

Fictitious Business Names

Avoiding Liability Bulletin - February 2012

... Do not use a fictitious business name (d/b/a) that is false, misleading, or deceptive. While this statement is easily understood, some may advertise and thus hold themselves out in a manner that they may not consider or know is misleading. For example, if an individual practitioner holds herself out as Mary Doe (intended to be fictitious) and Associates, when in fact Mary Doe is a sole proprietor, this name and advertisement is misleading. There may be other private practitioners who have their offices in the immediate vicinity, but they may all be sole proprietors – thus, they are not actually part of Mary Doe’s business, as the term “and Associates” indicates.

Use of the word “Corporation,” or “Inc.,” or “LLC” would be false and misleading if there is not a lawfully formed corporation or limited liability company, as the case may be. In some states, a limited liability company is not permissible for specified health care practitioners. I have occasionally seen fictitious business names that included words such as “medical,” “psychology,” and “institute,” each of which raised my concerns. Of course, each situation is different and state laws will vary.

Issues may also arise with respect to some “counseling centers” that hold themselves out as distinct business entities (e.g., the XYZ Counseling Center or the Minor Street Counseling Center). Who owns the XYZ Counseling Center? Sometimes, the answer I have received is “no one. We are all individual practitioners and we just use the name of the Center.” I typically ask whose name or names are on the fictitious business name statement that was filed. Presumably, or at least arguably, the owner(s) of the business is the person (or persons) who signed the statement. He or she (they) may incur liability, depending upon the circumstances, for the negligent acts of the others who hold themselves out as employees of the Center, or perhaps, as partners or co-owners.

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