

LIGHT ON LAW

A Guide To Legal Wellness For Yoga Studios and Teachers

Gary Kissiah

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Keep current on legal developments and best practices by signing up to receive our Light on Law Newsletter at:

<http://garykissiah.com/>

ABOUT THE AUTHOR

I am a lawyer who specializes in representing yoga and other wellness businesses. I teach yoga philosophy, yoga ethics and yoga law. I write and publish books on yoga law and yoga philosophy.

ABOUT MY BOOKS

Light on Law For Yoga Studios: A Guide to Legal Wellness

This book is for yoga studios, entrepreneurs and other wellness businesses.

It discusses the essential legal issues you need to know such as: independent contractors and employees, protecting yourself against liability, starting and running your business, legal entities, key legal agreements, selling products, branding, content, websites and social media, ethics and taxes. It contains 37 essential legal forms written specifically for yoga and other wellness businesses.

The book is a beautiful, full color 340 page PDF which is readable on all computers, iPads and iPhones.

You can buy it directly from my Website here:

<http://garykissiah.com/tees/light-on-law-for-yoga-studios/>

Light on Law For Yoga Teachers: A Guide to Legal Wellness

This book is just for yoga and wellness teachers. It will empower you to meet your legal obligations and to protect yourself from legal trouble.

The book is a beautiful, full color 200 page PDF which is readable on all computers, iPads and iPhones.

It includes 23 legal forms written just for yoga teachers. You can buy it directly from my Website here:

<http://tinyurl.com/la2y8hd>

Light on Law: A Guide To Independent Contractors and Employees

Our newest book has over 150 pages of discussion on independent contractors and employees for yoga studios and other wellness businesses. It explains the federal and state laws you must know and how to properly classify your independent contractors and prepare a strong agreement to build your case. It shows you how to interview, hire, manage and terminate your employees under federal and state law. It contains 10 essential agreements including model independent contractor and employee agreements.

The book is a beautiful, full color 200 page PDF which is readable on all computers, iPads and iPhones.

You can buy it directly from my Website here:

<http://garykissiah.com/tees/independentcontractors/>

The Yoga Sutras of Patanjali: Illuminations Through, Quotation, Design and Commentary

My book takes a new approach to studying and practicing the Sutras. Each Sutra is presented in a layout that contains the Sanskrit text, a plain English translation, imagery that illuminates the Sutra and a brief commentary. The commentaries are drawn from sacred writings and spiritual authorities from a variety of traditions.

It is a print book and is available on Amazon here:

<http://tinyurl.com/az34w8w>

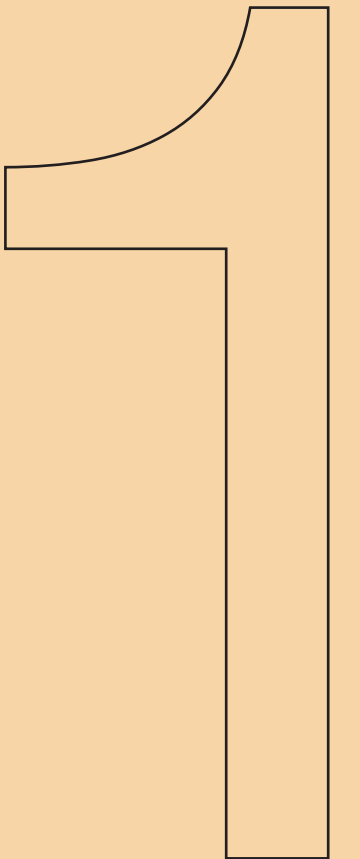
It is also available as a PDF download from my Website:

<http://garykissiah.com/tees/yoga-sutras/>

Table of Contents

<hr/> Introduction	2
<hr/> Working With Lawyers	8
<hr/> Key Agreements	14
<hr/> Independent Contractors	20
<hr/> Protection From Liability	26
<hr/> Legal Entities	32
<hr/> Selling Products From Websites	36
<hr/> Trademarks	40
<hr/> Ethics	44
<hr/> Regulatory Concerns	50
<hr/> About Gary Kissiah	54

Introduction



Yoga Is Now A Big Business

The Yoga Journal's "2012 Yoga in America Market Study" found that over 20 million people in America practice yoga and spend over \$10.3 billion dollars. There are more than 70,000 yoga teachers and 26,000 studios. Yoga has become a big business.

As yoga has grown, it has entered the mainstream media and is featured in movies, TV shows, newspapers, advertisements, conferences, books and articles. It is being offered in hotels, resorts and airports.

However, this exposure has also led to a spotlight on injuries to students, scandals involving prominent yoga teachers and the attention of regulatory bodies who are interested in regulating and taxing the yoga community.

Increasing Legal Risks and Responsibilities

As a result of these factors, the legal risks and responsibilities of yoga and wellness business owners and teachers have dramatically increased.

However, the community has not been well-served by the legal profession. The practice of yoga and wellness modalities has historically been a small community operating under the mainstream radar and has not come to the attention of lawyers as a potential source of new clients. This is a function of money.

Lawyers typically will not represent clients unless they feel they can make a substantial amount of money. The community, on the other hand, has been slow to engage lawyers due to the difficulty of retaining lawyers and the high cost of legal services compared to the modest revenues that most yoga

studios, wellness businesses and teachers make. There has also been a perception that many legal concerns can generally be ignored because they do not apply to small businesses. Ignorance may have been bliss in the past but it is no longer true.

New Sources of Liabilities

There are now many new sources of legal risk and liability to the yoga and wellness community. This is the result of several developments.

First, there have been significant new developments in the law of independent contractor relationships. Both federal and state taxing authorities are aggressively auditing and pursuing businesses who routinely treat workers as independent contractors rather than as employees. The reason is simple: tax revenues. The laws have been changed, interpretations have tightened and many yoga and wellness businesses are at risk of facing an audit, having their workers re-characterized from independent contractors to employees and being subject to back taxes, fines, penalties and tax return amendments. This situation is aggravated because many yoga studios and wellness businesses do not use independent contractor agreements for their workers or, if they do, the agreements are often inadequate. This is the result of using poorly understood forms of unknown origin that do not reflect the actual business relationships or include language that complies with federal and state independent contractor laws.

Second, yoga and wellness businesses have wholeheartedly embraced the Internet. As business models have evolved, some businesses are selling products over the Internet, offering streaming practice videos and pursuing other creative business ideas. This has opened a new world involving regulatory, trademark, copyright, product liability, advertising, privacy and social media legal considerations. All of these activi-

ties trigger legal duties, risks and potential liabilities.

Third, as the yoga and wellness community has entered mainstream awareness, increasing attention is being paid to injuries to yoga students. There have been many articles in the New York Times and other prominent media channels, and books chronicling the physical harm that yoga can inflict on the body have been published. This situation has been aggravated due to the proliferation of yoga teacher training programs that graduate and certify teachers with modest experience. Because yoga is attracting more and more people from the mainstream population who have little understanding of the authentic goals of the yoga tradition, the potential for claims and lawsuits is rising. Legally sufficient releases of liability are often not used, insurance policies for teachers are poorly understood, and there is inconsistent use of best practices that are specifically designed to reduce the chances of injuries.

Fourth, as money has flowed into yoga and wellness businesses, regulators have taken note. There have been movements in many states to regulate yoga studios which will increase the cost and complexity of doing business. There are attempts to tax yoga and wellness businesses at the city and state level in many states. The yoga community has been rocked by a variety of scandals over the years. This type of behavior can only serve to fan the flames of governmental regulation because there is no mandatory regulatory structure within the yoga community that addresses ethical problems.

Finally, it is a law of nature that lawyers follow money just as water flows downhill. As the yoga and wellness community grows, we will become a target for personal injury lawyers because there will be enough money at stake to justify filing a claim or lawsuit for personal injury or for mental distress due to inappropriate touching. We may also start seeing more

product liability claims. As these trends continue, the inevitable result will be increasing disputes, lawsuits and involvement with the legal system, regulators and lawyers.

It is my heartfelt belief that it is beneficial for society as a whole to have access to a growing and thriving yoga and wellness community that heals body, mind and spirit. However, the community cannot thrive and businesses and teachers cannot make sustainable incomes if they become mired in legal and ethical problems, disputes among studios, teachers and vendors, claims and lawsuits, and burdensome regulations and taxes.

My intention is to educate the community about basic legal issues and to encourage the adoption of best practices to avoid legal problems. This in turn will help the yoga community build businesses on a solid foundation so that it can thrive and be successful for the benefit of all.

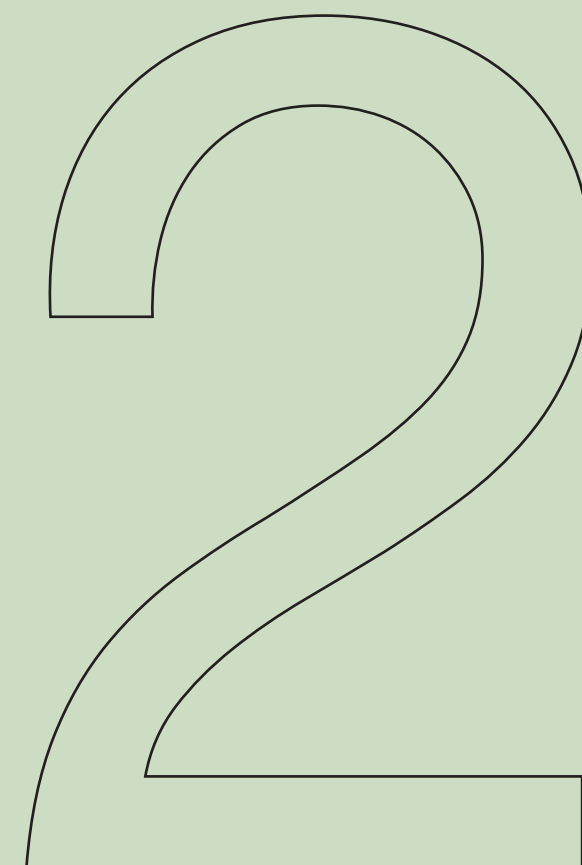
This Minibook is a brief introduction to some of the key issues that you should consider in running your yoga business. There are many more legal considerations and best practices to know but it is my hope that this book will spark your curiosity to learn more!

I encourage you to sign up to the Light on Law Newsletter. This will give you valuable information on new developments, current issues and best practices.

Namaste!

Gary

Working With Lawyers



KNOW WHEN YOU MUST HIRE A LAWYER

The use of lawyers invariably involves spending money and time and, depending upon the situation, can be very stressful. Naturally, you want to avoid this but there are times when you must engage a lawyer to represent you.

You need to hire a lawyer when:

1. You are negotiating a complex agreement and the other side has a lawyer. There is way too much disparity in expertise for you to negotiate a fair and reasonable deal.
2. You are served with an administrative proceeding such as by a state or federal tax or regulatory authority.
3. You want to sell your yoga business or purchase an existing business from someone else.
4. You and one or more founders are setting up a new studio. A lawyer can guide you on setting up the appropriate legal entity and entering into a founder's agreement that governs the relationship among the founders. If you are the sole owner of your studio, you may be able to set up a single member limited liability company with the assistance of your tax advisor.
5. You want to register a trademark to protect the name of your business or brand. (You may consider using a trademark service.) You want to license your intellectual property such as a book, recording or video or file a patent application.
6. You receive a demand letter and the law firm is asserting that its client was harmed by your actions or you are served with a complaint. Do not respond to the law firm or attempt to represent yourself. Do not communicate with the lawyer's client. You could be setting yourself up for additional liability based upon

your responses. Retain a lawyer immediately.

7. You are opening up a franchise studio (i.e., a studio that is part of a chain and you are operating under the chain's name and with its support in exchange for a royalty). You should engage a lawyer to read and negotiate the franchise agreement. These documents can be quite complex, and you need to understand what you are getting into.

HOW TO FIND THE RIGHT LAWYER

1. Use your network of students, clients, teachers and friends.

Ask other yoga and wellness providers for recommendations. You might consider putting a note in your newsletter or Facebook page that you are looking for a lawyer.

2. Find and use paralegals.

Look for paralegals in your network and use them as a source of legal help or legal referrals. Many paralegals are subject matter experts and can be an invaluable resource in helping you explore legal issues and finding the right lawyer.

3. Use lawyers to find other lawyers.

If you are lucky you may have a student or client who is a lawyer and is willing to exchange legal services for yoga and wellness services or give you a price break. If not, perhaps they can recommend a lawyer.

4. Contact bar associations.

Many counties and cities have local bar associations that contain lists of member attorneys. Some of them even have recommendation services and can be quite helpful because they are referring lawyers that are within their local jurisdiction.

Visit the websites of the American Bar Association and the Bar Association of the state where you live. You can find a wealth of information from these associations to help in choosing a lawyer-from referrals to general information on a variety of legal questions.

HOW TO CHOOSE A LAWYER

Spend the time and take great care in hiring the right lawyer to represent you. It is an important relationship and you should hire your lawyer carefully. The right lawyer can be a real asset for you and your business. Interview your prospective lawyer and do not be shy about asking hard questions.

Make sure that your lawyer understands your business, wants to represent you and is someone you can communicate with.

When interviewing a prospective lawyer explore the following issues:

1. Find out if the lawyer has handled matters and clients with needs similar to yours. Does the lawyer represent businesses or practitioners in the yoga and wellness communities?
2. Determine if the lawyer is generally knowledgeable about the yoga and wellness community. If not, the lawyer should at least express an interest in learning about the yoga and wellness community. Be aware that it may end up costing you more money if the lawyer has to spend time to understand your business and serve your needs.
3. Is the lawyer you are interviewing the one who will actually represent you? Some lawyers merely recruit new clients and then pass them off to other lawyers to do the work.
4. Ask about fees and billing. There are different types of fee plans such as flat-fee, hourly, retainer and

contingency. Discuss the cost of each of these options, and find out if they are flexible in letting you choose the one best for you.

5. Decide whether you want to go with a small or a large firm. Each has its own set of advantages and disadvantages. Most of your legal needs can be handled by a solo practitioner or a small firm, but small firms may not house all of the specialties you need and may not have the reputation of a larger firm. Large firms are significantly more expensive than small firms. Large firms can handle all of your legal matters without referring you to other firms for specialized services. They may be able to prevail in matters due to their reputation. However, their level of service may not be good for small clients.

6. How will you be kept informed about the progress of your matter? How quickly will the lawyer respond to your phone calls and e-mails?

7. The lawyer may attempt to charge you for an initial consultation. Do not agree to this. If you do end up paying for the consultation, require that the amount be credited to the bill later on.

8. Does the lawyer communicate well? Do you like this person and do you speak the same language? Follow your instincts and feelings.

9. Does the lawyer represent any competitors of yours? If they do, they may ask that you waive the conflict of interest that arises from representing two competing clients. Make sure that you understand what the waiver means, and that you are completely comfortable in giving a waiver.

HOW TO REDUCE YOUR LEGAL FEES

Lawyers are like taxi cabs. The longer the ride, the more it costs! Keep your ride short to minimize your

bills. Here are ten ways to reduce your bills:

1. Come prepared. Keep meetings short and productive.

Remember, in dealing with lawyers, time is money and you want them to work fast!

2. Negotiate a fixed fee billing price or cap the fees.

If the engagement is on an hourly fee basis, you will want to know (1) the hourly rate, (2) the minimum billing increments, (3) whether there is a charge for every phone call, letter and e-mail, (4) an estimate of the number of hours the matter will take, (5) what expenses might be required and the cost of expenses, and (6) what happens if the matter takes longer than anticipated.

3. Pay only for work performed.

Make sure that the lawyer bills you only for the exact amount of work performed. Some lawyers charge a minimum of 15 minutes. Thus, if your lawyer makes a two minute phone call, you will get charged for 15 minutes at the hourly rate.

4. Avoid partners.

They are the most expensive lawyers in the law firm. Use associates and paralegals as much as possible.

5. Be aware of “drive by” billing.

This means multiple lawyers billing time to your matter because they are “analyzing” your issues.

6. Be stingy with email communications with your lawyer.

Every communication must be read, whether it is rel-

evant to your matter or not. By sending fewer emails, you will reduce your fees. Do not call your lawyer unless you have an important question or new information. Don't use your lawyer for emotional venting. Practice yoga instead!

7. Never pay a bill that states: “For services rendered.”

This is a way for lawyers to gouge their clients. Insist upon a break-out of the hours and rate charged by all lawyers. Push back hard on the bill.

8. Negotiate the expenses.

Lawyers mark up routine expenses such as copying, mailing and routine office expenses. This is a profit center for them and way to gouge their clients.

9. Understand the Engagement Letter

The engagement letter will describe: the nature of your legal matter and the terms and conditions of your relationship and the hourly rate; the minimum billable increment; the expenses; and any other matters you agreed upon. Read the engagement letter carefully. Make sure that you understand its terms and make the lawyer explain anything you do not understand.

10. Do Not Agree to Pay Any Retainer Fees

The purpose of retainer fees is to shift the negotiating power from you to your lawyer if you need to challenge the bill. You are allowing the lawyers to use your money for free with no benefit to you. It is very difficult to get unspent retainer money back.

Key Agreements



THE STUDIO AND TEACHER AGREEMENT

When a new teacher wishes to join a studio, the teacher and the studio should have a heart-to-heart discussion of the many issues involved in the teaching position. When they have reached a “meeting of the minds” on the key terms of their relationship, their agreement should be reduced to writing and signed.

Many studios do not use agreements at all or, if they do, they use form agreements that do not reflect the actual working relationship between the parties. Sometimes, the many issues that typically arise are not considered at all.

The agreement between a studio and a teacher is the heart of the business of all yoga studios. It should not be viewed as merely a form to be signed but should reflect the actual working relationship. Oral agreements should not be used.

If you are a studio, you should put written agreements in place for all of your teachers now. If you are a teacher, you should work with the studios where you teach to enter into written agreements.

In view of the changes to the law of independent contractors in some States, the increased enforcement by tax authorities and the serious penalties and fines if the legal relationship is not correctly characterized, if you intend to establish an independent contractor relationship a properly prepared agreement is critical.

Here are some important points to consider in the studio-teacher agreement:

1. Will the teacher be an employee of the studio or an independent contractor? The agreement must clearly establish this relationship. If the intent is to treat the teacher as an independent contractor then

it must satisfy the tests. If the intent is to treat the teacher as an employee, use an employment agreement.

2. What is the amount of the compensation and when will it be paid? Will the teacher be paid a flat rate per class or will payment be contingent upon the number of students in a class? How will the teacher’s performance be evaluated?

3. Will the teacher be responsible for locking and unlocking the studio, turning lights on and off, taking payment for classes and product sales, answering retail questions or other administrative duties?

4. Can the teacher teach at competing studios or is the relationship exclusive? Must the teacher give notice if he or she wants to teach at a competing studio? What are the restriction on marketing activities that teachers can pursue in the studio both with respect to their own offerings and offerings at other studios?

5. Does the studio have a code of conduct? Does the agreement require the teachers to follow the code of conduct?

6. Under what circumstances can the studio fire the teacher? Can the studio fire the teacher “at will” or does the studio need to show “cause” or a good reason in order to fire the teacher? What type of notice must the studio give the teacher? Conversely, what notice should the teacher give the studio if he or she wants to leave the studio?

7. Who owns the teacher training materials? It is common for teachers to contribute to the preparation of teacher training materials by contributing writings or other intellectual property. The question as to who owns the materials may arise if the studio wishes to publish the materials or if the studio is being pur-

chased and the buyer wants to make sure that it is getting clear title to the training materials.

8. What about ownership of confidential information? The agreement should provide that the information about the students, business plans, financial information and the studio is proprietary and confidential and is owned by the studio.

9. Will the teacher have the opportunity to join the studio as a co-owner if certain goals are met? What are those goals and how would the amount of the ownership interest be determined?

THE STUDIO AND STUDENT AGREEMENTS

All offerings of a studio to its students should be reflected in an appropriate agreement. These include membership agreements, retreat agreements, teacher training agreements and releases.

The purpose of these agreements is to let the students know what they are getting when they participate in an activity so that future disagreements may be avoided.

Agreements also protect your studio and teachers from liability based upon personal injury or economic loss that may be suffered by students in classes, workshops, retreats or in teacher training programs.

THE RELEASE

All students attending classes at a studio must sign a release of liability. A well-drafted release should describe all of the services and activities provided by the studio; require the student to assume the risk of harm from participating in the activities; waive all claims against the studio, teachers, owners and independent contractors; require the student to agree

that he or she will not engage in any inappropriate conduct; attest that the student is in good medical condition; and give permission to take photographs and videos.

The release of liability should include teachers within the definition of the parties who are covered by the release. My review of many forms of releases routinely used in the yoga world shows that most of them do not include the teachers within the scope of the release.

Therefore, in many situations, if you are a teacher you are not covered by the release! If you are a teacher, make sure you read the releases offered by the studios where you teach and make sure that you are covered by the release.

Studios should also review their forms of release and make sure that they release both the teachers and the studio.

TEACHER TRAINING AGREEMENTS

All students should sign an agreement if they enroll in a teacher training program. A thoughtfully prepared agreement that reflects both the conditions and spiritual values of your training program will serve you well. Studios should use information gathered from the agreement as an opportunity to determine if it is appropriate for a student to enter the training program. This is preferable to letting everyone into the program and then being faced with removing students from the program or failing them because they cannot meet the certification criteria.

Your agreement should cover such items as gathering basic information about the applicant to ensure that it is appropriate for he or she to pursue the path of teaching yoga, the release of liability, the curriculum of the class, the requirements to obtain certification,

your right to deny certification if the student does not meet the requirements, your right to terminate the student's participation in the training, any continuing education requirements to maintain the certification, and your studio's code of conduct. You should consider whether you have the right to revoke the certification if the teacher breaches your code of conduct.

RETREAT AGREEMENTS

Make sure that each of the students who attends your retreat signs a retreat agreement. Using a retreat agreement is important for international retreats.

If the studio is the sponsor of the retreat, then the agreement should be between the studio and the students. If the teacher is an individual sponsor of the retreat, then the agreement should be between the teacher and the students. The studio and the teacher should be clear about who is the sponsor of the retreat. In some cases both could be sponsors and the agreement should be set up among the studio, the teacher and the students.

The retreat agreement should cover such matters as pricing information, health and fitness information, cancellation and refund policy, risks and uncertainties that are involved in the retreat, and the release from liability.

Using a retreat agreement is even more important if the retreat is in a foreign country because there are many more risks involved in international travel than domestic travel. An agreement is important because it gives the students notice as to the things that can go wrong on a retreat and your policies on the many problems that may arise. For example, the agreement for an international retreat should cover such issues as travel information, health information, local health risks and vaccinations, obtaining local health care, emergency contact information, changes in

the retreat agenda due to hazardous local conditions such as weather or political unrest, refund and cancellation policy, the release from liability and travel insurance.

DO NOT USE ORAL AGREEMENTS

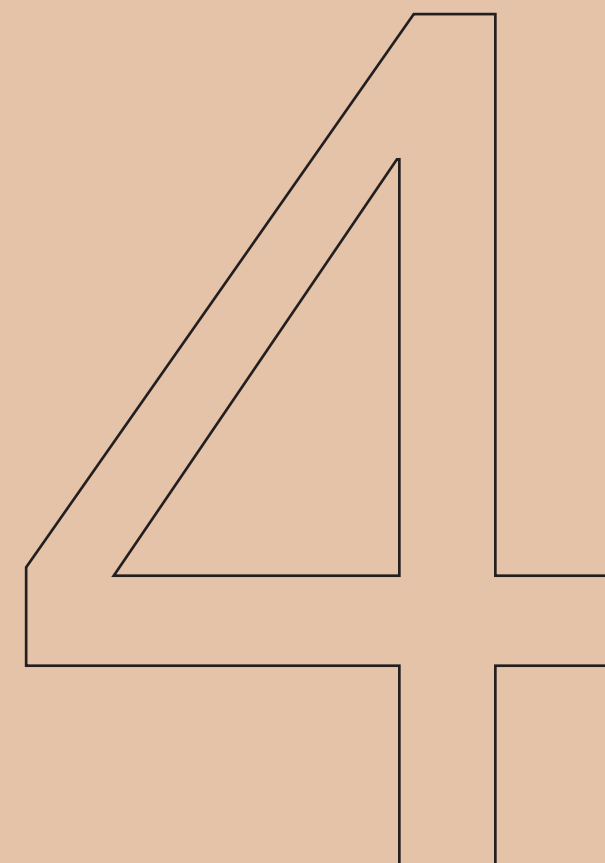
You should never attempt to make or rely upon an oral agreement. Even if both parties are acting in a fair, honest and reasonable manner, it is rare for two people to recall the terms of an agreement in the same way. It is a recipe for a dispute.

Using a written agreement is particularly important in the area of establishing independent contractor relationships since many complicated federal and state requirements must be met in writing. Moreover, a law called the Statute of Frauds requires that certain types of contracts be in writing or they are not enforceable. Generally, these are contracts that take longer than one year to perform, leases, and contracts for the sale of goods worth more than \$500.

Always reduce your agreements to writing, even if it is on the back of a napkin!

Handwriting practice lines consisting of 12 horizontal black lines on a light beige background. The lines are evenly spaced and extend across the left side of the page.

Independent Contractors



INTRODUCTION

Federal and state governments are stepping up their enforcement efforts to obtain additional revenues based upon the misclassification of workers as independent contractors rather than as employees. Because governments are faced with large budget deficits, they view pursuing misclassified workers as a source of additional revenues. The Internal Revenue Service (“IRS”) is currently auditing some 6,000 companies with respect to worker misclassification issues.

More than two-dozen other states—including California—are aggressively pursuing claims of misclassification to recover additional tax revenues.

All businesses that engage independent contractors now face increased risk of audit and potential liability with respect to misclassification of their employees as independent contractors.

If your yoga business is audited and found to have mischaracterized its teachers, it may be subject to severe penalties under both federal and state law.

The agreement between studios and teachers must build a strong legal position that the teachers are independent contractors (if that is the intention). The agreement must contain provisions that satisfy the tests for independent contractor status under both federal and state law.

WHAT IS A STUDIO’S LIABILITY UNDER FEDERAL LAW IF IT MISCLASSIFIES AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR?

If your studio misclassifies an employee as an independent contractor, you may be liable for unpaid fed-

eral taxes, penalties and interest on unpaid amounts. You may also be required to amend your income tax returns. If your mistake was honest, the penalty will equal 1.5% of wages paid to the employee, plus 20% of the amount that should have been withheld for Social Security and Medicare taxes, plus 100% of the employer’s matching share of Social Security and Medicare taxes. If the mistake was willful or if form 1099-MISC was not filed, then the penalties are dramatically increased. There may also be additional fines and interest.

Additionally, your teachers may lose many of the tax benefits and deductions of being self-employed. For example, they will no longer be able to deduct their reasonable and necessary business expenses or their travel expenses. Teachers who work at multiple studios may be treated as an employee at one studio and as an independent contractor at another studio. This creates a complicated and expensive tax compliance problem for the teachers.

WHAT IS A STUDIO’S LIABILITY UNDER STATE LAW IF IT MISCLASSIFIES AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR?

In late 2011, California passed a new independent contractor law, and California is aggressively auditing businesses in an attempt to find violations of the new law. The new law imposes harsh civil penalties for each violation and even higher penalties if a “pattern” of violations is found.

For each violation, an employer can face a penalty between \$5,000 and \$15,000 in addition to any other penalties permitted by law. The penalty can increase to between \$10,000 and \$25,000 per violation if you have engaged in a “pattern or practice” of violations.

A studio may also be required to place a public no-

tice on its website. You must publicly display this “scarlet letter” notice for one year stating that you misclassified your employees and that you will change your business practices to avoid further violations.

Finally, since the amount of workers’ compensation insurance premiums that you have to pay is based upon the amount that you pay your employees, your premiums will go up after your independent contractors have been reclassified as employees.

Be aware that disgruntled workers can complain to regulators that they should have been treated as employees rather than as an independent contractors and this can trigger an audit. Audits have also been triggered when employees have been terminated and have applied for unemployment benefits.

There are several audits of yoga studios going on in the Bay Area right now with some potential fines exceeding \$100,000.

One yoga studio in New York has been threatened with fines of \$149,000 related to independent contractor status and worker’s compensation issues.

WHAT SHOULD YOU DO NOW TO PROTECT YOUR STUDIO FROM LIABILITY?

Because of the new and aggressive posture of federal and state tax authorities, the complexity in the law and the penalties involved, all yoga and wellness businesses must review their hiring policies and their agreements with their teachers and other workers to ensure that they meet the independent contractor guidelines under both federal and state law.

You many need to change the terms of your existing relationships with your teachers and other workers to reduce the degree of behavioral and financial control you have to build your case for an independent con-

tractor relationship.

Although the federal law will be the same in any state where you live, there will be differences among the independent contractor laws in each individual state. You will therefore need to check with your lawyer to make sure that you are complying with your state's laws and regulations.

You should revisit and document the factors that supported the original classification of your independent contractors by either amending your existing agreements or entering into new agreements. You should consider how the relationships can be restructured to give the independent contractors additional control over his or her teaching responsibilities.

You can do this by ensuring the teacher pays for all expenses to teach at your studio, maintains an independent business apart from your studio, has freedom to make decisions about teaching classes, provides all materials necessary to perform the services and does not receive any employee-type benefits. You should consider having the teachers provide you with invoices for each of the classes that they teach at your studio. This is an important factor in showing that the teachers are running independent businesses.

Another important factor is to provide your teachers with the opportunity to rent studio space from you. The teachers would pay a flat fee for renting the space and would be responsible for marketing the offering, teaching the class, and collecting all of the money from the students. This shows that the teachers have the right to control the performance of their services.

You must build the strongest case that your teachers and workers are independent contractors rather than employees.

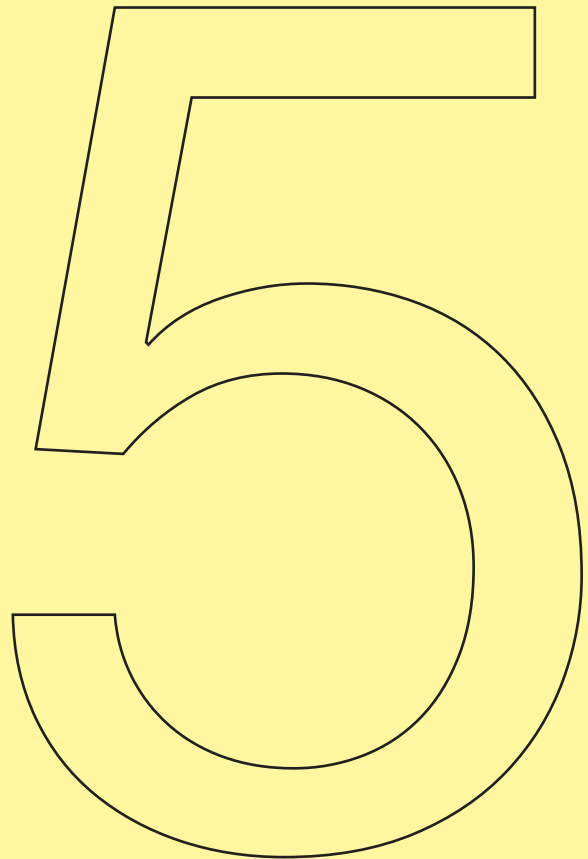
If you do not currently use agreements, put them in place now. You cannot rely upon oral agreements to satisfy the legal tests that your teachers and other workers are independent contractors.

You should sign properly drafted agreements with your independent contractors that establish the factors necessary to support an independent contractor classification under both federal and state law. Your actual hiring practices that you follow must be reflected in the agreements that you sign with your independent contractors.

Many studios either do not use agreements at all or use forms that they have obtained through the grapevine. Both of these approaches will fail to put you in a strong position to support an independent contractor determination.

If you do not have an agreement in place, you do not have a way to show that the parties intended to create an independent contractor relationship nor can you show compliance with the relevant tests. If you are using a generic form, it may not be based upon the laws of your state, may not properly reflect the new developments in the law and may have many errors and misstatements.

Protection From Liability



INTRODUCTION

The most common source of liability for yoga studios and teachers stems from injuries suffered by students in classes and workshops. Although lawsuits remain fairly rare, the probability of lawsuits is increasing for several reasons.

First, yoga has grown into a big business and this inevitably attracts the attention of personal liability lawyers. These lawyers see the stories in the mainstream press regarding yoga injuries and the growth of the industry and become more interested in taking these types of personal injury cases.

Second, there has been a proliferation of new and inexperienced yoga teachers that have been produced by the rapid expansion of yoga teacher training programs sponsored by yoga schools. This development, coupled with an increase in mainstream interest in yoga and the influx of new students, may well increase the chances of injuries. This is aggravated by the rise of new, extreme forms of yoga and hot yoga studios.

Accordingly, it is time for the yoga world to begin considering risk management strategies to moderate exposure to these types of lawsuits and claims.

Since it is not possible to completely eliminate the risk of harm to students and the potential for lawsuits, our legal goal is to reduce the probability of personal injuries and other types of claims occurring in the first place. If we can reduce the risk of harm to our students, we will have reduced the risk of lawsuits and claims.

However, if a student is harmed and decides to consult with a lawyer to evaluate the possibility of filing a lawsuit, you'll want the facts to show that you,

as either a studio owner or yoga teacher, have strong defenses so that they will be discouraged from filing a lawsuit. If a lawsuit is filed, with strong defenses you may be able to negotiate a favorable settlement rather than going to trial. If the matter does go to trial, you'll want to be able to present the strongest possible defense and to defeat the claims.

Yoga studios and the teachers should coordinate their practices and policies in implementing this strategy and have an open dialogue about using other strategies based upon their specific practices.

The Three Limbed Strategy to Prevent Liability

To protect yourself from liability for personal injury and other types of legal claims, use the three-limbed strategy.

The three-limbed strategy is:

1. All students must sign a well-drafted form of release that releases both the studio and its teachers from liability. This includes releases for workshops, retreats and teacher training programs.
2. The yoga studio and the teachers must have effective insurance coverage.
3. The yoga studio and the teachers must use appropriate and careful teaching strategies to minimize the risk of harm to the students and the potential for a claim or a lawsuit if they suffer an injury in class.

THE RELEASE

All yoga teachers and studios must obtain a release of liability from each student.

If you are a teacher make sure you obtain a release

at every studio where you teach. Make sure that the form of release specifically includes teachers. Many forms of release only cover the studios and do not cover the teachers. In this case you will not be protected by the release.

If you teach private lessons, workshops or lead retreats, make sure that you obtain a release from your students. See Chapter 3 for more discussion of releases.

Know Your Insurance Policy

Carefully read and understand your insurance policy. Below are some key questions to ask. Know the limitations and exclusions in your policy. Ask a lawyer or insurance expert if you do not understand the language in your policy.

1. Does the insurance cover your style of yoga? I have seen some policies that cover only the following styles of yoga: Anusara, Bikram, Forrest, Hatha, Iyengar, Jivamukti, Kripalu, Kundalini, and Vinyasa. If you are not teaching one of these styles, you may not be covered. If you have changed the style of yoga that you teach, have you re-read your insurance policy to make sure that you are still covered?
2. What are all of the exclusions from coverage? Be sure that you clearly understand the exclusions. Some policies expressly exclude AcroYoga, acrobatics, running yoga, aerial yoga, boxing yoga and martial arts yoga. Make sure that your practice is not excluded.
3. What if you are the owner of a yoga studio but you teach wellness modalities that are not covered? These may include body wrapping, gymnastics, massage, recommending or selling any vitamins, herbs, or nutritional or dietary supplements.

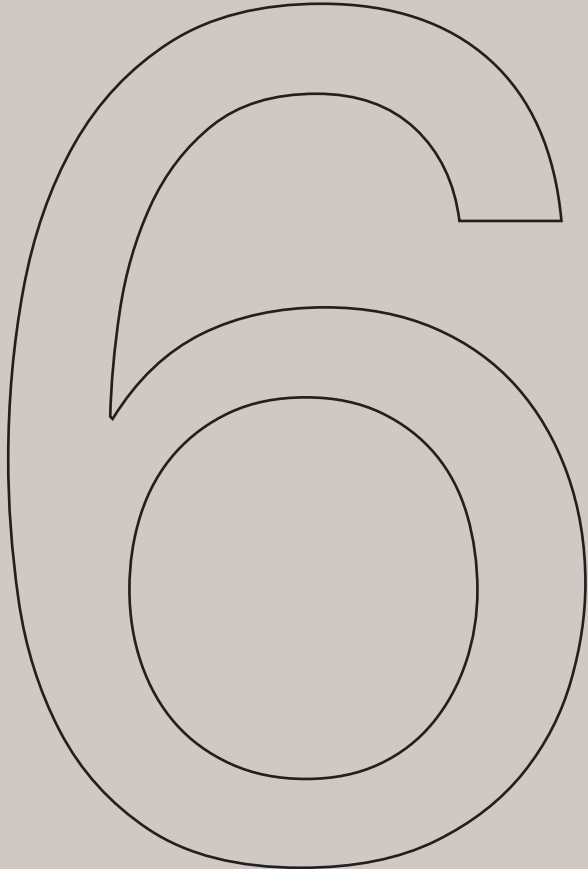
4. Are you covered if you teach private lessons in your home? Does your insurance policy cover claims that may arise from defects in your home studio? What about defects in your home or if someone slips and falls on your driveway?

5. How soon must you report a claim? Some insurance policies may deny coverage based upon when you report the claim. Some policies provide that you are not covered if you report the claim after the policy expires. Others provide that you are covered if the claim arose during the period the policy was in effect. As a best practice, you should report a claim or an anticipated claim to the insurance company immediately.

USE CAREFUL TEACHING STRATEGIES

The third limb of our strategy to reduce the risk of liability involves preventing harm in the first place through careful teaching strategies. The yoga studios and teachers should work together to determine these strategies and make sure that they are followed within the studio. If harm does occur, you then use effective communication to resolve the situation with the injured party rather than creating a scenario where they consult with a lawyer.

Legal Entities



SHOULD YOGA STUDIOS USE LEGAL ENTITIES?

One of the first decisions you must make in organizing your wellness business is whether you should use a legal entity in the first place. The reason that you should organize an entity is that it will protect your personal assets from claims and judgments that may arise as a result of conducting your wellness business.

If you are the owner of a yoga studio, then you must use a legal entity. In my view, the risk of liability is just too great to run your business as a sole proprietorship and risk the loss of your personal assets if there is a claim or lawsuit brought in connection with your business activities.

Ideally, you should organize your legal entity before you open your doors for business. However, if this is not possible, you should organize your entity as soon as you can after you launch your business.

If you and one or more founders are running a yoga business and do not have a legal entity in place, then you may have formed a general partnership as a matter of law. If you conduct your business as a sole proprietorship (i.e., without forming any type of entity) or as a general partnership and, for example, someone is harmed by a product that you sell over the Internet or one of your students is harmed in your class and you are not protected by insurance, you will be personally liable for the amount of the settlement and judgment. Thus, your personal bank accounts, assets and income can be attached by judgment creditors to satisfy their claim. You do not want to operate as a general partnership or sole proprietorship.

On the other hand, if you have a legal entity in place and if you respect all of the corporate formalities necessary to conduct a business through a corporate

entity, then only the assets of the entity may be used to pay the judgment. If there is not enough money or other assets held by the entity, the entity can file for bankruptcy, the judgment will not be fully satisfied and your personal assets will not be seized by creditors.

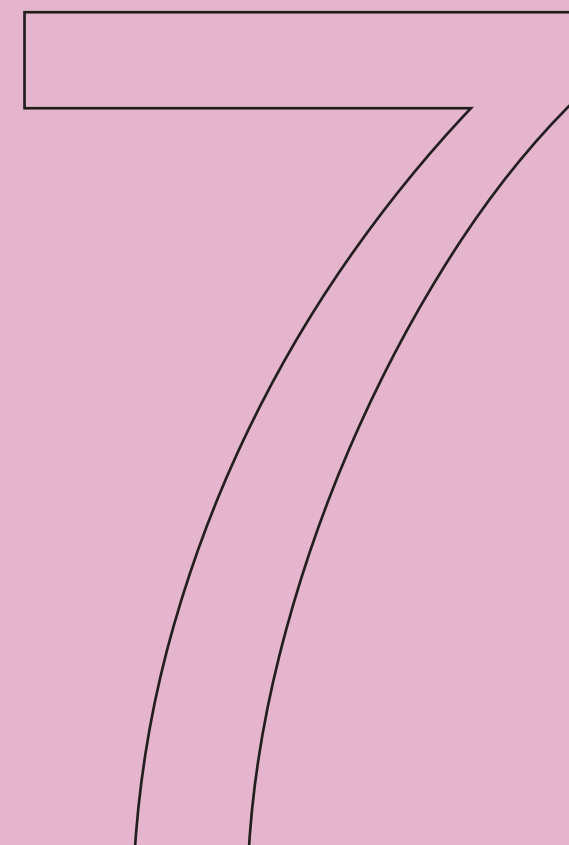
SHOULD YOGA TEACHERS USE LEGAL ENTITIES?

If you are only teaching classes and giving workshops, you are probably on safe ground if you decide not to use an entity. However, if you are pursuing a variety of entrepreneurial activities or if your business grows and becomes more complex, you may need a legal entity for legal protection. If you are selling products over the Internet and if any product carries a potential risk of harm to a purchaser of your product, you should set up a legal entity.

TYPES OF ENTITIES FOR YOGA STUDIOS AND TEACHERS

You should use either a limited liability company or a corporation for your legal entity. You should not use a sole proprietorship or a general partnership.

Selling Products From Websites



PROTECT YOURSELF FROM PRODUCT LIABILITY WITH YOUR WEBSITE TERMS OF USE

Many yoga studios and teachers are selling retail products through their websites. If you are doing this, you must have a retail purchase agreement from the manufacturer or supplier of the products you are selling. This agreement will include provisions relating to price, quantity, delivery requirements and warranty. This agreement must also protect you from liability if the product harms your customers.

What if you sell a fragrance that causes allergic reactions in your customers or proves to be toxic? What if you sell a product that proves to be unsafe to children? What if you sell a product that has been defectively manufactured and it harms a customer? What if you sell a product that infringes someone else's intellectual property rights and you get sued as a distributor?

GET INDEMNITY!

In all of these cases the manufacturer or supplier of the product must provide you with an indemnity. This means that if one of your customers has been harmed by a product they bought from you and they pursue a claim or lawsuit against you for damages, the supplier will hire a law firm to represent you in the proceeding. If you lose, the supplier will pay the damages, legal fees and costs that may be awarded to the injured customer.

The supplier of your products should provide you with a retail purchase agreement, and you should ask the supplier to show you the provisions that provide you with indemnity and protect you from liability if their product harms one of your customers.

CONSIDER FORMING AN ENTITY

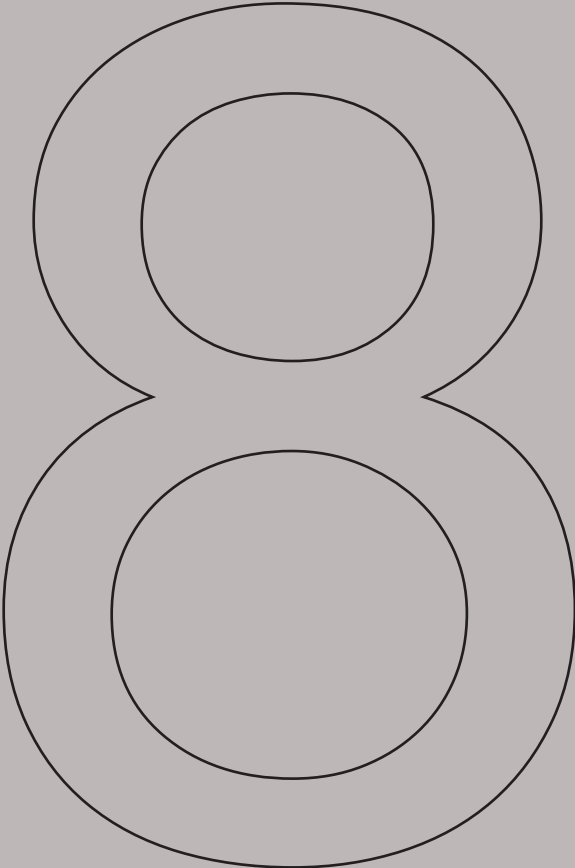
If you are selling products, it is time to consider forming a legal entity to protect yourself from product liability.

TERMS OF USE

You must provide terms of use on your website. The terms of use are your contract with the purchasers of your products. They provide you with important protections. They limit your exposure to claims based upon defective products, and contain provisions relating to guarantees of performance of the product, returns of products if they are defective, refund and return policies, and similar matters. Importantly, these terms of use may limit or completely disclaim your potential liability for product liability claims.

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Trademarks



SEARCH TRADEMARKS BEFORE YOU LAUNCH!

Before you launch your new website or your new brand, yoga studio, yoga style, fashion line, product or logo, you must do a trademark search to make sure that you are not infringing someone else's rights. If you infringe you may be forced to remove your website, brand, product or logo from the market and be liable for damages.

To illustrate the idea, let's assume that you have created a new yoga brand called "Bendy Yogini" and you have purchased the "BendyYogini.com" domain name from Go Daddy. If someone else has established trademark rights in the name "Bendy Yogini" before you launch your "BendyYogini.com" website, then your use of the domain name may infringe their trademark.

If the owner of the "Bendy Yogini" trademark decides that your use of the "BendyYogini.com" domain infringes its trademark, you may receive a "cease and desist" letter from their lawyers and be forced to take down your website and stop using any products which bear the infringing trademark. Furthermore, if you have used the domain name "Bendy Yogini.com" in your marketing and advertising campaigns, you may be required to stop your campaign and remove the infringing material from the market. The owner may also assert damages against you for trademark infringement.

How To Clear Your Trademark

After you have found a domain name that you want to use, your first step is to determine if it infringes someone else's trademark. You do this by using the free trademark search database provided by the federal Patent and Trademark Office (the "PTO"). This database is known as "TESS" which stands for

the "Trademark Electronic Search System". Your search will disclose if anyone has federally registered a trademark with the same or similar name.

Here is the link to TESS:

<http://tess2.uspto.gov/>

You can also use Google to search for your trademark. You can pay one of the professional trademark search companies such as Thomson Compumark. They can conduct a more comprehensive search of state registrations and common law marks than is available through TESS or Google, but they will charge a fee.

How Do I Get A Common Law Trademark For My Brand?

Trademarks are governed by both state and federal law. Federal law provides the most extensive protection for trademarks but state law protection may also be available. You may establish trademark rights in one of two ways: (1) by being the first to establish common law trademark rights; or (2) by being the first to register the mark with the PTO.

To establish common law trademark rights, you must be the first to use the mark in the stream of commerce. This means that you must sell an actual product with the mark placed on the product. To claim your common law trademark rights, place the "TM" (trademark) legend next to your use of your trademark. The purpose is to alert the public to your claim of ownership of the mark, regardless of whether you have filed an application with the PTO. You can start using the TM legend from the moment you decide to claim your rights in a mark.

You should establish your common law trademark

rights even if you do not intend to file an application to register the trademark with the PTO. If you establish your common law rights you will be able to use your trademark in the market where you established your rights even if someone obtains a federal registration of a trademark that is the same or similar to the one you have been using.

To illustrate, if you are the first to sell "Bendy Yogini" water bottles to the public, you have acquired a priority to use that mark in connection with the sale of your water bottles. This priority is limited, however, to the geographic area in which you sell the water bottles, along with any other areas in which you may be reasonably expected to expand. To assert your trademark rights you should place the "TM" legend after each use of the mark "Bendy Yogini."

If you sell "Bendy Yogini" water bottles in the San Francisco Bay Area, you can prevent other companies from selling Bendy Yogini water bottles in the Bay Area. You will not be able to prevent someone from selling Bendy Yogini water bottles in New York City unless you may be reasonably expected to expand in New York.

In addition to establishing your common law trademark rights, you should consider registering your trademark with the PTO. I recommend that you register your trademark if you intend to spend a lot of money advertising your brand or to sell products and services that carry your brand name.

ADOPT A CODE OF CONDUCT TO PROTECT YOUR STUDIO FROM LIABILITY

The proper use of a Code of Conduct is an important strategy to protect your yoga business from liability based upon the actions of a teacher, therapist or staff member for many reasons. First, you must adopt a Code of Conduct in the first place. Without a Code of Conduct in place you will not have objective grounds to discipline a teacher, therapist or staff member for inappropriate conduct. The Code of Conduct should be posted on your website and in your studio.

Second, everyone who is working in your studio should sign or acknowledge the Code of Conduct. This shows they have read and understood the Code of Conduct, and agree to be bound by its standards of conduct. An easy way to do this is to incorporate the Code of Conduct into your agreements with your teachers, therapists and staff.

Placing teachers, therapists and staff members on notice about the requirements of the Code of Conduct may prevent inappropriate conduct from occurring in the first place. It sets a standard of behavior and shows that your studio is serious about enforcing it. If someone violates the Code of Conduct, you will have firm legal ground for dismissing the bad actor from your studio. Without having a Code of Conduct in place, the bad actor could bring an action for wrongful dismissal based upon such grounds as age, race or gender discrimination.

Third, if a student is harmed due to inappropriate conduct and sues your studio, your position is much stronger with a Code of Conduct in place. You can argue that you maintain the highest ethical standards, that all teachers, therapists and staff members are required to read and sign the Code of Conduct, and

that the actions of the bad actor alone violated the Code of Conduct. Thus, only the bad actor is liable for the harm and not your studio.

Fourth, by establishing a Code of Conduct and publicly posting it you are affirming to your community that you are serious about implementing the ethical standards of conduct that are the basis of any authentic practice of yoga.

I recommend that you place your Code of Conduct on your website and also include information on how a student, client or patient can contact the Ethics and Teaching Committee (the “Committee”) to report a potential violation of the Code of Conduct. The Committee is discussed below.

If someone does have an ethics concern you want to have an open and easy process for that person to let you know about the situation. The sooner that these situations are addressed the better off the studio and the students will be.

SOURCES OF CODES OF CONDUCT

The practice of authentic yoga is founded upon a moral code that is embodied in many of its foundational texts. Georg Feuerstein explains as follows:

“Thus, it seems appropriate for contemporary Yoga teachers to endeavor to conduct their lives in consonance with Yoga’s moral principles, particularly because teachers have a great responsibility toward their students and should be expected to reflect the high moral standards espoused in Yoga. At the same time, we must acknowledge the complexities of our contemporary society, which make it necessary to appropriately adapt the moral standards originally designed for the conditions of pre-modern India.”

Here is the link to Georg Feuerstein’s Code of Ethics:

<http://tinyurl.com/khlhax>

Consider using the code of conduct adopted by the Yoga Alliance or the California Yoga Teachers Association. Other sources of guidance are prominent yoga schools such as Jivamukti and Iyengar.

The code of conduct adopted by the California Yoga Teachers Association is a comprehensive code of conduct. It covers general principles, professional practices, student relationships, confidentiality, assistants, students, and employees, professional relationships and advertising.

ESTABLISH AN ETHICS AND TEACHING COMMITTEE TO ADDRESS ETHICS AND TEACHER TRAINING PROGRAM ISSUES

I recommend your studio consider establishing an Ethics and Teaching Committee. This Committee may be comprised of owners, senior teachers and respected members of your yoga community. Three members is sufficient.

The purpose of the Committee is to administer your Code of Conduct by responding to any complaints from students regarding ethical violations and to establish a mechanism for dealing with delicate situations in a structured and objective way. It can also handle questions arising under your teacher training programs.

Many yoga studios do not have a process in place for dealing with ethical situations and, when they do occur, the owners typically try to address the situation on a “one off” basis. If you receive a complaint from a student about unethical behavior, it is a best practice to already have a Code of Conduct and a Com-

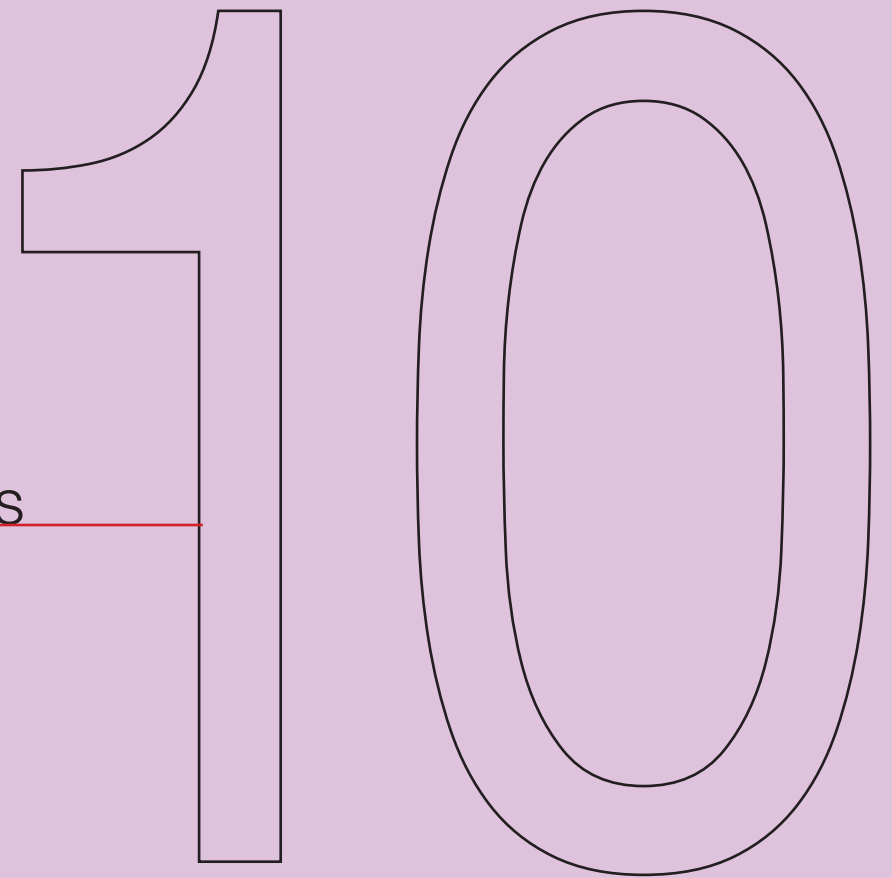
mittee in place to deal with the situation. A formal complaint and resolution process will go a long way towards establishing an ethically pure environment and gives students comfort that any situation that may arise will be handled in a professional and objective way.

Your Committee can also be used to address problems that may arise in your teacher training programs. For example, the Committee could evaluate and resolve situations where a student may not have met the requirements for certification as a yoga teacher under the Yoga Alliance criteria. I have seen cases where the head of the teacher training program has determined that a student did not meet the requirements, but the student disagreed and wanted to protest the decision and continue in the program.

If you have an ethics Committee in place, it can make that determination based upon an objective review of the facts. This is much preferable to a single person (such as the founder of the studio or the head of the training program) attempting to make the decision. Again, a decision of a Committee can be used to rebut any feelings of the student that the decision was based upon favoritism, bias or discrimination.

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Regulatory Issues



STATE REGULATIONS

There is increasing interest on the part of state governments to regulate and tax the yoga community. These efforts range from tightening and enforcing the independent contractor rules to levying local taxes and fees and imposing new regulations.

The Yoga Alliance reports that over 40 states have regulations that may apply to yoga studios.

The tax and regulatory regime for the yoga and wellness community is rapidly evolving. This is driven in part by the desire of regulators to reap more tax revenues from the yoga and wellness communities. We should also be aware that the recent scandals in the yoga community may cause some regulators to consider imposing licensing and other requirements on the yoga community. Because the yoga world has grown into such a large and high profile community, it has drawn the attention of regulators.

It is important to keep abreast of these developments because they may directly affect the economic viability of your business, the amount of your personal income or require you to comply with burdensome and expensive regulations. If you become aware of these developments, you can help organize the community and resist these types of burdens.

NEW YORK

A number of serious tax and regulatory issues are confronting yoga studios in New York. These include taxation of yoga classes, certificates of occupancy, licensing fees, and independent contractor status. One yoga studio has been threatened with fines of \$149,000 related to independent contractor status and worker's compensation issues. For more information visit the Yoga For New York website:

<http://yogaforny.org/>

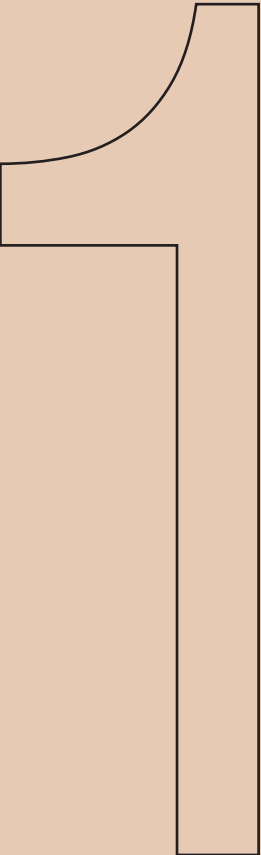
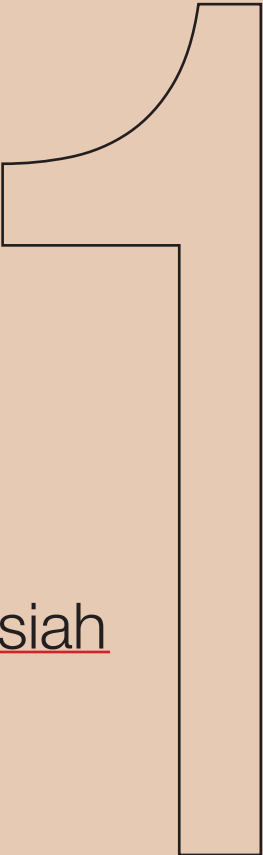
TEXAS

The Texas Yoga Association successfully defeated an attempt by the Texas Legislature to define yoga teacher training programs as “career schools” and subject them to regulation by the Texas Workforce Commission. For more information see:

<http://www.texyoga.org/>

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About Gary Kissiah



I represent yoga and other wellness businesses. I have practiced business law for 20 years. I was a Senior Attorney with Microsoft and I served on its Ethics Committee. I was a partner with Akin Gump Strauss Hauer & Feld LLP which is a large international law firm. I practiced in its corporate, securities and technology practice groups.

I recently taught a series of five national Webinars on yoga law through Yoga Alliance. These seminars covered the top ten things you need to know about the law, independent contractors and employees, liability, Internet laws and your yoga business, and how to open a yoga studio.

I have spoken at the Annual Yoga Alliance Business of Yoga Conference (2012 and 2013) and will speak at the Yoga Journal Conference in San Francisco in 2014.

I currently represent many yoga studios, teachers and wellness businesses. As a lawyer and as a yoga teacher, I understand your legal questions and I provide legal solutions that are sensitive and effective. My rates are affordable because I specialize and I wish to serve our community.

I have written three books on yoga law: one for yoga teachers, one for studios and one on the law of independent contractors and employees. They provide you with everything you need to know for your business and include many legal forms so you can do it yourself rather than hiring expensive lawyers.

MY WEBSITE

Here is the link to my Website:

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