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ASSET PROTECTION

The mention of the need for asset protection often makes me pause, as it sometimes comes from clients with few or no assets at all; and I suspect they have been approached by a salesperson. Of course, the protection of assets from liability from a malpractice lawsuit has long been a subject of planning for physicians. Let's look at some of the basics you should understand before you seek any products or solutions for asset protection.

Your assets need protection in the case that a malpractice verdict is more than your malpractice insurance limits. So, how often does this happen? That is not clear. An article in ACEP Now reports the following.[1] First, most medical malpractice suits are settled within policy limits or are dismissed without payment. Of those few that go to trial, 75% of cases are found in favor of the doctor. Of those that are found against the physician, most judgments are again within insurance policy limits. Obviously, good medical malpractice insurance is your best defense. Good property and casualty insurance with an umbrella policy is needed for protection from liability in lawsuits outside of your profession.

One tell-tale sign that the need for asset protection is somewhat overblown can be found with a Google search of the topic. The clear majority of articles online are produced by those making money by selling insurance policies and annuities or profiting from the creation of trusts. You should avoid getting your data from those who are benefitting by generating more fear and hype than is necessary.

Next, you likely have some protection already. In the state of New Mexico part of the equity in your home (up to $60,000 for an individual or $120,000 for a married couple), pension funds, all money in 401(k) and 403(b) retirement plans, IRA funds up to $1,283,025, and cash or withdrawal values in an insurance policy or annuity are already protected from creditors and bankruptcy.[2]

For most physicians, your assets will primarily be in your home and retirement plans and are thus afforded some protection. In order to utilize a trust, you must relinquish all control over the funds, and create an irrevocable trust, in order to have the assets truly protected. This may be appropriate in some situations, but it should be approached carefully. In addition, the use of life insurance products or annuities often come with hefty fees that may outweigh the benefit of likely unnecessary asset protection. Lastly, the use of business entities, such as a Limited Liability Corporation (LLC) or partnership may be of benefit if you have numerous properties or business holdings. Close consultation with an accountant and an attorney will allow you to use these entities as needed.

The take-away message is that most of us don't need extra protection. For those that do, a careful approach, guided by professionals without a conflict of interest, is the safest route. If you ever feel like you are being scared into a product, take a few minutes to do your research and take a second look.

References
1. Frank, M. (2014, Feb 2). Sheltering Personal Assets from Medical Malpractice Liability Is Overrated. ACEP Now. http://www.acepnow.com/article/sheltering-personal-assets-medical-malpractice-liability-overrated/2/ June 13, 2017.
2. O'Neill, C. (2016, Dec 21). New Mexico Bankruptcy Exemptions. NOLO. http://www.nolo.com/legal-encyclopedia/new-mexico-bankruptcy-exemptions.html. June 14, 2017.