

Questionable References



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Health care professionals are goal oriented individuals with a passion for excellence. Many strive for that career that fulfills everything they thought it would be when they were going to school. Sometimes that means being a little selective. Not every position is created equal. Even if the work is great, sometimes the management structure isn't in place to provide a happy and productive work environment. Sometimes interpersonal problems turn an otherwise great workplace into a place of dread.

Most of the MAHCP collective agreements provide mobility rights for its members to help facilitate the move from facility to facility. Seniority, service and accrued benefits can be transferred with employment in many cases. This makes it easier for MAHCP members to seek out the position in their field of health care that most suits their wants and needs.

One of the drawbacks to finding another position with another employer is the reference check that invariably follows a successful interview process. If the previous or current employer is not happy that their valued employee is leaving, what will they say about that employee when the call comes for a verbal or written reference? What if the reason for the new job is specifically to get away from a "bad" manager? Or the manager and the departing employee have had a personality conflict?

The best thing to do if a person knows they are going to get a bad reference, if possible, is don't provide the contact information to the employer. That may be practically impossible because there has only been one significant employer that can provide a reference as to the type and quality of work being sought. If the potential employer asks why the employee hasn't put their former employer as a reference, take the opportunity to explain, with all possible sensitivity, what it was about the previous workplace that made you seek out a fresh start.

If a bad reference is made, can anything be done? Usually a reference is a phone call with an attendant form that asks specific questions about the

performance of the prospective employee. The person providing the reference leaves no documentary evidence of the reference but the person receiving the reference has a written record of what was said.

The employee does not hear what is said about them. They don't even know if a bad reference is given until they are told by the prospective employer or until they are rejected for the applied for position. Usually the employee is left guessing why they weren't the successful applicant when their qualifications and interview process went well.

What is an employee's recourse when a bad reference is given? They may have the ability to demand the document created by the prospective employer when receiving the reference from the previous employer. See the sidebar for specifics in how The Personal Investigations Act of Manitoba provides employees some recourse if this happens (next page).



The provisions in the Act, taken together, provide the right for an employee who is denied employment by a bad report to try to get to the bottom of what was said about them by a reference.

First, before a potential employer calls a reference they must be authorized to do so by the employee. This sounds simple and straightforward but is complicated by the employment application form that often requests authorization to contact previous employers in your work history. The employee should read the terms of the employment application form carefully if they don't want to authorize the prospective employer to contact previous employers.

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Next, if the prospective employer is given authority and receives a reference that results in the rejection of the employment application, that employer has to provide the employee written notice of the rejection of employment and that the employee has the right to information that was obtained during the “investigation” of their references. This step is often not followed but an employee refused a job can insist on receiving such notice. It’s the law.

Once the notice of denial of employment is received by the employee, she has thirty days to demand that the prospective employer provide a description “as to the nature of all investigative information obtained” during the course of the reference check. She also has the right to protest the information that was provided if it was unfair or untrue.

Once the information regarding the bad reference is obtained by the employee, there may be the opportunity to sue the previous employer for slander if what they have said is not true and causes damage to the employee’s employment opportunities.

Health care professionals experience many exceptional demands from the types of careers they have chosen. They also have the right to demand that they be treated professionally and fairly. Ensuring that employers provide fair and accurate references as to the qualities they bring to their careers is one way to achieve the work environment that they work so hard for. MAHCP strives to support each member’s desire for a happy and worthwhile workplace.

This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.

This series of articles will continue in future editions of the MAHCP News. If there is a topic that you would be interested in, please contact Shelley at 772-0425.