

Syllabus Materials for Legally Mine Presentation

TITLE: "Using Powerful Tools to: Protect Assets from Lawsuits, Protect Your Medical License & Protect from Overpaying Taxes."

COURSE DESCRIPTION:

Learn how to structure your practice for lawsuit protection and prevention, how to protect your professional and personal assets from lawsuits, reduce your malpractice insurance costs, how to protect your retirement plans from judgements and seizures, and how to minimize vicarious liability for the acts of other professionals and staff.

OBJECTIVES:

Upon completion of this presentation, the attendees will know how to:

1. Maintain the focus of their medical practice on improved patient care rather than malpractice defense.
2. Structure their practices for lawsuit protection and prevention, improving overall operations management of the practice.
3. Protect practice and professional assets from lawsuits through applied risk management techniques, improving and enhancing fiscal efficiency.
4. Understand basic practice management tools that can help increase practice revenue as well as decrease unnecessary loss of revenue also improving and enhancing fiscal efficiency.

COURSE OUTLINE

Introduction

The Mislead Healthcare Professional Financial Crisis (Lawsuit Case Study)

1. Legal Entities Defined – What is vs. What is not a legal entity
 - a. What entities are allowed to do business in the US
 - i. Taxation introduction
 - ii. Brief introduction to the Limited Liability Company
2. Statistics related to torts
 - a. Causes of Lawsuits
 - b. Motivation of Lawsuits

Lawsuits

Sources of Lawsuits in a Healthcare Setting

1. New cases holding business/practice owners liable
2. Employee Actions (Vicarious liability – Pay for someone else's actions)
3. Joint Ownership Pitfalls – only takes one owner to be found liable
 - a. If Spouse is sued
 - i. Involvement in Partnerships

- ii. Service as Corporate Officer or Director
- iii. A suit today for an act ten years ago
- iv. Insurance creating a bigger target – and may not cover you
- v. Advisory Board Member dangers

Lawsuit Protection

Family Limited Partnership

1. History
 - a. Friedrich Weyerhaeuser (the Weyerhaeuser Corporation)
 - b. 16th Amendment
 - i. Income Tax – and how it birthed asset protection
 - ii. Family Limited Partnership introduced to the United States in answer to the problem created for the Weyerhaeuser Corporation.
2. Function of a Limited Partnership
 - a. Limits the Liability of the majority owners, while giving all liability to the controlling member or manager
3. Structure
 - a. General Partner
 - i. Owns very little (1%)
 - ii. Has complete control, manages & directs
 - iii. Who can be the general partner
 1. EXAMPLE: Husband & wife – or a corporation
 - b. Limited Partners
 - i. Owns Majority (99%)
 - ii. No control, no liability
 - iii. Who can be a limited partner
 1. EXAMPLE: Make anyone a limited partner (children, grandchildren, elderly parents, or anyone else)
 2. Not limited to family
 - c. Any Legal Entity can be either a General Partner, or Limited Partner
 - d. Uses of FLP for Healthcare Practices
 - i. Used for safe assets
 - ii. Distribute or re-invest income each year from FLP
 - iii. IRC 704 – Taxation considerations
 - e. 1960 – the year asset protection was developed
 - i. Attorney out of Utah experimented on the FLP
 1. Theorized that the law should uphold the same limitations established by FLP structures in the case of a lawsuit
 - ii. Supreme Court Precedence
 1. 1970 – 1974 supreme court case unanimously upholds the newly structured FLP for use in asset protection.
 - iii. New field of legal practice

- iv. Trial Attorneys unhappy at being locked out of access to assets in lawsuits
 - 1. Legal battles triggered between new asset protection attorneys and trial attorneys
 - 2. Importance of understanding lawsuit motivation

The Charging Order for Businesses and Healthcare Practices

1. The Charging Order

- a. Trial Attorneys Association's response to asset protection measures
 - i. Intended to end asset protection
- b. Adopted in all 50 states
- c. Concession that creditor seizes no assets to satisfy a claim
- d. Distribution Clauses
 - i. Pro-Rata vs. Non Pro-Rata
 - ii. Importance of avoiding documents drafted by trial attorney advocates
- e. New Distribution Clauses
 - i. 1977 - Supreme Court Private Letter Ruling
 - ii. Creditor receives no income that is in the FLP
 - iii. Must First Be Distributed
 - iv. Creditor pays taxes on money never received
 - v. IRS ruling #77-137

LLC vs. FLP

- 1. 1987 - LLC Modeled after FLP
 - a. Combined FLP protection and basic structure with the tax benefits being afforded to Corporations
- 2. LLC effectiveness
 - a. Proper distribution authority for both LLC & FLP
- 3. Charging Order for LLC
 - a. Also adopted by all 50 states

Summary of Lawsuits and Asset Protection

- 1. Proper vs. improper structures
 - a. Which types of entities are best for which types of assets
 - b. Common pitfalls of improper structuring
 - c. Best Legal Entity for Practice/Business

Practice Continuation Planning

Practical Estate Planning for Practice Management: Trust vs. Will

- 2. Proper use of Trust
 - d. Revocable Trusts
 - e. Irrevocable Trusts – and their purpose

Reducing Practice Loss Through Practice Structure

How the Proper Business Structure Effects the Practice Tax Impact

1. Proper use of Business Entities
 - a. FICA Tax Reduction
 - b. U.S.C. Section 280a
 - i. Qualifications
 - c. FLP Earned Income Shift
 - d. Capital Gains for Practice Sale
 - f. Best Legal Entity for Practice/Business

Entity Structuring for the Practice: Tying Everything Together

1. Considering Homestead Laws
2. Sorting assets
 - a. Safe assets will not trigger lawsuits so they can be grouped together
 - b. High liability assets need to be separated
3. Observing Corporate Formalities
4. General Costs for Entity Creation
 - a. Domestic (in-state) vs. Foreign (out-of-state) entities
 - i. When considering state filing fees is important
 - b. Associated Ongoing Fees
5. How to find properly worded documents
 - a. What to avoid
6. Timing of Implementation
 - a. Lookback period consideration

Conclusion

Discussion of implementation techniques

Question answer Session.

REFERENCES:

- Mitton, Jay W. (1995). *Cover Your Assets: Lawsuit Protection*. Crown Publishers, Inc. New York. NY.
- Mangelson, G. Kent, *A Proven Solution to the Medical Malpractice Crisis*, 2003, NMFAP, Provo UT
- Mangelson, G. Kent, *The Advanced Malpractice and Asset Protection Training Manual*, 2001, NFTPAP, Provo, UT