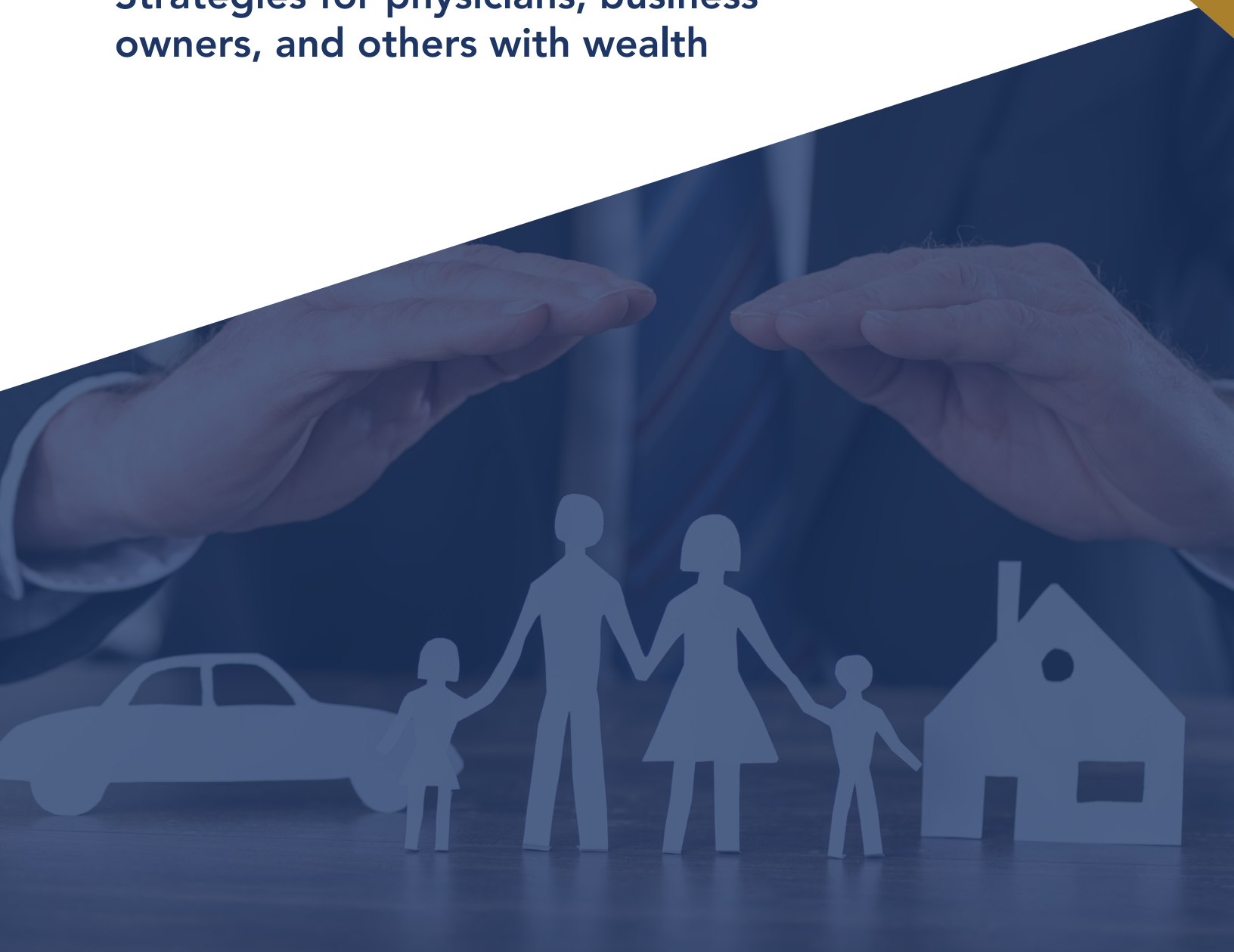
GoldMedalWaters

Protecting Your Assets

Strategies for physicians, business owners, and others with wealth



Introduction

Self-preservation may be the most basic of human instincts. We are hard-wired to guard against dangers in our environment (fire, growling animals, cliffs, etc.). We shelter our bodies from extreme heat and cold, and we learn to avoid hazardous situations like crowded theaters with few fire exits, or boats with too many passengers and not enough life rafts. In addition to shielding yourself from physical harm, today's world requires you to protect yourself and your family against threats to your financial wellbeing, especially when you have accumulated some degree of wealth.

While safeguarding your wealth may not seem as urgent as preventing physical harm, failing to protect your assets can lead to extreme financial and emotional hardship. That, in turn, can generate stress that negatively affects your physical health and your family's welfare. For all of these reasons, it is important to recognize and to guard against potential threats to your wealth, current and future.

This guide describes various risks that can pose a danger and ways to mitigate those risks. Some are specific to physicians but many also apply to small business owners and other professionals who want to protect assets for personal enjoyment, for financial security, and to preserve wealth for future generations.

GOLDMEDALWATERS

Table of Contents

Protecting Your Personal Assets – Umbrella insurance policies and more 5

For Physicians – Preventing and protecting against malpractice suits 8

For Business Owners, including M.D.s in private practice – Employer-related and business continuity risks 10

Everyday Risks – Disability risk, risk of ownership, vicarious liability 12

Overlooked/Underappreciated Asset Protection Strategies 13

Let's start by asking the most basic question: Who needs asset protection?

The answer: Everyone.

You've heard it many times but it's worth repeating, we live in a litigious society. No one is immune from being sued, and some people file lawsuits even when there appears to be little or even no foundation for doing so.

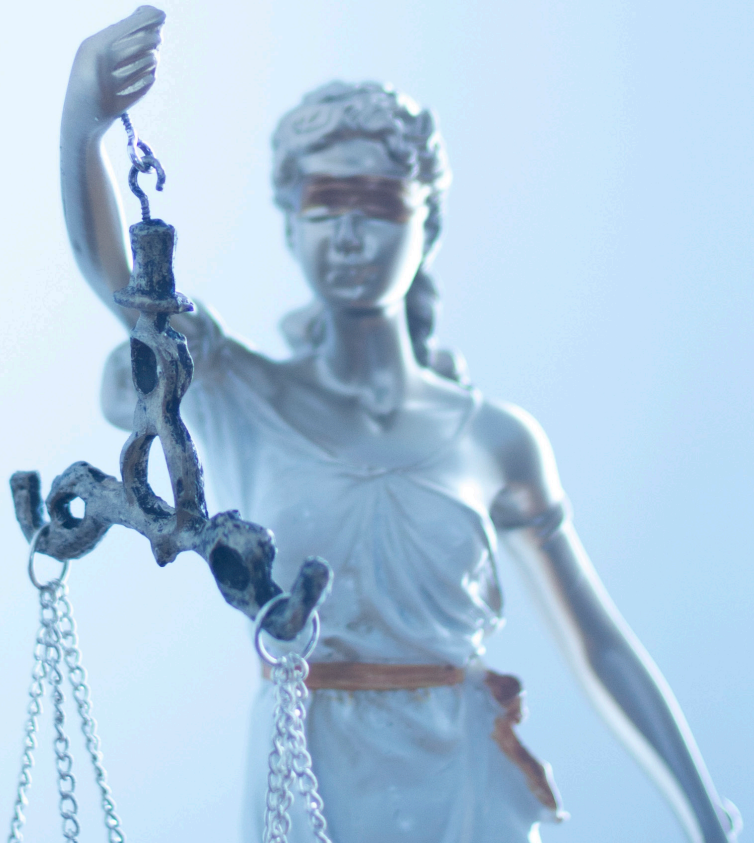
Consider this:

- The higher your income/net worth, the more you should be concerned about asset protection. Some plaintiffs view a wealthy defendant as someone who "should pay up."
- 94% of all lawsuits globally are filed in the U.S. Almost 50% of physicians age 55 or older have been sued during their careers, and 28% have been sued more than once[1].
- Parents can be held liable for an adult child's actions if that (adult) child is still on the parent's auto insurance and the parents co-owns the car.

Also, illness and accidents happen – they're part of life. Anyone can become disabled, and you want to protect your assets in the event you cannot work for a while.

[1] https://www.ama-assn.org/practice-management/sustainability/medical-liability-market-research

GOLDMEDALWATERS



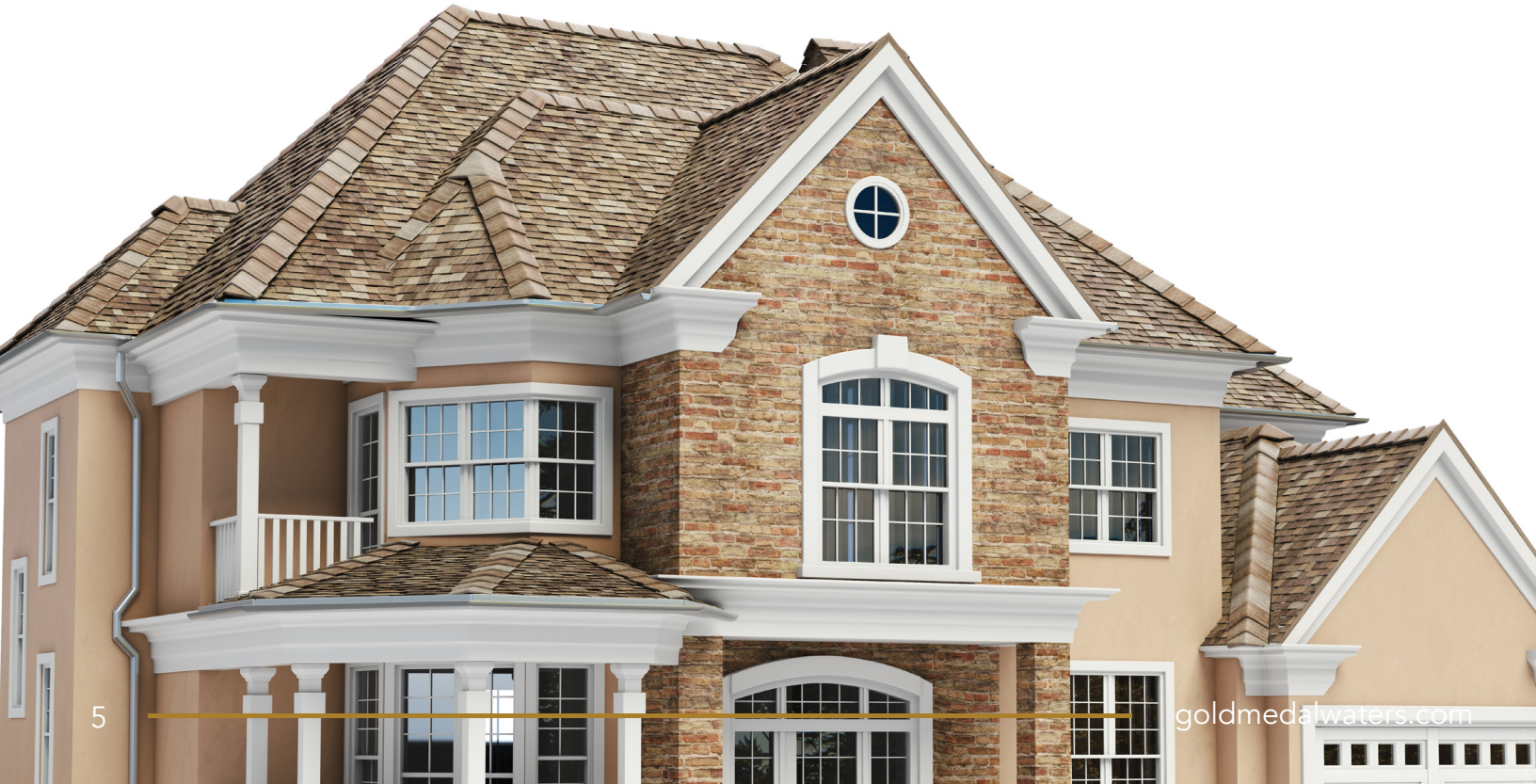
Protecting Your Personal Assets

A major financial event (a car accident where you are at fault, a lawsuit, whether it has merit or not, health problem or disability, etc.) could wipe out a significant portion of your net worth. As the first line of defense, **different types of insurance typically form the core of your asset protection strategy**, shielding you and your business against financial body blows.

Life, disability and health insurance are a given, but they do not address financial uncertainties arising from causing property damage or harm to others. For this, there are two broad categories of insurance to consider – personal liability insurance and professional liability insurance. First, we discuss personal liability insurance, which everyone needs, regardless of your profession. We then consider types of professional liability insurance.

You're probably familiar with various types of "property & casualty" insurance, such as car insurance, homeowner's insurance, flood insurance, etc. These policies provide protection in the event of property damage, theft, fire or flood, and also provide some level of protection in the event that someone is injured by your car or on your property.

However, if you earn a high income and/or have accumulated a sizable amount of wealth, traditional insurance policies are probably not enough. If you are at fault in a car accident or someone is injured on your property and the damages exceed the limits of your policy, you could be sued for whatever your auto or homeowners insurance does not cover. The more wealth you have, the more of a target you become for those injured parties.



Personal Liability Umbrella Policy

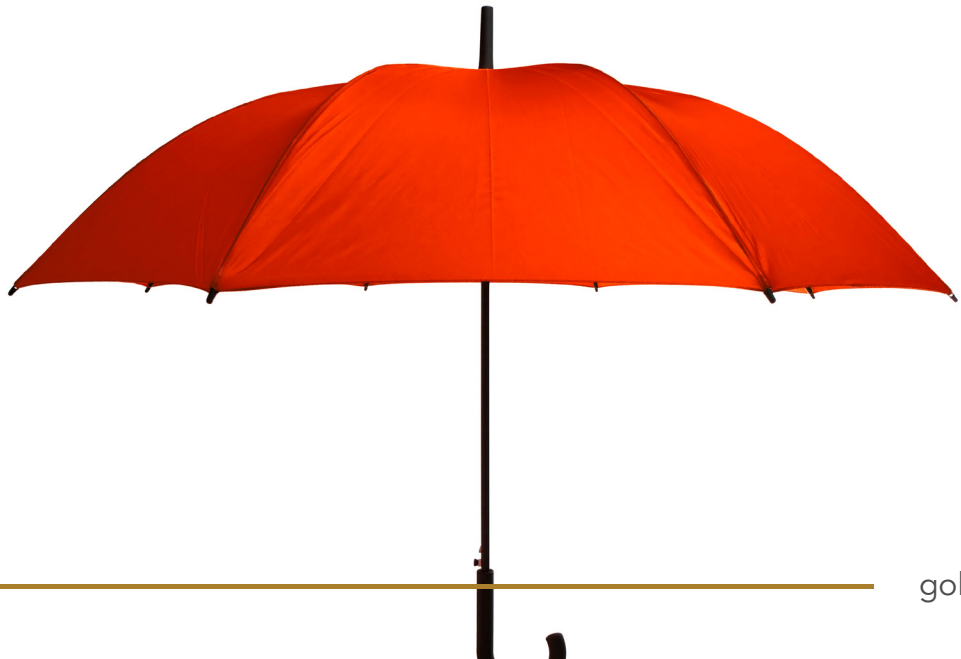
To address this risk, a Personal Liability Umbrella Policy (PLUP) provides coverage in excess of standard forms of insurance, protecting you to a higher extent against legal obligations arising from negligent acts. Very importantly, it also covers legal advice and legal representation in court. Some important details about a PLUP:

- A PLUP is usually stacked on top of auto and homeowner policies; in other words, it kicks in when coverage from those policies is exhausted. A PLUP may require you to purchase higher amounts of auto and homeowner insurance coverage than you currently have.
- Coverage from a PLUP applies to you and your immediate family members – you do not need separate policies for your spouse (or teenager).
- A PLUP covers legal obligations arising from bodily injury or from property damage.
- The policy covers reasonable medical expenses for the injured party, up to the maximum.

Some things a PLUP does not cover:

- Professional pursuits or liabilities arising from professional activities.
- Intentional acts
- Liabilities that occur on an uninsured location
- Gross negligence – if you cause an accident while driving under the influence, that is likely to be considered gross negligence and a PLUP would not cover you.

Note that a PLUP is not a silver bullet that addresses all issues of personal asset protection. Coverage typically ranges from $1 million to $10 million, at the upper end, which may not be enough to completely shield your assets. In fact, claims from lawsuits often exceed a policy's limitations, but keep in mind that the purpose of a PLUP is to help you avoid financial devastation. Most experts agree that almost everyone should have a PLUP; $1 million of coverage may cost as little as $200-$400 per year.



Other Personal Asset Protection Strategies

If your net worth exceeds $500,000, there are additional personal asset protection strategies worth considering.

- **Transfer assets to someone else.** If you are sued, you can't be forced to sell assets you don't own. However, if you transfer assets you lose control over them. If you transfer ownership to a trusted family member, remember that this can change a relationship. Do not attempt to transfer assets after the event that could cause a lawsuit has occurred; the transfer will be viewed as fraudulent and will be nullified.
- **Use joint ownership.** If you and your spouse jointly own assets, they may be protected in the event of a lawsuit, but only in some states. The courts must view the assets as "indivisible" (the term is "Tenancy by the Entirety"), which only applies in certain cases.
- **Know your state's "Homestead Exemption".** You may have heard stories of people sheltering their wealth by investing most or all of it in a home, based on the notion that your primary residence is exempt if you are forced to sell assets to pay damages in a lawsuit. The reality is, this homestead exemption varies by state, ranging from 0% to 100%, and is only unlimited in a few states. Some states allow married couples to double their exemption.
- **Consider a Home Equity Line of Credit (HELOC).** If you have borrowed against the equity in your home, it will show as a lien against the property, making it less enticing as a target for anyone considering a lawsuit against you.
- **Sign a prenuptial agreement.** While unpleasant to contemplate, divorce does happen and the financial implications are never positive. In fact, divorce typically represents one of the most significant threats to a physician's accumulated wealth. If you are considering a second marriage, a prenuptial agreement is often advisable, especially when there is a significant difference in wealth between the individuals and/or when there are children from a previous marriage. Consider any wealth you expect to inherit when structuring the pre-nuptial.
- **Use your retirement accounts.** Money in retirement accounts is generally protected from lawsuits (but not from divorce), another good reason for contributing the maximum possible. If you have other sources of income in retirement, it could make sense to take only the minimum required distribution from your 401(k) and IRAs because that money is shielded from lawsuits only while it is in the account – once it comes out, it is no longer protected. The cash value of life insurance policies is also often protected, but may have limitations.
- **Offshore asset protection.** Those with significant wealth may consider moving assets offshore. It forces claimants to argue their case overseas, which is a significant deterrent and may result in a settlement that minimizes your losses.

It is important to remember that asset protection is about settling the case favorably, not "winning."

Protecting Your Personal Assets

Liabilities Arising From Your Profession

Now we turn to risks arising from your professional life, and ways you can and should protect yourself in that arena. Before we dive in, it is worth noting that although you should keep your personal and business lives separate from a legal standpoint, a lawsuit or judgment that threatens your personal wealth can become a threat to your professional life, and vice versa.

Professional Liability Insurance is for liabilities arising out of failure to use due care and the degree of skill expected of a person in a particular profession. It includes Malpractice, Errors & Omissions, and Product Liability Insurance.

How much is enough? That is subjective. While the amount of the insurance may not cover the entire judgment against you, it should shield against devastating loss. If your actions cause injury to a defendant whose income/net worth is much greater than your own, carrying professional liability insurance in an amount equal to your net worth may not be enough. The bottom line: your coverage should be based on the nature and likely amounts of anticipated lawsuits.

For Physicians: Malpractice Insurance and Other Protections

When considering asset protection for physicians, the logical place to begin is with Medical Malpractice Insurance. This is the most common and obvious form of asset protection for M.D.s and doctors are usually well informed about the need for malpractice insurance, but different situations and medical specialties can lead to very different conclusions about the "how much is enough" question.

"Professional Liability Insurance is for liabilities arising out of failure to use due care and the degree of skill expected of a person in a particular profession. It includes Malpractice, Errors & Omissions, and Product Liability Insurance."

If your medical career is still in its early stage you may not have accumulated much wealth yet. In fact, if you are paying down student loan debt, and/or recently bought a house and have a sizable mortgage, your savings and the equity in your home are probably limited. In this situation, a doctor might think, "I don't need a lot of malpractice insurance. Even if I'm sued, there's not much to take."

However, even though you may not yet have accumulated much in the way of tangible assets, if you are sued for malpractice you would need to cover expensive legal fees. Also, in some cases a malpractice judgment can include claim on your future earnings. For these reasons, you might want coverage that exceeds the value of the assets you currently own. If you own a private practice, malpractice goes beyond you as an individual. You are the "captain of the ship". You not only need malpractice insurance to cover your own actions, you also need protection for anything your employees (nurses, PAs, etc.) do that results in a lawsuit. If you are part of a group practice, you may also be exposed to the mistakes and/or negligence of your partners.

Reduce incentives to sue. Having adequate malpractice insurance is essential, but the best way to avoid a damaging malpractice judgment is to prevent the lawsuit altogether. How can you reduce the likelihood of being sued? Don't be an easy target. Implement processes and procedures in your medical practice that reduce risk. Communicate clearly with your patients. Have a witness in the examination room. Stay up-to-date with current practices. Put things in writing. Note that while malpractice insurance is required for M.D.s, other practitioners including attorneys, physical therapists and mental health professionals, may also want to consider this form of asset protection.

Addressing Risks for Business Owners, Including M.D.s in Private Practice

While physicians know they need malpractice insurance, M.D.s in private practice may overlook the fact that they are also small business owners. This entails risks other than malpractice suits that can be a threat to personal wealth. These risks, which apply to just about every business owner and to other professionals, call for insurance or other protective measures.

- **Business continuity risk –** If you are in private practice or own another type of business, there are expenses that would still have to be paid if you become temporarily disabled, or if your place of business became unusable due to fire, flood, earthquake, etc. For example, an ophthalmologist who also sells eyewear will still incur costs associated with that part of the business (including payroll expenses, rent, etc.) if he or she is temporarily disabled. Business continuity insurance covers this risk.
- **Employer risks –** As a business owner or a physician in private practice, you can be sued by employees, vendors or clients over claims of sexual harassment or other forms of a hostile work environment. Employees can also bring a lawsuit for sexual discrimination or wrongful termination. A large judgment against you could be devastating to your business and to your personal wealth if your business is structured as a partnership or sole proprietorship.

While insurance can address many of these risks, it is not always the best solution, or sufficient on its own. Consider formal training to educate employees about behaviors that not only violate your standards, they are illegal and can put their jobs and the entire business at risk.

Business owners should also consider the following types of insurance to protect against workplace injuries, employee negligence and other risks:

- **Commercial liability insurance –** protects your business if someone is injured on the premises, or from an action taken by (or negligent behavior of) an employee.
- **Workers compensation insurance –** mandatory in most jurisdictions, to cover employees who are hurt on the job. Don't think accidents happen only in businesses where employees wear hardhats or are exposed to dangerous chemicals. Injuries can happen in any business.
- **Umbrella coverage –** can be used if your other insurance coverage is inadequate, and is usually fairly inexpensive.

Aside from insurance, as an M.D. in private practice or a business owner, establishing a professional corporation/LLC to separate business assets from personal assets is extremely important. In most states, this protects the business against claims on your personal assets, and vice versa (consult with an attorney about whether your state is an exception). Keeping separate accounts helps to deter people from claiming that the line between your personal and business assets is blurred; otherwise, they may attempt to go after assets from both. If you own real estate that is used for your business, consider creating an LLC to own that piece of property so that your professional corporation holds limited assets.

Everyday Risks

Everyday life includes sharp corners and jagged edges. We tend to think "that won't happen to me" but a positive outlook is insufficient protection, especially as you accumulate wealth. Protect your assets against the following risks, which are present for just about anyone who generates income and/or owns property.

- **Disability –** The risk of becoming disabled, either temporarily or permanently, is typically underestimated, especially for physicians. Anyone can become disabled - in fact, over one in four of today's 20-year-olds can expect to be out of work for at least a year due to a disability before reaching the normal retirement age.[2] If you were unable to work for some months (or longer), disability insurance would provide you and your family with income you would have earned if you had been working. If you do not have employer-provided insurance, consider an individual policy.

  > *For Physicians: M.D.s who now have employer-provided disability insurance may have purchased a disability policy in the past (e.g., while in private practice). If you are in this situation, you may think you are over-insured, but it may make sense to keep your individual policy in place. Employer-provided disability insurance is not portable, and individual policies become more expensive as we age. Consult with your advisor or insurance specialist before eliminating your personal policy.*

- **Risk of Ownership –** this catch-all phrase refers to bad things that can happen when someone uses or occupies something you own, often real estate, including your primary residence, vacation home and investment properties, but also other assets such as a boat or jet ski.

  If someone slips and falls on your property – you're at risk. This applies to your home or place of business, making this particularly important for doctors with elderly patients, or those who live in a place where sidewalks get icy in the winter. Similarly, if a worker is on your property for a remodeling project and falls off the scaffolding, you are at risk if the general contractor does not carry adequate workers compensation insurance. This applies to anyone who owns property or runs a business.

  As discussed above, an umbrella policy will cover most of these risks, and you should probably have at least enough to cover your net worth. But beyond the question of how much insurance to carry, consider the risk of ownership before you buy that ATV or motorcycle, especially if you have minor children, or family members struggling with substance abuse or mental health issues. Sometimes owning dangerous assets just isn't worth it.

- **Vicarious liability –** you have probably heard of vicarious pleasure. This is the opposite. Vicarious liability is a risk to which you are exposed through the bad behavior of others with whom you are closely associated, including business partners, employees and minor children. It can also arise from serving as a member of a board of directors, or on a physician's review board that is sued by a physician who received a negative judgment. Errors of Omission insurance protects against these kinds of risks.

[2] https://disabilitycanhappen.org/disability-statistic/

Overlooked/Underappreciated Asset

Regardless of your chosen career or profession, the following asset protection strategies, often overlooked and underappreciated, are important for everyone, especially those with a family:

- **Life Insurance –** This form of insurance is arguably the most important of all. What would happen to your family if the worst happened to you? If you are in the early years of your career, you probably have not saved much. How would your mortgage payments be met if you were not in the picture? How would your children's college savings accounts be funded? What if your spouse does not work outside the home or has an income far below what you expected to earn? Life insurance is critically important – talk to your financial advisor about how to meet your specific needs.
- **Protecting your home equity against legal action –** If you have considerable equity in your home, consider an "equity stripping" strategy such as a home equity line of credit. Even if you haven't actually used the credit line to borrow money against the value of your property, this can be an effective way to protect yourself in a legal proceeding. Note that it must be in place long before any creditor attempts to make a claim on your property.
- **The retirement savings shield –** As noted earlier, assets in a retirement savings account (401(k) or IRA are usually protected in the event of a malpractice suit or other legal judgment, another good reason to contribute the maximum to these accounts, for yourself and your spouse.
- **Gifting –** If you have sufficient assets to comfortably fund your own retirement and plan to leave a sizable estate to your adult children or other heirs, consider making financial gifts annually (up to the amount not subject to gift taxes), while you are still here to enjoy it. Doing so reduces the assets you have that could be pursued in a legal action. You might consider contributing to a 529 Plan for young children or grandchildren, or to Roth IRAs for young adults in the family who are just starting to earn some income.

GOLDMEDALWATERS

Even the most expensive and complex arrangements are not invincible, but creating levels of protection can deter legal threats. As the "quarterback" of your financial team, your Gold Medal Waters advisor can bring in a trusted expert on malpractice and other types of insurance to help evaluate your current needs. Finally, although it is important to protect yourself, your assets and your family against these financial risks, remember that your most important assets are your health, your family, your relationships and your ability to enjoy life.

About Gold Medal Waters

We believe that our client's future happiness depends on the work we do today. That proper financial planning and systematized investment management decreases negative stress and increases well-being, leading to better outcomes. That's why we're dedicated to pairing our clients with real people who deliver advice with warmth, understanding and privacy. A real relationship, not a computer algorithm.

Gold Medal Waters
4551 13th Street
Boulder, Colorado 80304
(720) 887-1299

CONTACT US