



For Doctors' Eyes Only

How to Protect Your

Hard-Earned Assets



(800)800-9191

(818)906-0126

info@AssetProtectionLaw.com

I'd like to ask you three questions.

How well are your personal and practice assets protected from lawsuit or divorce?

Is your practice effectively structured and have you considered how you will be bought out at retirement?

What steps have you taken to minimize taxes?

You dedicate your time to your patients and to keeping up with advances in your field. This leaves little time for figuring out answers to vital questions about the business side of your practice.

To be successful, a physician must understand both the profession of medicine and the business of medicine.

The purpose of this short booklet is to explore those non-medical issues which affect you personally and your practice financially. Once understood and acted on, these “business-of-medicine” factors will:

- **protect your practice and your personal assets from lawsuit,**
- permit you to structure your practice to minimize liability and maximize efficiency,
- increase your retirement savings,
- assure you that a lawsuit *will not deprive you of a well-deserved retirement*
- **reduce your taxes,** and
- protect your family in the event of your premature death.

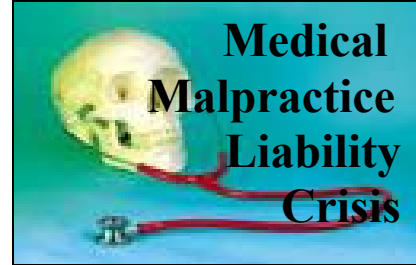
The first step to wealth preservation is to understand the threats that exist to your practice, your assets, your family and your retirement. These include:

Outside Threats such as taxes, lawsuits, predatory claims, death, and investment downturns; and

Internal Threats such as squabbling with medical partners, divorce, premature death and poor choice of current advisors.

Why You Need Personal and Practice Asset Protection

If you were to ask physicians for their top practice concerns, you would find that many would answer “**the rising cost of malpractice insurance**” and concern with “**malpractice lawsuits.**” The median jury award is in excess of \$5 million and you have statistically speaking a one in four chance of being sued this year. The dream of our parents was to work hard to achieve the good life. For many, the new American dream is to play the lawsuit lottery to have a chance at winning the “big one.” The lawsuit is the new “get rich quick” dream.



US tort law is based on the foundation that we do not want to place the poor at a disadvantage by having a law whereby they pay court cost restitution to doctors should they lose a case. While this is noble, the result is a culture where lawsuits are too easily brought and a legal system that invites and rewards abuse by lawyers and their clients alike.

Frivolous lawsuits are filed in record numbers and show no signs of letting up. In many instances, these lawsuits are nothing short of legalized extortion.

It's one thing to protect someone's rights; it's another to make a mockery of the legal system. Unscrupulous lawyers have meticulously manipulated a litigation crazed mentality among our citizenry and America is certainly not the better for it. We look to sue first and ask questions later. Personal responsibility, once the cornerstone building block of our great nation, is being eroded and replaced by a “sue unto others before they sue unto you” mindset.

Advertisement From the Internet

Medical Malpractice Referral Network - We are a collection of Medical Malpractice Attorneys across the Nation who stand ready to protect the rights of innocent victims of Medical Malpractice, whether caused by a doctor, hospital, nursing home or a medicine. Some of our Attorneys even have medical degrees to help them better understand complex medical issues.

We offer each malpractice victim a **Contingency Fee plan** so that your access to justice is not compromised or dependent upon your finances. We provide all up front costs associated with your medical malpractice case and we charge only at the successful conclusion of your case. We take a solemn pledge to pursue your case aggressively to its conclusion.



Why Malpractice Insurance Isn't Enough

A physician's best defense has traditionally been malpractice insurance. With malpractice costs rising at an alarming rate, we need a better solution. Malpractice insurance protects you if you lose a lawsuit. It also provides a team of defense lawyers...to defend you.

However, you would be ill-advised to rely solely on malpractice insurance. Here's why:

Having a high amount of malpractice insurance makes suing you more lucrative to the lawyer and you more attractive for a lawsuit. So, paradoxically, by purchasing more insurance, you make yourself more vulnerable to lawsuits – and more attractive for larger lawsuits.

Lawyers have their cross-hairs on you when you have a lot of malpractice insurance. More often than you'd think, lawyers do not want to take the time and trouble to go to trial. Instead, they try to negotiate a settlement with the insurance company. Because defending a baseless claim will still require large legal costs, the insurance company has an incentive to settle claims. This process drives up the cost of malpractice insurance and places you on the database (see the box below).



CALIFORNIA BUSINESS AND PROFESSIONS CODE §800

- (a) The Medical and Dental Board shall maintain a central file of the names of persons who hold a license. Said file shall provide a historical record for each licensee with respect to the following:
- (1) Any conviction of a crime that constitutes unprofessional conduct.
 - (2) Any judgment or settlement requiring the licensee or insurer to pay damages in excess of three thousand dollars for any claim proximately caused by the licensee's negligence, error or omission in practice.

Malpractice insurance remains a part of the solution, but we recommend some additional tools.

Example: What would happen if you lowered your malpractice coverage?

You'd be inviting the chances of personal and professional ruin. Perhaps, but how attractive are you going to be to your friend the lawyer if you have low malpractice coverage limits and, more importantly, have no other assets to go after?

Answer: Suing you will not be economically viable.

Lawyers will look for something (or someone) more lucrative. This approach will protect business and personal assets from creditors of your practice – be they personal injury lawyers or other predators. This is, of course, our objective.

How These 4 Myths Can Hurt Your Financial Well-Being

Against this huge threat from malpractice lawsuits, many of my physician clients rely on certain myths:

1. My Corporation Protects Me.

Professional corporations do not protect against malpractice.

2. I Am Insured!

As the old joke goes, you are insured if you fall off a 100 story building; however, if you hit the ground there is a policy exclusion.

3. My Living Trust Provides Asset Protection.

Assets in a self-settled (self setup) revocable trust are not protected.

Even an irrevocable trust in the majority of states (including California) will not provide you protection. Properly drafted (which they rarely are), both the revocable living trust and the irrevocable pre-inheritance trust can be excellent asset, divorce and estate tax planning tools which you can provide for your children (see 1(a) and 1(b), below).

4. I Am a Prudent Careful Practitioner. I Will Never Malpractice.

Malpractice may have nothing to do with your innocence.

“Deep pocket” wealth will still make you a significant lawsuit target as a “lottery ticket” for some predator and his 40 percent contingency fee lawyer. Although you are guaranteed a jury of your peers, do you really expect 12 physicians to judge your case?



The Lawsuit: Who Will Be Sued?

An attorney brings a malpractice lawsuit on a “contingency fee” basis. He is paid on a percentage of what he extracts from you. Therefore, as a businessman, before he undertakes the work of filing a lawsuit against you, he wants to know how much he can collect if he wins. If you have few assets, you will not be sued.

Are you worth suing?

Previously, the answer was an expensive and time consuming matter involving the search for separate scattered pieces of information found in the dusty files of county records, county recorders, banks, etc. around the country.

Today, a single computer inquiry via the services of an information broker will hunt through billions of documents nationwide to **find not only information in public records but also information about you which you thought private** such as financial accounts (account number and balances).



Something Stinks

Although Nevada corporations are touted as keeping ownership confidential, if you wish to control the Nevada corporation's bank account, the bank will require your name and social security number. This information is "somehow" available to information brokers. To obtain "privacy", please refer to the "Privacy Trust", at 1(d), below).

A successful asset protection plan eliminates the threat of most lawsuits by removing the predator's economic incentive. There is nothing an attorney likes less than winning a case and then not getting paid. If you do not have assets, you cannot be intimidated to settle frivolous or real lawsuits.



The foundation of every lawsuit is a defendant who can or insurance that can pay.

Example: Dr. Joraldi prescribed a drug, which was clearly labeled with the warning not to take it and drive. The patient ignored the warning and caused a serious accident. The lawyer argued the doctor should have known the patient would drive. The jury returned an over \$5 million award which malpractice insurance didn't cover. This was not a claim by the patient for malpractice, but rather a claim by someone injured by the patient.

How can you make yourself "not worth suing"?

ASSET PROTECTION TECHNIQUES EFFECTIVE FOR PHYSICIANS

Separately or in combination, the following are the basic techniques I use. They provide four principal benefits:

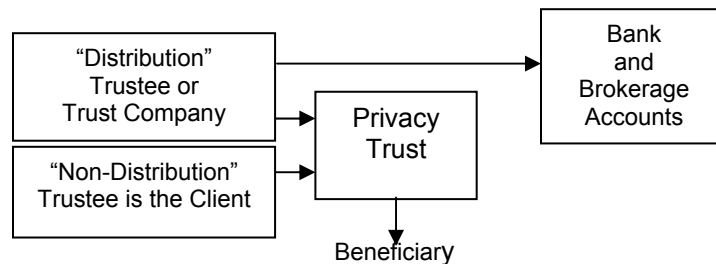
- 1. They protect my physician clients' personal, practice and retirement assets,**
- 2. The physician's or the physician's group practice is both asset protected and structured for maximum efficiency.**
- 3. They permit my physicians to grow their wealth in a conservative asset-protected fashion, and**
- 4. They protect their families from the physician's untimely demise.**

I will introduce the technique and then give examples of how the technique can benefit the physician. These techniques are basic and will not protect every physician. Only after an examination (consultation) can I understand your unique situation and prescribe (recommend) those basic and perhaps advanced techniques which will most benefit you.

- 1. The Flexible-Inflexible Trust.** In olden times monks, having taken vows of poverty, were embarrassed by their monasteries' huge land holdings. To resolve this problem, they asked the king (as the trustee) to hold legal title to their land and to allow them as settlors (those who set up the trust) and beneficiaries (those who benefit from the trust) to use (as equitable interest holders) the land. The written understanding between them was called a trust.

The trust is unmatched as a legal strategy that can be designed in limitless ways; restricted only by the skill and imagination of the parties. A non-self settled trust (a trust setup for you by another person) is the strongest asset protection technique available domestically.

- a. Living Trust. As the living trust is revocable and self-settled, it provides no asset protection for the person (settlor-you) who sets it up and places assets into it. However, it does, if funded properly (real estate transferred into it by recorded deed, brokerage and bank accounts properly retitled), provide estate tax and probate avoidance. Structured properly (which living trusts are almost universally not) they can provide unsurpassed asset protection, divorce protection and hundreds of thousands of dollars in estate tax benefits, at your death, for your children and beneficiaries.
- b. Irrevocable Trusts. In California and in most states these provide no asset protection for the people who set them up and transfer assets to them for their benefit. However, via a "Pre-inheritance Trust" they can immediately provide unsurpassed asset protection, divorce protection and tax benefits for their children and other beneficiaries.
- c. By utilizing an Irrevocable Life Insurance Trust (ILIT) to keep insurance free of the almost 50 percent estate tax, you in effect double the protection your family gets from your life insurance, for no extra cost. In addition, ILITs protect your policy's cash value from your, your spouse's and your children's creditors. If your generation skipping transfer tax (GSTT) exemption is applied to your ILIT, you could forever exempt millions of dollars from estate taxation. The policy's cash value can be accessed by certain advanced techniques.
- d. Privacy Trusts. This trust successfully conceals ownership of bank and brokerage accounts, home, rental property and other assets. This asset protection is extremely effective. Since banks and other financial firms are bad at keeping secrets both within their affiliated companies and from information brokers, you may want to tell them nothing. This can be accomplished as follows:



The distribution trustee (who can be a good friend) or a professional trust company is the signatory on the bank and brokerage accounts. You control the investments, but you do not need to be identified on the bank or brokerage account records

An Inheritance In Trust Is More Valuable Than Cash. Because of lack of understanding (which but for the overall low level of trust practice in my

profession, I would call malpractice), attorneys almost universally counsel clients to distribute trust assets to their children at certain ages. By doing so, your children lose the protection of the most powerful asset protection tool available domestically -- the non self-settled (setup) trust - that is a trust setup by you for your children, not setup by them (self-settled).

The greatest planning gift you can give your children is to set them up in a non self-settled trust which will protect their assets from creditors, predators, divorcing spouses, estate taxation and provide them with a vehicle through which to run their business or professional lives.

Many of my clients who understand the power of this technique use it by setting up for their children a “*Pre-Inheritance Trust*,” the most powerful asset protection tool which you can setup for your children NOW.

When the trust distributes assets, your children lose their asset protection and the assets are exposed to creditors and divorcing spouses. To the extent a parent allocated their Generation Skipping Tax exemption amount to the trust, an allocation which provides that the assets would never again be subject to the estate tax, that benefit is also lost.

For further information, or if you would like a copy of my article “*Family Tree of Life-How to use a ‘flexible inflexible trust’ to control and protect assets*” which appeared in the June, 2005 Investment Advisor Journal, please call my office at (818)906-0126.

2. Family Limited Partnerships (FLP) and Limited Liability Companies (LLC).

- a. Control. FLPs and LLCs have two levels of ownership, the active level (called General Partners and Managing Members respectively) and the passive level, the limited partners and members. A one percent General Partner or Managing Member controls their respective entity. You can give away 99 percent of the entity and yet maintain total control.
- b. FLP/LLC Funding. The major difference between the two entities is that the Managing Member is shielded from the LLC’s liability and a General Partner is responsible for the FLP’s liabilities. There are few cases describing how the court will treat LLCs; however, the FLP’s protection is well documented. The LLC, because of its total liability insulation should be funded with “dangerous” assets (those that can cause lawsuits against the LLC such as rental real estate, interests in closely held corporations, etc.). The FLP, has far more case law than the LLC, however, because of its lack of total insulation for its General Partner. It should be funded with “safe” assets (CDs, stocks, bonds, etc.).

In many plans multiple entities will be setup. All eggs are not placed in one basket. Dangerous assets are segregated from safe assets, and entities are setup in multiple states to cause creditors additional difficulties.

- c. Consequences of a Creditor Attack. Provided your FLP/LLC contains certain key protective provisions and is setup in the appropriate state, a creditor who attaches (liens or charges) your interests, cannot reach inside the FLP/LLC and get his hands on their assets, nor can he take over management control. However, the IRS may tax him on his percentage share of the FLP/LLCs earnings, whether they are distributed, or not. A 1977 IRS Ruling may force the creditor to pay tax on income he may never receive.
- d. Protect and Equity Strip Assets. FLPs/LLCs can also be used for equity stripping (removing your equity from the asset). In our example below, see “8. Protecting Your Real Estate and Equipment and Produce a Profit.” after bank financing, our real estate was left with \$200,000 of equity. As part of capitalizing our FLP/LLC, we could give it our \$200,000 promissory note. The FLP/LLC, as an entity independent of us and to ensure we make payment on our note, could place a \$200,000 lien on our real estate, effectively removing all remaining equity.

If the note we gave our FLP/LLC negatively amortized (example: seven percent face rate, three percent pay rate), we would owe more at the end of each year to our entity therefore adding more debt to the property to shield equity, which increased due to appreciation. Note that a second FLP/LLC could equity strip real estate owned by the first FLP/LLC. If in some unusual case, the creditor could get at the first FLP’s/LLC’s real estate, the equity would have been removed.

- e. Equity Stripping by Premium Financing – Traditionally, a method of purchasing large amounts of life insurance it can also have the benefit of encumbering and thereby asset protecting real estate, stock accounts and other valuable assets, thus denying their benefit to creditors.

Properly structured, you will still enjoy the real estate’s appreciation and now will also benefit by having the encumbered equity not only protected but growing inside a policy tax-free while you write-off the interest on the encumbering lien. See 8, below.

- f. Income and Estate Tax Savings. By giving your 14-year or older children FLP/LLC interests, they will receive their proportionate share of income in their lower tax bracket. If college costs \$25,000 a year, you must earn about \$45,000 pre-tax to provide their tuition. If the child received \$30,000 from the FLP/LLC less their 15 percent tax the child would likewise have \$25,000, a year’s college tuition, quite a savings. If you have two children and eight years of undergraduate and graduate studies to support and use this technique, you need to earn \$240,000 less to provide your children with their tuition.

Please note that cash does not have to be distributed to your children for you to benefit from their lower bracket. You may retain the above described \$30,000 in the FLP or LLC for your use and give your children just enough to pay their taxes, thereby using their unused low tax brackets and keeping the tax savings for your benefit.



Properly structured FLP/LLC interests can be discounted about 35 percent for lack of marketability and lack of control or minority ownership. This can save a huge amount of estate tax.

In addition, both entities can “freeze” your estate. Example: You place a \$3 million parcel of real estate into your FLP/LLC and transfer a 99 percent interest to your children. With a 33 1/3 percent discount applied to the 99 percent interest, your and your spouse’s \$2 million gift tax exclusion will negate gift tax. With a one percent interest, you totally control the FLP/LLC and the real estate. If 30 years later the asset is worth \$15 million, it is not in your estate, because you previously gave it to your children.

3. **Foreign Asset Protection Trust (FAPT) Planning.** A recent U.S. Department of Treasury report stated that litigation concerns are causing the FAPT market to “explode.” They estimate that “tens of billions of dollars” are currently in these trusts. An article in the January 1996 *American Bar Association Journal* stated that lawyers are increasingly utilizing FAPTs to protect themselves. “*I don’t want someone doing to me what I do to them all day in court.*”

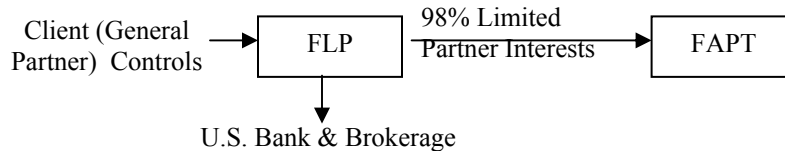
The FAPT is used in manners similar to domestic trusts (e.g., by themselves, or owning FLPs and LLCs, etc.); however, they enjoy several key asset protection advantages over their domestic counterparts:

- i. Most FAPT jurisdictions allow full asset protection to the person who sets up the FAPT (i.e. self-settled trusts). Although several states have recently enacted laws which permit this, the state laws are as yet untested and most certainly will not override federal law, (such as the bankruptcy regulations).
- ii. U.S. lawyers are not familiar with the laws in these countries, are not admitted to practice in these countries and these countries do not allow contingent fee arrangements. They do require the lawsuit loser to pay all expenses.

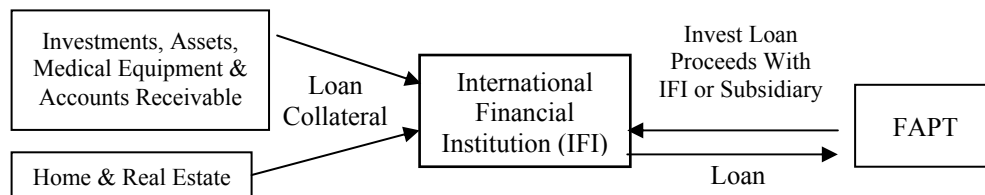
For these and other reasons, these jurisdictions afford superb asset protection.

- a. **Technique-Collapsing Bridge.** For those who desire the protection afforded by the FAPT but are reluctant to give up control of their wealth to a foreign trustee and place assets in foreign institutions, the collapsing and withdrawing bridge techniques provide a solution. In the collapsing bridge structure, a domestic FLP is setup with the client as the General Partner (the client controls) and the FLP’s assets are placed into domestic institutions. Example: you can keep your banking and brokerage relationship intact-you need only sign off as the general partner or managing member of your FLP or LLC. The FLP is drafted to allow a super-majority of the partnership units to vote to dissolve the partnership and 98 percent of these units are placed into the FAPT. When trouble comes, (provided you do not object) the foreign trustee liquidates the FLP and 98 percent of its assets are

moved into protected status offshore. As you many years prior to lawsuit transferred your assets into domestic protected status, and when difficulty arose the foreign trustee (not you) moved your assets offshore, you can not be accused of transferring assets to “hinder, delay or defraud creditors”. You can not be accused of making a “fraudulent transfer”.



- b. Technique-Equity Strip Shield. An international equity strip can shield the equity in your personal and practice assets by creating a bank lien on them. I have used this sophisticated technique both by itself or to doubly protect doctors’ assets by first placing them into domestic protection strategies and then removing their equity internationally.

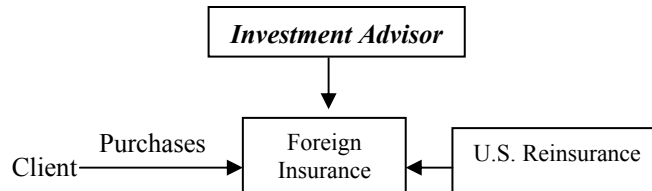


- c. Tax Planning. Let me clear up a popular misconception of both clients and many lawyers. The FAPT is not exactly tax neutral. Whereas the FAPT is income tax-neutral during your lifetime, upon your (the grantor’s) death, they become non-grantor trusts and sophisticated drafting can provide considerable income tax benefits for your heirs.

For further information, or if you would like a copy of my article “*The Foreign Trust Tax Solution*” which appeared in the September, 2005 Investment Advisor Journal, please call my office at (818)906-0126.

4. Private Placement Life Insurance. You can invest in foreign cash value life insurance. The major advantage of foreign versus domestic insurance companies is that numerous foreign companies offer “private placement” insurance to the smaller investor. That is, you can have your own investment advisor appointed to manage your policy’s cash value investment portfolio. In addition, as with all life insurance, the policy’s cash value grows on a tax-free basis. You can borrow the cash value on a tax advantageous basis and your “insurance brokerage account” can be paid to your heirs without estate or income taxes being due. As with the Tax Planning mentioned in 3(c) above, further sophisticated drafting can take advantage of considerable income tax benefits for your heirs.

To alleviate the concern that many U.S. persons may have regarding the security afforded them by utilizing a foreign insurance company, many of these companies will reinsure essentially 100 percent of any risk they have via a U.S. reinsurance company.



5. **Protecting Your Family Home.** In California your home is protected by a “homestead” which ranges from \$50,000 if you are single to \$75,000 if you are married to \$100,000 if you are over 65. With today’s real estate prices this may not be enough to protect your garage. The best way to protect your real estate is by stripping equity out of it (the “equity strip shield”), see 2(d) above and 8 below.
6. **Divorce.** Over 50 percent of California marriages end in divorce. If not yours, if you have two children, statistically one of them.

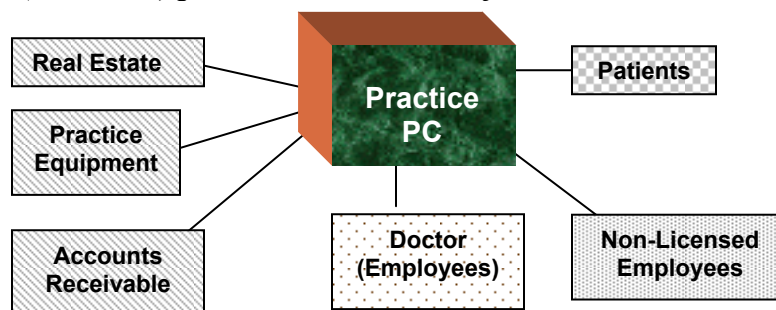
Example: A person marries. Over the years, that person’s father transfers majority control of the family business to him/her. Upon divorce, the spouse gets a large block of the stock and forces sale of the family business.

Perhaps a pre- or post-marital agreement would have prevented this. Perhaps dad should have given his stock via a flexible-inflexible trust arrangement (see #1 above). This would have protected the family business without need to involve or even obtain consent from the son or daughter-in-law. **Divorce protection is essential to a well thought out wealth protection plan.**

STRUCTURING AND PROTECTING YOUR PRACTICE

7. **Structuring Your Medical Practice.**

The typical (and worst) practice structure is as follows:



The Professional Corporation (PC) owns all practice assets and employs the professional and non-professionals employees. Everything is at risk to any doctor’s professional malpractice, employee’s non-professional negligence and real estate

liability claims as well as every claim a lawyer can bring against doctors, employees, practice equipment or real estate for injury.

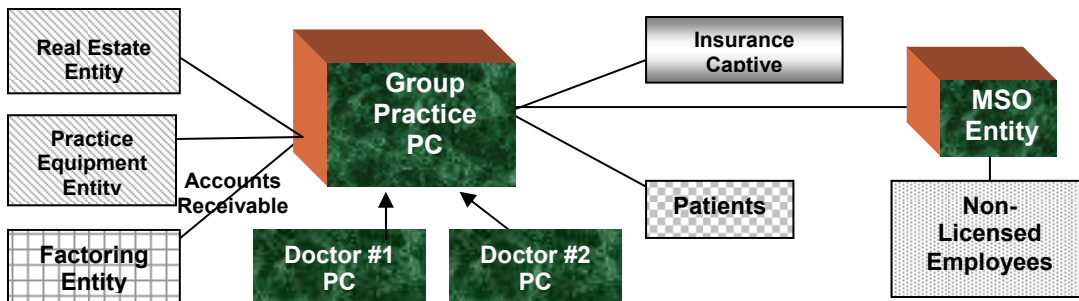


Equally bad is that all decisions must be made at the PC level, meaning each physician's needs are captive to a vote of the "partners".

From an asset protection and decision making process this structure is quite poor. From a tax point of view, flexibility is lacking. Considerable improvements can be achieved.

A professional corporation will not shield the physician from professional negligence claims. The professional corporation is useful in protecting the physician from liability from other claims, such as employment practices, claims made by staff, certain toxic materials claims, etc.

An ideal practice structure might look like this:



Here, each individual doctor can decide at his individual PC level his own advanced planning options and compensation arrangements without having to get Group level approval. Over my years of practice I have found that by allowing individual physicians to make their own decisions, this structure removes the frustration over having to always obtain group approval and mitigates the split up of successful group practices.

- a. The Doctor's PC shields each individual doctor from the acts or omissions of other doctors and other employees.
- b. The Management Service Organization (MSO) - Run your practice more efficiently by dividing practice functions between your PC and the MSO. The MSO is the employer for all non-professional employees and provides all non-professional (billing, collection, front-office, etc.) services to the group. This eliminates your wasted time in managing your practice and allows you to concentrate on medicine. It protects a considerable amount of practice income from malpractice claims and may allow you to do more efficient retirement planning by limiting the number of eligible employees in your PC.

- c. Equipment Leasing – Many practices require expensive equipment. If the equipment is owned by the practice or worse, individually, their equity is exposed to creditors. An equipment leasing entity (FLP/LLC or trust) can hold equipment used in the practice, which it then leases to the practice. Every dollar paid to the leasing entity is a dollar removed from the PC and the potential reach of creditors. If, for instance the entity holding the leased equipment is a trust for over 14 year old children, tax savings can also be achieved (see 2(f), above).
- d. Property Leasing – Many physicians own the building where they practice. By separating the building from the practice, you strip assets and rent money from the practice and away from potential creditors.

By creating a leasing entity, injury claims are segregated and the LLC/FLP or Trust which holds the real estate is not answerable for either malpractice of a doctor or an injury caused by any entity other than itself. If the value of the leased asset is substantial, a second entity can strip equity out of the first entity which holds the real estate leaving nothing.

If the Group PC is sued and if the Group was given only a month-to-month lease on its real estate and equipment, these assets can be re-leased to a new Group PC immediately upon loss of a lawsuit. The Group neither loses valuable assets or a valuable practice location. As above, tax savings can also be achieved.

- e. Factoring Entity can protect accounts receivable (ARs). In the alternative ARs may have liens placed on them by a second entity. See 9, below.
- f. Insurance Captive. If the group is large enough to warrant it, they may save malpractice premiums by self-insuring via a Captive. See 10 below.

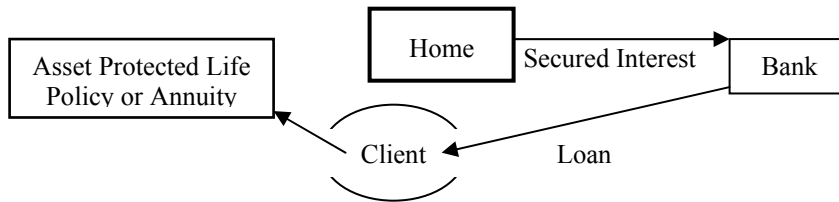
Risk must be and herein has been divided into several self-contained entities. All eggs have not been placed in one basket. Each entity affords powerful asset protection. This is a perfect example of what I call Red to Green planning, in my article *“The Asset Protection Strategist Or Learning To Become a Grand Master”* which appeared in the Spring, 2001 Asset Protection Journal. If you wish a copy, please call my office at (818)906-0126.



8. **Protect Your Real Estate and Equipment and Produce a Profit:**

In today’s low mortgage rate environment, place the largest lien you can against your property. Let’s assume an 80 percent lien against a \$1 million property at 6 percent interest only. \$800,000 of equity is removed from the property and this value is protected by the mortgage. As the interest is deductible, for those in the 45 percent tax bracket the after-tax interest cost is 3.3 percent. If the \$800,000 is invested into an asset protected cash value life insurance policy which guarantees a 5 percent minimum tax-free return, you have: (i) protected your real estate, (ii) earned 1.7 percent on your money, (iii) obtained an immediate multi-million dollar estate for your family and (iv) you will still personally benefit by the property’s appreciation.

If invested into certain equity-indexed products, your gain may be even greater.



The remaining real estate equity can be protected by utilizing the equity strip shielding technique described under #2(d) above or via an international equity strip, See 3(b) above.

If your insurance is properly structured, the policy’s cash value can be accessed via tax-free loans.

Example: Dr. Williams, age 40, owns a \$1 million home with a 7%, \$700,000 mortgage payable \$4,657 per month. As he has had this mortgage for several years only \$3,000 of each payment is tax deductible interest. He is in the 45 percent tax bracket; therefore, his after tax monthly payment is \$3,307. He obtained a new \$900,000 interest only loan at 5 percent payable \$3,750 per month, or \$2,062 per month after tax. He now has \$200,000 cash plus \$1,245 per month extra cash flow.

By placing the \$200,000 plus his monthly savings into an asset protected equity indexed life insurance policy, (i) he still benefits by his home’s appreciation, (ii) his home is fully asset protected (\$1 million market value less 6 percent selling commission less \$75,000 California homestead, less \$900,000 mortgage or negative 35,000 equity (nothing is left for the predator), (iii) the \$200,000 cash value life insurance is growing tax-free at 7 percent a year and is projected to provide him with a very significant tax-free retirement income.

9. **Protecting Your Accounts Receivable (AR).** ARs are typically one of the largest practice asset exposed to creditors. They are also a “non-working” asset; i.e., they do not earn income.

By borrowing against receivables, also known as “factoring,” physicians can strip the ARs value to creditors, while simultaneously leveraging the asset for investment purposes. If factoring is not feasible, you can place a lien against the ARs, similar to the equity stripping debt shield discussed above. For instance entity #1 (perhaps the MSO) could make cash advances to your PC for working capital. These advances could be evidenced by a lien perfected by the filing of a UCC-1 financing statement.

Insurance companies have long been in the business of extending loans against valuable assets so as to secure life insurance premium payments. Known as “premium financing,” these arrangements allow individuals who want to purchase life insurance to access non-working equity in their homes and their ARs. These programs are secured by the life insurance policy itself and whatever valuable property is being put up as collateral (e.g. real estate, equipment and ARs). This premium financing arrangement offers significant creditor deterrence, since the valuable assets are subject to the security interest, and the security interest will not be released until the life insurance policy pays off – and few creditors want to wait until somebody dies.

These programs are designed to create a “win-win” situation for both the life insurance company and the physician desiring asset protection. By selling the ARs to a finance company owned by the life insurance company, the otherwise dead equity in the ARs is used to fund the purchase of life insurance which then grows on a tax-free asset-protected basis.

10. **Going “Bare” or Using Captive Insurance Companies (CIC).** The proper use of a CIC can be very powerful. The CIC can shield assets from creditors as well as anyone going after the CIC’s funds, substantially reduce malpractice insurance needs and, if applicable, lower a doctor’s divorce payments. A CIC can be used to insure business and professional risks such as professional liability, wrongful termination, sexual harassment, business interruption, employer liability, Medicare or insurance fraud, personal risks and most other risk with which you are concerned. If properly structured the CIC can be quite economically and tax beneficial. To the extent not used to pay claims, premiums can come back to you when the CIC is terminated in a tax beneficial fashion. You, not the outside insurance company, profit by your low claims history. CICs can be specifically structured to insure against high premium liabilities, which most likely may never occur thereby allowing you to profit even more from your low claims history.

The CIC allows you to customize your policies. *Example: A medical malpractice policy can be designed to pay your legal expenses only.* There is no “pot of gold” for lawyers to go after and you will be afforded legal defense--a better solution than going “bare.”

Caveat: Be sure that the insurance policies issued by your captive can be used for hospital privileges. Also, make sure that the formation costs and ongoing expenses are cost effective and your group is large enough that your captive has enough assets to spread the risk against a run of payouts.

11. **Buy-Sell Agreements.** What happens if you or one of your “partners” die? Will your partner’s family become your new partner? If you die, how will your family be compensated for the value of your practice? What happens if you want to retire or your partner(s) wants to retire? What happens if one of your partners divorces? Will you find that you have a non-compatible new partner?

The best tool to resolve these issues is a life and disability funded buy-sell. This provides the Group with the pre-determined buy-out funds exactly when they need them. The key here is to draft the proper agreement considering the Group’s needs, and tax law requirements, and then fund it with the proper type of insurance.

12. **Retirement Planning and The Trap.** Techniques involving retirement plans, annuities, captive insurance companies and private placement life insurance, among numerous other advanced planning techniques, can protect your assets and provide significant tax benefits. For those who are concerned about their family’s security after their death, and intend to leave a fairly large estate, they need to understand that money in their qualified retirement plans may be taxed at about 70 percent.

- a. **Retirement Planning.** Qualified retirement plans, as O.J. Simpson can attest to, are asset protected. However, because of the 70 percent tax trap and the ability to access qualified plans only after age 59.5, non-qualified plans may be more beneficial. To grow retirement assets, you need to diversify and avoid aggressive investment schemes along the way.

Properly structured IRC Section 412(i) plans, can offer large annual contribution limits as well as guarantee you the retirement income you were planning on.

Section 79 plans in the proper circumstances can be quite useful in creating tax deductions and retirement benefits.

- b. **The Income In Respect of a Decedent (IRD) 70 Percent Tax Nightmare and a Solution.** Qualified retirement plan pay-outs at death are the major IRD item. They are first subject to income then estate tax.

Example: Dr. Maveny has a \$5 million estate and a \$1 million retirement plan. On his death his estate would first pay 46 percent in estate tax on plan assets and then 44 percent in income tax leaving his children 30 percent (\$302,400) of the \$1 million retirement plan inheritance.

Is it worth it to defer income tax now, to convert your plans capital gain into ordinary income and then to subject your family to a 70 percent tax later? The conventional wisdom is wrong. For high net worth physicians a qualified retirement plan can be a tax disaster.

Solution: For the high net worth physician withdraw retirement plan assets now and purchase income and estate tax exempt insurance. This may very

well prove to be far more retirement planning efficient. Additionally, you will not have to have your employees included in this type of non-qualified retirement planning. We would be pleased to illustrate the advantages of this type of planning for you and your family.

- c. Section 529 Tax Advantaged College Savings. If you are concerned about the stock market risks inherent in 529 plans or that you could die before the plan is fully funded, equity-indexed insurance may be a far superior technique for guaranteed funding of your children's education.

13. **Insurance.** Life insurance is the cornerstone of wealth protection planning.

- a. Instant Estate. It provides your family an instant estate. The years invested in your education and career are **instantly protected.**
- b. Tax-Free Withdrawals. Life insurance permits you to withdraw funds prior to age 59.5 and to withdraw them on a tax-free basis.
- c. Asset and Tax Protection. The policy can be asset protected, its cash value grows tax-free and when you die the policy pay-out is income and estate tax-free and is not subject to the 70 percent tax-trap of qualified retirement plans.
- d. Retirement Plan. The cash value of your policy can be structured to serve as a tax-advantaged retirement plan.

Although many of my clients assure me "I do not believe in life insurance," let me assure you, you need not believe in it -- it is not a religion.

Insurance is one of the most powerful planning devices available -- if used correctly. Insurance is the only investment that death cannot interfere with.

- e. Invest Tax Free. To the extent you want to "play the market" variable universal life insurance (VUL) and equity-indexed (EI) policies allow you to do so on a tax and asset protected basis.
- f. Private Placement Insurance. To the extent you want your investment advisor not the insurance company to pick your stocks, an offshore private placement policy permits this. See 4 above.

14. **Disability Insurance.** Half of us will experience a long-term disability. Because of the expense of caring for you, your disability can be more costly to your family than your death. The likelihood of your disability is great and without proper planning it's effect can devastate your family and your retirement funds.

Please read on to understand how you can maximize your chances of keeping your assets for years... and generations...to come.

Customizing Your Asset Protection Plan

More so than any other profession, doctors are at risk of losing all of their hard-earned assets. The depth of my specialization and level of my experience makes me uniquely qualified to handle the most complex cases.

And my approach is not to hand off your life's work to a newly minted attorney who will apply a cookie-cutter solution to your unique goals. That's not my methodology.

I treat every case with the attention to detail it deserves, and I am involved with you every step of the process to achieve the desired outcome.

*And, because every practice and situation is unique, we can commence to discuss the right strategies and structures for you in a **free** 1/2 hour (30 minutes) consultation with me.*

In this consultation, we will explore your goals, assets, and risks, and begin to develop a game plan to make sure you are as protected and as tax-free as you can be. There is no cost or obligation for this consultation. It's the investment I'm willing to make in you because I'm committed to helping you protect your assets for the future for you and your loved ones.

In the consultation, others have learned how to:

- leave an asset, divorce, and estate-tax protected inheritance and pre-inheritance amount to their children,
- guard personal and practice assets from malpractice and other creditor claims, and
- create the ideal structure for their practice for maximum practice and asset protection.

The consultation will set the groundwork to *generate actionable strategies* for your personal and professional situation and goals. If we decide to work together, let me give you an example of what a typical client achieves through this process.

Dr. Jones is a 49 year old surgeon, with a wife and two children under 14. He had \$4.5 million in assets and an annual income of \$800,000. He wanted to protect his assets from potential malpractice claims and work towards eliminating estate taxes and reducing income taxes. He also wanted to provide for his retirement in a tax efficient method.

We explored three specific options available to him and his family and used several strategies to meet his goals. He is now on track to retire at 55, protect his assets from potential lawsuits, and make certain his children receive the bulk of his estate in an asset, divorce

and estate tax protected manner. He also saved a considerable amount of income tax.

So what do I ask you to do to achieve results like this?

Please call me today at (818)906-0126 and ask for Starr to schedule a free 1/2 hour no-risk consultation on how I can provide you peace of mind. You have nothing to lose and everything to protect, so please call today to setup an appointment.

About the Author

Alan R. Eber, a pioneer in the asset protection field, an author and a highly sought after speaker on wealth protection. Alan has assisted doctors in establishing a wide variety of asset protection structures, many of which contain valuable tax savings features. His books on asset protection, family limited partnerships, and offshore planning, have been adopted by the California Society of Certified Public Accountants and the American Institute of Certified Public Accountants. Alan is the author of numerous articles concerning asset protection and estate planning techniques.

He received his Juris Doctorate from the State University of New York, his Master of Law in Taxation from New York University and studied international taxation at the University of Brussels. He is admitted to the state bars of New York and California.

