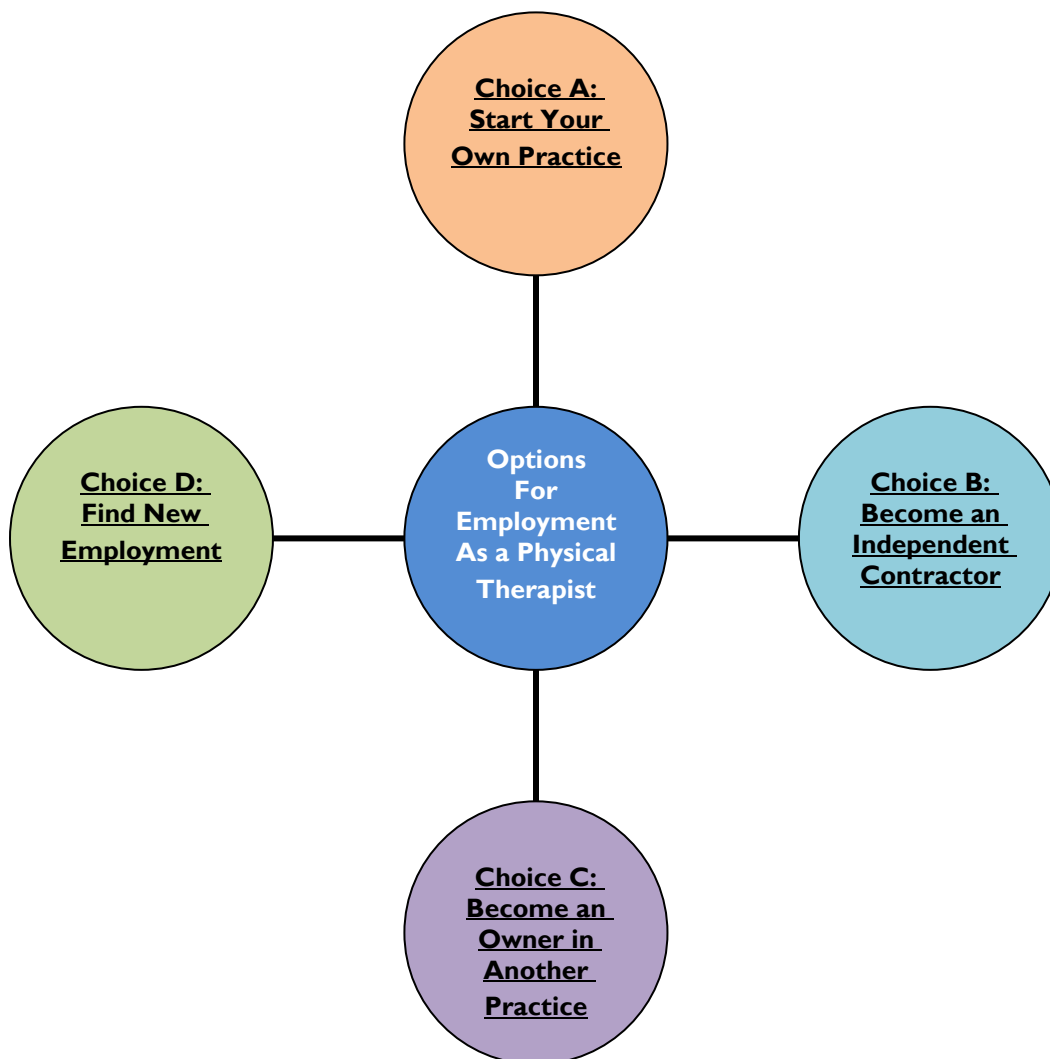


EMPLOYMENT TOOLKIT

Options for Employment for the
California Physical Therapist

Presented by CPTA



This guide is not legal advice and is not intended to be a substitute for obtaining legal advice specific to your situation. Consult an attorney to answer any of your legal questions. Attorneys can be found by searching www.lawyers.com, www.martindale.com, or by contacting your county or state bar association.

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CHOICE A: STARTING YOUR OWN PRACTICE

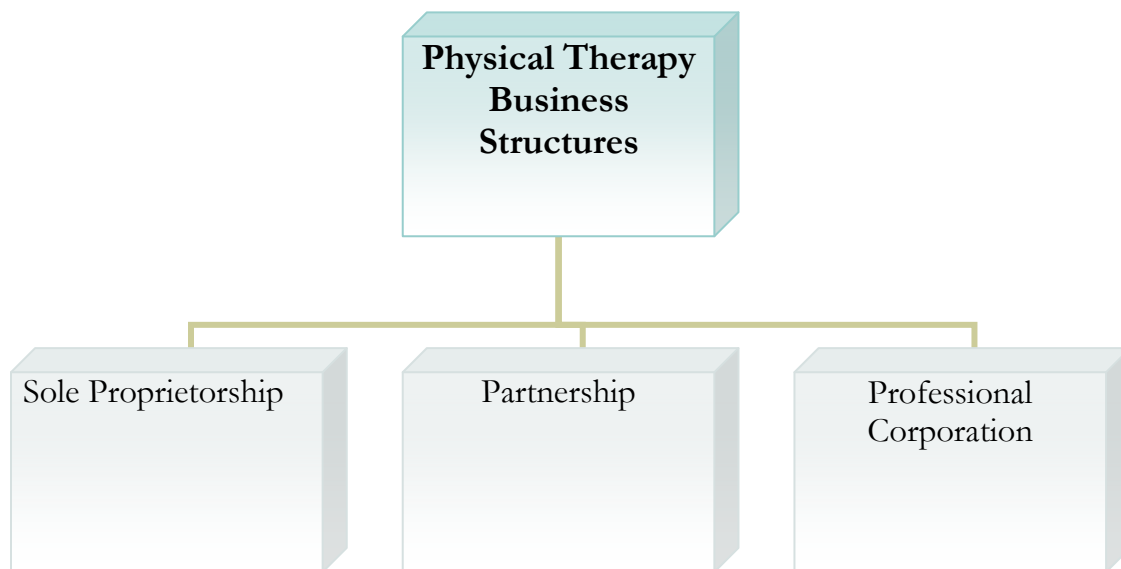
Starting a new business is an exciting, empowering, and often liberating choice for practitioners. It can offer flexibility, autonomy, and great deal of personal pride while providing a sound source of income. However, becoming a successful business owner requires a great deal of planning and work to ensure the business is well conceived, appropriately structured, and lawfully managed. If you are considering starting your own practice, consider the following points as you plan for your new business:

GET A MENTOR

Often the quickest way to get somewhere is to find someone who has been there before. There are plenty of resources to locate a mentor who has started his or her own business or practice. *Appendix 1* immediately following this section contains resources for finding and interviewing a potential mentor.

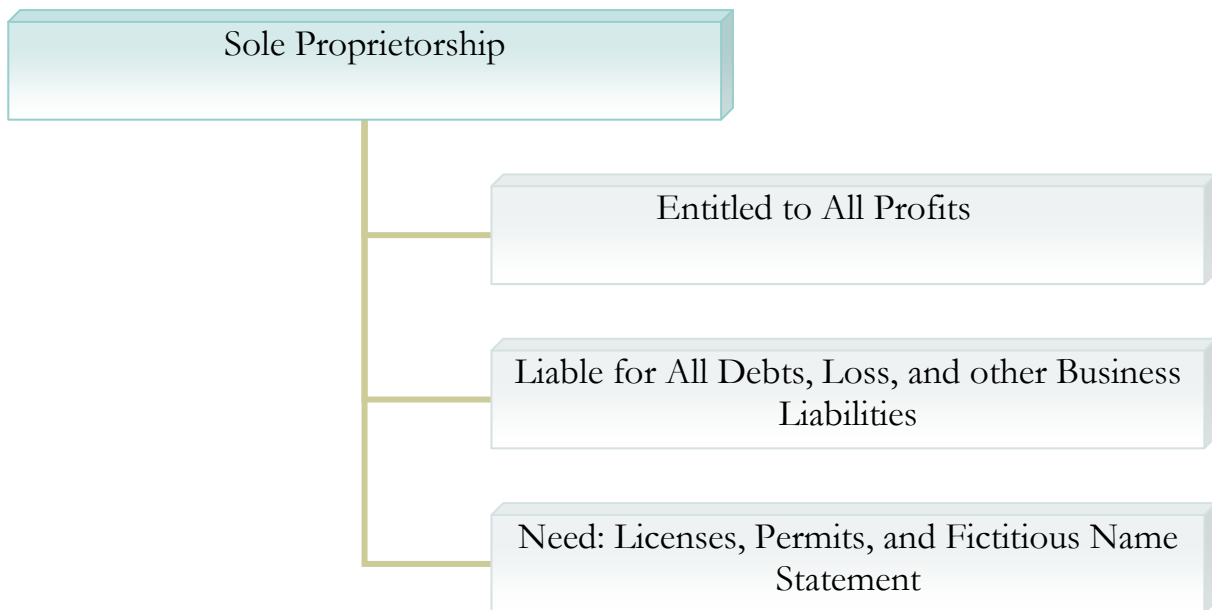
CHOOSE YOUR BUSINESS STRUCTURE

Choosing the appropriate business model for your business depends a lot on your particular circumstances, and on your goals and desires for your business. There are three basic business structures: sole proprietorship, partnership, and corporation. The business structure you choose for your new business will have specific legal and tax implications that warrant discussion with a tax and legal professional.



Sole Proprietorship

A sole proprietorship is a business in which one person owns all the assets, owes all the liabilities, and operates in his or her personal capacity. A sole proprietorship is the easiest, simplest structure to start a business. As a sole proprietor, you are entitled to all the profits of the business; however, you are also *personally liable* for all the business debts, losses, and liabilities. There is no formal action necessary to form a sole proprietorship, other than possession of the necessary licenses and permits. If you chose to operate under a name different than your own (i.e. if you wanted your business listed as “A+ PT Proprietor”) you would need to file a fictitious name statement with the county clerk of the county of the registrant’s principal place of business. **A practice operated as a sole proprietorship offers no protection for the owner’s personal assets.**



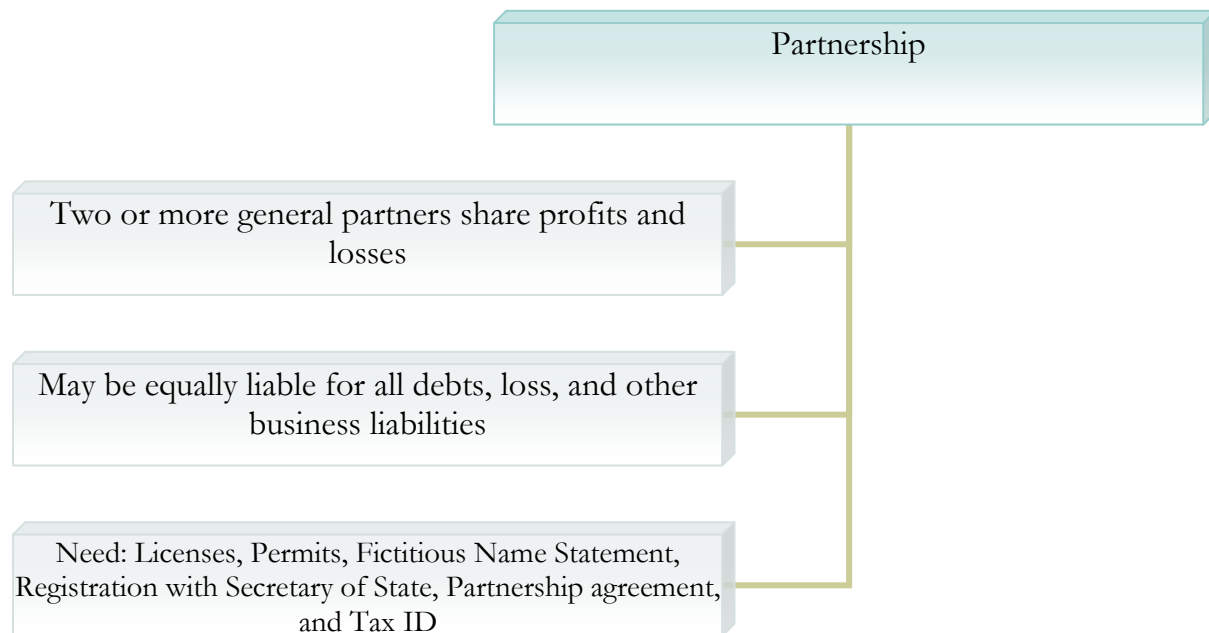
Partnership

A partnership is a voluntary association of two or more people, called general partners, who jointly own and manage the business for profit. Each partner contributes to all aspects of the business, including money, labor, and/or skill and in return receives an equal share (or share defined by a partnership agreement) of the business profits. Under the Uniform Partnership Act, a partnership is presumed to exist if the persons agree to share proportionally the business’ profits or losses. In a general partnership, each partner may share equal responsibility for the company's profits and losses, debts, and liabilities depending on how the partnership ownership is defined. To form a partnership, you must register your business with the Secretary of State, ad establish a business name,¹ and obtain a partnership tax identification number.² The partnership itself does not pay income taxes, the partnership must prepare and file a tax return and each partner must report their share of business profits or losses on their individual tax return. Each partner must also pay

¹ For partnerships, your legal name is the name given in your partnership agreement or the last names of the partners. Again, if you wish to operate on a name other than your legal name, you need to file a fictitious name statement with the county clerk of the county of the registrant’s principal place of business.

² Most businesses need to register with the IRS, state and local revenue agencies, and obtain a tax ID number or permit.

estimated tax payments for the year in progress. **A practice operated as a partnership offers no protection for the owner's personal assets.** If you chose to organize as a general partnership, be sure to consult with an accountant or tax advisor.



Note: Physical therapists in California may not organize as Limited Liability Partnerships.³

Professional Corporation

A corporation is an independent legal entity, owned by shareholders, that has legal authority to act as a single person distinct from its shareholders. This means the corporation itself, not the shareholders that own it, is held legally liable for the actions and debts the business incurs. A professional corporation is a type of corporation that provides services of a type that require a professional license. Incorporating a healthcare practice, including a physical therapy practice, can provide many benefits. However, it is critical that a physical therapist obtain expert legal and financial advice to decide whether incorporation is appropriate.

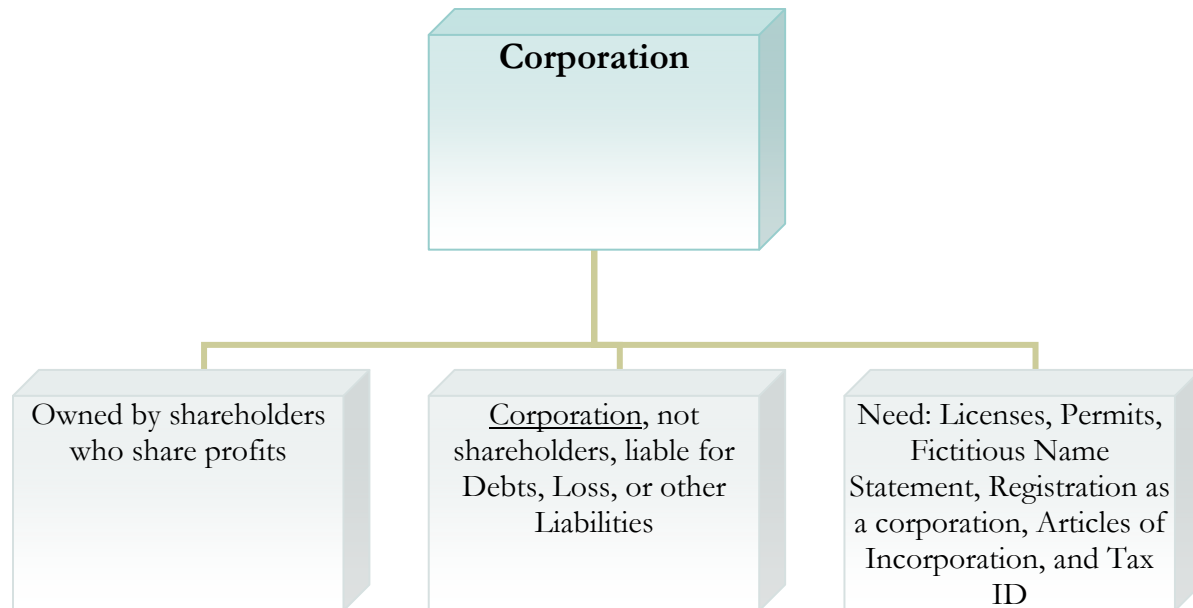
A corporation is formed under the laws of the state in which it is registered. Establishing a corporation is a more complex process than either a sole proprietorship, or professional partnership. The downside is that incorporation includes administrative fees and additional tax and legal assistance to ensure that the corporation is structured correctly and running appropriately. However, there are **significant protections** under a corporate structure that should not be discounted.

Why Incorporate?

Professionals who incorporate do so primarily to protect their personal assets from potential liabilities and the debts of the business while taking advantage of tax benefits not available to sole proprietorships and partnerships. *Appendix 2* discusses some of the benefits of incorporating.

³ California Attorney General Opinion No. 04-103.⁴ Regarding its 1990 resolution, the Board has recently stated:

The Physical Therapy Board of California has jurisdiction over physical therapy professional corporations. Statutes (Business & Professions Code 2690-2696) and Regulations (Title 16 California Code of Regulations 1399.30 - 1399.41) regarding physical therapist professional corporations can be located on the Physical Therapy Board of California Website (www.ptbc.ca.gov) under Laws and Regulations.



Special Note on Limited Liability Companies (“LLC”)

Under California law, an LLC is not permitted to render professional services. A business that provides services requiring a license, certification or registration pursuant to the Business and Professions Code may not conduct its activities as a limited liability company. In 2004, the California Attorney General confirmed this point, stating that because health care providers perform professional services under the guise of a professional corporation under the Moscone-Knox Act, confirms that they are not authorized to perform such services under an LLC. (See Attorney General Opinion No. 04-103, July 23, 2004).

General Corporations vs. Professional Corporations

From about 1990 to 2010, there was a debate about whether physical therapists could work for professional medical corporations or whether the Moscone-Knox Act prohibited physical therapists from providing services for such a corporation. On September 29, 2010, in Legislative Counsel Opinion #1021592, the Legislative Counsel resolved the issue, stating that:

- Because Section 13401.5 of the Corporations Code did not list physical therapists as a licensee that could provide services for a medical corporation, a physical therapist was prohibited from providing services as an employee of a medical corporation.
- A physical therapist who provided services under this scenario could be subject to license discipline by the Physical Therapy Board.

- Both a medical corporation and a physical therapist that violate the Moscone-Knox Act are guilty of aiding and abetting a violation of the Medical Practice Act, as well.

The Legislative Counsel’s rationale was that, because physical therapists were not listed in Section 13401.5 as possible shareholders, officers, or employees of medical corporations, they could not provide services for medical corporations. On November 3, 2010, the Physical Therapy Board rescinded its 1990 resolution⁴ which had previously authorized anyone to own a physical therapy general corporation.⁵

In July of 2011, the Physical Therapy Board summarized the state of the law *before* AB 1000:

[I]f you are an employee of a “general corporation” holding itself out as a physical therapy corporation and the corporation is not in compliance with Moscone-Knox (i.e. there are lay owners, directors, or officers, or the name of the corporation is non-compliant, or licensed professionals not subject to the Physical Therapy Practice Act are employed) you are advised to review sections 2690 through 2696 of the Business and Professions Code, Article 9 of Division 13.2 of Title 16 of the California Code of Regulations pertaining to Physical Therapy Corporations, and the Moscone-Knox Professional Corporation Act, sections 13400-13410 of the California Corporations Code.⁶

In 2013, AB 1000 changed all of this.



New Options for Ownership and Employment Post AB 1000



In October of 2013, the Governor signed Assembly Bill (“AB”) 1000 [effective January 1, 2014] which established “direct access” to physical therapy services in California and amended the law regarding professional corporations for Physical therapists. AB 1000 made significant changes to the Moscone-Knox Professional Corporations Act regarding:

1. The types of professional corporations that may employ a physical therapist, including medical corporations;
2. The types of professional corporations that may allow a physical therapist to have an ownership interest or serve as an officer or director; and

⁴ Regarding its 1990 resolution, the Board has recently stated:

In 1990, the Physical Therapy Examining Committee (later renamed Physical Therapy Board of California) passed a resolution, authorizing a provision of physical therapy services by a general corporation. The resolution was prepared and adoption recommended by legal counsel provided by DCA. The resolution was consistent with the understanding of the law at that time.

(See Physical Therapy Board’s “Summary of Facts Related to the Practice of Physical Therapy by Corporations,” [Summary of Facts], p. 2, at http://www.ptbc.ca.gov/about_us/meetings/materials/20110804_11_2.pdf.

⁵ *Id.* at p. 3.

⁶ *Id.* at p. 1.

3. The types of practitioners who may own, serve as officers or directors, or be employed by a physical therapy professional corporation.

As the result of the passage of AB 1000:

- Physical therapists may be employees, officers or shareholders of medical professional corporations (Corps. Code § 13401.5)
- Almost any health care licensee listed in the Business and Professions Code, including physical therapists, may be employed “to render professional services” by any type of professional corporation listed in the Moscone-Knox Act, including the newly added physical therapy professional corporations. (Corps. Code § 13401.5)
- A new Section 13401.5(p) was added defining who may be legally permissible shareholders, officers, directors and professional employees of physical therapy corporations. These include:
 1. Physicians and surgeons
 2. Podiatrists
 3. Acupuncturists
 4. Naturopathic doctors
 5. Occupational therapists
 6. Speech-language therapists
 7. Audiologists
 8. Registered Nurses
 9. Psychologists
 10. Physician Assistants

ONCE YOU CHOSE YOUR BUSINESS STRUCTURE, DECIDE WHETHER TO HIRE EMPLOYEES OR UTILIZE INDEPENDENT CONTRACTORS

Hiring Employees

The biggest benefit of hiring your own employees is that by definition you control the terms and conditions of their employment (with some limitations). You can hire and fire them at will, assuming you do not do so on a discriminatory basis. Many state and federal laws apply depending on the number of employees you have. *Appendix 3* covers the basic laws or requirements that you may be subject to.

Hiring Independent Contractors

Using a true independent contractor can relieve you of the many burdens placed upon you by state and federal employment laws. For instance, independent contractors:

- Need not be covered by worker's compensation;
- Do not have employment taxes deducted from their earnings by an employer;
- Have no rights to employee benefits;
- Are not employees subject to the Immigration Reform and Control Act (IRCA) of 1986;
- Are not covered by many state and federal anti-discrimination laws;
- Do not subject you to vicarious liability for their acts;
- Are not included under Cal/OSHA and federal/OSHA regulations in an employer's duty to provide a safe and healthy work environment;
- Are not covered by state and federal wage and hour laws;
- Are not entitled to unemployment insurance benefits from your accounts; and
- Are excluded from coverage under the National Labor Relations Act (unions).



NOTE: California administrative agencies and the Internal Revenue Service (IRS) closely scrutinize alleged principal/independent contractor relationships to assure that those relationships are not, in reality, employer/employee relationships. The consequences for claiming you are using an independent contractor but blurring the line can include significant tax, wage, and benefit liabilities, as well as massive fines that may be imposed by the IRS and California's Employment Development Department (EDD).

Appendix 4 contains common misconceptions about independent contractors, factors for determining that you are using a true independent contractor and reporting obligations.

COMPLY WITH REGULATORY AGENCIES

You must comply with local, state and federal regulatory agencies. A list of applicable regulatory agencies can be found in *Appendix 5*.

Find a Location

You will need to choose a location for your physical therapy practice. Look for areas that provide maximum access, signage, and consider areas that are close to referral providers. Be aware that if you rent space from a physician or anyone who might have a role in referring patients to you or receiving referrals from you, you must pay fair market value for that space. There is a federal anti-kickback statute that prohibits the payment of remuneration in exchange for, or in order to induce,

the referral of patients or other business, which is reimbursable under Medicare. The anti-kickback statute has been construed broadly by the courts and the enforcement agencies. See *Appendix 6* for more information.

When searching for a location make sure that you have created a budget and know what you can afford, as well as how much space you need to accommodate your planned staff and patients. Good websites to find listings in numerous markets are www.craigslist.org, www.cityfeet.com and www.loopnet.com.

Change address of record with the PT Board of California (PTBC) if applicable

The PTBC does not require individuals to register with the PTBC in order to form a corporation, nor does the name of the corporation need approval by the PTBC; however, the corporation must conform to the applicable statutes and regulations. Additionally, per Title 16, California Code of Regulations, Section 1398.6(a), licensees are required to report to the PTBC their residential address. An alternate address, such as a post office box or place of business may be listed as your address of record. Your residential address will not be publicly disclosed if you prefer to use an alternate address. All PTBC mailings will be sent to your address of record and the same would be disclosed to the public with a written request from any interested party. Licensees are also required to report any subsequent address changes within 30 days of the change, confirming the new and old address as well as the date the address change took effect.

Health and Wellness Services

As an autonomous practitioner it is important to determine the type of services you will offer. With the passage of AB 1000, patients now have “direct access” to physical therapy services without a diagnosis for 45 calendar days or 12 visits, whichever occurs first. If treatment continues beyond 45 calendar days or 12 visits, the patient must receive an in-person examination from a physician and surgeon or podiatrist, who must also sign off on the physical therapist’s plan of care

The California Physical Therapy Practice Act, Business and Professions Code Sections 2620 defines services related to wellness and fitness as the art and science of physical or corrective rehabilitation through the use of physical fitness and interventions for diagnostic and therapeutic purposes, which include strength and conditioning exercise programs for home/clinical/health club settings. Geriatric wellness exercise programs for individuals, groups and ergonomic or other educational programs for industry or private organizations are also included. If you plan to offer wellness services please refer to the PTBC website at www.ptbc.ca.gov for additional practice provisions.

Payment for services

One of the many decisions you will make is how you will want to be paid. Will you be a cash only practice, a mixture of cash and insurance pay, or insurance pay only? For insurance pay, you will probably want to consider signing up with a health care insurer or joining a network. A list of some of the major insurers and networks can be found in *Appendix 7*. Online payment services allow businesses to accept payment from clients electronically, which can either replace or supplement payment by credit card. While this method significantly increases client payment options, security and functionality concerns should be fully vetted before you commit to any specific online payment system.

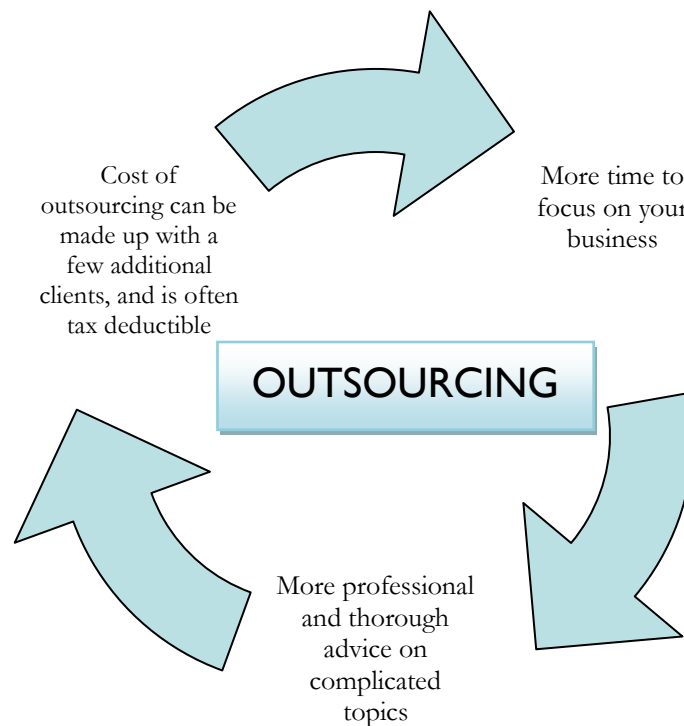
A major part of signing up with an insurance company or network is signing the contract. You

want to make sure to review any contract thoroughly before signing. It is recommended that you have an attorney review the contract if the language is not clear. Make sure that you know what it costs you to deliver care prior to signing a contract and do not be afraid to negotiate. Resources on contracting can be found in *Appendix 8*.

In addition to signing up as an in-network provider, it is crucial that practitioners register for a National Provider Identifier number (NPI). The NPI is a unique identification number for covered health care providers. Covered health care providers and all health plans and health care clearinghouses must use the NPIs in the financial transactions adopted under HIPAA. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that covered providers must share their NPI with other providers, health plans, clearinghouses, and any entity that may need it for billing purposes. Please refer to the NPPES website at <https://nppes.cms.hhs.gov> for additional NPI provisions.

OUTSOURCE SOPHISTICATED AND TIME CONSUMING TASKS

There is much to learn when starting any business but you do not have to learn everything. For example, it is a good idea to hire an accountant to look at your books and do your business taxes. You could learn to do it yourself but you should also consider where your time is best spent in building your business. Attorneys can be found by searching www.lawyers.com, www.martindale.com, or by contacting your county or state bar association. Accountants can be located by searching www.calcpa.org/public/referral/findcpa.aspx. Some other examples of tasks you can outsource are bookkeeping, billing, and human resource compliance. Additionally, there are companies that will complete an entire “new clinic install” to take your new office space from a blank slate to a fully functioning clinic in as little as one-two days. Ask your mentor and other business owners for recommendations.



Appendix I: Finding a Mentor

It is important to find the right mentor for you. You will want to interview and talk with them to set the expectations for your relationship. You will also want to note what questions they ask you and how interested they are in your specific situation. Mentors are more than people you go to lunch with; they are people who will help direct you in your practice, who tell you the truth and hold you accountable. Think of them as your coaches or physical therapists. They are not there to do the work for you but to help steer you in the right direction.

Questions to ask a Prospective Mentor	Elicits Information related to the Prospective Mentor's Experience	Elicits Information related to the Prospective Mentor's Goals of the Relationship	Elicits Information related to the Prospective Mentor's Expectations of the Relationship
Have you mentored anyone before?	✓		
What are your expectations for me?		✓	
How often and how long will you be available to meet with me?			✓
Do you have a mentor? How have they influenced you?	✓		
Who would you recommend that I connect with?		✓	
What should I be most focused on in the next quarter/year?		✓	
What do you wish you knew at my stage?	✓		
How can I work smarter?		✓	
How would you prefer I contact you?			✓

Remember that they are volunteering their time to help you. Ask if there is anything you can do to help them with their business. You may possess skills they don't have or simply be able to donate some of your time back to them. Be careful it doesn't become a taking relationship from your end.

Resources to Find a Mentor:

- California Physical Therapy Association – www.ccapta.org
- California Private Practice Group – www.cppsigs.com
- APTA Private Practice Section – www.ppsapta.org (*Available to APTA Members Only*)
- Micro Mentor – www.micromentor.org
- SCORE – www.score.org
- US Small Business Administration – www.sba.gov

Appendix 2: Benefits of Incorporating⁷

Protecting assets from employees' bad acts: A corporation can protect the owner/therapist's personal assets in the event an employee is in a car accident, commits malpractice or injures someone in therapy, or otherwise harms some other person. Incorporating a business may also shield the owner from lawsuits brought by employees themselves. Compliance with rules on corporate record keeping is key to maintaining the protection or "corporate veil."

Protecting retirement funds from creditors: A properly structured and maintained corporation may offer significant asset protection benefits to shareholders. For example, shareholder qualified retirement plans held in the corporation may be protected from the shareholder's creditors, including in bankruptcy.

Protecting practice in the event of death or incapacity: Because a corporation as a "legal person" can survive beyond the life of its owners, it may serve to generate income for its owner or owners beyond their death or incapacity. As noted above, professional corporations have restrictions on ownership and officers and an expert should be consulted.

Maximizing tax deductions: Corporate tax law provides numerous incentives for physical therapists to incorporate. Corporations can be further subdivided into C-corporations and S-corporations, an election which is required to classify a corporation under sub-chapter S of the IRS code. Each provides different tax advantages, and there are also differences in how many shareholders (owners) are permitted. There are significant deductions that may be available to corporations that are not available to sole proprietorships and partnerships.⁸ A tax adviser familiar with the differences should be consulted.

⁷ A physical therapist cannot own a professional corporation with health care providers other than listed in Corporations Code section 13401.5(p) or with unlicensed individuals.

⁸ Of course, any professional forming a corporation should consult legal counsel and a tax advisor regarding such an endeavor. But given the above-highlighted benefits, incorporating a physical therapy practice may be worth considering.

Appendix 3: Employment Laws

If you decide to hire employees, here are some of the basic laws or requirements that you may be subject to:

- Cal-COBRA (health insurance continuation)
- Child Labor
- Disability Insurance
- Discrimination and Foreign Workers
- Discrimination Laws (State)
- Employee Safety
- Fair Employment and Housing Act
- Immigration Reform and Control Act
- Military Leave
- New Employee Reporting
- Paid Family Leave
- Posters and Notices
- Pregnancy Disability Laws
- Privacy
- Sexual Harassment Training
- Smoking in the Workplace
- Time Off
- Unemployment Insurance
- Wage and Hour Laws
- Worker's Compensation

Many of these and other compliance issues can be found at www.edd.ca.gov.

Appendix 4: Independent Contractors

Common Misconceptions

Many employers operate on the misconception that they will be safe from the significant penalties of misclassification if their relationship meets any of the conditions listed below. This simply is not the case. It is a *myth* that you are safe just because the worker:

- Wanted to be treated as an independent contractor;
- Signed a written contract;
- Does assignments sporadically, inconsistently or on call;
- Is paid commission only;
- Has no supervision; or
- Performs assignments for more than one company.


Independent Contractor (Self-Employed) or Employee?

It is critical that you, the employer, correctly determine whether the individuals providing services are employees or independent contractors. Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors.

Before you can determine how to treat payments you make for services, you must first know the business relationship that exists between you and the person performing the services. The person performing the services may be:

- An [independent contractor](#)
- An [employee](#) (common-law employee)
- A [statutory employee](#)
- A [statutory nonemployee](#)

In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.



Judicial Analysis of Employee vs. Independent Contractor

Determining whether people are employees or independent contractors is an analysis that proceeds in two stages. “First, under California law, once a plaintiff comes forward with evidence that he provided services for an employer, the employee has established a prima facie case that the relationship was one of employer/employee.” *Narayan v. EGL, Inc.*, 616 F.3d 895, 900 (9th Cir.2010) (citation omitted). “As the Supreme Court of California has held ... the fact that one is performing work and labor for another is prima facie evidence of employment and such person is presumed to be a servant in the absence of evidence to the contrary.” *Id.* at 901. (citation and internal quotation marks omitted) (internal modifications omitted). “If the [alleged] employee establishes a prima facie case (*i.e.*, shows they provided services to the [alleged] employer), the burden then shifts to the employer to prove, if it can, that the “presumed employee was an independent

contractor.” *Id.* (citations omitted); *see also Yellow Cab Coop. Inc. v. Worker’s Comp. Appeals Bd.*, 226 Cal.App.3d 1288, 1294, 277 Cal.Rptr. 434 (1991) (explaining that under California law there is “a presumption that a service provider is presumed to be an employee unless the principal affirmatively proves otherwise”).

Common Law Rules

Facts that provide evidence of the degree of control and independence fall into three categories:

- **Behavioral:** Does the company control or have the right to control what the worker does and how the worker does his or her job?
- **Financial:** Are the business aspects of the worker’s job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
- **Type of Relationship:** Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no “magic” or set number of factors that “makes” the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another.

The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

Behavioral Control

Behavioral control refers to facts that show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. The behavioral control factors fall into the categories of:

- Type of instructions given
- Degree of instruction
- Evaluation systems
- Training

1. Types of Instructions Given

An employee is generally subject to the business’s instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work.

- When and where to do the work.
- What tools or equipment to use.
- What workers to hire or to assist with the work.

- Where to purchase supplies and services.
- What work must be performed by a specified individual.
- What order or sequence to follow when performing the work.

2. Degree of Instruction

Degree of Instruction means that the more detailed the instructions, the more control the business exercises over the worker. Instructions that are more detailed indicate that the worker is an employee. Less detailed instructions reflects less control, indicating that the worker is more likely an independent contractor.

Note: The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

3. Evaluation System

If an evaluation system measures the details of how the work is performed, then these factors would point to an employee.

If the evaluation system measures just the end result, then this can point to either an independent contractor or an employee.

4. Training

If the business provides the worker with training on how to do the job, this indicates that the business wants the job done in a particular way. This is strong evidence that the worker is an employee. Periodic or on-going training about procedures and methods is even stronger evidence of an employer-employee relationship. However, independent contractors ordinarily use their own methods.

Financial Control

Financial control refers to facts that show whether or not the business has the right to control the economic aspects of the worker's job. The financial control factors fall into the categories of:

- Significant investment
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market
- Method of payment

1. Significant investment

An independent contractor often has a significant investment in the equipment he or she uses in working for someone else. However, in many occupations, such as construction, workers spend thousands of dollars on the tools and equipment they use and are still considered to be employees. There are no precise dollar limits that must be met in order to have a significant investment.

Furthermore, a significant investment is not necessary for independent contractor status, as some types of work simply do not require large expenditures.

2. Unreimbursed expenses

Independent contractors are more likely to have unreimbursed expenses than are employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services that they perform for their business.

3. Opportunity for profit or loss

The opportunity to make a profit or loss is another important factor. If a worker has a significant investment in the tools and equipment used and if the worker has unreimbursed expenses, the worker has a greater opportunity to lose money (i.e., their expenses will exceed their income from the work). Having the possibility of incurring a loss indicates that the worker is an independent contractor.

4. Services available to the market

An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.

5. Method of payment

An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is usually paid by a flat fee for the job; however, it is common in some professions, such as law, to pay independent contractors hourly.

Type of Relationship

Type of relationship refers to facts that show how the worker and business perceive their relationship to each other. The factors, for the type of relationship between two parties, generally fall into the categories of:

- Written contracts
- Employee benefits
- Permanency of the relationship
- Services provided as key activity of the business

1. Written Contracts

Although a contract may state that the worker is an employee or an independent contractor, this is not sufficient to determine the worker's status. The IRS is not required to follow a contract stating that the worker is an independent contractor, responsible for paying his or her own self employment tax. How the parties work together determines whether the worker is an employee or an

independent contractor.

2. Employee Benefits

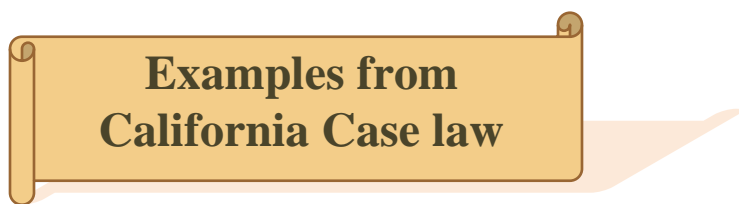
Employee benefits include things like insurance, pension plans, paid vacation, sick days, and disability insurance. Businesses generally do not grant these benefits to independent contractors. However, the lack of these types of benefits does not necessarily mean the worker is an independent contractor.

3. Permanency of the Relationship

If you hire a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship.

4. Services Provided as Key Activity of the Business

If a worker provides services that are a key aspect of the business, it is more likely that the business will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.



Truesdale v. Workers' Comp. Appeals Bd. (1987)

Cosmetologist who had signed an independent contractor agreement and was injured at beauty shop was found by the California Court of Appeal to

be an employee due to multiple factors including how he was paid (weekly), who provided supplies (the shop owner), and how his work was controlled.⁹

Mission Insurance Company v. Workers' Compensation Appeals Bd. (1981)

Claimant who had contracted to service security alarm firm's accounts was an independent contractor where manner of performance of work was within his control and he held himself out as being engaged in independent business and was separately licensed by the state to perform the services.¹⁰

Form SS-8

If, after reviewing the three categories of evidence, it is still unclear whether a worker is an employee or an independent contractor, [Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding](#) (PDF) can be filed with the IRS. The form may be filed by either the business or the worker. The IRS will review the facts and circumstances and officially determine the worker's status.

Be aware that it can take at least six months to get a determination, but a business that continually hires the same types of workers to perform particular services may want to consider filing the [Form SS-8](#) (PDF).

⁹ *Truesdale v. Workers' Comp. Appeals Bd.*, 190 Cal.App. 3d 608 (Ct.App. 1987)

¹⁰ *Mission Insurance Co. v. Workers' Comp. Appeals Bd.*, 123 Cal.App.3d (Ct.App.1981)

Employment Tax Obligations

Once a determination is made (whether by the business or by the IRS), the next step is filing the appropriate forms and paying the associated taxes.

- [Forms and associated taxes for independent contractors](#)
- [Forms and associated taxes for employees](#)

Appendix 5: Regulatory Agencies

City

Business License: Required if business located within incorporated city limits

Land Use Permit/Zoning Clearance: Example: zone change, variance, conditional use permit. May be required if business located within incorporated city limits.

County

Business Property Statement: Businesses are required to report all equipment, fixtures, supplies, and leasehold improvements held for business use at each location.

Fictitious Business Name Filing: Required if fictitious business name is used. Note that under Business and Professions Code Section 2693, the name of a physical therapy professional corporation and any name or names under which it may render professional services shall contain the words "physical therapy" or "physical therapist", and wording or abbreviations denoting corporate existence.

State

Corporation, Company or Partnership Filings: If you are considering becoming a corporation, (either stock or nonprofit), or a partnership (limited, or limited liability), you must file with the Secretary of State's Office.

Secretary of State

California Business Portal
1500 11th Street
Sacramento, CA 95814
916-657-5448

www.sos.ca.gov/business

Discrimination Law: Harassment or discrimination in employment is prohibited if it is based on a person's race, ancestry, national origin, color, sex (including pregnancy), sexual orientation, religion, physical disability (including AIDS), mental disability, marital status, medical condition (cured cancer), and refusal of family care leave. Discrimination in housing, public services and accommodations is also prohibited.

Department of Fair Employment and Housing

2000 O Street, Suite 120
Sacramento, CA 95814-5212
1-800-884-1684

<http://www.dfeh.ca.gov/>

Notes: Employers must post the Harassment or Discrimination in Employment notice (DFEH 162) and provide their employees with a copy of the DFEH's information sheet on sexual harassment (DFEH 185) or a statement that contains equivalent information. Employers must also provide notice of an employee's right to request pregnancy disability leave or transfer, as well as notice to request a family or medical care leave (CFRA). Employers with five or more employees must maintain all personnel records for a minimum of two years.

Occupational Safety and Health Information: Businesses with employees must prepare an Injury and Illness Prevention Plan. The state provides a no-fee consultation service to assist employers with preventing unsafe working conditions and workplace hazards.

Department of Industrial Relations

Cal/OSHA Consultation Services
2424 Arden Way Suite 410
Sacramento, CA 95825
916-263-2855

<http://www.dir.ca.gov/>

Notes: Certain permits/licenses/certifications may be required for compliance with Health & Safety Standards, General Industry Safety Order, Carcinogen regulations and Construction Safety orders i.e. excavation/trenching, asbestos related work, crane/derrick operation, air/liquid petroleum gas tanks, etc.

Radiation Source Registration: Those possessing radiation-emitting machines or devices containing radioactive material. Examples include physicians, dentists, hospitals, and industrial plants.

Department of Public Health

Radiologic Health Branch
Sacramento, CA 95814
916-558-1784

<http://www.cdph.ca.gov/programs/Pages/RadiologicHealthBranch.aspx>

Registration Form for Employers: Required to file a registration form within 15 days after paying more than \$100.00 in wages to one or more employees. No distinction is made between full-time and part-time or permanent and temporary employees in meeting this requirement.

Employment Development Department

Employment Tax Customer Service Office
http://www.edd.ca.gov/Payroll_Taxes/

Sales & Use Permit (Seller's Permit): All businesses selling or leasing tangible property must obtain a Seller's Permit.

State Board of Equalization

Sales/ Use Tax Division

<http://www.boe.ca.gov/info/reg.htm#sales>

Office locations

<http://www.boe.ca.gov/info/phone.htm>

Notes: For Additional information about RESALE CERTIFICATE, visit:
www.boe.ca.gov/sutax/faqresale.htm.

State Income Tax Information: Businesses should obtain the appropriate State income tax forms from the Franchise Tax Board.

Franchise Tax Board

3321 Power Inn Rd. Suite 250
Sacramento, CA 95826-3389
(800) 852-5711

<http://www.ftb.ca.gov/forms/search/index.aspx>

Wage/Hour Laws: Businesses with employees must comply with laws establishing minimum standards for wages, hours and working conditions.

Department of Industrial Relations

Labor Standards Enforcement

<https://www.dir.ca.gov/dlse/dlse.html>

Workers' Compensation Information: Businesses with employees must maintain Workers' Compensation Insurance coverage on either a self-insured basis, or provided through a commercial carrier, or the State Workers' Compensation Insurance Fund.

Department of Industrial Relations

Division of Workers' Compensation
2424 Arden Way, Suite 230
Sacramento, CA 95825
(916) 263-2735

<http://www.dir.ca.gov/>

X-Ray Certification: Required for persons to take x-rays working in hospitals, laboratories, private offices, x-ray laboratories, technical and medical schools

Department of Public Health

Radiologic Health Branch
Sacramento, CA 95814
(916) 558-1784

<http://www.cdph.ca.gov/programs/Pages/RadiologicHealthBranch.aspx>

Federal

Employer Identification Number (EIN or SSN): Employers with employees, business partnerships, and corporations, must obtain an Employer Identification Number from the I.R.S. Businesses can obtain appropriate Federal income tax forms from this location.

U.S. Department of Treasury

Internal Revenue Service

4330 Watt Avenue

Sacramento, CA 95814

(800) 829-3676

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Small-Business-and-Self-Employed-Tax-Center-1>

Notes: Applying for an EIN: <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Employer-ID-Numbers-EINs>

Proof of Residency Requirement: Employees hired after November 6, 1986 must provide proof of eligibility to work in the United States.

U.S. Immigration and Naturalization Service

630 Sansome St. Rm. 200

San Francisco, CA 94111

(415) 705-4411

<http://www.uscis.gov/portal/site/uscis>

Notes: Certain permits/licenses/certifications may be required for compliance with Health & Safety Standards, General Industry Safety Order, Carcinogen regulations and Construction Safety orders i.e. excavation/trenching, asbestos related work, crane/derrick operation, air/liquid petroleum gas tanks, etc.

Appendix 6: Negotiating a Lease

When negotiating a lease with a physician or referral source, be sure to comply with the following:

- The lease agreement should be set out in writing and signed by the parties;
- The lease covers all of the premises leased between the parties for the term of the lease and specifies the premises covered by the lease;
- If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such intervals;
- The term of the lease is for not less than one year;
- The aggregate rental charge is set in advance, is consistent with fair market value in an arms-length transaction and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare; and
- The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.

Safe harbor protection will be available when a transaction is at *fair market value* and the compensation paid pursuant to the agreement in no manner varies with referrals made between the parties. A key component is “fair market value.” Fair market value is defined as the value of the rental property for general commercial purposes, but shall not be adjusted for any additional value either the prospective lessee or lessor would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare. Fair market rules apply outside of referral relationships as well.

Appendix 7: Healthcare Insurers and Networks

Aetna	http://www.aetna.com/cpb/medical/data/300_399/0325.html
Anthem	http://www.anthem.com
Blue Shield	https://www.blueshieldca.com
CIGNA	http://www.cigna.com
California Medicaid Program (DBA Medi-Cal)	http://www.medi-cal.ca.gov
Nordian Healthcare Solutions, Medicare Administrative Contractor of California	https://www.noridianmedicare.com
Preferred Therapy Providers, Inc.	http://www.preferredtherapy.com
Physical Rehabilitation Network	http://www.prnpt.com
PTPN, Inc.	http://www.ptpn.com
State Compensation Insurance Fund	http://www.statefundca.com
Travelers Indemnity Company	http://mywcinfo.com

Appendix 8: Additional Resources

APTA Reimbursement Information - <http://www.apta.org/Payment/>

Starting a private practice? Start by visiting this site - <http://www.cppsigs.com>

Guide to Physical Therapist Practice - <http://guidetoptpractice.apta.org>

Physical Therapy Board of California – www.ptbc.ca.gov

Payer Contract Negotiation Presentation, Richard Katz, PT, MA -
<http://www.ccapta.org/associations/9137/files/Payor%20Contract%20Negotiating%20May%2019%202009%20Handouts.pdf>

Payer Contract Negotiation Article, Richard Katz, PT, MA -
<http://www.ccapta.org/associations/9137/files/PayerContracts.pdf>

CPT Coding Resources - <http://www.apta.org/Payment/CodingBilling/>

Free Online CPT Codes Search -
https://catalog.ama-assn.org/Catalog/cpt/cpt_search.jsp?locality=CA?checkXwho=done

American Medical Association - <http://www.ama-assn.org>

State of California Division of Workers' Compensation -
http://www.dir.ca.gov/DWC/dwc_home_page.htm

Official Medical Fee Schedule (OMFS) 1999 to present -
<https://www.dir.ca.gov/dwc/OMFS9904.htm>

Physical Therapists Getting Started with Medi-Cal - http://files.medi-cal.ca.gov/pubsdoco/prov_enroll.asp#Chart

Medi-Cal Enrollment Resources - http://files.medi-cal.ca.gov/pubsdoco/prov_enroll.asp

How to Bill Medi-Cal -
http://c.ymcdn.com/sites/www.ccapta.org/resource/resmgr/imported/physcd_a08o01o11.pdf

Medicare Coverage Database - http://www.cms.hhs.gov/mcd/index_list.asp?list_type=ncd

Centers for Medicare and Medicaid Services - <http://www.cms.gov>

CMS Provider Enrollment Forms - <http://www.cms.hhs.gov/MedicareProviderSupEnroll>

CMS Benefit Policy and Claims Processing Manuals – <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs.html>

EDD Information Sheet on Physical Therapists –
<http://www.ccapta.org/associations/9137/files/PT%20Services%20Fact%20Sheet%20EDD.pdf>

CHOICE B: BECOMING AN INDEPENDENT CONTRACTOR

Converting from an employee to an independent contractor may seem like a logical and easy choice when weighing your options. It allows you to create your own business, which offers tax advantages and independence not seen with the employer/employee relationship. However, a number of inherent risks and responsibilities that were previously assumed by your employer also accompany it. As an independent contractor, you must comply with the IRS Common Law Rules. These rules can be found in Appendix 4. When you change your relationship with the Medical Corporation from an employee to a self-employed independent contractor you must make significant adjustments in how you conduct yourself with the contracted entity. If these changes are not made and you simply continue to act as if you are an employee then you will most likely be viewed by outside regulatory agencies as an employee. If this occurs, you and the contracting entity will be subject to severe fines and possible legal action. As you read through the Common Law Rules you will see that a major test will be that your “independent contracting” occurs with more than one entity. If you simply continue to be contracted for one group for an indeterminate period of time you will most likely be viewed as an employee. The IRS allows you the opportunity to determine if your work situation qualifies as an Independent Contractor relationship. You can fill out Form SS-8 to determine your work status as viewed by the IRS. The process can take a while so you may want to consult with a tax attorney to obtain a more prompt legal opinion.

In addition to qualifying under the IRS Common Law Rules, there are other business points that must be considered and dealt with before converting to an Independent Contractor. These include:

1. You must obtain your own professional and business liability insurance. You cannot be covered under the Medical Group’s policy.
2. You will no longer receive vacation, sick or holiday benefits. You can only be paid for the work you perform so days off will occur without pay.
3. You will have to obtain your own medical insurance. Converting from a group policy under the medical corporation to an individual policy could be very costly and require that you qualify based upon pre-existing conditions.
4. You will no longer be eligible for a retirement plan offered by the Medical Group.
5. You will need to pay quarterly estimated taxes on your earnings to avoid end of year penalties.

The employer must report to the EDD within 20 days of entering into a contract for \$600 or more in any calendar year, or within 20 days of making payments totaling \$600 in any calendar year, whichever comes first.

Your city will likely expect you to apply for a business license. Refer to the regulatory section in *Appendix 5* for other regulatory requirements that may apply. If you are a sole proprietor, the employer or “payer” will likely ask you to fill out a Form W-9, which will report your first name, last name and social security number to the IRS. The IRS will be informed by the payer how much you have been paid. You should receive a form from the payer in January stating the total amount you have been paid for the prior calendar year (a form referred to as 1099-MISC). For your tax obligations regarding this income, please consult an accountant or tax adviser.

California’s Fair Employment and Housing Act (FEHA) protects independent contractors from

harassment (although not discrimination). The FEHA makes it illegal to harass an independent contractor, defined as any “person providing services pursuant to a contract,” based on race, religious creed, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation.

Please refer to *Appendix 4* for the IRS Common Law Rules, Common Misconceptions and links to IRS references.

CHOICE C: BECOMING AN OWNER IN ANOTHER PRACTICE



New Options for Partial Ownership, Post AB 1000



As discussed in section A above, AB 1000 has clearly established who can own an interest in a physical therapy professional corporation. It also established that physical therapists may own minority interests in other types of professional corporations and serve as an officer or director. These include the following:

CORPORATION LISTED IN MOSCONE-KNOX ACT	MAJORITY (51% OR MORE) SHAREHOLDER	MINORITY (49% OR LESS) SHAREHOLDER, OFFICER, DIRECTOR
Physical Therapy	✓	✓
Medical		✓
Podiatric		✓
Psychological		
Speech-language Pathology		
Audiology		
Nursing		
Marriage and Family Therapist		
Licensed Clinical Social Worker		
Physician Assistants		
Optometric		
Chiropractic		
Acupuncture		
Naturopathic Doctor		✓
Dental		
Professional Clinical Counselor		

CHOICE D: FIND NEW EMPLOYMENT

Working in the service of another as an employee gives the employer the right to control the details of work performance. However, for some, choosing to be an employee offers a welcome blend of security, structure, and specialization in their professional life. With the passage of AB 1000 in 2013, physical therapists are now able to be professional employees of medical, podiatric, and naturopathic corporations. With these expanded options for physical therapists looking for work, the following resources should prove helpful in researching and finding new employment:

Employment Resources

CPTA Career Center:

<http://pt.ca.associationcareernetwork.com/Common/HomePage.aspx>

APTA Career Center:

<http://www.apta.org/applications/careercenter.aspx>

APTA Website—Career Management:

<http://www.apta.org/CareerManagement/>

California Employment Development Department (EDD)

<http://www.edd.ca.gov/>

CalJOBS

<http://www.caljobs.ca.gov/>

CPTA Employment Mentors

James Syms PT, DSc, ATC, SCS, – jsyms@llu.edu (Inland Empire)

Richard Katz, PT, DPT – rkatz@adienthealth.com (Ventura, Northridge)

Cheryl Tibbetts, PT, OCS – cheryl@valleypt.net (South Bay Area, Santa Cruz)

Sheryl Low, PT, DPT, DSc, PCS – sheryl.low@csun.edu (Ventura, Northridge, Santa Barbara)

Robert Williams, PT, MA – willhartb@mindspring.com (South Bay Area, Santa Cruz)

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