6. Failure to Make the Medical Malpractice and Doctor Judgment-Proof

There are many ways that a medical practice and a doctor can work to make themselves a less-attractive target for a plaintiff's lawyer.

Often, the practice incurs debt in its name, and the lender or lenders have liens on practice and personal assets that must be paid before a plaintiff is able to levy upon a doctor or practice. Also, valuable assets like real estate and furniture and equipment can be owned by a separate entity that would lease those assets to the medical practice to make them inaccessible, or at least less accessible, to a malpractice claimant.

It is also important to ensure that each physician in a group has his or her personal creditor protection planning properly in place so that a plaintiff lawyer can be led to settle within policy limits if and when a catastrophic lawsuit occurs.

Because of state and bankruptcy law fraudulent transfer law statutes, it is often crucial that creditor protection planning for the medical practice entity and the doctors occur well before any problems arise.

When a serious lawsuit occurs, the doctors should keep in mind that the lawyer hired by the insurance company does not necessarily have duty of absolute loyalty to the doctor. The malpractice insurance carrier selects and pays the lawyer.

There are often circumstances whereby an independent lawyer should be hired by the doctor to encourage the insurance carrier to settle a claim within policy limits when the opportunity arises, in order not to risk the doctor's personal and practice assets to an "excess verdict." Many states have laws that will require an insurance carrier to be responsible for any excess verdict if proper demand has been made upon the carrier when it had the opportunity to settle within policy limits. These are called the "bad faith" rules.