Dropping your malpractice policy may sound great, but don't consider it except as a last resort.

The year Mark Macumber, MD, stopped carrying malpractice insurance, his annual rate was set to quadruple to $40,000 -- and that was only for a part-time job as a township health department medical director. The bulk of his work had been covered by the hospital that employed him, but it was about to discontinue its network of employed physicians. To get full-time coverage and continue delivering babies, the family physician in Berwyn, Ill., would have paid around $150,000 a year.

So like a growing number of physicians around the country, Macumber dropped his coverage. The decision meant he could not accept insurance contracts or maintain his hospital privileges. "It's the best thing I've ever done in my life," he says. "The actual decision -- the thing that pushed me over -- was when I was talking to one of my patients, and I said, 'Listen, the only way I could stay here and practice was if I didn't have insurance,' and my patient didn't even hesitate, he said, 'That's fine. I'll sign something; we just want a doctor.' So then I started asking other patients, and most of them didn't have a problem with it. There were a few patients who were bothered by it, so I just helped them find a new doctor, and it was no big deal."

But going bare is a big deal. Macumber's cash-only practice with no liability insurance premiums may seem like a romantic notion -- medicine at its purest -- but experts say you shouldn't even consider dropping coverage except as a last resort. For one thing, it may be illegal in your state. Some states prohibit doctors from practicing without coverage; others require bare physicians to take steps to ensure that malpractice awards get paid, at least partially. For another, even if it is legal, it's probably impractical. In most states, hospitals don't allow bare physicians to maintain privileges, and managed-care payers generally won't contract with them.

Practicing bare exposes you -- and your colleagues -- to a host of risks, including the potential loss of your personal assets in paying off a plaintiff and your own lawyer, whose services you'll have to cover yourself.

Attorney Michael Lowe in Orlando, Fla., a state where staggering liability premiums and accommodating asset-protection laws and hospital policies make practicing bare relatively common, advises physicians on how to do it but nevertheless cautions against it for most. "I don't like to recommend it; the lawyers in my firm don't like to recommend it," says Lowe. "It's a last resort in a situation where insurance is not affordable and you have no other means to protect yourself."

Richard Anderson, an oncologist and CEO of The Doctor's Company, a Napa, Calif.-based malpractice insurer, says physicians should be reluctant to go bare for personal, professional, and societal reasons.

Bare physicians could be one big judgment away from bankruptcy, and so they may find it hard to sleep at night, says Anderson, who is a leading tort reform advocate. Also, he says, because plaintiffs' lawyers tend to direct their energies toward the deepest pockets, bare doctors increase their colleagues' risk. Anderson's company advises its physician clients not to work with any bare doctor.

Finally, bare doctors strip patients of their indemnification against actual malpractice, Anderson argues.

Still think you may need to go bare? Experts suggest you take the following steps first:

- Consider all your alternatives. Is it possible you're buying more insurance than you need? Just as bare physicians increase their insured colleagues' risk, being over-insured probably increases your own risk. Don't carry higher-than-normal policy limits for physicians in your specialty in your community. Also, think about dropping services that aren't necessary to
your practice but which drive your premiums through the roof. And while it may seem
defeatist, don't dismiss the prospect of moving. It may be possible to reduce your premiums
dramatically by moving a short distance to the neighboring court jurisdiction.

- Check the laws and regulations in your state. According to the American Medical Association,
at least 15 states mandate coverage, require physicians to take steps to ensure they can pay
at least a portion of any malpractice award, or make physicians’ inclusion in judgment caps
contingent on their being insured.

- Understand the business implications. For doctors in most parts of the country, going bare
means making a radical change in business operations. You can expect to lose your hospital
privileges (though efforts are afoot in some places to persuade hospitals to abandon their
med-mal requirements), and you'll probably have to convert to cash-only. Such a conversion
opens an entirely new -- and complex -- subject. Don't act rashly or out of emotion.

- Know the risks. Many doctors believe going bare might be their best protection against a
lawsuit, reasoning that trial lawyers won't bother with them. Paul Gluck, a Miami OB/GYN
who's been bare for 15 years, notes that he'd been sued three times before dropping
coverage, and not once since. But Bob White, president of Jacksonville, Fla.-based First
Professional Insurance Co., says trial lawyers are increasingly annoyed by the trend and are
looking for bare doctors to make examples of. "This is becoming a bigger movement, and it's
a threat to the trial lawyers' wallets," White says. "And when you threaten their wallet, they'll
come after you harder than ever." Will you sleep at night knowing that you'll be personally
responsible for any judgment against you?

- Protect your assets. Even if you have insurance, you'll sleep a lot better knowing that a
judgment beyond your coverage limits won't ruin you. And there are ways to protect -- or
hide -- your assets. But there may be limits to what you can do. Some strategies have only
recently been developed and are legally untested, says attorney Lowe. Some assets are
harder to protect than others. And some so-called asset protection plans are just scams. Be
particularly careful about offshore accounts and other exotic schemes. There are some good
books on the subject, including *Asset Protection for Physicians and High-Risk Business
Owners*, by attorney Robert J. Mintz, which you can read online for free at [www.rjmintz.com]
But do NOT make asset protection a do-it-yourself project. Get experienced professional help.

- Consider defense costs. Fees for experienced lawyers usually start at $100 an hour and
sometimes triple or quadruple that amount. Make sure you have a strategy to pay your
attorney -- for example, set aside some just-in-case money, or purchase litigation insurance
(which pays only for your defense, not for any award). Also, be aware that trial lawyers who
know you're bare might offer to settle for slightly less than what the case is likely to cost you
to defend.

- Make sure everyone knows. Patients, payers, and, in most states, regulators must be
informed that you've gone bare before you treat anyone.

This list is only a starting point. Where you live will largely determine the practicality of going bare --
not only do laws regulating doctors vary, but so do laws regulating incorporation, bankruptcy, and
asset protection. Your asset-protection plan is also likely to affect your tax liability. And plans that
rely on your being married, as many do, beg the question, what if you get a divorce?
"Before you do it, you have to have a very coordinated approach with regard to understanding your
state's regulatory framework, your personal and corporate asset protection, and how you'll defend
yourself if you do get sued," says Lowe. "And you need to think about the consequences, in terms of
what you'll go through if you get sued and you're bare. Like the investment people always say,
'What's your risk tolerance?'"

Macumber understands all that and is quick to point out that he'd prefer to have malpractice
insurance. "By no means am I happy about this," he says. "I wish I could get my patients that
protection, and I don't want to encourage other people to think that this is the solution, [to] just go
bare." New patients to Macumber's practice are given a consent form that outlines both his status as
uninsured and his financial position, which includes "educational loans, an eight-year-old car that's
not even paid off, and a big mortgage," he says.

But Macumber's decision is based as much on principle as necessity. For example, against the advice
of counsel, Macumber takes no asset-protection steps because he says, "I'm trying something here,
where I'm being really upfront and honest with my patients ... and I think if I'm doing that on one
hand and on the other hand I'm also hiding all my assets, it's a little dishonest." (Of course, by his own account, he also has few assets to protect.) 

Macumber says he could also move his practice to a neighboring county just a few miles away and pay only about $5,000 a year for liability coverage, but he won't do it. "It goes against what I'm supposed to be doing as a doctor," he explains. "What kind of message is that?"

In short, Macumber is risking everything he owns for a principle. That makes him rare. But he is hardly alone in deciding to go bare. In Florida, for example, doctors like Gluck have been doing it for many years.

According to the Florida Department of Health, though, the practice is accelerating -- in just the last two years nearly 800 doctors have gone bare, and such doctors now account for about 6 percent of the state's 50,000 physicians. So common are bare physicians, especially in South Florida, that hospitals and managed-care payers generally don't require that physicians have coverage. A payer that made such a demand would have a hard time finding anyone to fill its panels, Gluck says.

"In Florida, it works," Gluck says. "In other states, it might not."

Physicians in other states are finding out. Though national data on bare doctors are unavailable, the phenomenon has apparently spread significantly in the last few years.

"Doctors in hard-hit states really only have a few choices," says John C. Nelson, a Salt Lake City OB/GYN and president-elect of the American Medical Association. "They're restricting their practices, they're relocating to places with more favorable malpractice climates, or they're retiring early. The fourth thing they're doing in some states is going bare."

In Sandusky, Ohio, Steve Sparks, MD, will give up his hospital privileges, stop assisting in surgeries, discontinue his work at a local nursing home, and focus solely on his cash-only general practice and weight management clinic -- all so he can drop his med-mal premiums, which are expected to increase 58 percent to more than $44,000 a year starting in June. The policy cost $1,000 a year in 1989.

"I'd love to have coverage and I do right now, but we're taking it at a loss," Sparks explains. "So what should I do -- should I default on my loans and close the business? That hurts more people in the community than my going bare."

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