



legal matters

Asset Protection Shield your practice assets and personal investments from legal claims with defensive financial planning. You may be more vulnerable than you realize.

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Ask physicians whether or not they have heard of the term “asset protection” and many will answer,

“No.” That may change soon. As more and more doctors look to safeguard their practice and savings from the ever-present lawsuit and creditor threats, asset protection will be increasingly discussed in medical journals and at conferences.

What is asset protection? Asset protection focuses on protecting your wealth from all types of dangers, such as lawsuits, creditor claims, and taxes. Attorneys who practice this area of law

should be versed in many legal sub-specialties, including corporate law, the law of partnerships, estate planning, tax planning, creditor rights, and the law of foreign countries, among others.

The goal of asset protection planning is to provide you with the greatest degree of financial security, both in your practice and in your personal financial affairs. This goal is achieved by using asset protection tools to safeguard both practice equity and personal wealth. In addition, asset protection planning often can create significant estate and

income-tax savings.

Despite the tax savings that can be achieved in asset protection planning, the primary focus of asset protection is always to legally secure the physician’s wealth from any and all threats. For once a physician’s asset protection program is established, his personal and professional assets will enjoy unparalleled security. Why? Because he will own his practice and other valuable assets in forms that prevent anyone from being able to seize them to satisfy a legal claim. With protected assets, any lawsuit or claim

he faces will be dropped or he will be able to negotiate a “pennies on the dollar” settlement because his assets are unavailable in suit settlements.

Either way, the protected physician has saved the time, expense, and stress involved in defending a claim, costs which he would incur even if he ultimately won the case or its settlement amounts were covered under an insurance policy. In this way, the costs of setting up an asset protection plan can be recouped if it discourages or advances the settlement of only one lawsuit or creditor claim.

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**A Case Study:
Dr. Stanley, Internist**

To see an example of what asset protection entails, take the case of a hypothetical internist named

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Dr. Stanley. Dr. Stanley, whose principal assets are some rental real estate and a mutual fund portfolio, operates a private practice, along with partners Dr. Steve and Dr. Jane. Let's assume here that Dr. Steve and the partnership are sued by Martha, a former receptionist, alleging wrongful termination. Her suit asks for compensatory and punitive damages totaling \$800,000. What can Dr. Stanley expect if he has not engaged in asset protection planning?

Most likely, neither the physicians' malpractice insurance policies nor their general insurance policies will cover them here—those policies typically exclude coverage for behavior in violation of state law (which wrongful termination by definition is). Also, because they operate their practice as a general partnership, both Dr. Stanley and Dr. Jane are as financially responsible to Martha as is Dr. Steve. Thus, Dr. Stanley's personal savings are completely vulnerable to the lawsuit threat. Without prior asset protection planning, Dr. Stanley could lose hundreds of thousands of dollars of his home equity or mutual funds to Martha's lawsuit, if it is successful. While he could then sue Dr. Steve for reimbursement, how attractive does this option seem?

A wrongful termination case such as this is only one example—the same principles would apply for any non-malpractice claim which malpractice insurance would not cover or for malpractice claims in excess of coverage limits. The unfortunate part of this hypothetical scenario is that Dr. Stanley could have easily protected himself from this and other lawsuit threats by using simple inexpensive asset protection strategies. First, to insulate himself from claims against his partners, Stanley could have established a professional corporation to be the partner in the medical partnership. Rather than Dr. Stanley personally being the partner, his professional corporation would be the

partner. This structure would shield Dr. Stanley's personal wealth from all claims against the partnership, other than those arising from his behavior.

Second, to protect his rental real estate, Dr. Stanley should own the properties through one or more limited liability companies (LLCs) or family limited partnerships (FLPs), designed specifically for asset protection. This way, the real estate would be protected from any lawsuit against Dr. Stanley professionally or personally, as well as any claim against his wife or against the couple together.

To safeguard the funds, Dr. Stanley could again use a separate FLP or LLC, as above. Even more effective is to use an offshore entity, such as a Nevis LLC to own the funds. Nevis is a small nation in the Caribbean. While it is unknown to many physicians and the general public, it is widely used among asset protection attorneys because of its favorable laws. This is chiefly due to the fact that the country has excellent LLC legislation, based on the state of Delaware's LLC statutes, which are extremely beneficial for LLC owners. In essence, the physician sets up a Nevis LLC and the LLC owns stable investments out of the U.S., including funds managed by internationally known mutual funds (i.e. Oppenheimer) or insurance companies (i.e. Skandia). In this way, the physician enjoys stable investment security along with the best of offshore asset protection. The physician benefits from the practical difficulty for creditors of attacking the funds domiciled in a foreign jurisdiction. To enjoy tax benefits as well, the LLC also might be combined with a captive insurance company. Congress has given certain captive insurance companies significant tax benefits (including full tax exempt status), which physicians can take advantage of in the right circumstances. (Read more about captive insurance companies in the March/April issue of *UO*.)

Why Physicians Are Particularly in Need

Does asset protection sound appealing to you? It should. Physicians are among the leading candidates to benefit from asset protection planning—along with other professionals, small business owners, real estate developers/owners, and the conspicuously wealthy. Like these other groups, physicians in general are perceived as “deep pockets.” As such they are attractive lawsuit targets who can afford to pay ridiculous jury awards or expensive settlements.

Like most deep pockets, physicians probably have much of their wealth exposed to the lawsuit threat. Physicians often have the misconception that malpractice insurance adequately covers their personal savings from most lawsuit threats. Malpractice is only one of many types of claims that can be brought against doctors, either in their practice or outside of professional duties.

There are a great many dangers which are typically not covered by malpractice insurance. All of a physician's personal wealth could be vulnerable if he is hit with any of these lawsuits: allegations of HCFA violations, claims for race, age, or gender discrimination, wrongful termination proceedings (as demonstrated above), personal injuries at the practice premises, negligent handling of the practice pension fund, claims arising out of managed care contracts, and others. Even ordinary contract disputes or delinquent debts can turn into lawsuits, and malpractice coverage provides no shield whatsoever.

Further, the list of non-malpractice lawsuits above does not even include claims against a doctor personally, which are completely removed from one's practice, such as those (1) from car or boating accidents, (2) by tenants of any investment properties, (3) arising out of outside businesses, or (4) from house guests or neighbors. These lawsuits threaten a physician's practice equity and personal savings as well.

While you can purchase insurance in an

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attempt to protect against these risks, premiums are often expensive and many claims are excluded in the policies' fine print.

Further, as jury awards continue to escalate, even reasonable coverage limits can leave you vulnerable to a major financial hit. For these reasons and others, relying solely on insurance to protect your practice and savings is both expensive and risky. The better strategy: Shield your practice and savings using an asset protection plan and enjoy superior lawsuit and creditor protection, while savings on taxes as well.

In today's world of risk management and defensive medicine, asset protection and the practice of medicine should go hand in hand. It is only a matter of time until physicians realize the benefits they can enjoy by establishing asset protection plans. It is a wise move towards the goals of a secure practice and a promising financial future. ■

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