

# How to Protect Against Malpractice Liability

Take proper steps to protect yourself.

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Most physicians, including dermatologists, have worried about malpractice liability at least once during their careers. While most physicians don't dwell on the possibility that they will have liability, nearly all dermatologists would be wise to acknowledge the potential liability they face and take proper steps to protect against it. This short article will outline a few strategies for doing so.

## 1. 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 a dedication to being the best physician possible, developing your ongoing knowledge through education and CME, and maintaining a general approach to meeting the medical standard of care expected in the field of dermatology.

Beyond this medicine-centered approach, dermatologists would be well-served to incorporate non-specialty specific risk-management techniques in their practice. These include learning how physicians and staff members can best communicate with patients, especially when dealing with difficult patients or bad outcomes. Physicians should also consider implementation of methods for handling protected health information (PHI), 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. (Get a free hardcopy or ebook by using the offer code at the end of this article.)

## 2. ASSET PROTECTION

Regardless of how many risk management courses a physician takes or how carefully they practice, mistakes occur. Human error cannot be eliminated from the equation. Sometimes bad outcomes will occur even when all best prac-

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tices were followed—and occasionally bad outcomes can lead to potential liability even if the physician believes he or she did nothing wrong. We would all agree that our legal system is not perfect and predicting liability is not a perfect science.

Given this, many physicians have chosen to buttress their practice risk management with asset protection planning.

Asset protection planning has a simple goal: to position a client’s 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 a physician’s goal is to feel more secure and sleep better at night knowing that they will not lose what they have worked hard to build—then asset protection planning is an important part of the solution.

**Asset Protection: A Matter of Degree.** A fundamental concept that physicians must understand about asset protection planning is that it is a discipline of degrees, not a black/white, vulnerable/protected analysis. In fact, we use an asset protection rating system for a client’s overall situation: from –5 (totally vulnerable) to +5 (superior protection). The goal is to move as much of the physicians’ wealth as possible from the negative vulnerable positions

to the higher positive protected positions—ideally, with as little cost and interruption as possible.

**Practice Asset Protection.** 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 (sexual harassment, wrongful termination, etc.) against any of the doctors threatens all of the assets of the practice. In other words, if you are in a group practice, you are underwriting all of the acts and omissions of your partners, to the extent of your practice assets.

What are the most important practice assets? Certainly, your cash flow and income are most important. 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—defined benefit plans and 401(k)s—and combination plans, non-qualified plans, captive insurance arrangements and more. More information on these topics is available in our books.

Other important practice assets include the practice real estate, if any, and valuable equipment. If your practice has valuable real estate or equipment, you may want to separate these assets from the main practice, using limited liability companies (LLCs) to lease them back to the main practice entity.

**Personal Asset Protection.** Personal asset protection encompasses shielding a physician's home, retirement accounts, other investment accounts, second home or rental real estate, and valuable personal property.

We typically recommend leveraging your state's exempt assets as a priority, because (1) they enjoy the highest +5 level of protection and (2) they involve no legal fees, state fees, accounting fees, or gifting programs. In other words, you can own the exempt asset outright in your name, have access to any values, and still have it 100 percent protected from lawsuits against you.

Each state law has assets that are absolutely exempt from creditor claims, thereby achieving a +5 status. Many states provide exemptions for qualified retirement plans and IRAs, cash within life insurance policies, annuities, and primary homes. Make sure you seek an asset protection expert to find out the exemptions in your state.

Beyond exempt assets, basic asset protection tools like family limited partnerships (FLPs) limited liability companies (LLCs), and certain types of trusts should be used.

FLPs and LLCs will provide good asset protection against future lawsuits, allow for maintenance of control by you (the client), and can provide income and estate tax benefits in certain situations. Specifically, these tools will usu-

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ally keep a creditor outside the structure through charging order protections. These protections 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 significant protection for physicians. These can range from life insurance trusts or charitable remainder trusts to grantor retained annuity trusts, domestic asset protection trusts and more. Each type has its pros and cons, costs and benefits. We explore this topic further in our books and other articles.

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Obviously, for all these legal tools, their asset protection benefits are reliant upon proper drafting of the documentation, proper maintenance and respect for formalities, and proper ownership arrangements. If all these are in place, the physician can enjoy solid asset protection for a relatively low cost.

## CONCLUSION

The practice of dermatology 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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