CHALLENGES:

1. Asset valuation
2. Tax implications
3. Estate planning
4. Succession strategy
5. Professional liability

STRATEGIES:

1. Structured settlements
2. Litigation funding
3. Risk management
4. Insurance options
5. Professional liability

OUTLOOK:

- Asset protection is a critical component of overall financial planning.
- Strategies should be tailored to individual circumstances.
- Continuous review and adaptation are necessary.
protection—shielding their personal assets from potential lawsuits. In this endeavor, asset protection attorneys approach a challenge much in the way a physician approaches being a patient. Like physicians, we asset protection professionals first will try to get a client to avoid “bad habits.” For a medical patient, bad habits might mean smoking, drinking too much, or a poor diet. For a client of ours, bad habits might include owning property in his or her own name, owning it jointly with a spouse, or operating any medical practice with business assets exposed (see above).

In fact, we use an asset protection rating system for a client’s overall situation: from –5 (totally vulnerable) to +5 (superior protection). Exposing business assets, owning property in your own name, etc.—are examples of –5 situation.

In this way, before we implement any sophisticated asset protection planning, we want to move the client from a -5 to at least a low negative or neutral number. This means eliminating any of the “bad habits” named above, and others. If you see yourself as a physician who has business assets exposed and owns personal assets in their name or jointly with a spouse, you should talk to an asset protection advisor immediately.

BASIC ASSET PROTECTION

Again, using the sick patient analogy, if you see a patient with a particular condition/disease, you try to treat it. For us, we try to treat physicians to solve their lawsuit vulnerability. In this endeavor, we use particular structures to protect a physician’s assets.

If you are in such a situation, where you want good basic asset protection, but do not want to pay for more advanced tools, then you need to always begin with exempt assets. We recommend exempt assets first because (1) they enjoy the highest +5 level of protection and (2) they involve no legal fees, state fees, accounting fees, gifting programs, etc. 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 against 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 expert on this to find out the exemptions in your state.

Beyond exempt assets, basic asset protection tools like family limited partnerships (FLPs) and limited liability companies (LLCs) should be used. Essentially, these tools 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 generally will keep a creditor outside the structure through “charging order” protections. These protections typically allow an physician to create enough of a hurdle against creditors to negotiate a favorable settlements. For these reasons, we often call FLPs and LLCs the “building blocks” of a basic asset protection plan. We may also layer in domestic irrevocable trusts, such as life insurance trusts or charitable remainder trusts.

In essence, these tools will provide adequate asset protection relating to an asset protection score of +2. Obviously, 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 basic asset protection for a relatively low cost.

ULTIMATE ASSET PROTECTION: ADVANCED STRATEGIES

For many aesthetic physicians, a basic asset protection plan, which has some potential vulnerability, is not good enough. Perhaps their state has few exemptions and a +2 on their asset protection score is not enough to give them the psychological comfort that they want. Other clients realize that the best protection comes from tools that actually can help clients create wealth. For this reason, these clients use advanced structures to put themselves at a +4 or +5, the ultimate asset protection score. Like a physician giving the ultimate medicine or most effective surgical procedure, asset protection consultants rely on a number of tools to provide ultimate asset protection.

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Beyond exempt assets, basic asset protection tools like family limited partnerships (FLPs) and limited liability companies (LLCs) should be used. Essentially, these tools 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.
These include:

A. Non-qualified and fringe benefit plans. Non-qualified plans and fringe benefit plans allow a physician to put funds away at the practice level and enjoy them in retirement. Also, these types of plan can be used in addition to qualified plans. In many states, these can be funded by exempt (+5) asset classes. Even in the states where there is no (+5) exemption, a (+2) LLC can typically be used to provide a solid level of protection.

B. Captive Insurance Companies (CICs). In this technique, the owners of a medical practice actually create their own properly-licensed insurance company—to insurance all types of risks of the practice. These can be economic risks (that reimbursements drop), business risks (that electronic medical records are destroyed), litigation risks (coverage for defense of harassment claims or HCFA audits) and even medical malpractice (keeping some risk in the captive and reinsuring the rest). To maximize the protection of the CIC, many physicians establish trusts to own the CIC.

CONCLUSION

Asset protection planning, like any sophisticated multi-disciplinary effort, is a matter of degree. Nothing in life is 100% certain (except perhaps death and taxes—subjects of other articles). For asset protection planning, this adage holds true. In your asset protection plan, make sure you understand the cost and benefits of the various tools you employ. It will help you not only protect the wealth you have already built, but may assist you in building greater after tax wealth for your retirement and beyond.


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