
OFFICE SHARING AND LIABILITY RISKS

Can a psychiatrist be sued and held liable for the activities of a professional with whom he merely shares office space? YES!

Here are the typical facts: Independent practitioners, Doctor A and Doctor B share a waiting area, receptionist, stationery, and office signage. A patient begins her treatment with independent practitioner, Doctor A. Based on the set up of the office, the patient perceives that Doctor A is affiliated with Doctor B. Later, when the patient sues Doctor A for malpractice, she also sues Doctor B. Doctor A merely shared office space with Doctor B, but because of their arrangement, the patient believed that Doctor B was both involved in and responsible for her care.

Remember that courts consider the *perception* of patients in determining whether a treatment relationship has been created and/or exists. Your very presence in a shared office may be the only factor that leads a person to believe that you associate with, employ, control or supervise your office mate(s). In the shared office setting, this may generate legal obligations and professional responsibilities that you have never before considered. You risk being held liable if a court finds the patient's perception reasonable.

To minimize your liability risks when sharing office space:

- Check with your personal business attorney to assess whether your shared arrangement may be perceived as a legal entity, (e.g., a limited or general partnership), despite your intent.
- Be sure that your office mates have not had any serious complaints or sanctions leveled against them by any licensing agency or professional organization.
- Know your office mates' insurance carrier and limits of professional liability coverage. Their limits should at least be equal to yours. If your limits are higher than your office mates' limits, you could become the "deep pocket" if you are named in litigation involving your office mates.
- Avoid the appearance of any control of or supervision of your office mates.
- Eliminate as many objective indicators of association with your office mates as possible. This might include shared outdoor signs, letterhead, office telephone numbers, billing personnel, etc.
- Inform office staff and your office mates about the liability risks involved when professionals share staff, phones, receptionists, and billing personnel. Refrain from engaging in any contract with your office mates that could be construed as an employment contract.
- Keep patient and business records separate from those of your office mates.

- Post and provide to every patient a fact sheet or disclosure statement stating, at a minimum:
 - That all of the professionals are independent practitioners
 - That you are not in partnership with them
 - That you have no responsibility for their billing
 - That you neither control nor supervise the services that they provide
- This should be a part of the written information that you provide for your patients to read, discuss with you, and sign during their first visit.
- Periodically check to confirm that your written protocols and procedures are being followed. For example, call your office and your answering service to assure that the receptionist and operators are answering your phone line with words that identify you and your office only and not with a phrase such as “The offices of _____ and _____.”

Keep in mind that there may be ethical and legal issues related to fee-splitting if you accept or pay a percentage of fees collected for office space, administrative services, and other overhead expenses. To avoid the appearance of fee-splitting, psychiatrists should negotiate a reasonable charge for the use of space, administrative coverage, and other expenses. Personal counsel should be consulted when developing office sharing arrangements to ensure compliance with all relevant statutes and regulations.

In addition to shared office space, websites present another potential problem when it comes to patient perception. It is not unusual for groups of independent providers to share a website as a means by which to advertise their individual practices. The name of the website will often suggest that the providers are working in a group practice thus giving the same impression as that of a shared office. Should you choose to share a website with other individual practitioners, make certain that there is a clear statement on the website indicating that all practices are independent, setting forth the same information you would on the disclosure statement noted above.

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