



655 Beach Street
San Francisco CA 94109-1336
P.O. Box 880610
San Francisco CA 94188-0610

Phone: (800) 562-6642, ext. 639
Fax: (415) 771-7087
Email: omic@omic.com
Web site: www.omic.com

As you are probably aware, if you enter into a partnership, you can be held liable for the full amount of damages resulting from the actions of any of your other partners. However, you may not know that you can also be held liable for the acts of physicians or entities with whom you have no formal partnership agreement. This occurs in cases where physicians who have not formed a partnership work in close association with one another or an entity.

WHAT IS CONSIDERED AN APPARENT PARTNERSHIP?

Many states have adopted the "doctrine of ostensible partnership." Under this doctrine, individuals who have not intended to form a partnership, nor even believe themselves to be partners, may still be held liable for the actions of the other ostensible or apparent partners. This is possible if, through their conduct, they cause others to believe that they are in a partnership. Once a partnership is found to exist, either formally or apparently, the legal consequences are the same. Physicians and/or entities who have a contractual or employment relationship with one another are generally not considered to be apparent partners because their relationship is otherwise formally defined.

A trial court will determine whether the doctrine of ostensible partnership should apply. The court and/or jury will consider all of the evidence presented to determine whether the physician has fostered the belief that he or she is a partner and that he or she has consented to such characterization.

It is the substance of the conduct that matters. It is not sufficient that you have made written or oral declarations that you are not in a partnership. The types of conduct which most often cause the courts to invoke the doctrine of ostensible partnership include any kind of profit sharing, or any references, written or oral, to another physician as a partner. Though not determinative, the court also looks to such practices as using a common business name, using common letterhead or prescription pads, joint billing, seeing each other's patients on a regular basis, and/or advertising together.

HOW TO AVOID THE APPEARANCE OF AN APPARENT PARTNERSHIP

For those of you who do not intend to have a partnership, but share office space with other physicians, OMIC suggests that in order to minimize the risk of being held liable as an ostensible or apparent partner, you should:

- Keep your practices entirely separate.
- Not practice under a common business name.
- Use separate letterhead and prescription pads.
- Never refer to your associates as partners either in conversation or in writing.
- Never use any type of profit sharing plan.
- Bill for services in your name only.
- Advertise in your name only.
- Not see each other's patients on a regular basis. If you need to see others' patients on an emergency or on-call basis, bill the patient separately for your services.
- Post a sign in the shared office that explains that you and the other physician(s)/entity are not partners or agents of one another and that you will bill separately.

COVERAGE ISSUES

Please note that the OMIC medical professional liability policy provides defense coverage, but no payment of damages or supplementary payments, to insureds in the event they are named in a claim or suit as a result of their alleged status as an apparent partner (as long as this is not the sole allegation). OMIC defines "apparent partnership" as "an association between two or more health care providers or professional entities in which the health care providers or professional entities appear to the public to be in partnership even though they have not legally formed a partnership or corporation and one is neither the employer nor employee or independent contractor of the other." Entity coverage is not available for apparent partnerships. As always, insureds are provided a defense and coverage of damages and supplementary payments for their own acts, errors or omissions in the provision of direct patient treatment.