



CNA HealthPro

FAQs – Adding a Dentist

Q. I'm considering adding a dentist to my growing practice. What factors would a court consider in determining whether the new dentist is an employee or an independent contractor?

A. Unfortunately, there are no simple, unambiguous rules or guidelines used to distinguish between employees and independent contractors. When courts review specific cases, they take into consideration a range of factors that define the working relationship. Probably the most important criterion is the amount of direction and control vested in the hiring party.

Under the "Direction and Control" test, if you (the hiring dentist) have the right to direct and control the means by which your hired dentist performs her work (for instance, by dictating which procedures can and cannot be performed or by implementing billing guidelines) rather than just specifying an end result, then the new dentist would most likely be classified as an employee. Note that it is the *right* to control that governs the determination, rather than whether that control is actually exercised.

An independent contractor is expected to produce a specified result (such as providing quality dental care or serving a particular patient base), but is free to choose the means by which that end is attained.

In determining the new dentist's employment status, a court or regulatory body may ask the following questions, among others:

1. Who provides the dentist's materials, tools and equipment?
2. Who sets the hours worked?
3. Who hires staff members and makes promotion and termination decisions?
4. Do you currently provide any benefits to the new dentist?
5. Do you furnish a 1099 income report to the IRS for the new dentist?

If the *hired* dentist helps determine how others in the office (such as hygienists and office personnel) conduct their business, while the *hiring* dentist has significant control over the hired dentist, then the hired dentist is likely to be found to be an employee. However, if the hired dentist exercises little or no control over the office personnel, and runs her practice in an unfettered manner, then she is more likely to be considered an independent contractor.

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