

Is Going Bare the Right Way to Go?

By Jonathan Katz, M.B.A.

Central Florida Edition | September 2005 VOL. 7, NO. 9

M.D. NEWS

A BUSINESS AND LIFESTYLE MAGAZINE FOR PHYSICIANS



Comprehensive Sleep Disorder Center
It's More Than Your Snore

Going bare - not purchasing medical professional liability insurance - is an option available to physicians in Florida. However, this might not always be the best option.

Florida physicians who go bare usually have some form of asset protection. Florida state statute says that each physician with hospital privileges is responsible to pay the first \$250,000 of any judgment for medical malpractice (or risk losing their medical license until the judgment is paid). If a physician needs to maintain his or her livelihood, they must pay the judgment regardless of how good their asset protection plan is.

When a standard medical professional liability insurance policy is purchased, unlimited defense costs are paid by the insurer outside of the limit of liability. A physician who goes bare must pay his or her own defense costs, in addition to the first \$250,000 of a judgment. And keep in mind that one of the top insurers in Florida averages more than \$180,000 for a case taken through trial. I would suspect that an individual physician going bare would pay more, as they do not enjoy the same staff, knowledge or economies of scale as an established insurance company. These costs often are overlooked by physicians who

make the decision to go bare.

Also overlooked are the opportunity costs. A physician managing his or her own defense will most likely take time away from the practice of medicine to focus on this important and urgent matter. The related stress and lack of focus on their medical practice could lead to decreased revenue, or even new medical errors. There are those who promote legal defense insurance or membership clubs that provide reduced hourly attorney fees as a solution to this issue. I worry about the deductibles, coinsurance, maximum payout caps, the financials or future viability of these companies. I just don't believe it will end up being the solution to the problem.

There are some who promote bankruptcy as a guaranteed way to avoid paying the first \$250,000 of a judgment for medical malpractice, while still maintaining a medical license. Aside from the fact that there are many problems created by bankruptcy, this is not a guaranteed method. Rather, it will be up to the bankruptcy judge presiding over the case to decide. Bankruptcy judges typically err on the side of creditors, and a physician who decides to go bare might not come off as a reasonable party in the eyes of the judge. Furthermore, the new federal bankruptcy laws due to take affect this fall will further complicate this course of action.

Other issues to consider are the possibility of losing hospital privileges or health plans, and shifting risk to other providers (more of a moral issue for now). I do agree with those who tout going bare as a way to avoid frivolous claims; however, I do not see a catastrophic case just going away. If these last two issues become widespread, you can bet that plaintiff attorneys and hospitals will take action. For physicians who practice in medical groups, the assets of the entire corporation remain at risk for the vicarious liability of that provider. The assets of a medical group - including accounts receivable - are much harder to protect than that of an individual physician. I have yet to hear of an accounts receivable asset protection plan that is guaranteed to work, and the costs to establish or terminate the plans being promoted throughout Florida are usually extremely high.

In conclusion, while it is true going bare may help a physician avoid being the target of a frivolous claim, the risks and costs of a valid or catastrophic claim that will not be deterred are too great in my opinion. Unfortunately, claims in Florida are becoming almost as certain as death and taxes. And I don't believe going bare is the best long-term course of action. ■

