

Top 10

“SUPER HERO” TIPS

to Help a Physician Sleep at Night



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LAW FIRM

The Goosmann Law Firm, PLC recognizes you chose your career because you wanted to take care of patients—to focus on improving the health of others, in some cases even if it means an emergency in the middle of the night. But in today’s world, there are so many additional stresses and concerns that keep you from sleeping at night. The full-service legal team at the Goosmann Law Firm has several legal remedies that provide greater protection for you—allowing you to have peace of mind.

- 1. Create your armor. Form a company.**
- 2. Use your shield. Safeguard your limited liability.**
- 3. Be a Super Hero. Protect your family by executing a current estate plan.**
- 4. Think of Hercules. Defend your assets.**
- 5. Just like the Boy Scouts, get prepared. Review your insurance coverage.**
- 6. Keep the bacon. Tax planning is key.**
- 7. Know your business. Review your service contracts.**
- 8. Lead your team. Review employment issues and contract terms.**
- 9. Avoid Kryptonite. Mitigate compliance risks.**
- 10. Call in reinforcements. Put the Goosmann Law Firm on retainer.**

1. Create your armor. Form a company.

In many cases, it is a smart move for physicians to form a company. A Professional Limited Liability Company (PLC) or a Professional Corporation is often used by physicians to protect them from liability. What may lurk out there to bite the unsuspecting physician? Here are some examples:

- Employment cases (wrongful termination, discrimination, and sexual harassment)
- The misdeeds of business partners and employees
- Contract breaches, such as business agreements and leases
- Liability as a board member
- Accidents
- Investments, such as owning rental real estate
- Compliance issues with federal and state regulations



To help protect your assets from an unforeseen liability, forming a company can be a smart and relatively painless solution. Once the company is set up, there are a few easy steps every year to keep it active, which keeps its liability shield up. This keeps you protected not just next year, but, if properly maintained, will protect you twenty years from now. The Goosmann Law Firm can also make this painless for you, taking the annual management of these steps off of your to-do list.

It is important for any company to respect the difference between the company’s bank accounts, property, equipment, and other assets and personal assets owned by the company’s owners. A PLC, like a corporation or other legal “person,” is a separate legal entity with assets that are owned by the company. Any attempt by a PLC member to dispose of or use company property without proper authority would be no more proper than an attempt by that member to dispose of or use another member’s personal property. Members must respect the fact that the company’s assets are the property of the PLC or PC, not the owners’. Similarly, an owner should not intermingle personal assets with the company assets.

The company’s books, records, and financial statements should be maintained clearly to reflect the separation of the Company’s assets from the personal assets of the members. The Company must conduct business in its own name (not in the individual name of any manager or member).

Forming a company is one important part of creating a comprehensive liability plan, which may include insurance plans and relying on state exemptions. Your liability plan should be tailored to you to take into account your personal network and risk exposures. All letterhead, business card, bills, checks, invoices, and other Company forms should show the Company’s full legal name (and fictitious business name, if any), and the Company’s current address, telephone number, and fax number.

2. Use your shield. Safeguard your limited liability.

Owning a company requires some corporate maintenance. Keeping your company properly maintained and active protects your assets against future threats. Corporate compliance is an ongoing responsibility throughout the business lifecycle—starting, running, growing, and closing. Throughout each stage, your business must be proactive in managing these filing obligations and notifying state authorities.



Corporate Entity Management: Errors in entity compliance can be damaging to a company and its owners. Missed deadlines, filings, or payments can result in lost time and money and governmental penalties. It is important to keep your company or corporation in good standing and maintain these filing obligations and notifying state authorities.

Registered Agent Services: Your registered agent is your point of contact with state agencies and courts and receives official legal documents on your company's behalf. It is critical that each official state document is handled correctly and delivered to you promptly, so that you are aware of filing deadlines and court proceedings that affect your business.

Annual Report Filing Services: Annual report filings can be a time-consuming nuisance, especially when you are juggling all the demands of running your growing business. Plus, if you do business in more than one state, keeping track of the different deadlines is a challenge, especially since many states no longer provide reminders. Yet, the timely filing of your annual reports enables you to keep your business in good standing with the state.

Foreign Qualification Is Required to Do Business in a New State: If you are doing business in a state other than where you formed your company, you need to register as a foreign corporation. This process, which is often called foreign qualification, is not an option—it's a legal requirement. Failing to do so could result in fines and penalties, and a loss of access to the state's court system to enforce your company rights.

We recognize and appreciate that company maintenance can take a little time and focus, but does not rank high on your priority list. Many of our clients want to focus on what's important: taking care of their patients, maintaining and expanding their business, and enjoying their time on the rare occasions they have time off. That's why the Goosmann Law Firm offers a convenient program which dots the “i's” and crosses the “t's” for you. We can keep your company vehicle maintained so it runs smoothly.

Goosmann Law takes care of its clients' corporate needs through its Corporate Annual Maintenance Program. This program allows us to serve as your company's registered agent, receive legal notices and Secretary of State notices, file all mandatory Secretary of State reports on behalf of your company, and keep your company's corporate book current through annual meeting minutes.

Our experienced attorneys are ready to deliver Registered Agent services with the quality, value, and convenience your business deserves, while simplifying your responsibilities.



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3. Be a Super Hero. Protect your family by executing a current estate plan.

Estate planning is equal parts getting a plan in place and keeping it current. Laws change and circumstances change. For example, on the estate tax front, the past five years have seen the estate tax disappear (briefly) and then return with an exemption at an all-time high. Recent changes to the tax code have shifted much estate planning from the preventative planning which aimed to minimize death taxes to strategies that are more flexible and maximize income tax benefits.



The consequence is that older estate plans anticipate a tax landscape that no longer exists. These plans, while adequate in some ways, are not as efficient or useful as they could be if revisited. Furthermore, failing to regularly update a plan as wealth is accumulated will likely create a tax liability which could otherwise have been avoided. If an individual does not have a plan, it becomes all the more pressing to get one in place. The laws ensure there is a plan in place for someone who doesn't plan. The head-spinning number of changes lately guarantee that whatever that plan is, it is not what the person would have wanted.

There are also reasons other than changed finances and tax considerations for updating a plan. Individuals outgrow their plans; their lives outgrow their documents. What one needs before marriage is different than what is needed when one is newly married, which is different than what one needs after the birth of a child. Plans should be reviewed even as people get older, and their lives steadier. Goals for retirement might evolve or the lives of those we care about might change. Marriage, divorce, birth, and death, each serve as a cue; a reminder to review an estate plan to see if it still fits with present circumstances. An individual should review their plan to see if their property and policies are still going to the people they want them to.

Half of estate planning is also picking the right people to serve in your estate plan, whether as an executor, trustee, or agent under a power of attorney. Relationships, however, change over time. Is the person a couple trusted to care for their child five years ago the same person they want for the job today? Failure to review one's plan every couple years and to see if the plan holds up to time will likely result in an unintended and unwanted outcome. The Goosmann Law Firm helps ensure, year in and year out, that your plan is up-to-date and keeping pace with your life.

4. Think Hercules. Defend your assets.

A lifetime of hard work may be spent carefully building wealth only to have it taken away suddenly by a lawsuit such as a medical malpractice claim. Many asset protection strategies are available to health care professionals. The catch, though, is that the strategies require implementation long before a problem arises. Planning must be done in advance. These strategies are multi-pronged approaches, and the overall protection becomes stronger as the different components are layered and intertwined.

You should always have adequate malpractice and general umbrella insurance. Depending on your administrative services, you may also need a Directors and Officers (D&O) policy. These policies will help absorb certain liability claims. Liability insurance, however, should not be relied on exclusively given the possibility that a claim will surpass the coverage or the policy will not cover a certain event or creditor.



Health care professionals are at a higher risk of finding themselves in a creditor's crosshairs. You should also consider making use of the Domestic Asset Protection Trust laws that have become available in several states over the past two decades. The old rule used to be that one could not make a Trust for oneself and expect the assets inside the Trust to be immune to creditors. However, Domestic Asset Protection Trusts, or DAPTs, allow a person to do just that. DAPTs allow a person to create a Trust for his/her benefit, and yet still protect those assets from lawsuits.

Not every state offers DAPTs, and of those states that do, all are not equal. South Dakota and Nevada are among the best places to establish DAPTs. If done correctly, a sizeable group of assets can be protected inside a Trust, so even in the worst case scenario there will be sufficient assets for support. Working with the Goosmann Law Firm, you will gain peace of mind knowing your family is protected with a Trust that fits your circumstances.

5. Just like the Boy Scouts, get prepared. Review your insurance coverage.

A key aspect for every health care professional, whether you are employed by a large hospital, a member of a practice group, or practicing solo, is to have adequate insurance coverage. Insurance provides you with a safety net that you hope you never need, but that you want under you if you take an unexpected fall. But when you're looking at insurance options, and deciding what is necessary for your situation, you want to make sure that you are protected from liability claims and that you are protected against unexpected losses of income.

Protection from liability claims: As a health care professional, malpractice liability coverage is essential. Although statistically malpractice claims have leveled out over the past several years, it is critical that every health care professional has sufficient professional liability insurance coverage. The amount of coverage that you carry may vary based upon the type of practice that you have, and you should consult with your insurance agent on that particular issue, but at a minimum you should have at least \$1 million in coverage, per occurrence. When considering malpractice insurance you want to look at coverage not only for civil lawsuits but also administrative actions such as licensing or credentialing.



In addition to malpractice insurance you should consider coverage for cyber liability to protect you or your practice from claims arising from losses relating to electronic patient information. If you are in a group practice you should also consider Directors and Officers coverage, Errors and Omissions Liability, and employment practices liability.

Protection against income loss: Insurance is also a tool to protect your income stream for unexpected occurrences. The most-often overlooked insurance tool is disability coverage. Statistically the odds of missing significant time from work due to a disability are higher than expected. In fact, some studies show that just over 1 in 4 of today's 20 year olds will become disabled before they retire. Without long and short-term disability insurance coverage, your income stream could dry up very quickly. It is important for you and your family that you have adequate income loss coverage. The old adage says the two things that are certain in life are death and taxes. Although there isn't coverage for taxes, it is important to plan for your dependents by having a life insurance policy to insure your loved ones are protected in the event something tragic happens to you. Term life insurance is very affordable and should be purchased for a length of time that sufficiently covers any minor children.

The attorneys at Goosmann Law Firm are experienced in managing their clients' risks and will team with your insurance agent to assist you in making a plan that protects your assets and against income loss.

6. Keep the bacon. Tax planning is important.

Failure to do any tax planning is like leaving money on the table, or handing it to the government. There are two facets to this planning: estate taxes and income taxes. Changes to the federal estate tax landscape allow for a greater opportunity to pass wealth on. As of 2016, an individual can transfer a total of \$5.45 million during life and at death. With portability—the ability to pass the unused amount to a spouse—a couple can transfer twice as much. With such a large ceiling, there is now a trend to keep assets in a person’s estate so that there can be a basis bump at death which will help reduce capital gains taxes. When a couple’s combined assets start edging past \$10 million, more advance strategies need be implemented to help avoid a tax liability of 40% on the excess over the exemption amount.

There are also many income tax planning opportunities available year-to-year for high earners. Tax-deferred retirement planning should be a priority. This shifts taxable income from years where the individual is in the highest income tax bracket to later years when they are being taxed at a lower marginal rate. Strategic use of mortgages, and the ability to deduct the interest thereof, can also be used to reduce taxable income. Another useful strategy is tax-harvesting losses, selling assets that have decreased in value to create a capital loss that can be used to offset other capital gains, and to a limited extent, ordinary income. And these are just the options that are readily at hand. Though it requires a detailed analysis, there may be other deductions and credits available on both the federal and state level. The Goosmann Law Firm has experience identifying these opportunities and makes it a priority to collaborate with you and your CPA to take advantage of them.

7. Know your business. Review your service contracts.

It is essential that you know and understand the terms of all your contracts, including when the contract expires or renews automatically, any notification period necessary to terminate the contract, professional and business liability provisions, restrictive covenants, specific service obligations, and many other terms relating to extensive regulatory requirements. The time to review and renegotiate your contracts will depend on the terms of the original contract. In your review, remember to include all categories of contracts such as real estate leases, employment contracts, employee leases, personal service agreements for professional and administrative services, and co-management agreements.

Generally, a contract should be reviewed at least once a year if it is an annual contract, or once every two years if a two-year contract. Whatever the term of your contract, a thorough review should be conducted at least 4 to 5 months prior to the anniversary date of the contract in order to capitalize on the opportunity for a new or enhanced agreement. Although contracts can be changed outside the renewal/expiration cycle, penalties for non-renewal or missing deadlines can be costly. In particular you could find yourself out of compliance with the Stark Act exceptions and/or safe harbor provisions of the Anti-Kickback Statute if a contract expires without renewal, so it is important to track contracts to stay current.



Just as in your original contracts, consider whether your life style or family situation has changed and whether you have different financial goals and priorities since the time you signed your last contract. Now is the time to renegotiate any changes in benefits, ownership/partnership opportunities, outside employment activities, job duties, and restrictive covenants. If you are considering departing your current practice, review any gap/tail insurance terms in your contract as well as triggering events for terminating the contract.

Whether you are seeking to change the compensation formula for your contract, or other terms and conditions, it is critical that any changes are reduced to writing and included in the contract or an addendum to the contract. In addition to possibly not meeting regulatory guidelines, informal and verbal agreements are often a source of discontent for both sides. Therefore changes in terms should be clearly implemented through amendments to change the written terms of your contract. Utilize an attorney, like one at the Goosmann Law Firm, who has experience in drafting and reviewing physician contracts to conduct the review. Communicate with your attorney any issues, concerns, or changes you believe are necessary for you to be satisfied with the terms and conditions of your contract.

8. Lead your team. Review employment issues and contracts terms.

This includes but is not limited to compensation, professional liability coverage, restrictive covenants, and disclosure requirements. Hiring, supervising, and firing employees is a challenging prospect for busy physicians who are focused on delivering quality patient care. Employment laws are confusing and present daily challenges. Ignoring employment laws and regulations can create additional costly expenses over and above the 55 percent of annual practices expenses that staff salaries and benefits often represent.

Compliance with the alphabet soup of federal and state employment laws, including the (FMLA) Family Medical Leave Act, FLSA (Fair Labor Standards Act), ADA (Americans with Disabilities Act) are challenging. So is investigating and resolving gender and race discrimination law violations in the workplace. The slew of regulations requires physicians to hire and retain excellent practice management staff. The top five litigations risks in the area of employment law are:



- The misclassification of employees as independent contractors
- Wage and hour violations
- Gender and race discrimination
- Americans with Disabilities Act
- Family and Medical Leave

Once you find the right person to manage the employees in your practice, keeping that person from being courted away by other practices is a priority. A non-compete provision in an employment contract can provide some protection from losing your management staff. A non-compete clause must, however, comply with the statutory requirements of South Dakota statutes or risk having a court find the covenant invalid.

The Goosmann Law Firm understands these most current laws and can navigate you through them to ensure you can continue to stay focused on what's most important to you.

9. Avoid kryptonite. Mitigate compliance risks.

The health care sector is one of the most heavily regulated sectors of the economy and it is also the sector that is growing most rapidly. As a health care professional there are many opportunities for business growth. But almost any health care business transaction or growth plan has the potential for not complying with regulations such as the anti-kickback statute, the Stark Act, HIPAA, or the Affordable Care Act, just to name a few. The consequences of violating the myriad of health care regulations can potentially be catastrophic to the growth of your business. Not only are there civil monetary penalties that can range from tens of thousands of dollars to millions of dollars, but it is also possible that you or your business entity could be excluded from participation in federal reimbursement programs such as Medicare or Medicaid.



In order to meet your goal of growing your business, while remaining compliant with state and federal regulations, you should assess the following steps:

- Identify the reason behind your plan for growing your business (For instance, are you adding employees, working with new business partners, or developing a medical invention?);
- Identify any additional parties who may be involved in your business growth plan;
- Develop a timeline for when you want to implement your plan;
- Determine if funding is necessary for implementing your plan and whether you will need to go to a third party for assistance with any funding.

With this basic information in hand you will be able to work with an experienced health law attorney to develop a plan to put your goal into operation in a manner that allows for business growth while staying compliant with health law regulations.



As a health care professional you have worked hard to succeed in your chosen profession and you may have great ideas for taking that success to the next level. You can make your ideas reality if you plan properly and work with professionals who can guide you through the regulatory maze in a manner that keeps you compliant and profitable.

The Goosmann Law Firm has experience in health care regulatory matters and that can navigate you around the regulatory pitfalls that can trip you up and keep you up at night. Let us help you grow your health care business by addressing the legal issues while you concentrate on medical issues.

10. Call in reinforcements. Put the Goosmann Law Firm on retainer.

Navigating through the rules and regulations of the health care industry is not an easy task. There are a number of federal and state regulations that affect your medical practice or health care business. If not carefully navigated, you could end up spending large amounts of money trying to fix mistakes that missed key regulatory issues. The best way to maintain your focus on your career goals is to consult professionals who are familiar with the regulatory issues that arise in the health care industry. Maintaining the Goosmann Law Firm on retainer is in effect having your own in-house counsel available to answer questions on regulatory matters and to work with you on your goals to maximize your success.



Call us today! We know health care.

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