



Renting out Operatory Space: A Check List for Smart Dental Office Sharing

By TDIC Risk Management Staff

For rent: Two operatories in an established dental office. Call for information.

It sounds like a good idea. You are not using all of the space in your office and would like another source of income.

This appears to be a growing trend based upon ads in dental publications and an increasing number of calls to TDIC's Risk Management Advice Line about renting dental operatories.

Such arrangements can work. However, to be successful, a number of essential items need to be addressed before reaching an agreement with another dentist. According to Arthur Curley, a senior trial attorney in San Francisco, important considerations include: a sublease or shared-office agreement in writing, definition of term, description and measurements of space leased, specification of shared equipment and services, insurance, indemnity, joint use of employees, need for signage and forms to avoid "ostensible agency," ownership of patient records and handling of emergencies. Additional details include notice provisions and events for termination, selection of joint employees and hiring and firing of joint employees, said Curley, who has provided legal services to doctors for more than 35 years.

Renting operatory space in your office can be handled in different ways. A shared-office agreement is one possibility, according to Curley. "If services are provided such as reception, telephone, email, office software, shared-office staff, shared supplies, shared equipment, use of radiographic equipment and use of leasehold improvements, then additional items are being leased and a shared-office agreement is a more appropriate description of the agreement," he said.

A sublease is another option, but a sublease can present unexpected issues. "If you are simply leasing an operatory without provision of any ancillary services, you can treat it as a sublease," Curley said. "A problem with subleasing is that it will likely require consent of the landlord. Also, leases often contain a clause stating that the landlord is entitled to all or a portion of excess rent received in a sublease. Thus, if a total lease is \$5,000 per month and 10 percent of the office is subleased to another dentist, any lease amount over \$500 would be excess rent and the landlord would be entitled to receive all or a portion of that amount."

Prior to subleasing, TDIC advises dentists to contact the landlord to determine lease violations. Also, call your insurance carrier to ensure you are adequately insured and if this type of arrangement presents coverage limitations.

A sublease or shared-office agreement should always be in writing. In addition to the considerations listed above, Curley outlined the following key points:

- Identify the other doctor's practice as a separate practice on signs, business cards, billings, letterhead and when answering the telephone. Have patients sign an acknowledgement that the two doctors' practices are separate practices and each dentist is independently responsible for his or her own treatment. This may reduce chance of liability for actions of the other doctor under "ostensible agency."
- Make sure contracts contain indemnity language establishing each dentist's responsibility for his or her own actions.
- Ensure each dentist maintains his or her own insurance for professional and property liability by requiring proof of such insurance as part of the contract. Also require that such insurance be maintained for at least 3 to 5 years following termination of contract. If the dentist who rents space does not maintain insurance, the "landlord" dentist may be the only one sued by the patient for injury incurred during treatment by the tenant at the landlord's office.
- Ensure the contract contains specific language concerning termination of sublease at will or on defined notice.
- If employees are shared, consider Employment Practices Liability Insurance for both doctors.
- If your office is not incorporated, consider incorporation to limit liability for the actions of the other dentist.
- Consider engaging the services of an attorney knowledgeable in drafting and interpreting business leases.

TDIC's Risk Management Advice Line can be reached at 800.733.0634.

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