

Turn all incoming calls into new private duty business

By Barbara Akst

The first 30 seconds of your initial contact with prospective clients can make or break the sale.

Most people don't realize the long-lasting impact of their first impression. Potential clients are often reserved, waiting to learn something about the sales person representing your company before deciding whether or not to put the energy into forming a new relationship and doing business with your agency.

When your phone rings or a potential customer walks through your door, you have the opportunity to make a positive, powerful impression. Whether that person 'buys' your product or not, if you succeed in developing a relationship with him, he will become your customer or your advocate.

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How to legally prevent clients from privately hiring your caregivers

Contracts preventing clients from hiring away your caregivers are commonplace in the private duty industry, but many of them, including yours, may be unenforceable.

That's what Michael Berliant, owner of Gentle Homecare in Deerfield, Ill., recently discovered.

One of Berliant's clients recently hired away a caregiver despite signing a contract stating he would have to pay the agency \$5,000 in liquidated damages if this happened within 90 days of terminating services, Berliant says.

"When we contacted the client and advised him he had violated our agreement, he basically told us to sue him," says Berliant.

Berliant took the client to court in what appeared to be a "slam dunk," case, he says. His agency's client contract was written by an attorney, and in the 15 years he's been using it every client that violated it either paid the full amount or negotiated some type of settlement.

The end result: Berliant lost the case. He also lost a caregiver who had been with the agency for one year, lost the client and spent \$3,000 in attorneys' fees, says Berliant, whose private duty agency serves 100 clients.

Proving damages in these cases is difficult. No matter how good you think your contract is, you can lose in court at any time, says health care attorney Bob Markette, a principal at Gilliland and Markette in Indianapolis.

"We felt our contract was appropriate, but you never know what can happen in court," says Berliant.

Red Flags Rule delayed ... again

The Federal Trade Commission (FTC) is delaying enforcement of the "Red Flags" Rule until June 1, 2010, the federal agency reports. The FTC previously delayed the enforcement of the rule until Nov. 1, 2009. Congress asked the FTC for the delay while it considered legislation (H.R. 3763) that would exempt health care businesses with 20 or fewer employees from the rule's requirements. For more information, visit www.ftc.gov/redflagsrule.

In the future, he'll work hard to settle these cases out of court "rather than push my luck," he says.

What would you do in the same situation?

Consider that 92% of private duty executives have a client contract that contains a provision prohibiting clients from privately hiring away their caregivers. But 81% of those executives also say they've had a client sign the contract and then go ahead and hire a caregiver away, according to 86 private duty executives who responded to our Client Contract Survey.

More interestingly, of the executives who said their clients breached the contract, 17% sued the client in small claims court and won, 46% received damages without suing, and 37% received no damages because they didn't take any action.

Those that didn't take any action said that they either didn't pursue the case because they felt bad for the client, or they thought it didn't make economic sense to go to court, according to the survey respondents.

Also note that of the respondents who have either collected damages in court or settled out of court, the majority collected an amount that was less than what their contract stipulated.

Whether you take the client to court or settle for damages out of court, private duty agencies must take action when clients hire away their caregivers, says Brittnei Salerno, administrator of La Jolla [Calif.] Nurses Homecare.

"I know this is not popular with all providers, but I believe the more we allow this to occur, the more it will keep happening in our industry," says Salerno.

Salerno's contract demands a \$5,000 payment from both the client and caregiver should they breach the agreement.

Sample private duty client contract language

The following is sample language that health care attorney Bob Markette, a principal at Gilliland and Markette in Indianapolis, recommends using in your client contract:

"I agree that I will not hire any employees assigned to provide care to me for up to XX days/months after I terminate my service agreement. If I do, I will be subject to a finder's fee of \$XX. I understand that [XX home care agency] invests substantial resources in finding, screening, hiring and training its employees."

Would your client contract stand up in court?

So how can you ensure that your contract would stand up in court, or that it's good enough to scare a client's attorney into settling the case before it even makes it into a courtroom?

In Berliant's case, one of the main factors the judge cited as relevant in determining whether a "liquidated damages" provision is enforceable was whether the "actual damages" his company incurred were "uncertain and difficult to prove," Berliant says.

"Liquidated damages" is an amount required to satisfy a loss resulting from a breach of the contract, and it's an amount that both parties agree to in advance, says attorney Markette.

Liquidated damages should be related to actual damages but could be less or more than the actual damages. Both parties agree to accept this amount – even though it may be less than their actual damages - because it eliminates the need to prove damages at trial and saves both parties litigation costs, Markette adds.

Berliant, like most private duty agencies, used the term "liquidated damages" in his contract because it's difficult to determine actual damages because they vary case-by-case, he says.

However, in court Berliant had to bring in a spreadsheet that laid out his actual damages, which turned out to be more than the \$5,000 set in the contract, he says.

The judge determined the contract was not enforceable because the damages were not "uncertain" or hard to calculate and the actual amount should've been included in the contract, Berliant says.

It's entirely possible that this identical case and evidence could be presented to a different judge with the opposite result, he adds.

But he learned his lesson and has amended his contract's language, he says. He's changed the wording from "liquidated damages" to "actual damages based on determined losses up to and including \$10,000."

When drafting client contracts the wording of the damages clause is vital, says attorney Markette. Instead of using the term "liquidated damages," describe the penalty the client must pay as a "finder's fee."

A "finder's fee" encompasses the amount of time, effort and money an agency spent to recruit, screen,

hire and train the employee, and the cost to replace the employee, Markette says. *[For sample contract language, see box, p. 2].*

Also, when a client hires away one of your caregivers, collect damages from both of them, recommends attorney Markette.

In other words, implement and enforce both a client contract and a caregiver non-compete, Markette says. "Have as many tools at your disposal as possible."

In his experience, most of his clients don't want to sue the client if they can avoid it. So they use the non-compete to deter their caregivers, Markette says.

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Turn calls into new business

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You and every member of your staff can learn the skills to develop these relationships with everyone who has contact with your agency.

Understand your caller

Step 1: Read the caller's behavioral style: All behavior styles are based on two dimensions: openness and directness. Individuals show their emotions in very different ways. Some people will tell you all of their problems the first time they meet you, while others don't show their emotions at all.

Individuals considered "open" share their thoughts and feelings willingly and typically have animated facial expressions and open physical gestures. They are huggers, hand-shakers and touchers. They're people-oriented, develop relationships quickly, and often make decisions based on emotion.

Other individuals don't show their emotions and display 'closed' behaviors. They often have 'poker faces,' are physically more rigid and much less expressive. They're task-oriented and will make decisions based on facts.

Step 2: Determine the caller's directness: In addition to showing emotions in different ways, individuals also demonstrate different amounts of control over people and situations. Understanding the amount of control each customer needs is another key factor.

Individuals who are direct are often viewed as 'forceful' and referred to as 'Type A Personalities.' They confront conflict, change and decision making head on. They're outspoken communicators and very competitive, impatient and confrontational.

Individuals who are indirect approach risk, decision making and change much more cautiously. They are diplomatic, patient, cooperative and avoid conflict. They're not afraid of conflict, but will avoid it when possible through smooth talk, diplomacy and finesse. They often keep a low profile and speak in a slower, quieter manner.

Step 3: Respond to a customer's style

What if the inquiry call is from someone whose tendencies are different from the sales rep? Is that phone call going to be a success? The answer is YES BUT ... the sales representative will have to modify his/her behavior to accommodate the caller. To be successful, sales reps must know their own behavior style and be able to identify their customer's behavior style. They must then adjust their style to meet their customer's. Here's how:

- **Increase their openness.** Some of your sales or marketing staff may need to work at being more open with customers who are open, and let their emotions show a little more. Encourage these staff to pay personal compliments to the person they're speaking to. They need to develop a relationship with each prospect using friendly language, standing/sitting closer to the prospect, using 'easy' gestures such as leaning back, smiling or even gently patting the other person on the back or shoulder. They must be willing to digress from the agenda and 'go with the flow.'
- **Increase their self-containment.** Other staff may have the opposite response style, and need to get right to the task at hand when speaking to more closed customers. They need to maintain a more logical, factual organization to their sales presentation. They should always have a script and/or timeline of what they need to do and say. They should not initiate physical contact and should downplay their enthusiasm and body movement. Encourage them to use more business-like language. Staff must hold back if their customer is uncomfortable with their openness.

- **Increase their directness.** Some staff will need encouragement to move and speak at a faster pace when the customer's style is a bit more reticent. They'll need to learn how to initiate conversations or decisions. Teach these staff how to give recommendations, rather than just ask questions. They should use direct statements and communicate with a strong confident voice. They also should learn how to challenge tactfully when they disagree (if it is appropriate to do so). One of the easiest ways to increase their directness is to increase their eye contact.

- **Decrease their directness.** When faced with a take-charge customer, however, some staff will need help to relinquish the reins of the conversation somewhat. The best first step is to ask others for their opinions and then acknowledge their input. Train them to share the decision-making responsibilities with the customers and allow the customer to assume some of the leadership within the relationship. They should show less energy and be more "mellow." Train these staff not to interrupt customers when they are speaking and to provide pauses in the conversation so the customer can speak.

Assess the customer's situation

When answering an inquiry call, each staff member's primary goal should be to make a new friend, one who *needs* your agency because of your knowledge and skills and *wants* you because you show you care. This step is so important it should take 50% of the time of any call. Once the relationship is developed, you can ask probing questions and receive honest answers.

If you're able to connect with the caller and assess his situation accurately, even if you cannot meet the customer's specific need, customers will know that you

are someone they can trust and they will call again and refer their friends to you. Here are two ways to ensure your staff make a good first impression and don't alienate clients:

- **Use the caller's name throughout the conversation and don't use terms of endearment** (honey, dear, sweetheart). Some callers make take offense to them.

- **Avoid industry jargon.** Sales reps should assume their caller knows *nothing* about the industry. This call is an opportunity to educate the caller and demonstrate that your sales rep is an expert. During one of the mystery shops I recently completed, the sales person said he could send a CNA to my mom's house. When I asked what a CNA was, the sales person responded, "someone who helps their mom with ADLs." Had I not been an expert in this field, I would've been lost ... twice.

Resolve the client's needs

Here is when you show the caller results. Teach your staff how to resolve each client's needs in the following ways. Once you've gathered all the information about your callers' emotional and physical needs, you are able to "match" your services with their needs and develop a plan of action – together. You can demonstrate to prospects how and why your agency is able to meet their specific needs.

You should present a plan to customers based on the needs you identified together, with resolutions for each of the problems they revealed. You should get the prospects' input and confirmation that you have accurately assessed the situation and that the proposed solution will resolve their problem. Now is the time to negotiate the type and hours of service. At this time in the call it's also appropriate to explain the costs involved with your services and the steps involved in starting services.

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Private Duty Benchmark: Number of private duty employees			
Private duty companies employ 169 employees, on average, according to the 72 private duty executives who responded to the 2009 Private Duty Home Care Survey.			
	Average	Median	Range
Number of employees employed or contracted (including administrative, management and field staff)	169	80	2 – 1,400
Source: PDI's 2009 Private Duty Home Care Survey			