

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
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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
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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
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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)
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Anatomy of a Malpractice Lawsuit in Florida

- Plaintiff files a complaint
 - Discovery phase
 - Written questions
 - Request for documents
 - Depositions
 - Experts hired
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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
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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
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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
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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
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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
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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

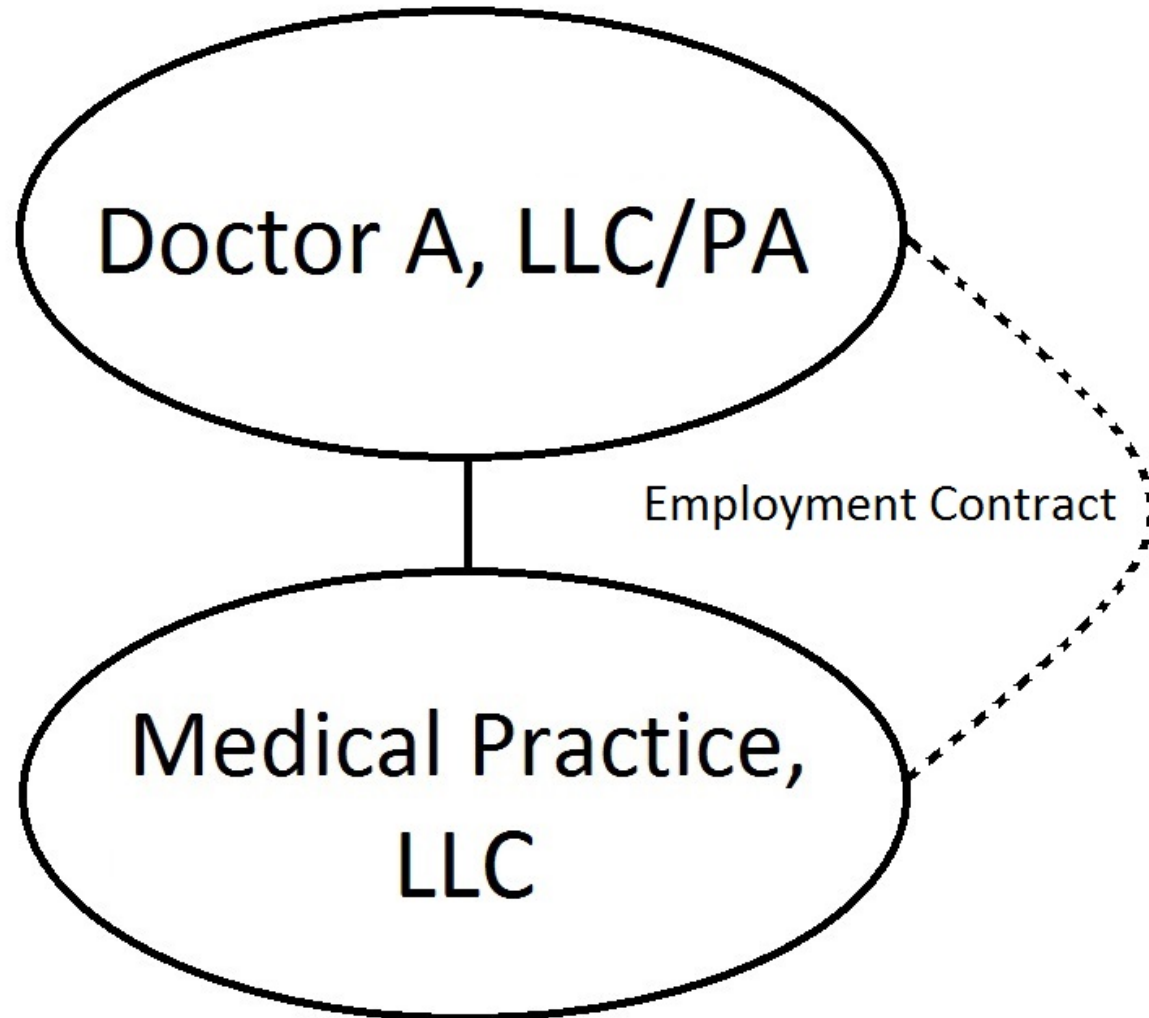


Sole Proprietorship

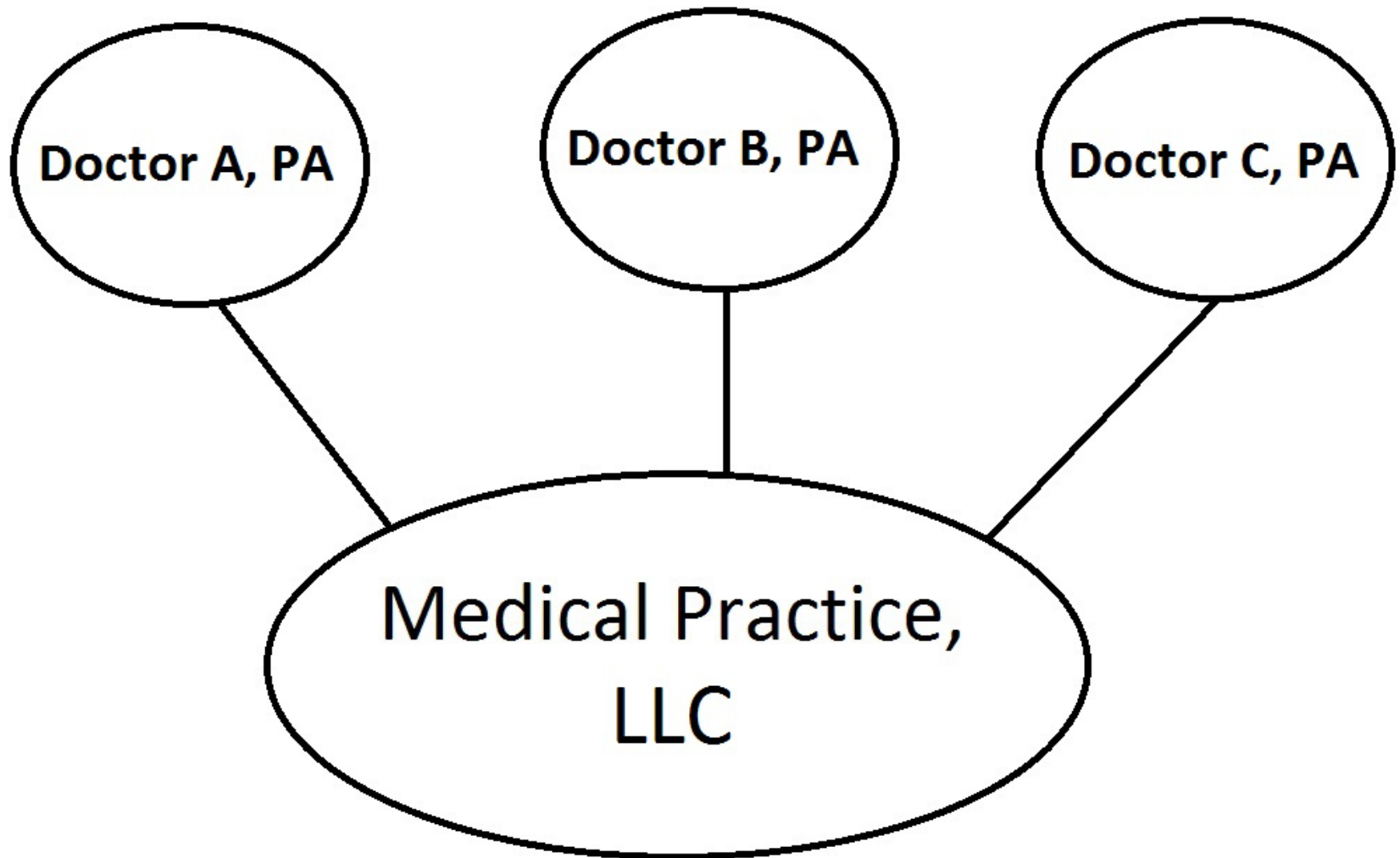
Physician
(Personal)



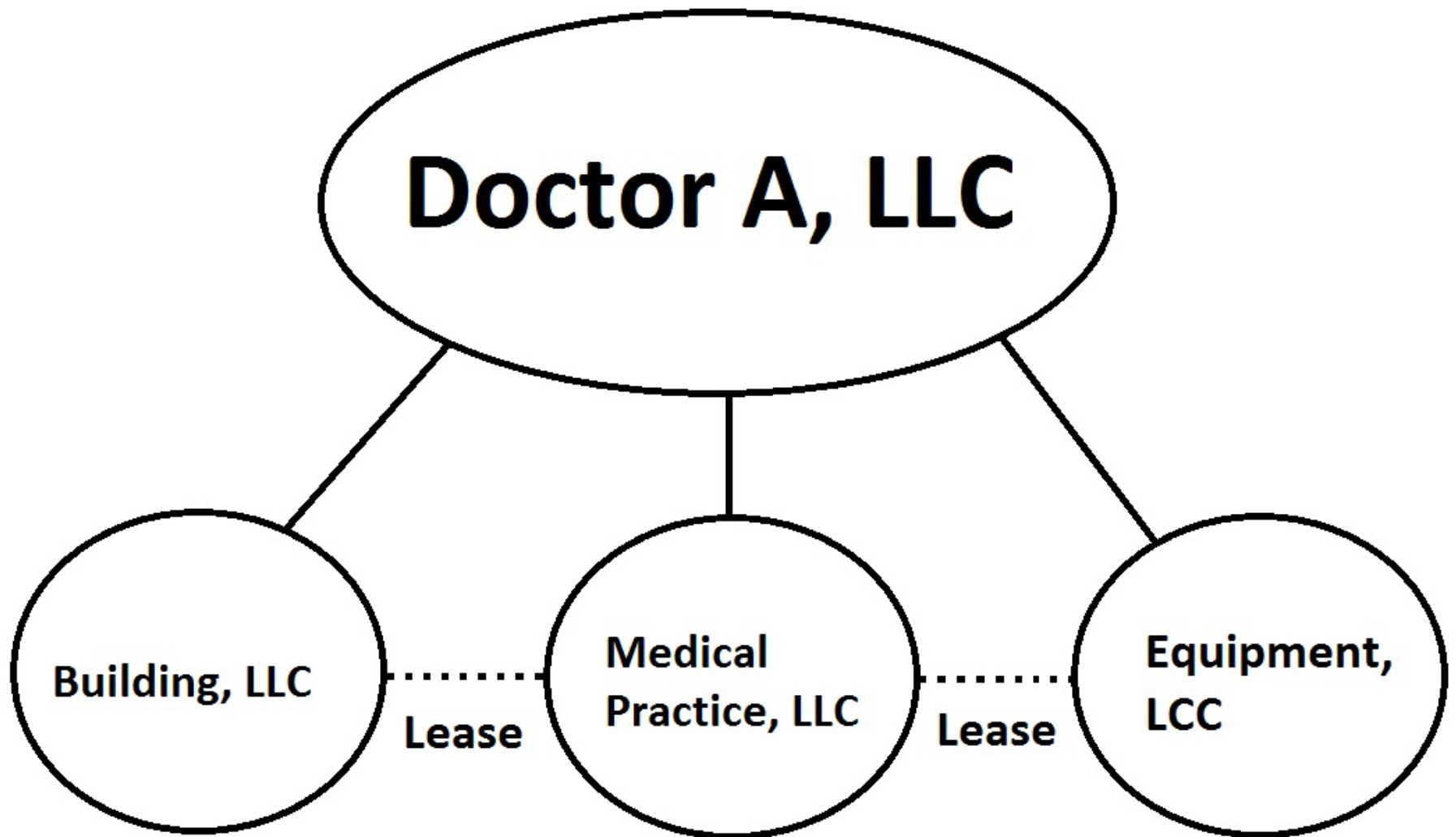
Single Member



Medical Practice, LLC




Asset Structure




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
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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.
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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
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Keep in Mind

- Some health professions prohibit ownership by anyone outside of that specialty
 - Examples include:
 - Dentistry
 - Optometry
 - Chiropractic medicine
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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
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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
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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 Data 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
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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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