



# Settling on the proper form for your practice

**Question:** I am looking to make a switch from agency practice to my own private counseling practice. I am so confused about the different forms that a practice can take. Do you have any suggestions?

**Answer:** I can understand the confusion because the terminology can be complex and the choices are numerous. Let's look at some of the options and the respective pros and cons of operating under the different forms. Keep in mind that state laws may differ regarding the different forms, so it is advisable to consult a health care attorney in your state who handles formation of corporations and other business entities. I would also highly recommend speaking with your accountant because tax consequences of the different practice forms may affect your tax liability.

One possible form of business, and perhaps among the easiest for a counselor starting his or her own private practice, is the *sole proprietorship*. Typically, you would operate under your own name and credentials and use your Social Security number. After obtaining any required operating licenses or permits (in addition to your counseling license), professional liability insurance and premises insurance, you'd be in business. The sole proprietorship is simple and inexpensive to form and operate on an ongoing basis. The disadvantages of operating as a sole proprietor are that your profits are declared on your personal tax return, there is no shield against liability and your personal assets can be reached to satisfy business liabilities or debts.

A *partnership* is a business entity typically composed of two or more individuals or other business entities. Although a partnership is fairly simple to create and maintain, it can pose some tax and liability issues. For example, you may be liable for the acts and omissions of your partner.

A *limited liability partnership* may offer you some insulation from the debts and obligations of the partnership and the independent actions of your partners. You could still incur liability if you supervised partners or employees, however, and you would still be responsible for your own conduct and debts.

*Corporations* are business entities created under state law, and they operate like independent legal “persons” apart from their shareholders and directors. They are owned by one or more stockholders and managed by a board of directors. Corporations may enter into contracts, pay taxes and exist after their shareholders die or sell/transfer their shares to others. Corporation owners or shareholders benefit from limited liability for the corporation's legal obligations. However, maintenance of the corporate form can require annual filings, regular reports and periodic meetings, which can be onerous for some small counseling practices. If you opt for a corporate form of practice, note that various types of corporations exist, and taxation is a key consideration in how to structure a corporation.

In some states, *professional corporations* are available to allow incorporation by similarly licensed professionals. Counselors sometimes operate as *nonprofit corporations* but are advised to seek professional legal and tax advice because corporate registration as a nonprofit entity does not automatically mean contributions are tax deductible.

A *limited liability company (LLC)* is a hybrid version of a corporation and partnership. The main advantage for a counseling practice is limited liability similar to that of a regular corporation. Counselors forming an LLC typically can elect whether the company will be taxed like a partnership (pass through taxation to the individual) or a corporation. Sometimes the LLC is subject to franchise tax.

One important point: There really is no counseling practice form that will totally insulate you from your *own* malpractice liability. No matter what form your practice takes, you need professional liability insurance.

Also, as mentioned previously, it is usually worth the cost of hiring a reputable attorney and accountant upfront to make sure that you choose the right form for your practice and personal financial situation and one that is supported by your state laws. If you don't already have an attorney for your practice, you might ask colleagues if they have recommendations. You could cross-check any recommendations through the online attorney directory at [martindale.com](http://martindale.com). When you use that site, you can search for law firms or attorneys in your city or state and also pick several areas of practice (e.g., corporate organization, health law and health care corporate law). You might also wish to read Chapter 11 of *The Counselor and the Law: A Guide to Legal and Ethical Practice*, seventh edition, which I co-wrote with Burt Bertram. The book is published by the American Counseling Association.



The question addressed in this column was developed from a deidentified composite of calls made to the Risk Management Helpline sponsored by ACA. This information is presented solely for educational purposes. For specific legal advice, please consult your own local attorney. ❖

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