It is estimated that one to two percent of physicians, throughout the country, practices without medical malpractice insurance. This situation is invariably caused by increasing malpractice insurance rates and, in some cases, a lack of available insurance. Many factors have lead to increased insurance rates: more lawsuits, higher verdicts and settlement of claims, public expectations of medical outcomes, reduced investment rates of return for insurance companies, and industry-wide insurance losses such as 9/11 and Hurricane Katrina. Most industries adapt to higher insurance premiums by passing their increased costs on to the consumer. In contrast, physician compensation is usually tied to government reimbursement health programs or third-party contracts. Consequently, physicians cannot easily pass the additional cost of insurance on to patients or payers. Increasing economic pressures, including the cost of malpractice insurance, has resulted in some physicians retiring and a few continuing to practice while “going bare” by dropping their malpractice insurance.

**Insurance may be required**

Going bare may not be an option in some states. For example, Massachusetts, Pennsylvania, Wisconsin, Kansas, and Colorado require physicians to have malpractice insurance to maintain state professional licensure. Other states, such as Arizona, California, Missouri, and Indiana, allow hospitals to require physicians to have malpractice insurance as a condition for obtaining and maintaining hospital privileges. Although Florida does not require “insurance,” it does require a physician without insurance to pay at least the first $250,000 of a judgment or risk losing his or her medical license. Similarly, most managed care and third-party payers require malpractice insurance as a perquisite to both credentialing and contracting.

In Arizona, a physician is not required to have malpractice insurance as a condition of licensure. However, it is also highly unlikely that a “bare” physician would ever be able to either obtain/maintain hospital privileges or third-party payer provider contracts.

**Consider the full cost of going bare**

Going bare may not necessarily save money in the long run. Visions of saving large premium dollars will usually disappear with the first claim. By going bare, the physician becomes a self-insurer for all claims, and for the defense costs of medical board, government and peer review investigations that are often included as an added benefit of a malpractice insurance policy.

As the self-insurer for a lawsuit, the physician has the choice to either default, thereby allowing a judgment to be taken against him with collection from his assets, or to defend the lawsuit. Defending the lawsuit requires the physician to either act as his own attorney or to hire an attorney. Even as his own attorney, the physician is responsible to pay the costs of defending a suit, including filing fees, travel expenses, and experts’ fees. In addition, by acting as your own attorney, considerable time will be lost from the practice of medicine, thereby decreasing patient collections. By hiring an attorney, the physician gains more time to practice, but gains the substantial additional expense of attorneys’ fees. In addition to the expense of defense, there is the cost of any compensation paid to the claimant either by settlement or judgment.

The cost of defending a single moderately sized case is likely to exceed $100,000. Yet, many physicians have multiple claims to simultaneously defend. Similarly using 2003 figures, the costs of paying a medium sized malpractice jury award and a medium settlement are $1,200,000 and $700,000, respectively. For some specialties, such as obstetrics, the payouts for medium verdicts and settlements are even more. Thus, a physician thinking about going bare must seriously consider whether it is worth the risk of potential asset depleting defense expenses, settlements or judgments.

If the physician intends to return to the malpractice market after a few years, he may find himself uninsurable or a high risk. Many insurance companies will not underwrite a physician who has a gap in coverage, thereby forcing him into the much higher priced secondary insurance market.

Although there may be initial savings in not paying insurance premiums, when all things are considered, the actual cost of going bare may far exceed the cost of purchasing available insurance.

**What to consider**

- Does your state allow it?
- Do you need hospital privileges?
- Do you rely on third-party payers that require malpractice coverage?

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• What are your assets?
• Have you consulted an attorney to discuss asset protection?
• Can you financially defendant one or more claims or suits?
• Can you financially bear multiple claims and suits?
• Is bankruptcy an option?
• Do you intend to pay any verdicts or settlements?
• Do you employ nurses, staff, and physicians for whom you are vicariously liable?
• Do you intend to reapply for coverage after a few years?
• Will you be purchasing tail coverage for your prior insured period? Without tail coverage you will also be insuring all claims for care and events before going bare.

Summary
Many physicians “jokingly” state that they will not continue to pay high malpractice premiums because they are “going bare.” However, any realistic assessment of this option is likely to lead to the conclusion that “going bare” is not a sensible solution as it will result in loss of hospital privileges and payer contracts, one substantial claim may lead to bankruptcy, and the physician is unlikely to be insurable again. Instead, a more practicable and realistic option to forgo high malpractice premiums is to look for a source of employment that provides malpractice coverage. For example, many physicians who no longer wish to pay premiums have obtained malpractice coverage as a benefit of employment with large physician groups, the federal or state government, managed care providers, corporations, medical centers, and universities.

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