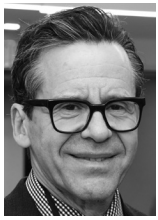

Independent Contractors and Peer Review

By Barry Sporer, DMD
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This column is a departure from the typical Peer Review case study. The lack of clarity surrounding the employee-independent contractor relationship can be perplexing and even muddle questions for responsibility for services rendered when a patient brings a dentist to Peer Review. In light of this, I would like to address this complex relationship as it relates to the Peer Review process.

It is not in the scope of the Peer Review Committee to evaluate the professional business arrangement between dentists practicing together. This includes partnerships, associateships and independent contractors.

While partners assume joint financial responsibility for treatment performed in their offices and owners must assume full financial responsibility for treatment performed in their offices by associates, doctors who have dentists working in their offices as “independent contractors” might argue that they are not responsible for the treatment performed by these dentists in their offices.

Recently Peer Review was faced with just such a dilemma. A patient was treated by a dentist working as an “independent contractor” in another dentist’s office. Because the treating dentist received 50% of the fees collected, it seemed only fair to the employer dentist and his legal counsel that the independent contractor be responsible for 50% of the total escrow required. (Note: both patients and dentists are required to place all outstanding fees, or fees received for the treatment under review, in an escrow account pending the conclusion of the

Peer Review process. Failure to submit such funds is deemed a violation of the Agreement to Submit to Peer Review.)

As previously stated, it is not in the scope of Peer Review to determine the exact nature of professional employment contracts or whether someone fits the criteria to be considered an independent contractor. As is often the case in these arrangements, the patient paid all the fees to the owner-employer dentist who in turn paid the “independent contractor” 50% of the collected fees. It was the opinion of the New York State Dental Association’s legal counsel that the fact that the owner-employer collected the fees and paid the dentist who provided the service, made that dentist an employee rather than an independent contractor. In addition, the “independent contractor” did not control the means and methods of the work (staff, supplies, equipment, space, billing, etc.) as one would when running their own separate dental practice.

Consequently, the Peer Review Committee informed the employer dentist that since he was paid all the fees for the patient, he was responsible for placing the escrow, and if he wanted to pursue the dentist who performed the treatment for 50%, he was free to do so, just not through Peer Review. ■

Editor’s Note: You can find a relevant article on this subject on the homepage of our website, www.nycdentalsociety.org entitled “Classification of Independent Contractors Versus Employees.” The article lists some of the key criteria and factors used to determine if a worker is an employee or an independent contractor. The article was written by Bill Barrett, Esq., Member, Manadelbaum Salsburg, a Corporate Friend of NYCDS.



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