate of accountability.
- Don't let anyone be "the general." The dentist says he sees this repeatedly in small dental offices where the front desk staff person has a great deal of control and power. Once placed in this position, that person loses perspective. The dentist thinks this is an "ego-changing" position that makes the front desk person very possessive and turns him/her into the gatekeeper, so this person feels justified in taking money from "their" practice.
- Require employees to take time off and to multi-task.

## Case Study 4

### **Background and Situation**

The office manager, who was the highest-paid staff member in the dentist's practice, began embezzling after six months of employment, and continued stealing over a four-year period. She had control of all financial activities, and she gave excuses as to why only she could handle checking account transactions. She took approximately \$61,000 in checks alone, but the practice's credit card history is still being investigated. The doctor suspects that cash was taken but cannot prove it.

Following are the different ways the office manager embezzled:

- She paid her personal bills, such as house payments, clothes, utilities, etc. out of the practice's account.
- She used the dentist's signature stamp, asked her to sign blank checks (especially prior to the dentist going out of town) and forged the dentist's signature.
- The office manager was very protective of the bank statement and always did the reconciliation. Her scheme was to write checks to pay whatever personal bill she wanted, delete a patient record of a visit, and then go into the financial software and change the payee on that particular check to a vendor that the practice used. The dentist never double-checked the bank statements or cancelled checks against practice records or invoices.

The dentist discovered the embezzlement when she changed accountants (her prior accountant only reviewed the practice information once a year to do the taxes). The new accountant noticed that the financial entries to vendors were unusual in that the amounts were always an even amount, (i.e. \$300 rather than \$311.52.) The dentist then requested copies of all practice checks from the bank and compared the checks to practice information. Some checks were missing completely, since the employee pulled and threw away checks used to pay personal bills.

The office manager's husband also worked in the office doing cleaning; the dentist learned that the employee's husband was paid more frequently and more money than he had earned.

### **The Outcome**

The dentist criminally prosecuted the office manager, and the employee confessed to police when arrested but later pled not guilty to the charges. The sentencing was still on-going at the time of printing. The dentist was not reimbursed at all by her insurance.

### **References and Red Flags**

The dentist did not check references on the office manager because her practice is in a very small town and the doctor knew that the dental office this employee had worked at previously would view her as "stealing" this experienced employee (no pun intended). No previous employers were contacted.

Only after the fraud was discovered did the doctor find out that a former jewelry store owner who had employed this person said she experienced unexplained inventory shortages.

Red flags in this case included the fact that the employee never took vacations or days off when the bank statement was due to arrive. Also, the employee and her husband had filed bankruptcy. However, the dentist thought the office manager was an exceptionally nice person with good work experience.

### **Long-term effects**

The dentist reports that she felt disbelief, betrayal and hurt by the embezzlement since this was a long-term employee and she was like a member of the family. Another employee considered herself a surrogate grandmother to the office manager's children. After the shock wore off, the staff became angry and offered support to the doctor. The whole staff went to the court appearance and felt this crime had been committed against all of them.

### **Resulting changes to dental practice**

- Bank statements are now mailed directly to the accountant.
- The dentist only signs checks when invoices are attached.
- Dentist no longer uses a signature stamp.
- Petty cash is kept locked and there are new procedures for use.
- Practice software printouts are examined monthly.
- Spot checks are conducted.
- Dentist switched banks.
- Every check is listed on the deposit slip and tied to the day sheet printout.
- A second staff person is being hired so accounting duties can be split up and employees can be cross-trained.

### **Advice for other practice owners**

- Always cross train — have at least two people who alternate handling accounting functions.
- Break up duties.
- Have accountant review all financial statements.
- Only sign checks when the invoice is attached.
- Do not use a signature stamp.
- Conduct spot checks.

## Case Study 5

### **Background and Situation**

The front desk worker, employed for 6 months, embezzled \$6,200 over a five-week period in 1997. The employee handled incoming funds, patient accounts and depositing funds; however, the dentist did reconcile the checking account.

The front desk employee's scheme was not very sophisticated; she used white-out to change the payee on practice checks from a vendor's name to her name.

The dentist discovered the fraud when she reconciled the checking account and saw the altered checks. The dentist used an accounting firm to verify that the embezzlement occurred.

### **The Outcome**

The dentist both civilly and criminally prosecuted the employee and won both cases. The former employee accepted a misdemeanor charge with a plea bargain and no jail time. This was dependent on the former employee paying the full amount taken (\$6,200) within 10 days; she did this with money provided by a relative.

In the civil suit, the employee was also required to pay accounting and legal fees of approximately \$1,800, payable \$100 per month for 18 months. The dentist did not file an insurance claim for any losses because the employee made restitution.

### **References and Red Flags**

The dentist did check references with no negative reports, but there were red flags. They included:

- The employee volunteered to take on additional responsibilities that had to do with patient accounts, paying bills, etc. The dentist was suspicious and did not allow this.
- The employee asked the dentist to buy new practice software because the current system did not let her handle patient accounts in the manner she wanted. (In retrospect, the software created an audit trail that helped the dentist prosecute her).
- The employee appeared to be living beyond her means and indicated that she had serious debt problems.
- Employee was driving without a valid driver's license (dentist did not know this during the hiring process).

### **Long-term effects**

The most lasting effect of the embezzlement has been on the dentist's emotions — the feeling of betrayal and loss of trust. The dentist asked the employee why she did not discuss her money problems and ask for an advance. The employee insisted she was just “borrowing” the money.

### **Resulting changes to dental practice**

- The dentist personally pays all bills.
- The dentist prints the day sheet daily and compares it to the bank deposit.
- An outside accounting firm does the check reconciliation and the bank statements are mailed directly to the firm.
- The dentist now shares more financial information about the practice with the staff. The dentist's staff was surprised to learn what portion of the money coming into the practice was actually left after expenses were paid.

### **Advice to other practice owners**

- Have reconciliation of the practice account done outside the office.
- Do a full background check on all employees — disclose that you will do this on the employment application form.
- Get a copy of the employee's driver's license when hired.
- Share your practice numbers with your staff, enough that staff understands the expenses of running the practice and knows that all money coming in does not go “into the dentist's pocket.”

## Case Study 6

### **Background and Situation**

The office manager worked for the dentist for three years and began embezzling right away. She handled incoming funds and patient accounts. The dentist does not know the exact amount taken, but write-offs during a one-year time period totaled \$30,000. The dentist does not know how many of the write-offs were legitimate and how many were fraudulent.

The employee also stole items from the dental office, including postage, supplies, toothbrushes, coffee and petty cash. The office manager encouraged other employees to take these items, too. Part of her “cover” was to accuse other employees of theft, thus diverting attention from herself.

The dentist caught on to the embezzlement when the office manager was going to be off work for three months. She packed up all her belongings before taking this leave and kept asking if her job would still be there when she was ready to return. The office manager called the office continually while she was on leave, checking on how her replacement was doing. During this time, she made indirect threats to the doctor, saying things like “I hope nothing happens to your family.” The doctor did contact the local police but they had no background on this individual. The doctor discovered later that the office manager had even made enemies of other tenants in the practice’s office building.

Another staff member finally spoke up and told the dentist what was really happening. The dentist then became aware of the supply theft and that only the office manager could have been responsible for all the things she was accusing other staff members of doing. The atmosphere and morale in the office improved when the office manager left.

After being fired, the former office manager started calling patients and sending letters, saying negative things about the dentist. A nasty letter was even sent to one of the dentist’s family members.

### **The Outcome**

The doctor could not really prove any of the allegations against this employee, so she could not prosecute or collect any money from insurance. The most telling thing is that all the problems stopped after the employee no longer worked in the office.

### **References and Red Flags**

The doctor did not check the office manager’s references because she knew the employee’s previous employer.

The office manager was very controlling, especially over staff situations. She continually fabricated stories and created crisis situations that she then solved herself (a diversion tactic). Below are examples of red flags that alerted the dentist to embezzlement:

- Continual inventory shortages of postage, supplies, coffee, toothbrushes, petty cash. The office manager alerted the dentist to these shortages and hinted which employee

she thought was responsible. In fact, the doctor almost fired a dental assistant whom the office manager accused of stealing.

- Time sheet discrepancies (again, the office manager hinted which employee she thought was responsible). This function was password protected.
- The whole staff sensed the tension in the office, and every day there were new crisis situations. It created a very poor work environment.
- Certain patients, in particular the office manager's family, received special discounts and even free dentistry and products (handled as write-offs).
- The office manager befriended certain patients and gained their confidence; this reinforced her importance to the practice.
- She exhibited bizarre behavior, including making disparaging, prejudiced statements and reacting angrily, out of proportion to situations.
- The office manager did not take vacations, but occasionally took days off.

### **Long-term effects**

- The dentist is less trusting and it has affected her self-esteem — she no longer trusts her own instincts. The dentist questions why she could not have seen this situation coming, especially since the office manager had even gone on vacations with the dentist.
- The entire staff was affected by the negative environment the office manager created. Some employees left the practice during her time there.

### **Resulting changes to dental practice**

The doctor has a family member now as the office manager and the inventory is monitored much more closely.

### **Advice to other practice owners**

- Do not assume that embezzlement cannot happen to you.
- Be involved in the day-to-day activity of your practice.
- Check records and reports carefully.
- Educate yourself – take classes and read articles.
- Pay attention to your own intuition and any “red flags.”

# Case Study 7

## **Background and Situation**

In this case study, the embezzlement was not discovered until one doctor sold his practice to another and underwent the valuation process for the practice sale.

The office manager, who had worked in the practice for 10 years, embezzled funds for over two years, but the owner was not sure when it started. This office manager worked in a satellite office for the doctor. The office was only open two days a week and handled mainly implant cases with fees ranging from \$5,000 to \$20,000. The office manager was responsible for handling incoming funds, patient accounts and depositing funds.

The doctor in this case study estimates that the office manager embezzled \$300,000 through the following schemes:

- Patients paid cash, as directed by the office manager, and were even asked to bring the money in after-hours, on the pretense that this was being done for the patient's convenience.
- The office manager kept the patients' charge card numbers and "lapped" payments into other patients' accounts to hide the fraud.
- The patient paid his or her bill and the office manager then applied in the patient's name for Care Credit (she had all the necessary information — name, address, SS#, etc.)

The fraud was discovered after the original owner-dentist sold this practice to another dentist. The purchasing dentist had changed the practice's software system and was unhappy with office manager's collection skills; these circumstances led him to discover the embezzlement. In the end, 110 patients were victimized by the office manager's credit card fraud and more came forward as a result of numerous articles on the case in a local newspaper.

## **The Outcome**

It took two years for the original owner-dentist to prosecute the office manager both civilly and criminally, and he won both cases. The office manager was sentenced to four years in prison, two years of probation, and five years of supervision, plus she is required to pay a small amount of restitution (which the dentist does not expect to receive).

The dentist did get \$10,000 from his insurance carrier for the losses. He had difficulty getting this because he had switched insurance carriers and the new carrier claimed they were not responsible during the time period in which fraud occurred.

## References and Red Flags

The office manager's prior dentist-employer told this dentist that he would not be happy with this employee, but he did not elaborate. The office manager had also been fired by a retail store for stealing. She offered explanations for both these situations and was so efficient, friendly and hard working that she was hired anyway.

Other "red flags" included:

- The day sheet never balanced but the office manager always had an excuse.
- The office manager rarely took vacation days.
- The office manager became angry when questioned about her job.
- She never missed a day of work.
- The doctor added a password to the new practice software and the office manager became very upset.
- The office manager set a code on the phone answering system and did not share the code with anyone; she completely limited access to herself. Over 100 messages were discovered from angry patients once the doctor gained access to the system.
- The office manager took patient records out of the office and did collections from home. She also drove on her day off to patients' places of employment to collect cash payments, telling them that her "discount" had a time limit and she was doing them a favor by making it easy for them to keep the discount.
- The dentist discovered that the office manager was a gambler. She bought cars for her children, a boat and jet skis. The office manager did not own a home and it appears she spent all the money (or she hid it well).

## Long-term effects

The dentist's patients are angry with the dentist and blame him for "allowing" this to happen in his practice. There have been many local newspaper articles on this case, and this bad press has hurt the practice.

## Resulting changes to dental practice

- The dentist monitors office systems and accounts more closely.

## Advice for other practice owners

- Don't trust anyone when it comes to your money.
- Share dental office expenses with staff. If the staff thinks the doctor is rich, they may have no sympathy and feel it is their "right" to steal from the practice.

## Case Study 8

### **Background and Situation**

The dentist in this case study experienced two (see Case Study 9) different types of embezzlement, fraud and theft in his practice. In the first case, his front desk employee embezzled \$40,000 over a three-year time period. She handled incoming funds, patient accounts, depositing funds and balancing/reconciling the checking account.

The front desk employee used the following methods to embezzle:

- The employee stole cash and had constant problems with patient accounts, but would then “fix” them and prove that there was no problem. She also kept two sets of books.
- The employee forged the dentist’s signature, and was very brazen at the end; she did not even attempt to disguise her own signature. She would also change the amount on checks after signature, and ask the dentist to sign blank checks.
- The employee created a “phantom” supply company and cashed checks that should have paid the practice’s invoices.
- She also used the dentist’s personal credit card number to make personal purchases, charging thousands of dollars.

The dentist discovered the embezzlement when a vendor called on a Saturday and the office manager was not in. The vendor asked why a bill of \$10.70 had not been paid, and the dentist replied that he had paid that bill three times.

### **The Outcome**

The dentist worked with the district attorney’s office on a fraud audit. The dentist prosecuted the front desk employee both civilly and criminally. The case was settled in about four weeks from the time the fraud was discovered. The employee was required to pay restitution of \$4,000 (10% of the \$40,000 stolen.) The dentist’s insurance did not cover any of the losses.

*Post-script:* The dentist was told that the employee who had embezzled from him had been hired by a real estate company and was handling funds there. The dentist called the real estate company since he knew the owner and, using legally appropriate language, indicated that the employee was not to be trusted and that a background check would be prudent. The owner of the real estate company did not believe that this “wonderful” employee could do that at his company. Two years later she was caught stealing again.

### **References and Red Flags**

The dentist did not check references because the employee claimed to have recently moved from another state. When a background check was finally run, it showed a criminal record.

The dentist reported that “red flags” he saw included the employee’s willingness to work for the first three months for no salary. In addition, she stayed late and took work home, and she did not take vacation days (her only days out of office were when the dentist was not in.)

### **Long-term effects**

As a result of his employee’s embezzlement, the dentist trusts no one. He does a thorough background check on everyone, even non-dental employees hired to work at his house.

### **Resulting changes to dental practice**

- The dentist does background checks on all employees.
- He has raised his amount of coverage for employee dishonesty.
- The dentist controls the checking account.
- The dentist inspects all checks (both sides).
- The dentist only signs a check when the original invoice is attached and then he initials the invoice to show it has been paid.

### **Advice to other practice owners**

This dentist advises that no matter how great an employee seems, make him or her accountable and test them. Make employees feel you are watching. Don’t make it inviting or easy to steal.

## Case Study 9

### **Background and Situation**

In this instance, the crime was theft, not embezzlement. An employee was going through other employees' wallets, recording credit card numbers and selling the numbers. Credit cards were returned to wallets so employees did not miss them. Only when unauthorized charges started appearing did the office realize there was a problem. Special marking dye was used (placed on credit cards). The employee that was stealing suddenly left work, never to return, when she could not wash the dye off.

### **Advice to other practice owners**

- Secure lockers for all employees' personal belongings.

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## Case Study 10

### **Background and Situation**

In this case study, the office manager began embezzling funds in June of 1998 and continued over a period of three years. The office manager handled incoming funds, patient accounts and was responsible for depositing funds.

The dentist interviewed estimated that the office manager embezzled approximately \$25,000 using the insurance scheme below:

When a patient came in early in the month, the claim was submitted electronically, and the dentist signed off on each daily schedule, confirming that the patients were all seen and procedures were billed correctly. When the insurance check arrived, the office manager filed the Explanation Of Benefits (EOB) in the patient chart, deleted the entire visit from the computer (as if the patient was never there), took the check to the bank, endorsed the doctor's name and then wrote "Pay to the order of [her name]." This was the same bank used by the practice, the doctor personally, and also the payer (local business). The doctor never saw the checks.

The insurance fraud was discovered when a new office manager noticed that a patient claimed they had been in for a visit six months prior but there was no record of the visit. The dentist ran an audit trail and compared that to the patient's chart. Three visits were not listed for that particular patient.

Based on this suspicious case, the dentist ran a 22-page report and discovered the three-year trail of embezzlement.

### **The Outcome**

The dentist did all of the research into the embezzlement himself since he was familiar with his practice software and he did the monthly billings himself.

The dentist prosecuted the office manager criminally, and she pleaded guilty and was convicted of a felony. The sentence was six months of jail time, but five months were "stayed." She was also sentenced to 250 hours of community service, and required to pay \$10,000 of restitution to the insurance company and \$15,000 to the dentist. In addition, the dentist was paid 51.25 hrs of time to prepare the case @ \$60 per hour.

The dentist is still considering civil litigation and he is trying to determine if the bank that cashed the checks has responsibility.

### **Red Flags and References**

The owner-dentist did not check references because the office manager had started as a co-op student through a high school program and worked in the practice for 14 years. The doctor's mother held this employee's veil the day she was married!

The only “red flag” that the dentist noticed was that the office manager was spending beyond her income level. She bought a new car each year and remodeled her house. However, her father had won the lottery so everyone assumed he was helping pay for those items.

### **Resulting changes to dental practice**

- The dentist does a daily audit – he looks at every check, EOB and patient visit.
- He reviews every check and posted transaction on the day sheet, runs a check register daily and compares it to the daily deposit slip, and runs a daily schedule to check it against payments and charges.
- The dentist makes all bank deposits himself.
- He runs a background check on every employee.

### **Advice to other practice owners**

- Learn your software management system.
- Look for suspicious behavior.

# Case Study 11

## Background and Situation

In this case study, the embezzler was a dental assistant who worked in the practice for five years and acted as an office manager as well. She handled the office's payroll. When the payroll was incorrect, the dentist asked her to back up the payroll on a computer and the employee did not comply. The dentist became suspicious, questioning the employee to the point that an argument ensued. She ended up quitting her job shortly thereafter.

After the employee left, the dentist discovered that she had embezzled \$7,000 worth of supplies through vendor collusion. The office manager had worked with a sales representative from a supply company on this scheme. The dental office had automatic re-order quantities for supplies, and the doctor suspects the employee was carrying supplies out of the office to either re-sell or to create more frequent re-orders. The employee received a kick-back from the fraudulent sales rep. The doctor believes he was being overcharged for the supplies so there would be profit for the employee and sales rep to split.

The only reason the dentist discovered the embezzlement was because he heard from a former employee that their supply company had terminated their sales rep because of embezzlement and called the supply company to check on his account. The dentist was told that he had a \$7,000 credit as a result of the sales rep's theft from the company.

## The Outcome

The dentist verified that the fraud occurred by calling the supply company, which had tracked the sales rep's sales and estimated the \$7,000 amount of supplies stolen (or fraudulent charges). However, the dentist thinks there could have been far more stolen than he's aware of.

The dentist did not prosecute the employee because he found out about the vendor collusion after the employee quit and he had a credit for the supplies with the vendor.

## References and Red Flags

The dentist did not check references because the previous practice owner had hired the employee.

Although she was an existing employee, the dentist did see red flags in his dental assistant's behavior. He said she was very controlling, would not share information when asked, and noted that she would dress up for vendor visits (he thinks that she did this to fool vendors into thinking she was running the practice).

The employee would take vacation days occasionally; however she would come into the office very early before the rest of the staff and on Sundays. The dentist simply thought she wanted to get overtime, but now he suspects she was covering something up.

### **Long-term effects**

The dentist in this case study said he has become a lot more cautious of all employees and is involved in every aspect of the practice that concerns money, payroll, billing and supplies.

### **Resulting changes to dental practice**

- The dentist implemented a computerized payroll system that forces employees to log in and out using their passwords.
- The dentist knows all passwords and controls the bill paying, payroll and supplies — he does not delegate it to any particular employee.
- Only the dentist takes deposits to the bank.

### **Advice to other practice owners**

- The dentist should consider having his/her spouse (or someone who has a vested interest in the practice) manage the money if he/she does not want to.
- Bond all employees.
- Ensure that the dentist reviews all transactions either on a daily or weekly basis with consistency.
- Have a high standard for employees and share the practice expenses with them so they understand that the income is going toward overhead, salaries, equipment, etc.

## **Appendices**

**APPENDIX 1. AMA article on Embezzlement**

**APPENDIX 2. Reading Lists**

**APPENDIX 3. Web sites**

**APPENDIX 4. Bibliography**

## Appendix 1: AMA Article on Embezzlement

### Catch them if you can: Don't let staff steal from your practice

**Employees can't rob you blind if your eyes are open to the possibility of theft. Here's how to ensure that no one on your staff has sticky fingers, while also not alienating the innocent.**

By Robert Kazel, *AMNews* staff. Nov. 24, 2003.

To be able to trust your employees is priceless. To never be on the defensive against rare cases of dishonesty can be costly. Blindly trusting workers who handle money or who carry out any financial-related task can trigger loss that may go undetected for many years. Cal Klausner, a CPA in Bethesda, Md., recalls a bookkeeper of a two-doctor ob-gyn clinic who embezzled money from the office in a scheme painfully simple in its execution.

Every month, the longtime worker would take the practice's American Express bill and show it to one doctor, who would sign a check for payment. The bookkeeper would go to the second doctor with the same bill, get another check signed, and would use that check to pay her personal credit card bill. The card issuer was not suspicious that a worker's personal bills were being paid on a medical office's checks. The scam went on for years and cost the practice about \$25,000. "Each doctor wasn't aware of what the other one was doing," Klausner says.

Such instances of deceit and betrayal are not only hazardous to any practice's financial health. They can be deeply hurtful to doctors' sense of trust and to a practice's team spirit once they are exposed.

"She used to baby-sit [the doctors'] kids," Klausner says. "She was considered a member of the family." The long-running fraud ultimately was discovered while the employee was on vacation.

She didn't go to jail because the doctors decided not to pursue prosecution, which is common in such cases, Klausner says. Practices are often eager to put the past behind them when they find they have been duped, lacking the "resources or inclination" to try to regain the money or punish an errant employee, he says. Yet emotional scars can remain long after the employee is fired.

"Ninety-nine percent of the time when fraud of this type occurs, it's a deep personal shock to the doctor," Klausner says. "The comment I hear from the doctors is ... 'She was so nurturing and trustworthy and part of our personal lives.'" Doctors

*"Ninety-nine percent of the time when fraud of this type occurs, it's a deep personal shock to the doctor," Klausner says. "The comment I hear from the doctors is ... 'She was so nurturing and trustworthy and part of our personal lives.'"*

can take heart knowing that if they instinctively feel that their staff wouldn't dream of stealing from them, their belief is probably on target.

But cases such as the one described do occur, and scams against doctors by their workers "run longer and take larger amounts of money than the average [corporate fraud]," says L. Burke Files, a private investigator in Phoenix who has many physician clients. "Nationwide, compared with other businesses such as retail or manufacturing, [physician practices are] much more likely to be victim to fraud and deceit," he says.

When employees violate a doctor's trust, the transgressions can range from occasional theft of money out of the petty-cash drawer all the way to extravagant plots involving credit-card fraud, false billing, the creation of fake companies, identity theft and "ghost" payrolling. Fortunately, the more sophisticated and costly scams are exceptional. But sound loss prevention requires doctors to be continually vigilant that these activities might be happening.

The possibility of deception need not stir up paranoia among doctors. Doctors are far from helpless to place obstacles in the path of crime. "Embezzlement is one of the easiest crimes to catch," says Mike Corwin, a private investigator in Albuquerque, N.M. "When someone's embezzling, there's always a paper trail. In time, the person will usually be caught."

### **Putting backgrounds in the foreground**

Too often, doctors overlook the most essential protective measure for sorting out bad apples before they join the payroll: a thorough resume check during the hiring process.

"You have to do a background check on your potential employees and check their references," says Tom Hess, a health care attorney in Columbus, Ohio. For employees who handle money or do the books, experts say there's also every reason to do a criminal background check, obtainable through state crime bureaus or private investigators. "The prescreening is really about half the battle," Files says. "The No. 1 thing is to look [the applicant] dead in the eye and say a complete background check must be done by an investigator familiar with the medical community. Many won't go along and will leave."

Doctors might well consider looking first to prevent the least dramatic, day-to-day theft of funds from their offices. Sticky fingers in a cash drawer might not be on the mind of a busy doctor, but could become a significant and nearly imperceptible tax on income over the years.

"One rule is that most of the time, frauds start small and grow," Klausner says. "It's very abnormal that someone sits back and plans, 'I'm going to steal \$100,000.' There's a couple of lunches out of petty cash. A co-pay is missing. There's a couple of [unauthorized uses of] credit cards. These things tend to start almost inadvertently."

*"Embezzlement is one of the easiest crimes to catch," says Mike Corwin, a private investigator in Albuquerque, N.M. "When someone's embezzling, there's always a paper trail. In time, the person will usually be caught."*

A good way that practices can try to fight losses is to develop a tight reconciliation system between the office billing software and its general ledger accounting system. This ongoing conversation between computer minds rarely occurs in the average doctor's office, but the linkage can succeed in pinpointing errors and misdeeds involving funds.

Once a medical practice establishes a stronger, formalized system of controls to monitor money, including cash on hand, office workers will understand that honesty is both valued and expected.

"If you're tight on the petty cash box, it sends a statement out that you're running a business, you're tight on your pennies and you're not an open 'profit-sharing' arrangement with the firm's receipts," Klausner says.

Credit card acceptance has meant convenience to many patients but also danger that a dishonest employee, such as the thieving ob-gyn bookkeeper, may play the system for personal gain. "There's just a tremendous opportunity for abuse when it comes to credit cards," Klausner says. Some experts recommend that credit card bills for the practice be sent directly to one of the doctors' homes and not handled by employees at all.

Additionally, employees should be required to take a vacation every year as a matter of practice policy. If employees resist, that may be a warning flag in itself. And as many people as possible should be brought into the handling of finances — taking cash, doing collections, working with insurance companies, paying practice bills, billing patients — because it's much less probable that a group of employees would be guilty of dishonesty.

The practice also might want to consider taking out an employee dishonesty insurance policy, available generally at low cost. Often a practice's business coverage includes a rider for misdeeds by employees but may cover as little as \$10,000, Klausner says.

### **The accountant cometh**

A good way to catch crimes in the office is to open up the doors and books to outside eyes. Periodic inspections of financial records by an accountant or certified fraud examiner frequently will lift the veil on long-running numbers games. Often a brief inspection by a CPA is sufficient and costs much less than the potential loss from insider crime.

A physician who suspects wayward activities by employees should specify that a fraud investigation or forensic audit be done, not a standard tax audit, which is not meant to probe for dishonesty. Though the prospect of a calculator-toting sleuth sifting through books in front of your employees might appear injurious to morale, any doctor needs to view the process as a necessary step to insure the practice's longevity, experts say. Explain to workers that routine, periodic audits are a fact of life for successful businesses and not a personal witch hunt.

*A good way to catch crimes in the office is to open up the doors and books to outside eyes. Periodic inspections of financial records by an accountant or certified fraud examiner frequently will lift the veil on long-running numbers games.*

“Blame the accountant,” advises Steve Bankler, a CPA in San Antonio who does financial audits for medical practices. “The doctor should tell staffers if the practice is audited by the IRS and they get a hint of cash not being deposited, the IRS can in a civil matter say they owe taxes, penalties and interest. The practice then has to prove it did not get [funds that are missing], and it’s almost impossible to prove a negative. The IRS doesn’t have to prove anything.

“Say to the employees: ‘We have to put these systems in place.’”

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<http://www.ama-assn.org/amednews/2003/11/24/bisa1124.htm>

## Appendix 2: Reading Lists

### Reading List - ADA Resources

- American Dental Association Council on Dental Practice (2003). Starting Your Dental Practice. Chicago, IL: American Dental Association.
- American Dental Association Council on Dental Practice (2004). Employee Office Manual: A Guide for the Dental Practice. Chicago, IL: American Dental Association.
- American Dental Association Council on Dental Practice (2003). Basic Training III for Dental Administrative Personnel. Chicago, IL: American Dental Association.
- American Dental Association Council on Dental Practice and Division of Legal Affairs (2002). HIPAA Privacy Kit. Chicago, IL: American Dental Association.

### Reading List - Non-ADA Resources

- Association of Certified Fraud Examiners (2004). The Small Business Fraud Prevention Manual. ([www.CFEnet.com](http://www.CFEnet.com)).
- Lewis, D.P. (2003). Your Roadmap to Financial Integrity in the Dental Practice, Hudson, OH: Lexi Comp.
- Lewis, D.P. (2000). Employee Embezzlement and Fraud in the Dental Office, Scams, Schemes and Broken Dreams. Monte Sereno, CA: JdSG International.
- Sheetz, M. & Silverstone, H. (2004). Forensic Accounting and Fraud Investigating for Non-Experts. NY: John Wiley & Sons Publishing.

## Appendix 3: Web Sites

**Tip – use the Search function on any of these web sites and type in “embezzlement” or “fraud.”**

United Concordia Success Stories

[http://www.ucci.com/was/uccweb/info/success\\_stories.jsp](http://www.ucci.com/was/uccweb/info/success_stories.jsp)

U.S. Chamber of Commerce

<http://www.uschamber.com/sb>

Illinois Certified Public Accountants Society

<http://www.icpas.org/icpas/consumer/consumer.asp>

Association of Certified Fraud Examiners

<http://www.cfenet.com/services/FrdPrevCheckUp.asp>

Entrepreneur Magazine, online

<http://www.entrepreneur.com/>

INC Magazine, online

[www.inc.com](http://www.inc.com)

National Healthcare Anti-Fraud Association

<http://www.nhcaa.org/>

The Fraud Detectives Consultant Network

<http://www.frauddetectives.com/>

Bizmove.com – the Small Business Knowledge Base

<http://www.bizmove.com/general/m6t1.htm>

### **Government Sites:**

Bureau of the Public Debt, US Department of the Treasury

<http://www.publicdebt.treas.gov/cc/ccphony.htm>

Consumer Sentinel

<http://www.consumer.gov/sentinel/>

Federal Bureau of Investigation, Financial Crimes Section

<http://www.fbi.gov/hq/cid/fc/fchome/default.htm>

Federal Trade Commission (FTC), ID Theft  
<http://www.consumer.gov/idtheft/>

Financial Crimes Enforcement Network  
[www.fincen.gov](http://www.fincen.gov)

Small Business Administration, “Financial Controls”  
<http://www.sba.gov/managing/financing/control.html>

US Government, Department of Justice, Criminal Division, Fraud  
<http://www.usdoj.gov/criminal/fraud.html>

## Appendix 4: Bibliography

American Association of Orthodontists (1996, July). The ABC's of Computer Embezzlement. American Journal of Orthodontics and Dentofacial Orthopedics.

American Dental Association Council on Dental Practice (2003). Starting Your Dental Practice. Chicago, IL: American Dental Association.

American Dental Association Survey Center (1996). 1996 3rd Quarter, Quarterly Survey of Dental Practice, p. 10. Chicago, IL: American Dental Association.

Asian Organisation of Supreme Audit Institutions (ASOSAI) Understanding Fraud and Corruption. ([http://www.asosai.org/fraud\\_guidelines/chapter2.htm](http://www.asosai.org/fraud_guidelines/chapter2.htm)).

Association of Certified Fraud Examiners (2002). How to Prevent Small Business Fraud, Chapter 2. (<http://www.cfenet.com/pdfs/smallbusinessfraudexcerpt.pdf>).

Association of Certified Fraud Examiners (2003). 2002 Report to the Nation. Austin, TX: Association of Certified Fraud Examiners.

Boston College (2004, December). "Fraud/Embezzlement."  
[www.bc.edu/offices/audit/ethics/fraud/](http://www.bc.edu/offices/audit/ethics/fraud/)

Buyer, Diane M. (1995, Summer). More than money. Indiana Dental Association Journal.

De St. George, Jennifer & Lewis, Don, Jr. (2000, December) How do you protect yourself from employee dishonesty? Journal of the American Dental Association. Vol. 131.

Hall, Susan K. (1996, Winter) Safeguards help avoid embezzlement. Journal of the New Jersey Dental Association (NJDA), 7. N1.

Jarrow, Sidney F. (1993, July). Preventing and handling fraud in medical offices. Journal of Medical Practice Management, Vol 9, N1.

Lewis, Donald P., Jr. (2003). Your Roadmap to Financial Integrity in the Dental Practice. Hudson, OH: Lexi-Comp.

Lewis, Donald P. Jr., CFE, (Speaker). (2004, February). Chicago Dental Society Midwinter Meeting. Chicago, IL.

Mason, Belle C. & Bernardo, Stephen M., Esq. Embezzlement – is it happening to you?; ([http://www.silver-freedman.com/library/jan\\_98\\_br2.html](http://www.silver-freedman.com/library/jan_98_br2.html)).

Ratliff, Marion S. (1994, Spring). Embezzlement: Benefits beyond the fringe. Journal of the Oregon Dental Association, p.30.

Shaw, P. & Bologna, J. (2000). Preventing Corporate Embezzlement. Woburn, MA: Butterworth-Heinemann.

Sullivan, John P. (1995, May). Can you judge crooks by their cover? Chicago Dental Society Review, p. 21-23.

U.S. Chamber of Commerce (2004, December). Preventing Embezzlement. ([http://www.uschamber.com/sb/business/p04/p04\\_8250.asp](http://www.uschamber.com/sb/business/p04/p04_8250.asp)).

Workgroup for Electronic Data Interchange (WEDI)/Strategic National Implementation Process (SNIP) (2004, April). Small Practice Security Implementation White Paper, Version 2.0. (<http://www.wedi.org/cmsUploads/pdfUpload/WhitePaper/pub/2004-04-20SmallPractice.pdf>).

Williams, H.E. & Thomas, C.C. (1997). Investigating White-Collar Crime, Embezzlement and Financial Fraud, Springfield, IL: Charles C. Thomas.