



Malpractice Protection Strategies

The inherent risk of medicine mandates both risk management and asset protection.

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At one time or another, many physicians including neurologists, have worried about malpractice liability. Concerns may occur when physicians begin practice, looking at malpractice

insurance coverage for the first time. Concerns may also arise later when a physician or a colleague is served with a lawsuit by a former patient or employee.

Although most physicians don't obsess over the possibility that they will have liability, nearly all are wise to acknowledge the potential liability faced and take appropriate steps to protect against it.

Risk Management

The first and most obvious strategy to protect against malpractice liability is to reduce risk and practice the best medicine possible. This begins with dedication to be the best physician possible, developing ongoing knowledge through continuous education, life-long learning, and maintaining a general approach to meeting the standards of care expected in an area of medicine.

Beyond this medicine-centered approach, physicians are well-served to incorporate nonspecialty-specific risk management techniques into their practice. These include learning how both physicians and staff members can best communicate with patients, especially when dealing with challenging cases or poor outcomes. Physicians also must consider methods for handling protected health information, adhering to constantly changing HIPAA regulations, and managing risks of communication technology, from blogs and websites, to texting and email. Many of these techniques are covered in the seventh edition of our CME monograph, *Risk Management for the Practicing Physician*, nationally certified for up to 5.0 hours of Category I CME credit. (You can get a free hardcopy or ebook in the special offer following this article.)

Asset Protection: A Matter of Degree

Regardless of how carefully physicians practice medicine and manage their risks, mistakes will occur. Human error cannot be eliminated from the equation. Moreover, sometimes bad outcomes will occur even when all best practices were followed—and occasionally, bad outcomes can lead to potential liability even if the physician believes he or she did nothing wrong. Most would agree that our legal system is not perfect, and predicting liability is not a perfect science. Thus, many physicians have chosen to buttress their risk management practices with asset protection planning.

The goal of asset protection planning is simply to position assets in such a way that makes it difficult, and in certain cases nearly impossible, for a potential future lawsuit plaintiff to have access to them. If the goal is to feel more secure and sleep better at night knowing what an individual has worked hard to build will not be lost, asset protection planning is an important part of the solution.

A fundamental concept that physicians must understand is that asset protection planning is a discipline of degrees rather than a clear-cut analysis of protected versus vulnerable. We use an asset protection rating system for a client's overall situation: from totally vulnerable (-5) to superiorly protected (+5). The goal is to move as much wealth as possible from the negative vulnerable positions to the higher positive protected positions—ideally, with as little cost and interruption as possible.

Protecting Assets of the Practice

While the first priority of most physicians is to protect their personal assets, practice protection should not be overlooked. That is because any malpractice claim or employee claim against any individual in a practice may threaten all of the assets of a practice. In other words, if you are in a group practice, you are underwriting the acts and omissions of your partners, to the extent of your share of the practice assets.



Cash flow and income are the most important assets. The good news is that the tools that protect your cash flow also typically help you save on income taxes and build retirement wealth. These include qualified retirement plans (eg, defined benefit plans, 401(k)s and combination plans), nonqualified plans, captive insurance arrangements, and more. More information on these topics is available in our books.

Other important practice assets are real estate, if any, and valuable equipment. If a practice has valuable real estate or equipment, separating these from the main practice with a limited liability company (LLC) that leases them back to the main practice entity is a good way to protect those assets.

Protecting Personal Assets

Personal asset protection encompasses shielding a home, retirement and other investment accounts, any second home or rental real estate, and valuable personal property.

We typically recommend leveraging exempt assets for the state of a physician's residence as a priority, because these enjoy the highest level of protection and involve no legal, state, or accounting fees or gifting programs. In other words, exempt assets may be owned outright in a physician's name, accessible, and 100% protected from judgments in a liability lawsuit.

Each state law has assets that are absolutely exempt from creditor claims, making these highly protected. Many states provide exemptions for qualified retirement plans and IRAs, cash within life insurance policies, annuities, and primary homes. It is important to seek out an expert to find out and understand the exemptions in a particular state.

Beyond exempt assets, basic asset protection tools like family limited partnerships (FLPs), LLCs, and certain types of trusts can be used. FLPs and LLCs provide good asset protection against future lawsuits, allow for maintenance of control, and may provide income and estate tax benefits in certain situations. Specifically, these tools will usually keep a creditor outside the structure through charging order protections, which typically allow a physician to create enough of a hurdle against creditors to negotiate favorable settlements. For these reasons, we often call FLPs and LLCs the building blocks of a basic asset protection plan.

There are many types of trusts that also provide protection for physicians. These can range from life-insurance or charitable-remainder trusts, to grantor-retained annuity and domestic-asset protection trusts, and more. Each type has pros and cons, costs and benefits. We explore this further in other articles and in our books.

For all asset protection tools, benefits rely upon proper documentation, maintenance and respect for formalities, and ownership arrangements. If all are in place, a physician can have solid asset protection for a relatively low cost.

Conclusion

The practice of medicine, including neurology, has inherent lawsuit risks, primarily from medical malpractice. Risk management and asset protection planning go hand in hand to help physicians reduce their risk of liability and protect them, in case liability does occur. ■

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