

# business | whose clients are they?

## preventing poaching

**CARMINE IS THE OWNER OF A** small, urban day spa. She has spent the last three years growing a loyal clientele and stable staff team. Today, a customer comes to her and confides that she has been approached by a massage therapist on Carmine's staff about coming to see her "after hours" at another location.

This sad story is not new. It may have happened to you. The "poacher" could be a manicurist, esthetician or other spa therapist. Often the first sign that an employee is leaving comes with a suspicion that they are soliciting guests during work hours.

Your response and follow up are determined in part by what your work relationship is with the individual. The rights and responsibilities of a room renter or independent contractor are different than those of an employee.

### Prevention and clear communication

In all cases, the best way to deal with "poaching" is to prevent it from happening in the first place. Client confidentiality, workplace ethics, non-solicitation and proprietary information should all be topics addressed in your employee manual. If you do not have one, start one! Begin by clearly defining your policy on the issue of client lists—and access to them.

Make this part of your new employee orientation. Cover the basics but do not forget to include your policy on workplace behavior. Every em-

ployee should sign an official document stating that they have read the spa's policies and understand what steps of action will be taken if there is a breach of the policy. This should become part of the employee's confidential file, which you may need in

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the future if you have to proceed to a counseling session or take other disciplinary steps.

When you are dealing with renters or contractors, you certainly can mention these expectations in your lease or contractor agreement—but be aware that they may be hard to enforce.

### The ultimate red flag

Lauren Olson, owner of Radiance Advanced Skin and Body Care located in The Woodlands, TX shares this tip from years of interviewing potential employees: "If I note during the interview that the spa professional states that he or she can bring clients with them from their current place of employment, I see it as a red flag." The lesson here is that if they are willing to poach clients from their current employer, they may be willing to do the same to you.



### So what can I do about it right now?

Take a deep breath. Eric Light, president of spa consulting company The Strawberry Hill Group, Inc., advises keeping a firm grip on your emotions. "It's normal to feel betrayed when you learn that an employee has been approaching clients with an eye toward the door—but stepping into your management role will be important to resolving the problem."

Take the time to review your policy and the steps outlined in it. Follow each step, documenting the actions that you take. Don't have a policy? Then begin to get clarity about the situation by putting your concerns down on paper. Stick to the facts. Use this document to start a conversation with the individual. You should schedule a time to meet with them when you will have privacy and can talk face to face. Do not speak to other employees or therapists about the situation.

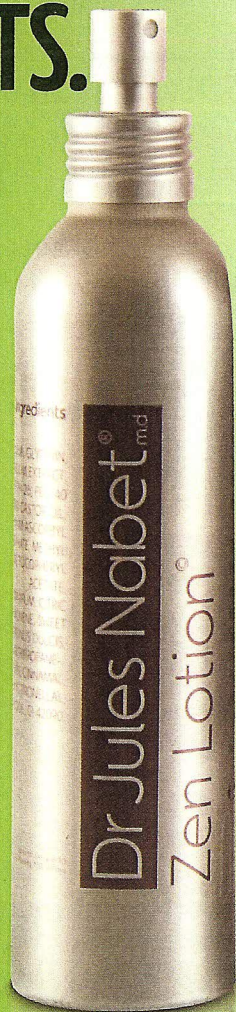
Share your concerns in a non-emotional, non-threatening manner. You may use an opening line such as "Jeannie, it has come to my attention that some of our guests have been approached by you about using your services in another location other than our spa. What can you tell me about that?" Leave the question open ended so that you are not disclosing specific information, but

*continues*

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rather inviting them to tell you their side of the story. This may or may not lead to a full disclosure of what the individual has shared with clients. Make notes of the meeting after the conversation. Be as detailed as possible. Give yourself time to decide what steps you will take next.

## What are your options?

**Employee:** Your client list may be considered a "trade secret" and covered by the Uniform Trade Secrets Act, which has been adopted by 47 states and the District of Columbia. Your state may have different guidelines that apply to this situation. You can do some preliminary research yourself, but consulting an attorney may save you time and agitation. Your conversation with the individual may have prompted them either to leave or to follow the spa's policies. If the employee decides to stay, outline a plan for follow up and stick to it. If they do not follow the plan, it can support their termination.

**Booth or room renter:** While you may be distressed to find out they are moving on, room and booth renters at your facility are free to take their clients with them when they go. It may not be "nice" of them to try to take your clients with them—but it also may not be against the law. You may just have to wait until the lease expires. In this situation, look at the terms of the lease or rental agreement.

**Independent contractor:** When the poacher is an independent contractor, your best option may just be to no longer use their services. Remember, true independent contractors are responsible for their own hours; marketing, supplies, protocols, etc., and are performing "work for hire." They are not employees. Carefully check the IRS definitions regarding independent contractors, and be sure that they are not misclassified.

What happened in Carmine's situation? After a confidential discussion, the employee chose to leave—and Carmine updated her policy manual!

## Disclaimer

This article is intended for informational purposes only. It should not be construed as legal advice. Readers are encouraged to consult a qualified attorney regarding these matters. ■

*Patti Biro has more than 25 years of experience designing and implementing professional education and client education programs, with a diverse background in corporate education, continuing professional education, medical spa, wellness, bridal and consumer publications. She is the creator of "Elder-ssage™, a massage therapy*



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