

# Antidiscrimination Within Your Medical Practice, Part III

By Margie Satinsky, M.B.A.

*(This is the third in a three-part series on antidiscrimination laws and regulations that protect both the workforce and, more recently, patients.)*

In the first two articles, we focused on antidiscrimination laws and regulations on anti discrimination that apply to patients and to the workforce/potential workforce. In this article we'll make suggestions for future direction in your practice.

**What's the best starting place for establishing clear antidiscrimination programs in my practice?** Effective antidiscrimination programs need support from the very top. The practice owner should commit to eliminating discrimination in all aspects of practice operations. Philosophy, standards and expectations

must be clear and communicated orally and in writing. There's little value in posting signs in the break room and handing out a list of questions that can/cannot be asked in interviews if the practice owner isn't on board.

**How should we document our anti-discrimination philosophy and programs?** Incorporate antidiscrimination philosophy and policies and procedures into your operating and employee manuals. Here's sample language that several of our clients use at the beginning of their employee manuals:

*Our practice is an equal opportunity employer and will not discriminate in recruiting, hiring, training, promoting, transferring, discharging, compensating*

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*or any other term or condition of employment on the basis of race, religion, color, age, sex, national origin, or on the basis of disability if the employee can perform the essential functions of the job with a reasonable accommodation if necessary. Subsequent language deals with reporting of problems, investigation of complaints, corrective action, and commitment not to retaliate against those who testify as a witness.*

**Should we post information indicating our commitment to antidiscrimination in the workplace?** Absolutely. We recommend that you post appropriate information in the break room so all employees are reminded of the practice's commitment on a daily basis.

**How can we provide effective workforce training on antidiscrimination?** We have three suggestions.

First, schedule regular staff training

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sessions for everyone in the practice, including the owner(s), all clinicians and all administrative staff. Explain the laws, the way in which the practice currently responds to them, changes (if any) that need to be made and the importance of having everyone's commitment. Leave time for questions so workforce members can raise specific concerns.

Second, include antidiscrimination philosophy, policies and procedures in the formal orientation program that is required for every workforce member.

Third, designate one individual as the antidiscrimination go-to person who can answer questions and respond to concerns that are raised. That individual may be the practice manager or human resources manager if you have one.

**In what ways can we ensure that the recruitment process is fair and inclusive?** In most situations, job candidates have the opportunity to meet not only with the direct supervisor but also with others in the practice with whom they will work.

Each and every workforce member must understand what questions can be asked during interviews. Here are a few examples from our much longer list.

- Age: Ask if the job applicant is of legal working age. Do not ask any other age-related questions orally or in writing.
- Availability for weekend work: In the position description, clearly state the days and hours when the employee is needed. Do not ask the candidate what religious holidays he/she observes. If the subject comes up, indicate that you will make a "reasonable" effort to accommodate religious needs.
- Citizenship: Don't ask questions about an individual's citizenship during either the application or the interview processes. Federal immigration laws require verification of both identity and work history of new employees after they have accepted an offer of employment but within specific timeframes at the beginning of employment through the "I-9" verification process.
- Credit inquiries: Don't ask applicants anything about their debts.
- Criminal background: Don't ask questions on this topic during the interview but mention that you require authorization to do a criminal background check for every workforce member prior to the start of work.
- Disability or handicap: Ask only about the applicant's ability to perform the essential functions of the job with or without reasonable accommodation. Don't ask about physical or mental health, previous collection of workers' compensation benefits or whether or not a reasonable accommodation is needed (unless and until you have made what is called a "conditional job offer." A conditional job offer is an offer that is subject only to certain limited, well-defined exceptions).
- Drug or alcohol use: Be aware of distinctions between the use of illegal drugs and drinking alcohol. The former, but not the latter, is often treated as per se illegal. Treatment of the latter depends on the circumstances. Also be aware that alcoholism may be a protected disability. The best practice is to leave the testing and any questions to the post-offer, pre-employment physical exam conducted by a physician trained in what is/is not a permissible area of inquiry and how to ask the relevant questions.
- Height and weight: Ask about applicants' ability to perform the job, not about specific weight or height.
- Family status: Ask questions that are related to the job. For example, ask applicants where they see themselves professionally within the future. Do not ask about marital status, number and age of children and family responsibilities. Where relevant, such as where there is significant overtime or travel, ask open-ended questions about whether or not anything would limit or interfere with the applicant's ability to undertake those tasks.
- Financial status: Don't ask questions about applicants' financial status. Credit checks may be appropriate for certain positions, but where utilized there are specific procedures that must be followed under the Fair Credit Reporting Act.
- Gender: Ask applicants about availability to work during normal work hours. Avoid questions about gender roles or pregnancy.

**What's next for our practice?** The best way to determine what's next for your practice is to start with an honest self-examination. You may be a practice that's been in existence for many years but that has knowingly or unknowingly ignored the law. Or you may be a new practice that made a commitment to antidiscrimination from the start.

Here are some preliminary questions to ask:

1. Are you and your workforce familiar with the new regulations that apply to patients and have you taken the required steps to comply with the rules?
2. With respect to your workforce and job applicants, do you have an antidiscrimination policy? If so, what are the elements?
3. Have you stated your commitment and policies and procedures in writing?
4. Is responsibility for antidiscrimination against both patients and workforce members/job applicants clear?
5. Do you train your workforce during orientation and on a regular basis?
6. Have there been any complaints; if so, what corrective action did you take?