

# The Business of Medicine: Entry & Exit



**By Stephen C.  
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## *Starting a Practice*

Starting a medical practice is in many ways like starting up any business, but because of the regulatory agencies can be like starting a foot race carrying an extra 20 pounds of ankle weights. To start a normal business, you must do quite a number of things to ensure you can survive. You need a business plan. New physicians frequently comment that they are expected to be not only good practitioners of medicine, but great business people as well. Medical schools do a fine job of teaching the art of medicine, but the art of practicing business requires on-the-job training and experience as well.

The extra twenty pounds physicians carry when opening a new business is a result of the number of agencies that control what physicians can and can't do, above and beyond the agencies that control normal businesses. Physicians must file with a number a state and federal agencies, register with many others, and certify with even more. Hospitals and insurance companies add to the list of interfaces for a physician/businessman. How does a physician even know what to do? To figure it out, follow the same process you'd follow if you were contemplating anything of great magnitude. Read, study, ask questions, find a mentor who has been there and figure out where the pitfalls are.

Along with this article, I have provided many sidebars (courtesy of the General Counsel at TMA) that provide information or indicate where to go to get more information. It is always important to find out what you don't know so you can start the ramping-up process. There are many very helpful articles and publications which help direct physicians who are starting a new practice. I will list a few of them here for you. In reality, once a new physician is ready from a medical training perspective, it will take several months to get ready business-wise to start practicing medicine.

Ideally, a physician should start preparing a business plan while yet in residency (see "Business Plan" cutout). Otherwise, there is an unnecessary delay once the residency is completed. Going through this process while in residency will also help ensure the physician is sure he/she actually wants to start a new business. This will be a time to also consider other alternatives such as becoming a partner with an existing firm, buying an existing practice or working as an employee for another physician or medical agency.

If a new physician wants to purchase an existing practice, BCMS has listings on its website of physician practices for sale. Applying the principles of "Practice Valuation" as outlined in my article in the February edition of *San Antonio Medicine* magazine, a physician can decide if it is better to take over an existing practice or start a new one. Buying an existing practice makes it easier to evaluate market position, cash flow issues, mentoring issues, etc.

The ultimate comparison is whether or not buying an existing practice will make you better off than pursuing one of the other alternatives mentioned.

Some of the hospitals in San Antonio also assist physicians in setting up new practices. This assistance comes in the form of revenue advances or guarantees, mentoring from other physicians in the community, system setups, help locating staff and finding office space, etc. These agreements often have time limitations and requirements to which the physician must agree. Hospitals do this to encourage physicians to practice in San Antonio and do so close to their locations.

Talk about how to set up a practice with those in the know. Get advice from professionals. TMA also has a practice consulting service which, for a fee, can help set up a practice or provide ad hoc advice along your way. The Bexar County Medical Society has a staffing service that can help find key employees and check their backgrounds. There are also many professional services that can provide great advice (see my article on "Business Advisors and Consultants" in the April 2007 issue of San Antonio Medicine magazine).

Prepare, prepare, prepare. Your intended life's work is in the balance. Don't ASSUME anything. Research EVERYTHING. Don't cut corners that will limit your ability to be successful.

Investigate, evaluate, choose, plan and then pay attention to details. The business of medicine is changing everyday. Anticipate your future. Remember that while you may love the art of medicine, if you fail to run a good business, it will negatively affect you financially and adversely affect the care of patients who are depending upon you.

## 1. ADDRESS NOTIFICATIONS

Organizations to notify of the address of a new practice:

Texas Medical Board  
PP Box 2018  
Austin, TX 78768-2018  
(512) 305-7010

Bexar County Medical Society  
Attn: Membership  
6243 W IH-10, Suite 600  
San Antonio, TX 78201  
(210) 301-4391

Texas Medical Association  
Attn: Membership  
401 W. 15<sup>th</sup> Street  
Austin, TX 78701  
(512) 370-1441

## 2. DRUG REGISTRATIONS

If you plan to administer, prescribe or supply controlled substances in Texas, you must obtain an application for a Texas controlled substances registration number.

Texas Department of Public Safety  
Controlled Substances Registration  
PO Box 4087  
Austin, TX 78773-001  
6100 Guadalupe, Bldg. E  
Austin, TX 78752  
(512) 424-2188

Once you have obtained a Texas controlled substances registration, you can apply for a Drug Enforcement Administration (DEA) number.

Drug Enforcement Administration  
Attn: Registration  
10127 Morocco, Ste. 200  
San Antonio, TX 78216

If you plan to prescribe Schedule II controlled substances, you must obtain a supply of Official Prescription stickers designated for your use.

Texas Department of Public Safety  
Official Prescription Program  
PO Box 4087  
Austin, TX 78773  
(512) 424-2189

To send payments to the Official Prescription Program:

Texas Department of Public Safety  
Official Prescription Program  
PO Box 15999  
Austin, TX 78767-5999

### **3. GOVERNMENT PAYORS**

If you plan to treat Medicare patients in Texas, you will need to apply for a Medicare provider number from Blue Cross/Blue Shield of Texas, who handles it for Medicare. BCBS will supply the application, but it takes 6 to 8 weeks to get the provider number.

Blue Cross/Blue Shield of Texas, Inc.  
Provider Services  
PO Box 655924  
Dallas, TX 75265-5924  
(214) 766-6076

Medicaid provider numbers for Texas are obtained from the National Heritage Insurance Company. However, you will need to get the Medicare number first. NHIC's number is (512) 794-2325, or (800) 873-6768. It will take about a month.

Champus is handled by Wisconsin Physician Service. You can call and ask for an application for a provider number. Ask for the Central Provider Coding Unit.

Wisconsin Physician Service  
Coordinator, Professional Relations  
CHAMPUS  
PO Box 701061  
San Antonio, TX 78270-1061  
(210) 545-9076

Texas Workers' Compensation Commission (TWCC) is for workers who are injured on the job. For a guide as to rules, forms and fee guidelines, contact:

TWCC Publications  
(512) 440-3618

Or call TMA and ask for a copy of :

The Complete Workers' Compensation Guide for Texas Physicians  
(800) 880-1300 Ext. 1423

### **4. MEDICAL MALPRACTICE INSURANCE**

There are a number of carriers that provide medical malpractice insurance, and the number of providers has steadily increased since tort reform was implemented in Texas in 2003. The Texas Medical Association (TMA) created the Texas Medical Liability Trust in 1979 to serve members of the state and county medical societies. Contact:

Texas Medical Liability Trust  
PO Box 14746  
Austin, TX 78761  
(800) 580-8658

## 5. INTERNAL REVENUE SERVICE

Call (800) 829-3676, or go online to <http://www.irs.gov/businesses/index.html>

Ask for forms:

- SS-4 Application for Employer Identification Number
- 15 Employers Tax Guide
- 334 Tax Guide for Small Businesses
- 505 Tax Withholding and Estimated Tax
- 541 Tax Information on Partnerships
- 552 Record-keeping for Individuals

Unemployment insurance taxes are typically paid quarterly. Contact:

Texas Workforce Commission  
Tax Department  
Status Section  
101 E. 15<sup>th</sup> St.  
Austin, TX 78778-0001

Workers compensation insurance is required if you have one or more full-time employees. You need to buy the insurance from an insurance broker.

The Occupational Safety and Health Administration (OSHA) sets safety standards for workplace. OSHA will require that you post a permanent notice to employees, maintain records of workplace injuries and illnesses, and report annually on job-related injuries and illnesses. The reports actually go to the Texas Workers Compensation Commission.

## 6. NATIONAL PROVIDER IDENTIFIER (NPI)

The U.S. Department of Health and Human Resources has established a system for all providers of healthcare and healthcare services. It requires that all physicians (or any entity that would bill Medicare or any other government program) obtain an NPI number. If a physician practice bills as a practice (instead of by physician), then it needs an NPI number as well. To apply, access the National Plan/Provider Enumeration System (NPPES) website at <https://nppes.cma.hhs.gov/>

## 7. ADMINISTRATION OF OFFICE EMPLOYEES

If you are going to be an employer (receptionist, nurse, etc.), you must apply for a federal employer identification number from the Internal Revenue Service. The IRS will tell you how to handle the withholding federal taxes, Social Security, and unemployment insurance taxes.

## 8. MEDICAL WASTE DISPOSAL

The Texas Department of Health defines the categories of waste subject to regulation and establishes the standards for waste treatment prior to disposal. The "Texas Board of Health Rules for Definition, Treatment and Disposition of Special Waste from Health-Care Related Facilities" can be found at Title 25, Texas Administrative Code, Chapter 1, sections 1.131-1.137. The authority to regulate medical waste removal and disposal remains with the Municipal Solid Waste Division of the Texas Water Commission. Current medical waste regulations are available from the Special Waste Evaluation Team, Municipal Solid Waste Division, Texas Water Commission, PO Box 13087, Austin, Texas 78711-3087. Refer to "The physician's guide to medical waste regulations, parts 1-4", in Texas Medicine for a more in-depth review of these regulations. For copies of these articles contact TMA's office of General Counsel at Texas Medical Association, (800) 880-1300.

## 9. BUSINESS PLAN

Every business needs a business plan. A business plan should be able to answer the following questions:

- **Business Purpose** – What services will you provide?
- **Market** – Who needs and will buy your services? What is the size of the market? Is it a growing or shrinking market?
- **Location** – Should you lease or buy a location? What renovations will be needed? Are there any deed or zoning restrictions? What other businesses operate in the area? Does the location help advertise the business? Is the office close to a needed hospital or surgery center?
- **Competition** – Who will compete with you for patients (identify them specifically)? Which competitors are successful and why? What share of the market do your competitors have? What will be the difference between you and your competitors?
- **Management** - What do you know about management of a business? Can you manage relationships with payors? Can you manage staff?? Do you have job descriptions for your staff? How many employees do you need? What skills should employees have? How will staff get trained?
- **Objectives** – What do you plan to accomplish in the first five years of your business? You should have measurable goals and timeframes.
- **Financial** – How much money will it take to equip a practice? What capital equipment will you need? How long will you have to pay employees, rent, and utilities and the like before the cash from payors begins to come in? How much money will it take before the business is self-sustaining from a cash perspective? Who will you borrow the money from to start the practice and under what terms? Can you afford to pay back student loans and pay practice start-up loans? Prepare a three-year cash forecast for the best and worst of conditions. Does it get you where you want to be? Is it viable?
- **Payors** – Which payors do you plan to do business with? How long does it take to get credentialed by these companies? What rates will they pay you? How negotiable are the payors? How long does it take from the time a service is performed until money is received from payors?
- **Electronic Medical Records** – You will need to begin with an electronic system for clinical, financial and administrative purposes. What type of system best suits your practice? How much will it cost? What are the electronic filing requirements of Medicare, Medicaid and the payors?
- **Legal Structure** – What type of corporation will you set up? The common types of corporations used by physicians are sole proprietorship, general partnership, limited liability partnership, limited liability company, professional association, and non-profit health corporation. What are the advantages and disadvantages of each (see table)?

## COMPARING CORPORATE TYPES

	GENERAL PARTNERSHIPS	LIMITED LIABILITY PARTNERSHIPS	LIMITED PARTNERSHIPS	FOR-PROFIT CORPORATIONS
<b>Investors Required to Form</b>	Two or more. No restrictions on types of investors.	Two or more. No restrictions on types of investors.	Two or more with one or more limited partners and one or more general partners. No restrictions on types of investors.	One or more (if S Corp., cannot exceed 35). No restrictions on types of investors unless S Corp., then no: corps, non-resident aliens, partnerships, certain trusts, pension plans or charities.
<b>Name given to Investors</b>	Partners	Partners	Partners	Shareholders (S/H)
<b>Formation and Filing</b>	Formed by an express or implied agreement to enter into business as co-owners. No filing required.	File application form with secretary of state and have \$100,000 of liability insurance or escrowed segregated funds.	Enter LP agreement and all general partners must file certificate of LP with secretary of state.	Select corp. name, file articles of incorporation with secretary of state, capitalize corp. through sale of stock, hold organizational meeting of directors, adopt bylaws governing corp.
<b>Liability</b>	Each partner has fiduciary duty to partnership and has joint and several liability for obligations of partnership and partner's malpractice.	Each partner is shielded from joint and several liability for errors and omissions of other partners (but only E&O).	<u>General Partners:</u> Same liability as partners in GP. <u>Limited Partners:</u> Limited liability (unless limited partner participates in control of business).	S/Hs shielded from personal liability beyond assets of the corporation and their investment, but piercing corporate veil considerations are necessary.
<b>Ownership</b>	Tenant in partnership. Each partner has equal right to property for partnership purposes only.	Tenant in partnership. Each partner has equal right to property for partnership purposes only.	Tenant in partnership.	May own and use property in its own name. Shares in corp. are freely transferrable subject to state and federal securities laws, TBCA restrictions, and corp. restrictions.
<b>Management</b>	Each partner has equal rights to participate in management (unless otherwise agreed).	Each partner has equal rights to participate in management (unless otherwise agreed).	Centralized in general partners; limited partners are generally authorized not to take part in management to avoid liability as general partners.	Generally controlled by holders of majority of shares who elect the directors; managerial duties may be delegated to officers and agents.
<b>Tax Consideration</b>	Pass-through entities; partners liable for their share of partnership income, losses, and tax attributes (but these can be allocated among partners by agreement).  May be subject to state franchise tax.	Pass-through entities; partners liable for their share of partnership income, losses, and tax attributes (but these can be allocated among partners by agreement).  NOT subject to Texas franchise tax.	Pass-through entities; partners liable for their share of partnership income, losses and tax attributes (but these can be allocated among partners by agreement).  May be subject to state franchise tax.	Double taxation, but some corporations can elect S status, which eliminates tax at corporation level.  May be subject to state franchise tax.
<b>Tax Return Federal</b>	<u>Partnership:</u> IRS Form 1055  <u>Partners:</u> IRS Form 1055 Schedule K-1	<u>Partnership:</u> IRS Form 1065  <u>Partners:</u> IRS Form 1065 Schedule K-1	<u>Partnership:</u> IRS Form 1065  <u>Partners:</u> IRS Form 1065 Schedule K-1	<u>C Corp.:</u> IRS Form 1120 <u>S Corp.:</u> IRS Form 1120S <u>S Corp. S/H:</u> IRS Form 1120S Schedule K-1
<b>Advantages</b>	Maximum flexibility.  No double taxation.	Maximum flexibility.  No double taxation.  GP with partners shielded from joint and several liability for E&O of other partners.	Liability protection to limited partners.  No double taxation.	Liability limited to extent of S/H investment.
<b>Disadvantages</b>	Joint and several liability.	Still some joint and several liability; partners have joint and several liability for debts and obligations of LLP from any cause other than E&O of other partners. Thus, partners will remain liable for LLP's contractual obligations.	General partners have joint and several liability.  Usually ineffective in medical practice setting because of liability exposure for general partners and because physician owners generally want voices in management.	Physicians cannot form a general corporation in most states to practice medicine.  Possible securities offering requirements.  May be subject to state franchise tax.

## COMPARING CORPORATE TYPES

	NONPROFIT CORPORATIONS	PROFESSIONAL ASSOCIATIONS/CORPORATIONS	PROFESSIONAL LIMITED LIABILITY COMPANIES	JOINT VENTURE CONTRACTUAL
<b>Investors Required to form</b>	One or more. If nonprofit health corp. investors must be licensed physicians, but statute is silent regarding status of "members."	One or more. All members must be individuals licensed to perform professional services for which the PA is formed and meet "S Corp." requirements, upon election.	Two or more (if seeking classification as partnership for tax purposes). All members must be individuals licensed to perform professional services for which the PLLC is formed.	Two or more. No restrictions on type of investors.
<b>Name Given to Investors</b>	Members	Members	Members	Joint Venturers
<b>Formation and Filing</b>	File articles of incorporation with secretary of state, hold organizational meeting of directors, adopt bylaws governing corp. If NPHC, must meet certain requirements and file with the TSBME.	File articles of association with secretary of state.  If "S Corp.," file election with IRS.	File articles of organization with secretary of state; members must adopt regulations to govern operation of PLLC.	Enter into joint venture agreement which can be expressed or implied. No filing required unless seeking to do business under an assumed name or obtain a tax identification number.
<b>Liability</b>	Members are not personally liable for debts, obligations, or liabilities of the corporation.	Resembles corporate liability; limited to extent of member's investment.  Member and PA are liable for E&O, but other members are not liable.	Resembles corporate liability; limited to extent of member's investment.  Member and PLLC are liable for member's E&O, but other members are not liable.	Similar to general partnership. Each venturer has joint and several liability for obligations of joint venturer.
<b>Ownership</b>	May own and use property in its own name, but certain limitations in the disposition of property must be observed.	May own real or personal property necessary or appropriate for rendering of professional services. Transfer of ownership is limited.	Similar to corporation rules. Transfer of ownership is limited: membership cannot be transferred to unlicensed persons.	Same as general partnership.
<b>Management</b>	Board of directors or trustees (at least 3); if NPHC, board of directors must be entirely composed of licensed physicians.	Board of directors or executive committee.	Members may manage PLLC or select managers. All managers or officers must be licensed in same profession for which PA is formed.	Same as general partnership.
<b>Tax Considerations</b>	A nonprofit taxable corporation may be subject to federal and state franchise taxes.	Taxed as corporations. To avoid double taxation, must elect "S Corp." restrictions regarding size, membership, allocation of profits/losses, etc.  May be subject to state franchise tax.	Carefully structured PLLC will allow pass-through taxation (it must lack at least two of the four corporation characteristics).  Special allocations of profits and losses may be made.  May be subject to state franchise tax.	Same as general partnership.
<b>Tax Return Federal</b>	<u>Taxable</u> : IRS Form 1120  <u>Tax-Exempt</u> : IRS Form 990	<u>C Corp.</u> : IRS Form 1120  <u>S Corp.</u> : IRS Form 1120S	<u>Member</u> : IRS Form 1065 Schedule K-1 If corp. characteristics: <u>C Corp.</u> : IRS Form 1120 <u>S Corp.</u> : IRS Form 1120S	Same as general partnership.
<b>Advantages</b>	NPHC can practice medicine.  Absence of statutory requirements for NPHC "members" appears to permit non-physician members.  Exclusion from HMO Act permits captitated contracts.	Familiar entity to physicians.  Proven limited liability protection.  Not subject to Texas franchise tax.	Unlike PA, may have unlimited number of members and still receive a favorable tax position.  Enjoys limited liability of corporation while qualifying as a partnership for tax purposes.	Same as general partnership.
<b>Disadvantages</b>	No individual benefit; no part of income is distributable to owners, members, directors or officers.  Risk of regulatory interpretation on "members" in NPHC.	May be owned only by individual physicians, thus, a PA cannot be member of another PA.  S Corp. restrictions (for example, no more than 35 members and no non-resident alien members).  Not recommended unless PA will be engaged in practice of medicine.	Ownership rules similar to PA.  LLC statute has not been well-tested in Texas. Question of whether Texas courts will recognize limited liability of PLLC members.  Subject to Texas franchise tax.  Must avoid at least 2 of 4 corporate characteristics for tax purposes.	Less defined structure may leave joint ventures with only contractual rights and remedies outside of state laws protecting rights of general partners.  Joint and several liability.