EisnerAmper

Practice Strategies

A Newsletter for Healthcare Professionals

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The Deep-Pocketed Defendant

How Insulated Are Your Assets?

With so many litigation horror stories these days, you can't really blame healthcare professionals for being a bit paranoid. Consider these possible scenarios:

• An OB/GYN is successfully sued in a "bad baby" case. The $4 million judgment tops her $2.5 million malpractice coverage, and the plaintiff's attorney quickly slaps a lien on $1.5 million of equity in her home.

• A practice office manager prevails in her wrongful termination lawsuit when it becomes clear that her firing was in retaliation for spurning the unwelcome advances of a partner. Now all of the practice owners are on the hook for damages

With stories like this, it's no wonder physicians lose sleep wondering when the process server will show up at their doorstep.

It's Nothing Personal

The simple reality is that litigants — whether a divorce attorney or a litigious ex-employee — search for defendants who can pay. The scary part is that it's not all that hard to find out what is in your practice's pockets.

Utilizing a network of publicly available sources and entirely legal techniques, attorneys can map out your assets and income. Even when no assets are found, physicians are often targeted due to their capacity to earn income.

Asset Protection 101

Asset protection is based on a simple concept: disassociating you from your assets and income sources. This is typically achieved by shifting income and assets away from the professional practice, where they are vulnerable, and toward another entity, which is privately controlled.

In the case of personal assets such as land, cars, planes and brokerage accounts, a variety of asset-shifting strategies can be employed to either isolate these assets from hostile creditors or at least make them less appealing to go after. (See page 3 for more details.)

Different assets have different levels of risk attached to them. So the first step is to determine the risk your assets face of being seized through any of the following methods:

Office lawsuits — There are plenty of potential lawsuits lurking around your practice, including:

- Sexual harassment
- Slip-and-fall
- Wrongful termination
- Breach of contract

Malpractice —Malpractice actions (rightfully or wrongfully) are brought every day. Depending on the case and the jury, a judgment may well exceed your malpractice coverage.

Practice real estate — If you own a medical office building in your name, a victorious plaintiff could claim it.

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Exit Strategies

How to Prepare for a Retiring Physician

Here's an eye-opening demographic fact: A startling one-in-four doctors will reach retirement age in the next five years.

Just as noteworthy, many mid- and late-career physicians are not interested in hanging in there to attain Marcus Welby status. In research commissioned by The Physicians Foundation, 39 percent of physicians surveyed say they are stepping up their retirement plans due to changes in the healthcare system.

That means the chances are good that a partner could be retiring from your practice in the foreseeable future. Ideally, an exit strategy for departing physicians is spelled out in the partnership agreement or employment contract. Some practices go as far as negotiating a formal separation agreement with departing physicians that clarifies the terms of departure, including the settlement of any money owed.

Make It a Smooth Move

At the very least, you'll want to take some steps to minimize disruption to the practice. As soon as a retiring physician submits notice, consider creating a transition plan that addresses these key areas:

• **Payout** — As a group, determine whether you will be offering a buyout to the retiring partner or paying out a percentage of his or her final salary. This can be done either in a lump sum or via installments over time. The goal is to fairly compensate the retiring physician while easing the financial burden on the practice.

For example, the practice might agree to a slightly larger percentage of salary in a lump sum versus sharing ongoing practice profits over several years.

• **Patients** — Beyond properly notifying patients of a departing physician, the practice will need to establish continuity of care so that patients don't feel abandoned. The reality is that patients can become rattled when they learn that they will need to "start over" with an unfamiliar physician.

The departing physician and/or practice should send a letter notifying patients of the change and offering to provide continuing care or transfer records to another provider. The key is to help patients understand why the transition is happening and how it will impact their care.

• **Contracts** — Review any legal agreements that the retiring physician is party to. These may include equipment and building leases, bank notes and any shareholders' agreement (for practices structured as a corporation) or operating agreement (for LLCs).

• **Third parties** — Your state licensing board, the DEA, third-party payers and your malpractice carrier will all need to be notified of the change in status. While the individual doctor may do some of this legwork, it's ultimately the practice's responsibility to make sure that everyone is properly notified.

• **Malpractice coverage** —"Tail coverage" may be necessary to cover any claims filed against a retired physician for treatment provided while employed at the practice (especially if he or she has previously been insured on a "claims made" basis). The employment or shareholders' agreement should spell out exactly who is responsible for procuring the coverage, and the party securing the coverage should provide a certificate of insurance to the other party.

• **Other providers** — Switching patients to other physicians in the group is certainly an option if the practice has the capacity. But if you're planning to replace a retiring physician, consider whether you'll need to bring in a locum tenens or tap a local physician to cover until you are able to recruit a new provider.

• **Patient records** — If the departing physician's patients will be seen by others in the group, patient records will likely be maintained by the practice. Note that patient lists, charts and other demographic information remain with the practice, not the retiring physician.

• **IT issues** — A physician's departure also requires dotting the I's and crossing the T's with regard to IT systems. This includes changing passwords and login permissions for the practice's scheduling, billing and/or Electronic Medical Record (EMR) software.

The only thing that's constant is change. So make sure your practice is well prepared for the changing of the guard that will occur as physicians retire. ■

Our experienced accounting professionals can review your practice partnership agreements and buy-sell agreements, as well as provide an independent evaluation of practice worth. Call us to schedule an appointment.

How to Protect Your Assets

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Divorce — Many doctors transfer assets to a spouse as part of an asset-protection plan. However, doing so may place you in a vulnerable position if the marriage fails.

Segregate Practice Assets

In the case of a medical practice, separate entities may be formed to segregate real estate — such as a medical office building — and expensive equipment owned by the practice. Legally, an LLC can own real estate (like an office building) and rent it back to the medical practice. This shields the building from any liability that arises outside of the LLC.

Beyond physical assets, it's also critical to protect your practice's accounts receivable. A wrongful act of a single partner can actually threaten all of the AR in a typical practice. Protection strategies include taking out a loan collateralized by the AR or purchasing a cash-value life insurance policy funded by the proceeds of the AR. In the case of a loan, the bank will have first lien against the receivables, protecting them from creditors and litigators.

Protect Personal Assets

Once the practice itself is protected, the personal assets of individual physicians in the practice should be shielded. Here, one or more LLCs can be established, or physicians can opt for an irrevocable trust to hold the assets.

Also, qualified retirement plans such as 401(k)s, SEPs and Simple IRAs are generally off limits to creditors. The key is to make sure that such plans fully comply with federal Employee Retirement Income Security Act (ERISA) regulations. Note, however, that retirement plan assets may be vulnerable in situations of divorce.

Another advanced strategy involves forming a captive insurance company. Here, practice owners create a licensed insurance company to insure against potential liabilities of the practice. For further protection, a trust may be established to own the company.

Before the Lightning Strikes

A final key component of asset protection is the need to create your plan before any claim against your assets is made or litigation is threatened.

In general, the courts will not recognize protective moves made in anticipation of litigation or action by creditors. The key is to have a plan in place *before* the lighting strikes. ■

Our accounting professionals have the training and the tools to help you create an effective shield around your personal and practice assets. Call us to learn more.

Asset Protection Strategies

Start with the Basics

Sure, there are plenty of exotic (and expensive) strategies available to protect your assets. But advanced strategies like offshore trusts should be employed only *after* you've covered the basics. The following tried-and-true strategies are a good first step in putting your assets safely out of reach of creditors:

Asset shifting — Shifting assets to less-vulnerable family members is a good first step. Jointly held property is generally unappealing to creditors, who know they'll have to share it with a spouse or children who have not been sued.

Ownership structure — You'll also want to move income and assets away from a medical practice, where they are vulnerable, and toward an entity that is privately controlled (corporations, limited partnerships, LLCs, etc.).

Home titling — Protect what is often your biggest asset — your home— by titling it as tenancy-by-the-entirety ownership. This differs from joint tenancy in that neither spouse can convey his or her interest or force a partition of the property without the other spouse's consent.

Gifting — Another option is to give assets away. For example, you could give your children stock or the deed to your vacation home, or sign your boat over to your brother. Under current gifting limits, you can gift up to $14,000 per person, per year, tax-free.

Trusts — By putting money in an irrevocable trust — which you don't control and can't revoke — the money isn't considered to be yours any more and won't be available to creditors. By transferring ownership of assets from your name to the name of your trust, you can also reduce estate taxes and probate expenses, provide income for loved ones, and protect your assets when long-term care is required.

The threats to your hard-earned assets are real. Our professionals can provide valuable guidance on protecting your personal and practice assets.

Four Metrics You Should Be Monitoring

Reviewing end-of-quarter financials is one thing, but there are some meaningful metrics your practice should be looking at on a daily or weekly basis. These include:

***Daily:* Cash Receipts** — Revenue is the lifeblood of the practice. The money that is collected and deposited should be monitored daily, both as an indicator of financial health and as a deterrent against fraud and embezzlement.

***Daily:* Patient appointments** — Track the number of available appointment slots daily. Unfilled slots are essentially money left on the table. Using this data, you can tighten up on operational efficiencies while also helping keep charge volume consistent. At the same time, track rates of cancellations, no-shows and doctor-ordered bumps. These numbers will help point out opportunities to optimize your schedule and improve capacity management.

***Weekly:* Charges** — By extension, charges drive cash receipts. Watch for fluctuations in charges, which could signal anything from poor coding and charge entry to simply having a physician away on vacation.

***Weekly:* Payables** — Keep tabs on practice overhead by monitoring unpaid invoices and the amount of cash available to cover those expenses. Weekly monitoring allows you to get a handle on practice cash flow and helps ensure you have sufficient funds on hand to cover your bills.

There are also a number of different key performance indicators (or KPIs) you can be monitoring on a regular basis, including accounts receivable aging and your payer mix and performance. The key is to develop a dashboard of KPIs based on your unique challenges, opportunities and strategic goals.

Finally, be sure to take action. Don't allow KPIs to be another report that sits in your inbox. Use the data to uncover areas of underperformance and take actionable steps to improve your practice's performance and profitability. ■

Please contact our office for help establishing dashboards and understanding what key performance indicators mean for your practice.