PROTECTING YOUR PRACTICE
A CHECKLIST FOR OFFICE MANAGERS

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With the start of the New Year, I meet with all of my medical practice clients around the
country to discuss asset protection and corporate compliance initiatives for the coming year.
With this article being published close to the first of the year, I thought I would share some of the
asset protection and compliance strategies we use with our clients so that the readers of this
column can utilize these strategies.

First, it is critical that every physician and other medical professional practice through an
entity that is either a corporation or a limited liability company (“LLC”). The purpose of
practicing through an entity is to use the corporate “veil” to protect the owner physician’s
personal assets from liability associated with a variety of third party claims. Unfortunately, if a
physician commits malpractice, the act by the physician of committing malpractice is not
protected by the existence of a corporate entity. However, a corporate entity will protect
physician owner’s personal assets from most other forms of liability (absent direct fraud by the
physician) including malpractice by another physician in the group.

To assure the corporate “veil” is in existence to protect a practice, it is critical that the
practice follow corporate formalities. This means, in part, holding formal corporate shareholder
and director meetings. The shareholders of the corporation (or Members of a LLC) should hold
a formal corporate meeting electing the Board of Directors (or Board of Managers for a LLC) for
the following year. The shareholders should also discuss the activities of the entity during the
prior year (major expenditures and material contracts) and approve those actions, policies and
procedures implemented by the officers and Directors of the company where appropriate.

Next, the entity should hold its annual Board of Directors (Board of Managers) meeting
and formally elect each of the officers (only President and Secretary typically needed) to carry
out the business of the entity. LLCs are not required to have officers as all of the administrative
functions can be performed by the Managers but it is permissible to elect specific officers of a
LLC as, typically electing officers will assist in the efficient operation of the LLC.

In addition to the corporate officers, the Board should elect a Billing Compliance
Coordinator and a HIPAA Compliance Officer. Although not legally required, the purpose of
electing these positions is to show the OIG and Office of Civil Rights that the entity has a
 corporate culture of Medicare billing compliance and HIPAA privacy and security compliance.
The purpose of holding these meetings is to formally establish that the physician entity and its
physicians as shareholders, Board members and officers have a mandate of corporate compliance covering a number of regulatory areas. Therefore, if an individual physician violates the law or corporate policy, the entity and other physicians have a defense that the offending physician is acting outside of the scope of his or her duties and not on behalf of the entity.

Once the basic corporate formalities are satisfied, the Board should adopt resolutions stating the entity has policies against billing fraud, paying other providers inducements for patient referrals, violating HIPAA privacy and security policies, and specifically requiring all employees and owners of the Company to comply with all of these policies and procedures.

The next step is to adopt resolutions to establish that the Board has also reviewed and approved other policies and procedures of the Company. These resolutions should state that the Board approves all compensation, bonuses and other distributions paid to employees and owners of the Company and approves all payments used to fund employee benefit plans. Additional resolutions should cover the Board’s approval and intention to enforce the Company’s policies against age, sex, race, religion and other discrimination against Company employees, patients and vendors; policies against workforce or sexual or other harassment against Company employees and patients; and resolutions against employees or owners inappropriately accessing or taking company intellectual property.

There are a number of other resolutions for a Board to adopt covering a multitude of legal and practical issues. This Article is too short to describe all of those resolutions. Although not an end in and to themselves, the formal shareholder and Board meetings and minutes containing the suggested resolutions are a statement to government regulators and potential plaintiff attorneys that if individuals associated with the Company engage in inappropriate behavior, such behavior is not condoned by the Company. Further, the Company and its Board has not ignored these types of legal issues and regularly seeks to identify potentially problem situations.

By articulating the Company’s position on these issues, the Company creates a defense to claims that it conspired to assist in the inappropriate activity or that it was negligent in not attempting to address the inappropriate activity. The resolutions also help to prevent disgruntled shareholders from claiming months after the fact that the shareholder did not approve or know about expenditures or policies that might adversely affect that shareholder. Although not an absolute protection, holding formal meetings and drafting appropriate minutes goes a long way to protect the assets of the physician and the practice.