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## Doctor's bankruptcy filing provides malpractice haven

By [Phil Galewitz](#)

Palm Beach Post Staff Writer

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Dr. Jacques Farkas thought he would be sued as soon as the surgical drill slipped from his hands and sliced the exposed nerves in his patient's lower back.

"This may be a lawsuit," Farkas told an operating room nurse during the 2001 procedure.

### Bankruptcy's shield

Dr. Jacques Farkas was able to use state and federal bankruptcy laws to shield all but \$16,000 of his \$2.6 million in assets from creditors and malpractice victims. Following is a breakdown of his major assets:

- Juno Beach home: \$1.6 million
- Home furnishings: \$30,000
- Pension: \$480,000
- Other investments: \$450,000
- Monthly income: \$38,000
- BMW 530i (leased): \$46,000-\$50,000 (MSRP)

### What is bankruptcy?

Bankruptcy is a federal court process designed to help consumers and businesses eliminate their debts or repay them under the protection of the bankruptcy court. Bankruptcies can generally be described as 'liquidation' or 'reorganization.'

Under a liquidation bankruptcy (Chapter 7), you ask the bankruptcy court to wipe out (discharge) the debts you owe. Under a reorganization bankruptcy (typically Chapter 13, for consumers), you file a plan with the bankruptcy court proposing how you will repay your creditors. You must repay some debts in full; others may be repaid only partially or not at all, depending on what you can afford.

Because bankruptcy protections vary from state to state, those with unlimited homestead exemptions, such as Florida and Texas, are attractive to the wealthy contemplating a bankruptcy filing.

Congress did pass the changes to federal bankruptcy laws last year in response to high profile cases such as Burt Reynolds and former Major League Baseball commissioner Bowie Kuhn filing for relief from creditors while keeping million-dollar Florida homes.

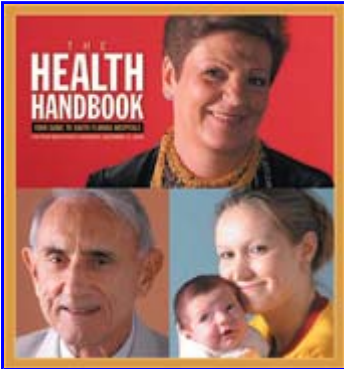


Those changes, however, had only a modest effect on doctors' filing for bankruptcy because the law dealt largely with consumers, not business owners, experts say.

But the new law does make it harder to file for Chapter 7 bankruptcy protection where all the debts are erased. Instead, it could leave more doctors in Chapter 13 where they have to follow a repayment plan to creditors, said Michael Singer, a Palm Beach Gardens health lawyer. Also, the new bankruptcy law puts a \$125,000 cap on home equity protection for people who own property for less than three years and four months.

- Phil Galewitz

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U.S. Bankruptcy Court in Palm Beach County blocked McAloon's malpractice case against Farkas. It also stopped patient's lawsuit against him. As a result, the doctor was able to keep nearly all of his assets, including a \$1.6 million oceanfront home in Juno Beach, and maintain his \$400,000 a year salary.

Court documents detail Farkas' financial situation. Although he reported more than \$2.6 million in assets, the bankruptcy court could identify only \$16,000 that creditors could tap. Most of that money is expected to go to Farkas' bankruptcy attorney and the court's bankruptcy trustee.

McAloon's 2003 lawsuit against JFK is expected to go to trial in March.

Farkas, 54, declined to comment for this story. His attorney, Charles Cohen of Boca Raton, noted that the doctor to file for bankruptcy was within his rights.

"What Dr. Farkas did is not uncommon at all," he said.

Moreover, Cohen said, Farkas had no choice but to file for bankruptcy because of the malpractice claims and the reluctance to settle for a smaller amount.

Cohen likewise blamed the malpractice system for pricing policies beyond reach of Farkas and most South Florida surgeons.

But because doctors can take the bankruptcy route when sued, critics contend that their actions raise questions about the fairness of Florida's medical malpractice system.

Florida is one of only a handful of states that enables physicians to practice without malpractice insurance. As a result, many doctors who practice without coverage routinely take steps to reduce personal liability and to protect themselves from a lawsuit.

That leaves hospitals carrying the liability burden, and people such as McAloon feeling victimized all over again.

"It has just ruined my life," said McAloon, while sitting recently in her one-bedroom Boynton Beach condo.

### **State, federal laws protect assets**

Nearly all of the assets of Farkas, who is now an employed surgeon at St. Mary's Medical Center in West Palm Beach, are safe under state and federal bankruptcy laws. His Juno Beach home and its \$30,000 in furnishings are protected. He retained his BMW because it was leased rather than owned, and his nearly \$1 million in pension and investment accounts. The bankruptcy court could not garnish any of his wages because Farkas is the head of a household.

Meanwhile, according to court records, the doctor and his wife, Marcia, spend \$750 a month on new clothes, \$1,000 a month on food and \$895 in monthly "gifts."

Farkas has been practicing medicine for 25 years, most of it in Palm Beach County. He spent two years at medical school in Guadalajara, Mexico, and did the rest of his training in Illinois. In documents from the malpractice lawsuit, Farkas was sued three times during his surgical training. He said he has been sued four times since starting his own practice.

While average malpractice insurance costs soared in the early part of this decade, industry analysts say the rates are beginning to level off.

most likely also went up because of several claims against him.

His former malpractice insurer paid out money in three malpractice suits. In 1998, his provider paid a \$200,000 claim for a 1993 incident. In 2001, his insurer paid \$7,000 resulting from a 1999 malpractice suit. And in January 2004, his insurer paid a \$157,800 claim for a 1996 malpractice case.

Farkas moved his surgical practice to St. Mary's in 2005 because he works as a trauma surgeon as part of his duties.

Trauma and neurosurgery, his areas of practice, are considered high risk. Since 2001, Farkas has performed more than 400 operations and rung up more than \$31 million in charges, according to Intellimed International, a market data firm.

Health lawyers said its not uncommon for Florida doctors to file for bankruptcy, though it would be more typical *after* a court judgment, not before. They said the downside to filing bankruptcy means Farkas will face difficulty borrowing money, though his relatively large salary could help limit the damage.

That is little consolation to his former patients.

"It's not fair," said Sam Sanguonchitte, 52, sitting outside his Boynton Beach home. "I trusted him before the surgery, and he should stand up like a man and take responsibility."

Sanguonchitte, who repairs fine watches, was referred to Farkas for surgery in 1999, after he passed out several times during a cruise. He was diagnosed as having an abnormal cervical spine.

Farkas proposed doing spinal surgery to stabilize the discs along the spinal cord in his neck. Farkas did the spinal surgery using rods that the manufacturer advised should not be used in spinal surgery. Within a year after the operation, the rods migrated into Sanguonchitte's brain, severely injuring him. Today, Sanguonchitte can't work and is often in pain.

"I can't walk. I can't do anything," said Sanguonchitte, who uses a wheelchair.

He has had four additional operations to limit the damage. Though he has health insurance, he's still had to pay for thousands of dollars in medical expenses on his own. His wife, Matilda, takes care of him at home.

In July, a Palm Beach County jury found JFK Medical Center liable for failing to stop Farkas from doing the surgery. It ordered the hospital to pay \$11.4 million in damages. The hospital is appealing.

### **Group warns of doctor flight**

Sanguonchitte and McAloon tried to stop the Farkas bankruptcy proceeding, saying it was filed in bad faith. But the bankruptcy court disagreed, and in early December a federal appeals court concurred.

That left only \$16,000 of Farkas' more than \$2.6 million in listed assets for the victims vulnerable to a lawsuit, according to the bankruptcy court.

Asked how much would be available to Sanguonchitte and McAloon after attorney and court fees, Cohen said: "pennies."

Doctors have complained for years about a "jackpot jury" system and that skyrocketing liability costs have threatened their livelihoods. The Florida Medical Association has warned that doctors are leaving the state because they fear losing their homes from even one malpractice suit.

But observers say doctors have little to worry about from the Florida malpractice system. It typically takes at least five years to bring a malpractice suit to a jury and appeals can add at least another three years before a final judgment. Doctors effectively cannot be sued for malpractice that causes a death of a patient, if the patient does not have a surviving spouse or children under age 25.

A 2003 state law generally caps how much most patients can recoup in "pain and suffering" damages to \$500,000.

Because Florida doctors are allowed not to carry malpractice coverage, they must pay only \$250,000 of a malpractice judgment if they want to retain their license. If they don't pay, they could be subject to punishment by the state Board of Medicine.

Farkas didn't have to worry about repercussions from the state medical board because neither of the two malpractice cases against him were brought to trial.

Farkas had malpractice insurance when he operated on Sanguonchitte in 1999 and McAloon in 2001. But he stopped carrying insurance in January 2003 before being sued by Sanguonchitte and McAloon later that year. Because Farkas chose not to buy "tail coverage" that would have covered him after he stopped paying premiums, Farkas no longer had any coverage when the suits were filed.

Farkas' bankruptcy experience shows how the doctors can do an end run around the malpractice system, critics say.

"It's outrageous," said Arthur Levin, director of the New York-based Center for Medical Consumers, a patient advocacy group. "And the state is complicit in this by not requiring doctors to carry malpractice insurance, the way all drivers must carry automobile insurance."

### **Aftermath for patients**

McAloon, 77, said she also feels Farkas and the state's malpractice system let her down.

Years have gone by since her internist referred her to Farkas to help with severe pain in her lower back. Farkas operated on her to remove a bone spur encroaching on nerve roots in her spine in June 2001.

The mistake occurred as the procedure was nearing completion. That's when the surgical drill Farkas was using struck a retractor a nurse was holding to protect the area around the nerves. When the two instruments collided, the drill accidentally cut McAloon's nerve roots.

The nurse, Lynn Croteau, testified in a deposition that Farkas' comment immediately after the incident was, "This may be a lawsuit."

After the surgery, Farkas told McAloon there was damage to her nerves. He did not admit to a mistake. "It's a risk and complication of surgery," he testified in a deposition.

There isn't a day that goes by that the botched surgery doesn't affect her.

Because she has no control over her bowels, everything she does depends on how well her laxatives and anti-diarrhea medicine work. She now has numbness in her legs which makes it difficult to walk. She gets repeated urinary tract infections.

McAloon, who has nine children, wishes she never had the surgery. She said she spends hundreds of dollars a year on adult diapers and other medicines.

But her motivation in going after Farkas is bigger than her personal discomfort. She says she filed suit to stop Farkas from making the same mistake on other patients. "I want to see him pay and put out of business," she said.

Her daughter, Susan Cullom, asks a different question: "Every other profession has to pay for their mistakes, why don't doctors?"

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