

Asset Protection for Acupuncturists

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Over the years I have been in the acupuncture field, I have noticed something obvious: most acupuncturists and doctors of Oriental medicine don't tend to be good at business. They may be fantastic healers, but their knowledge and understanding of business leaves a lot to be desired. In fact, they tend (in my opinion) to hate dealing with anything related to business. The schools don't teach much on the subject, either. What acupuncturists do learn about business comes after their formal acupuncture education.

One of the biggest areas of misunderstanding is the form of business acupuncturists choose to work through. Forms of business include sole proprietorships; partnerships; professional corporations (PCs); corporations; limited liability companies (LLCs); and contract business trusts. When it comes to asset protection and privacy, the champion of these is the contract business trust, followed distantly by the LLC. What form of business leaves your personal and business assets most vulnerable? The sole proprietorship. And what form of business do most acupuncturists choose? The sole proprietorship.

Admittedly, acupuncture malpractice insurance and office liability insurance do provide some asset protection with respect to lawsuits and injuries related to business activities, but those policies cover only what is in their provisions. Over the years, many acupuncturists have found themselves unprotected when their malpractice insurance carrier went under and they had to scramble to find other coverage. If you lose your insurance coverage, are your assets nevertheless protected from lawsuits?

At the same time, what happens if you get hit with a non-professionally related lawsuit? What if the limits of your coverage are inadequate for the judgement that comes down from a court? If you are using a sole proprietorship to do business, everything in the business is up for grabs. What if you are sued personally? All of your personal and business property is vulnerable. And what about the number of frivolous lawsuits being filed nowadays? If you are hit by one of these suits, all of your years of hard work could go down the drain because someone found an attorney who saw that you have assets, making you a good target. Remember: in bad economic times, the number of lawsuits goes up - people have to make money somehow, and the number of attorneys is increasing. Do you still think the sole proprietorship is such a great way to do business?

As Jay Mitton, JD, MBA, states, "Just owning an asset makes you a target of lawsuits." The first item an attorney will look at in deciding whether to take a case is its merit. The next thing an attorney will do is scrutinize the insurance coverage and other assets, personal and business, the potential target of the suit has in his or her name. (For example, do you own a home that has a large market value and relatively little mortgage debt? Has your bank sold information about your income and bank balance to a database the attorney can access? Can the attorney find out what you are worth on paper? Yes, the attorney can.)

According to Mr. Mitton, most attorneys and estate planners mistakenly tout the living trust as an asset protection vehicle. Living trusts can help to avoid probate for at least the lifetime of the living spouse, but then never have, and never will, be able to protect your assets, because the living trust

is an alter ego. In other words, the name on the assets may change, but the assets are still yours. Thus, the assets in a living trust are still considered yours and are therefore vulnerable to an adverse judgement. The living trust is a revocable trust. (Mitton states that most attorneys can't even draft living trusts properly, so in most instances, they aren't even worth the paper they're written on.)

To understand the concept of asset ownership, consider the following. A number of years ago, a famous athlete was in the public eye due to a murder case in California. He was acquitted of criminal charges, then lost a civil suit for \$33 million dollars. Apparently, many assets were not in his name, and the athlete claimed to be massively in debt, so the judgement was largely moot. Yet occasionally, we hear of this athlete living a life of luxury. How could this happen? Certainly not by being a sole proprietor or using living trusts.

The contract trust, on the other hand, is an entity that is irrevocable. Properly drafted and substantiated, the contract trust (such as a "Massachusetts trust" or "common law business trust") can be used to conduct business in every state while maintaining an "arm's-length" distance needed to protect assets. That which is not yours cannot be taken in a lawsuit against you.

The contract trust is little understood and largely unknown by most accountants, attorneys, estate planners and financial advisors. In practice, though, it is an amazingly versatile vehicle for asset protection and privacy. Just like acupuncture, those who have experience with the contract trust understand how well it works, while those who have no experience may deride it and call it quackery. Like the difference between a trained and an undertrained acupuncturist, a properly created and operated contract trust can be a key element in the health of a business, while if it is improperly drafted and operated, it will do no good and could provide a false sense of security. If created and used incorrectly, it will be as worthless to your asset protection strategies as a sole proprietorship, partnership or living trust.

Acupuncturists focus on long-term health and prevention. Acupuncture has helped people for generations to protect and improve their health (an asset). Protecting business, financial and personal assets is an important part of any health care strategy. Contract trusts can provide a vehicle for business and personal asset protection and privacy to you, your children and grandchildren, as they have for generations.

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