

TRUSTS & ESTATES

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Preventative Medicine for the Health of Your Estate

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Physicians and other licensed health care providers labor many years to build their practices. However, unlike many other businesses, a health care practice cannot be passed by will or otherwise to the provider's spouse or children, unless they too maintain the same license. Even if an heir is also a licensed physician, the State may not approve the transfer of a medical practice to a licensed family member if they do not have adequate credentials to engage in the same specialty. How then is a health care provider to protect their assets and secure a legacy for their heirs?



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For licensed health care providers, planning and protection of assets should begin from the time a practice is first established. Nothing prevents a practitioner from establishing a practice as a sole proprietorship, but doing so can make the practitioner's assets (including assets unrelated to the practice, i.e. a primary residence, securities or other valuables) vulnerable to judgment creditors of the practice. Creating a professional corporation, limited liability company or limited liability partnership can shield such personal assets from certain creditors of the practitioner's health care business. No corporate entity will shield the provider from liability arising under professional malpractice, personal guaranties, criminal activity, and/or certain tax related matters, but the corporate structure can certainly help in protecting the provider's personal assets from certain creditors.

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For those practitioners with business partners, it is advisable to secure a succession plan among the partners. Handshake deals and oral understandings will be difficult to prove in a later probate proceeding. Succession plans can be structured to achieve the transfer of a deceased practitioner's ownership interest, and can be funded in a variety of ways including life insurance. In this way, a provider's estate can realize the rewards of years of service in building a practice, even if the provider's heirs do not elect to follow in a parent's footsteps.

The health care practice may not be the only entity that needs to be protected. Considerations should also be made for any real estate holding companies or ancillary businesses which the provider may own, either singly or with partners. Real estate holding companies are commonly formed by practitioners who want to own the space that houses their practice. Owning real estate in the provider's individual capacity can be a risky proposition not only because of the potential for liability that can affect the provider's personal assets. If a provider partners with someone in the ownership or tenancy of real estate, and does not adequately provide for certain eventualities, a deceased practitioner's estate may have to continue paying the carrying charges for real estate (even though the deceased physician is no longer practicing there).

Business and succession planning should be a part of an overall estate plan that also considers asset protection strategies to preserve assets for future generations. Health care providers should be particularly cognizant of the need for a power of attorney and health care proxy which outline an individual's wishes concerning financial and health care directives when an individual cannot act for themselves. Each of these documents is necessary to protect not only an individual's assets, but also to ensure that their wishes are honored.

An attorney well versed in health care corporate matters and a competent estate planning attorney are your best bet in protecting your future and your legacy.

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