

PHYSICIANS WITHOUT INSURANCE: ISSUES TO CONSIDER



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With reimbursement rates decreasing and expenses increasing many physicians are looking to reduce their operating costs. In an effort to reduce such costs, many physicians cancel their medical malpractice liability insurance and avail themselves of a Florida law which permits a physician to practice medicine without maintaining medical malpractice liability insurance. A physician should consider the requirements of the “going bare” statute before electing to cancel his or her malpractice insurance.

Florida law provides an exception to the requirement that in order for a physician to obtain and maintain an active license to practice medicine in the State of Florida, he or she must demonstrate, to the satisfaction of the Florida Board of Medicine and the Florida Department of Health, that he or she has the ability to pay claims and costs arising out of the provision of medical services. Such exception is commonly referred to as “going bare”.

In order to meet the exception, a person holding an active medical license issued in accordance with Chapter 458, Florida Statutes, agrees to:

1. Pay a judgment creditor, upon the entry of an adverse final judgment, the lesser of: the entire amount of the judgment with all accrued interest or either \$100,000, if the physician does not have hospital staff privileges, or \$250,000, if the physician maintains hospital staff privileges. The payment has to be made within 60 days after the date the judgment became final, unless the parties agree otherwise. Failure to pay timely exposes the physician to disciplinary actions ranging from the probation of his or her medical license to the suspension of his or her medical license.

2. Place a sign in physician’s waiting room or hand each patient a written statement containing the following language: “Under Florida law, physicians are generally required to carry medical malpractice insurance or demonstrate financial responsibility to cover potential claims. YOUR DOCTOR MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida law subject to certain conditions. Florida law imposes penalties against non-insured physicians who fail to satisfy adverse demonstrate financial responsibility to cover potential claims for judgments arising from claims of medical malpractice. This notice is provided pursuant to Florida law.”

3. Submit the application form to the Florida Department of Health indicating the physician’s election not to carry malpractice insurance.

If physicians elect to “go bare” it is

important that such physicians’ take steps to protect their assets from judgments. For example, if a physician has insurance prior to “going bare”, the physician should consider purchasing tail coverage from his or her current carrier. Such coverage may protect the physician against claims for past actions while the physician was insured. While the physician is not required to purchase tail coverage, claims reported after claims-made coverage has expired may not be covered.

Additionally, physicians considering “going bare” should: (a) develop a legal defense plan in order to minimize legal costs in the event of a lawsuit and (b) develop an Estate Plan that may also consider potential liability issues associated with their prospective status. It is important to note, however, that bankruptcy court proceedings should not be assumed to be a substitute for adequate insurance. In South Florida, a “bare” physician who had declared bankruptcy and protected his assets in his home by placing them in his wife’s name only, was forced to pay the first \$250,000 of the settlement. The judge ruled that the first \$250,000 was a condition of licensing, thereby forcing the physician to pay. Had the physician carried malpractice insurance, the judgment and the expense of litigation would have been covered.

The choice to “go bare” is one that only the physician can make but such a choice should only be made after careful consideration of all the factors involved. Physicians should consider consulting legal professionals with expertise in this area of the law. ¹