Basic Asset Protection for Doctors: Asset Protection Made Simple

Presented by:

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Objectives

• Maintain the focus of your medical practice on improved patient care rather than malpractice defense
• Structure your practice to reduce liability
• Protect your professional and personal assets from lawsuits
• Reduce malpractice insurance costs
Remember...

• The practice of medicine is a service business
  – Patients have a right to choose their provider
  – Payers have a right to choose their panel members
Ask Yourself...

• How well does my office represent me?
• Are appointments made/kept in a timely and professional manner?
• Do I have a working knowledge of my patients’ medical records?
Ask Yourself...

• Do my billing and collection procedures unnecessarily antagonize some patients or give them reason to be resentful?
• Are my medical records complete, legible, and accessible?
Service Based Disputes

• Complaints over cash/elective procedures not covered
  – Prequalify
  – Pre notify of costs procedures

• Charging for:
  – No show fees
  – Signing paperwork
  – Follow up visits to go over lab work

• Not being cognizant of drug costs
The Grandma Test

• Is your policy or procedure something you would subject your grandmother to?
Indicators of Potential Lawsuits

• Informal complaints
  – May be complaints about the quality of care received
  – Verify complaints are reported quickly
    • Train your staff to escalate complaints

• Medical record requests
  – Especially by dissatisfied patients
Indicators of Potential Lawsuits

• Patient conference requests
  – Could be a prelude to litigation
  – If patient arrives with an additional person, invite a staff member to sit in as your witness
  – Prepare a memorandum outlining the conversation and place in a legal folder

• Avoid communicating with patients by e-mail or letter unless absolutely necessary
Indicators of Potential Lawsuits

- Attorney requests
  - Be wary
  - Get a valid medical authorization form for release of information
  - Avoid discussing the case beyond the release of the patient’s medical record
Responding to a Claim

- Get legal counsel involved right away
- Notify insurance carrier
  - First notice should encompass a complete description of the event
  - If you report an incident which does not become a claim, neither your standing nor premium will be affected
Responding to a Claim

• Protect the medical records of the patient
  – Medical records are your first line of defense
  – Limit staff access to records
  – Never alter your records
  – Your insurance coverage may be jeopardized if you tamper with medical records
Responding to a Claim

• Cooperate with your insurance carrier
  – Be candid
  – If you believe your actions were within the acceptable standard of care, let your carrier know
Responding to a Claim

• Develop a legal file
  – Keep any correspondence received from the plaintiff’s attorney, your insurance carrier, your defense attorney, and your personal attorney in this file
Responding to a Claim

• Avoid discussion about the claim
  – Limit these discussions to your insurance carrier and defense attorney

• No blogging or social media complaining
Anatomy of a Malpractice Lawsuit in Florida

• Statute of Limitations
  – Most negligence actions is 4 years
  – Medical malpractice is actually 2 years
  – Runs from when the patient knew or should have known that the injury occurred and that there was a reasonable possibility that the injury was caused by medical malpractice
  – Statute of repose may limit claim to 4 years even if the injury and/or cause was unknown
Anatomy of a Malpractice Lawsuit in Florida

• Pre Suit Requirements
  – Investigate the claim
  – Gather records
  – Get expert review
  – Get sworn expert opinion
  – File notice of intent
Anatomy of a Malpractice Lawsuit in Florida

• 90 days pre suit investigation period
• At the end, the physician can:
  – Deny the claim
  – Offer to settle
  – Offer to arbitrate on damages (requires an admission of liability)
Anatomy of a Malpractice Lawsuit in Florida

• Plaintiff files a complaint
• Discovery phase
  – Written questions
  – Request for documents
  – Depositions
  – Experts hired
Anatomy of a Malpractice Lawsuit in Florida

- Mediation
- Trial date is set at pre-trial conference
  - Could be several years away
Consent to Settle By Physician

- Insurer can’t settle without your agreement

- Amendment to the law permits the policy to allow for physicians to refuse settlement
Three Strikes and You’re Out

• A strike is defined as a final judgment by a court or agency that has been supported by clear and convincing evidence.

• Any doctor hit with three qualifying malpractice judgments will have his/her medical license revoked automatically.
Strike Occurs After:

- A final order of an administrative agency following a hearing where the doctor was found to have committed medical malpractice
- A final judgment of a court of law entered against a doctor where the licensee was found to have committed medical malpractice in a civil court action; or
- A decision of binding arbitration where the doctor was found to have committed medical malpractice
Reducing Malpractice Risk

• Stay current
• Spend the time
• Serve your patients' needs medically, personally, and financially
• Document, document, document
Asset Protection
Insurance Coverage

• Insurance coverage through a reputable carrier with appropriate limits is the best asset protection you can get
  – Malpractice insurance
  – Premises liability insurance
  – Umbrella coverage
  – Excess/Secondary coverage
Business Entities

• Why form a company?
  – Offers protection for your personal assets

• Caveat:
  – Must observe the “corporate form”
    • i.e. treat it like a business and not your piggy bank
Layers of Protection

• Using multiple business entities can add additional layers of protection
• Place all significant assets in separate business entities
  – Expensive equipment
  – Building and/or property
Spouse or no Spouse

• Depending on the law in your jurisdiction it may be advantageous to own your practice with a spouse or even children

• However, there is considerable disagreement among asset protection planners on the subject
Other Methods of Asset Protection

• Have your spouse sign for a child’s driver’s license
• Carry sufficient auto insurance
• Disability insurance
• Avoid excess liability in other business endeavors
Structuring Your Practice
Sole Proprietorship

Physician (Personal)
Single Member

Doctor A, LLC/PA

Employment Contract

Medical Practice, LLC
Medical Practice, LLC

Doctor A, PA

Doctor B, PA

Doctor C, PA
Asset Structure

Doctor A, LLC

- Building, LLC
  - Lease
- Medical Practice, LLC
  - Lease
- Equipment, LCC
Health Care Clinic Act
Health Care Clinic Act

• Requires clinics with lay owners to be licensed by the Agency for Healthcare Administration

• Applies: If **ANY** portion of the business is owned by a non-exempt person
Traps for the Unwary

• If a non-exempt person owns the clinic, practice, or facility.
• If a non-physician controls all major decision making for the clinic, practice or facility.
• If all financial matters are controlled by a non-physician.
• If a corporation or LLC owns the clinic, practice or facility.
HCCA Consequences

• Third-degree felony with each day of operation
• If an individual has an interest in more than one clinic, AHCA may revoke the license for all of the clinics
• Administrative fines of up to $5,000 per day
• Potential recoupment of claims made to third-party payors
Keep in Mind

• Some health professions prohibit ownership by anyone outside of that specialty

• Examples include:
  – Dentistry
  – Optometry
  – Chiropractic medicine
Defensive Medicine
Defensive Medicine

- Ordering potentially unnecessary medical tests, procedures or consultations to protect the physician from accusations of negligence
- 75% of physicians report practicing defensive medicine
- About $650 billion spent annually
Pitfalls of Defensive Medicine

- Delays in patient care
- Increased expense in patient care
- Expose patients to unnecessary risks
- Damage doctor/patient relationship
- Exposure to other liability such as audits
Protect Yourself

- Documentation
- Follow-up
- Procedures
- Patient relations
Protecting Your License
The Initial Complaint Sources

- Disgruntled employee/employer, colleague/coworker, patient/family member
- Code 15 or adverse incident report
- Agency for Health Care Administration (AHCA) surveys
- Law Enforcement
- Self Report or Adjudication
- Malpractice Allegation
- National Practitioner Date Bank (NPDB)
- Other
Common Allegations in DOH Complaints

- Unprofessional conduct (e.g. disruptive physician)
- Failure to practice with reasonable skill and safety
- Criminal conduct
- Engaging or attempting to engage in the possession, sale or distribution of controlled substances
- Filing a false report
- Malpractice settlements
Collateral Consequences of License Discipline

- Discipline remains on the medical license forever
- Will usually precipitate an investigation and/or discipline by other states where the physician holds a license
- When discipline is imposed, the physician generally has an affirmative duty to report to other states where a license is held
- Could serve as a basis for exclusion from Medicare/Medicaid programs
- Will generate a NPDB report
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