

Optima Healthcare Insurance Services
RISK MANAGEMENT CHECKLIST
Avoiding Ostensible Agency Claims

A theory of ostensible agency liability hinges on “relationships” and actions taken which appear to “hold out” an independent contracted physician as an employee. To evaluate and prioritize your risk mitigation actions, start with an analysis of the actual and perceived relationships between the hospital and the independent contractors. Time should not be wasted trying to disassociate the relationship between the hospital and the physicians. There will always be an assumption that some physicians are employed by the hospital; such as by offering Emergency Services, the hospital is providing physicians. Focus your efforts on what is done to educate providers, staff, and patients on the actual relationships and ensure ongoing effective communication.

DEPARTMENT/ SERVICE	ACTION	COMMENT/ ACTION ITEMS
Admissions	Include a disclaimer on the Conditions of Admissions (COA) and the Consent to Treat Forms to inform patients that the physicians and allied health practitioners (if applicable) are independent contractors and not employees or agents of the facility (define the legal relationship between hospital, physicians and allied health practitioners).	
	Whenever possible, use a separate signature/initial line next to the definition of relationship.	
	Develop a monitoring system to ensure all COA forms have been signed correctly and timely.	
	Educate admitting clerks routinely on the theory of ostensible agency and the importance of obtaining signatures on COAs.	
Marketing/ Advertising	Evaluate the marketing impression you create for the public and avoid references that imply the hospital is providing physician services.	
	Establish a process for administration, risk management, and/or legal counsel to routinely review all materials to identify inappropriate or noncompliant language that can increase the facility’s exposure to litigation.	
	Consider key words and slogans which may contribute to the perception of ostensible agency (i.e., best in state, our doctors, center of excellence team, etc.) and ask marketing to focus on words that imply separate but working together (i.e., collaboration, partnership).	
	Review marketing and advertising materials for content that could be misconstrued by the public	
	• Website, internet communications	
	• Radio & newspaper ads	
	• Billboards	
	• Magazine ads and articles	
	• Physician referral program promotions	
• Stationery letterhead		

DEPARTMENT/ SERVICE	ACTION	COMMENT/ ACTION ITEMS
	<ul style="list-style-type: none"> • Patient documents referring the patient to hospital services 	
	<ul style="list-style-type: none"> • Contracts 	
	Evaluate if pictures or portrayals of contracted physicians are being used. If used, include a disclaimer. See comments above about choice of words.	
Contractual Agreements	Stipulate in service contracts that providers performing hospital services are independent contractors and are not employees or agents of the facility	
Facility Email Addresses	Evaluate IF and WHEN facility email addresses will be used by independent contracted providers.	
Prescription Pads	<p>Evaluate the risks associated with providing prescription pads with the hospital name/logo for use by independent providers.</p> <p>If you choose to do this, include a disclaimer stating the provider is an independent contractor and not acting as an agent of the hospital.</p>	
Business Cards	Evaluate when the hospital will allow physicians to utilize business cards with the hospital name/logo and define purpose of use. (i.e. Medical Directors, Chief of Programs, etc)	
Lab Coats, Scrubs & ID Badges	Remove the hospital's name and logo from lab coats and scrub clothes or phase out the hospital identifying uniforms.	
	Identify physician name badges in a color or manner different from the employed staff or do not have hospital name/logo on the physician badge.	
Insurance Coverage	Evaluate and identify which "buried" physicians are provided coverage with the hospital professional liability policy as additional insured.	
	Evaluate the adequacy of coverage for the entire organization with the additional insured potential exposures.	
Facility Signage	Post signs in areas of high public traffic (i.e., emergency department, outpatient clinics, and admissions areas) explaining that the physicians and allied health practitioners (if applicable) practicing at your facility are independent contractors and not employees or agents of the facility. Sample wording for signs – "Although physicians are not our employees, we are glad they have chosen our hospital as a place to practice".	
	Evaluate the populations you serve, and post multilingual signs (as appropriate).	
Office Signage	If physicians are leasing office space for private offices or clinics, evaluate how these practices may be perceived by the public.	

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	Consider using different signage for these office/practices and have separate entrances from the main hospital, where possible.	
Billing	If your facility provides the billing services for physicians operating in your buildings; add wording to the bill to explain that the bill is done for the convenience of the patient and the physician.	
	The hospital name and logo should not appear on any billing document or envelopes when billing on the physician's behalf.	
	Post signage about separate billing practices in diagnostic imaging, laboratory, emergency and other departments where there could be a perception of ostensible agency.	
Risk Management	Provide education to high risk departments (Finance, Marketing, Admissions, etc.) on the theory of ostensible agency.	
	Review the marketing/advertising materials prior to use with public.	
	Educate admitting clerks routinely on the theory of ostensible agency and the importance of obtaining signatures on COAs.	