

## 14 Situations Where Physicians Should Lawyer Up

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By [Ericka L. Adler](#) [2]

Practices might be inclined to take on a legal issue on its own. Here are a few situations when they should hire a lawyer instead.

**Source:** Physicians Practice

Physician practices handle a wide variety of business and administrative issues on a daily basis, often with the help of experienced practice managers who bring knowledge and expertise to the job. However, there are times when I recommend that a practice and its manager recognize when there may be issues on which they have limited knowledge and where legal advice may be appropriate. Often my clients call me too late after trying to handle something on their own.

The following are some circumstances where I think it's worth it to call your lawyer to be sure you handle the situation for the best possible outcome:

1. The practice receives a letter from an attorney making a demand (for money, cease and desist, etc.).
2. The DEA, FBI or other state or federal agent calls or comes to the practice or home of one of the owners/employees to ask questions about anything.
3. Any documents are received affecting a physician's license, Board status, medical staff privileges at a hospital, etc. This is an area where mistakes cannot be easily remedied and talking to legal counsel immediately is very important! In no event should a resignation be submitted before legal counsel is consulted.
4. The practice is served with a complaint by the EEOC, State Department of Human Rights, Department of Labor, OSHA or any other state or federal agency regarding an employment or practice matter.
5. The practice receives a non-routine billing audit, desires to self-report or enter into negotiation with the government, or any payer, on a repayment or integrity agreement.
6. The practice is named in a lawsuit or its employees/owners are required to testify related to a lawsuit, or otherwise participate in any government or agency interview or investigation.
7. The practice discovers, or is accused, of a breach of HIPAA.
8. The practice discovers theft of prescription drugs or prescription pads, the false ordering of drugs by an employee, or that prescription drugs have been ordered from a non-permitted supplier.
9. There is a complaint of criminal or sexual misconduct, harassment or discrimination, by an employee or partner of the practice.
10. The practice discovers theft of funds or property by an employee or partner, or an illegal scheme of any kind.

While the above may seem like obvious reasons to call a lawyer, too often practices try to handle these matters on their own. Additionally, some healthcare/transactional issues that should also lead to a call to counsel include:

1. Employing a new physician. Practices often rely on outdated contracts that contain errors or are not updated to reflect current law (i.e. non-compete requirements, fee-splitting, supervision of

mid-levels). This also applies to legal enforcement of contracts and making legal threats.

2. Introducing new ancillary services to a practice which are "designated health services" under the federal "Stark" law. Practices must be aware that a legal analysis of the practice structure and modifications to corporate documents may be required.
3. Entering into agreements with new vendors related to items or goods billable to federal payers or commercial insurance (DME, lab, PT) or developing marketing arrangements. All of these potential arrangements can implicate state and federal self-referral and anti-kickback statutes.
4. Entering into arrangements with other healthcare providers or entities for space, equipment, personnel or similar arrangement, especially when there may be direct or indirect referrals of patients between the parties.

I am sure there are many more examples to add to this list. The key is to really understand your practice's own limitations and to appreciate that sometimes even the best practice manager does not know what they do not know! A practice should develop a relationship with healthcare counsel who can be available, even for a quick question. There is no doubt that sometimes the cost of not getting advice may be more than a practice can afford.

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