

U S PHYSICAL THERAPY INC /NV
Form 8-K
November 01, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934
Date of Report (Date of earliest event reported): November 1, 2018

U.S. PHYSICAL THERAPY, INC.
(Exact name of registrant as specified in its charter)

Nevada 1-11151 76-0364866
(State or other jurisdiction (Commission (I.R.S. Employer
of incorporation or organization) File Number) Identification No.)

1300 West Sam Houston Parkway South, 77042
Suite 300, Houston, Texas
(Address of Principal Executive Offices) (Zip Code)
Registrant's telephone number, including area code: (713) 297-7000

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12(b) under the Exchange Act (17 CFR 240.14a-12(b))

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth

company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

ITEM 2.02 RESULTS OF OPERATIONS AND FINANCIAL RESULTS

On November 1, 2018 – U.S. Physical Therapy, Inc. ("USPH" or the "Company") (NYSE: USPH), a national operator of outpatient physical therapy clinics, reported results for the quarter and nine months ended September 30, 2018.

The press release includes a discussion of Operating Results and Adjusted EBITDA, non-GAAP (generally accepted accounting principles) financial measures. See page 8 of the press release, attached as Exhibit 99.1, for a definition of Operating Results and Adjusted EBITDA and page 8 for a reconciliation of those measures to the most directly comparable financial measure calculated and presented in accordance with GAAP.

In accordance with General Instruction B.2 of Form 8-K, the information in this Current Report on Form 8-K, including the exhibits, shall not be deemed to be "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

A copy of the press release is attached hereto as Exhibit 99.1

ITEM 8.01 OTHER EVENTS

See Item 2.02 above. The fourth quarterly dividend of 2018 for \$0.23 per share will be paid on December 7, 2018 to shareholders of record as of November 9, 2018.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

Exhibits Description of Exhibits

99.1 Registrant's press release dated November 1, 2018 *

* Filed herewith.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

U.S. PHYSICAL THERAPY, INC.

Dated: November 1, 2018 By: /s/ LAWRENCE W. MCAFEE
Lawrance W. McAfee
Chief Financial Officer
(duly authorized officer and principal financial and accounting officer)

ing that period.

We are also party to an employment agreement with Annette Gardner, pursuant to which Ms. Gardner serves as President of Cross Country Local, the Company's per diem nurse staffing subsidiary. The term of the agreement expires on August 1, 2005. Ms. Gardner currently receives an annual base salary of \$212,180. Her salary is scheduled to increase at a rate of 3% per year and Ms. Gardner is eligible to receive an annual bonus at the discretion of our Compensation Committee and is entitled to incentive bonuses directly related to Cross Country Local's revenues. If Ms. Gardner is terminated without cause or shall terminate her own employment for good reason, she shall be entitled to (i) one year's worth of her base salary in effect as of the date of termination, and (ii) the incentive bonus she would have been entitled to for the year in which her termination occurs, on a pro rata basis. Ms. Gardner is subject to a three-year post-termination noncompetition covenant within a 50 mile radius of any Cross Country Local office. However, if Ms. Gardner is terminated without cause, then the noncompetition agreement will be effective only if we continue to pay Ms. Gardner's base salary and provide her with benefits for six months following her termination.

Our Stock Plans

Amended and Restated 1999 Stock Option Plan. We have reserved for issuance 2,145,515 shares of common stock under our Amended and Restated 1999 Stock Option Plan, subject to adjustment for stock splits or similar corporate events. Our Amended and Restated 1999 Stock Option Plan provides for the granting of options to purchase shares of our common stock to any of our employees or consultants and our non-employee directors. Each stock option granted under our Amended and Restated 1999 Stock Option Plan is either intended to qualify as an incentive stock option or is a non-qualified stock option. The plan is administered by the Compensation Committee of our board of directors. The exercise price of options granted under our Amended and Restated 1999 Stock Option Plan is determined by the committee. In the case of incentive stock options granted to ten percent stockholders, the exercise price cannot be less than 110% of the fair market value of the common stock. In the event of a change of control of our company, stock options granted and not previously exercisable, will become exercisable unless the committee determines in good faith that an alternative option will be substituted.

Amended and Restated Equity Participation Plan. We have reserved for issuance 2,252,486 shares of common stock under our Amended and Restated Equity Participation Plan, subject to adjustment

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for stock splits or similar corporate events. Our Amended and Restated Equity Participation Plan provides for the granting of options to purchase shares of our common stock to key management employees of our company and our affiliates. Each stock option granted under our Amended and Restated Equity Participation Plan is either intended to qualify as an incentive stock option or is a non-qualified stock option. The exercise price of options granted under our Amended and Restated Equity Participation Plan is divided into five tranches ranging from 100 percent to 300 percent of the fair market value of the common stock on the date of grant. However, for incentive stock options granted to ten percent stockholders, the exercise price in the first tranche cannot be less than 110 percent of the fair market value of the common stock on the date of grant. The plan is currently administered by the compensation committee of our board of directors. In the event of a change in control of our company, stock options granted and not previously exercisable, will become exercisable unless the committee determines in good faith that an alternative option will be substituted.

401(k) Plan. We maintain a 401(k) Plan. The plan permits eligible employees to make voluntary, pre-tax contributions to the plan up to a specified percentage of compensation, subject to applicable tax limitations. We may make a discretionary matching contribution to the plan equal to a pre-determined percentage of a n employee's voluntary, pre-tax contributions and may make an additional discretionary profit sharing contribution to the plan, subject to applicable tax limitations. Eligible employees who elect to participate in the plan are generally vested in any matching contribution after three years of service with the company. The plan is intended to be tax-qualified under Section 401(a) of the Internal Revenue Code so that contributions to the plan, and income earned on plan contributions, are not taxable to employees until withdrawn from the plan, and so that our contributions, if any, will be deductible by us when made.

Deferred Compensation Plan. The Board of Directors adopted the Deferred Compensation Plan, an unfunded non-qualified deferred compensation arrangement, effective as of January 1, 2003. Designated executives of the Company may elect to defer the receipt of a portion of their annual base salary, bonuses and commissions and the delivery of stock option gains to the Company's Deferred Compensation Plan. The Company may also make a discretionary contribution to the Deferred Compensation Plan on behalf of certain participants. Participants are immediately fully vested in any deferrals of annual base salary, bonuses, commissions and stock option gains and generally become vested in Company contributions after three years from the date such contribution is made to the plan. A participant's account balance will also become fully vested upon the occurrence of a change in control or upon a participant's retirement, death during employment or disability. Generally, payments under the Deferred Compensation Plan automatically commence upon a participant's retirement, termination of employment or death during employment; however, under certain limited circumstances described in the plan, participants may receive distributions during employment. Benefits under the Deferred Compensation Plan are payable solely by the Company. To enable the Company to meet its financial commitment under the Deferred Compensation Plan, assets may be set aside in a corporate-owned vehicle. These assets are available to all general creditors of the Company in the event of the Company's insolvency. Participants of the Deferred Compensation Plan are unsecured general creditors of the Company with respect to the Deferred Compensation Plan benefits.

RELATED PARTY TRANSACTIONS

We were party to an agreement with Bruce A. Cerullo dated as of December 21, 2000, pursuant to which Mr. Cerullo agreed to continue on as a director and provide certain consulting services to us at such times as we reasonably requested and that were reasonably convenient to Mr. Cerullo. Mr. Cerullo resigned as a director of the Company effective August 19, 2002. Mr. Cerullo has not been asked by us to provide any consulting services to the Company and it is not expected that we will ask it of him in the future. He is subject to a four-year non-competition covenant which expires August 19, 2006, the four year anniversary of his resignation. Mr. Cerullo has retained all options that were vested and exercisable as of the date of his resignation.

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PERFORMANCE GRAPH

The following graph shows the total stockholder return through December 31, 2002 of an investment of \$100 in cash on October 24, 2001 (the date of our initial public offering) (i) in Cross Country's common stock (CCRN) (ii) the Nasdaq Market Index (NASDAQ), and (iii) the Dow Jones U.S. Healthcare Providers Index (DJUSHP). Historic stock price performance is not indicative of future stock price performance. All values assume reinvestment of the full amount of all dividends and are calculated as of the last day of each month.

10/24/01 12/31/01 3/31/02 6/30/02 9/30/02 12/31/02

CCRN	\$	100.00	\$	155.88	\$	158.82	\$	222.35	\$	83.06	\$	82.06
NASDAQ	\$	100.00	\$	112.52	\$	106.61	\$	84.98	\$	68.19	\$	77.79
DJUSHP	\$	100.00	\$	107.93	\$	118.89	\$	127.68	\$	117.73	\$	98.49

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PROPOSAL II

APPROVAL OF AMENDMENT TO CROSS COUNTRY'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO CHANGE NAME OF CORPORATION TO "CROSS COUNTRY HEALTHCARE, INC."

The Board of Directors has unanimously approved, subject to stockholder approval, an amendment (the "Amendment") to Cross Country's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") solely for the purpose of changing the Company's name to "Cross Country Healthcare, Inc."

A copy of the certificate of amendment (the "Certificate") effecting the Amendment is attached as Appendix A to this Proxy Statement. If approved by the Company's stockholders, the change in our name will become effective upon the filing of the Certificate with the Secretary of State of the State of Delaware. The Board intends to file the Certificate as soon as practicable once stockholder approval is obtained.

The name change will not affect the validity of currently outstanding stock certificates. The Company's current stockholders will not be required to surrender or exchange any stock certificates that they now hold and should not send such certificates to the Company or its transfer agent for exchange.

Delaware General Corporation Law does not offer stockholders appraisal rights in the event of a change of the corporate name.

The impetus of the name change is a Settlement Agreement, dated February, 2003, between the Company and The Cross Country Group, LLC. The Cross Country Group, LLC, a Massachusetts based company, provides certain automotive and non-healthcare travel related services, and had initiated actions aimed toward preventing the Company from using the corporate name "Cross Country, Inc." Pursuant to the Settlement Agreement, the Company has agreed to add an industry identifier, such as "Healthcare," to its corporate name. The Cross Country Group, LLC has agreed to dismiss any lawsuits and all Trademark Office proceedings against the Company upon receipt of stockholders approval of the name change. There is no monetary consideration being paid pursuant to the Settlement Agreement.

The Company does not expect the name change to have any negative effect on its business.

Proposal II must be approved by the affirmative vote of the holders of a majority of the shares of the Common Stock outstanding as of March 18, 2003. Abstentions from voting on this proposal will have the effect of a "no" vote.

The Board of Directors of Cross Country deems the approval of the Amendment to be in the best interest of Cross Country and its stockholders and recommends that holders of the Common Stock vote FOR Proposal II.

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PROPOSAL III

RATIFICATION OF APPOINTMENT OF INDEPENDENT PUBLIC ACCOUNTANTS

The independent public accounting firm for Cross Country for the fiscal year ended December 31, 2002 was Ernst & Young LLP ("E&Y"). The Board, upon the recommendation of the Audit Committee, has appointed this firm, subject to ratification by the stockholders, to audit the financial statements of the Company for the fiscal year ending December 31, 2003. In arriving at its recommendation to the Board, the Audit Committee reviewed the performance of E&Y in prior years, as well as the firm's reputation for integrity and competence in the fields of accounting and auditing. The Audit Committee expressed its satisfaction with E&Y in these respects. E&Y's fees for services rendered during

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the fiscal years ending December 31, 2001 and December 31, 2002 were:

	2002	2001
Audit fees:	\$ 262,015	\$ 236,473
Audit-Related Fees:	\$ 275,475	\$ 1,355,744
Tax Fees:	\$ 156,218	\$ 238,398
All Other Fees:	\$ 46,859	
Total:	\$ 740,567	\$ 1,830,645

"Audit Fees" include fees associated with the annual audit, the reviews of the Company's quarterly reports on Form 10-Q and annual report on Form 10-K. Audit Fees for 2002 included three quarterly reviews, whereas audit fees for 2001 included only one quarterly review, as the Company went through its initial public offering in October 2001. "Audit-Related Fees" principally included the Company's initial public offering in 2001 and secondary public offering in 2002, audits in connection with proposed or consummated acquisitions, and accounting consultation. "Tax Fees" included tax compliance, tax advice, tax planning and consulting. "All Other Fees" principally include fees associated with risk management advisory services.

E&Y has audited the Company's financial statements annually since 2000. Representatives of E&Y will be present at the Annual Meeting to make a statement, if they desire to do so, and to respond to appropriate questions.

The Audit Committee has considered, and is satisfied that, the provision of the services provided by E&Y represented under the headings "Audit-Related Fees," "Tax Fees" and "All Other Fees" is compatible with maintaining the principal accountant's independence.

The Board deems the ratification of the selection of E&Y as independent accountants of the Company to be in the best interest of the Company and its stockholders and recommends that holders of the Common Stock vote FOR Proposal III.

SECTION 16(a) BENEFICIAL OWNERSHIP COMPLIANCE

Based solely on our review of the reports under Section 16(a) of the Exchange Act and written representation from certain reporting persons furnished to us during the year ended December 31, 2002, we believe that other than as described in the next sentences, each of the persons required to file such reports is in compliance with all applicable filing requirements. Mr. Lewis failed to file a Form 3 on a timely basis on one occasion and Mr. Conlin failed to file a Form 4 on a timely basis on one occasion. The required filings were made promptly after noting the failures to file.

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DEADLINES FOR SUBMISSION OF PROXY PROPOSALS, NOMINATION OR DIRECTORS AND OTHER BUSINESS

PROXY STATEMENT PROPOSALS. Stockholder proposals intended to be included in the Proxy Statement and form of proxy for the Annual Meeting of Stockholders to be held in 2004, in addition to meeting certain eligibility requirements established by the Securities and Exchange Commission, must be in writing and received by the Secretary at the Company's principal executive offices on or prior to December 24, 2003. Alternate notice deadlines apply if the date of the annual meeting differs by more than 30 days from the date of the previous year's annual meeting.

By Order of the Board of Directors

Stephen W. Rubin
Secretary

April 10, 2003

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APPENDIX A

**CERTIFICATE OF AMENDMENT
OF THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF
CROSS COUNTRY, INC.**

The undersigned corporation, in order to amend its Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), hereby certifies as follows:

FIRST: The name of the corporation is Cross Country, Inc.

SECOND: The corporation hereby amends its Certificate of Incorporation as follows:

Article I of the Certificate of Incorporation, relating to the name of the corporation, is hereby amended and restated to read in its entirety as follows:

The name of the Corporation is Cross Country Healthcare, Inc.

THIRD: The Amendment to the Certificate of Incorporation effected herein was duly adopted in accordance with the applicable provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Amendment, this ___ day of _____.

CROSS COUNTRY, INC.

By: _____

Name: Joseph A. Boshart
Title: President and Chief Executive Officer

PROXY

**CROSS COUNTRY, INC.
6551 Park of Commerce Blvd., NW
Suite 200
Boca Raton, Florida 33487**

This Proxy is solicited on behalf of the Board of Directors

The undersigned, having duly received the Notice of Annual Meeting of Stockholders and the Proxy Statement, dated April 10, 2003, hereby appoints Karen H. Bechtel, Joseph A. Boshart and Thomas C. Dircks as proxies (each with the power to act alone and with the power of substitution and revocation) to represent the undersigned and to vote, as designated below, all shares of Common Stock of Cross Country, Inc. held of record by the undersigned on March 18, 2003, at the Annual Meeting of Stockholders to be held at 9:00 a.m. on Thursday, May 8, 2003 at the offices of Proskauer Rose LLP at 1585 Broadway, New York, New York and at any adjournments or postponements thereof. The undersigned hereby revokes any previous proxies with respect to the matters covered by this Proxy.

**CROSS COUNTRY, INC.'S BOARD OF DIRECTORS RECOMMENDS
A VOTE "FOR" THE FOLLOWING PROPOSALS**

- | | | |
|--|---|---|
| 1. PROPOSAL TO ELECT NINE DIRECTORS
FOR TERMS EXPIRING AT THE 2004
ANNUAL MEETING. | FOR all nominees listed below
(except as marked to the contrary) o | WITHHOLD AUTHORITY
to vote for all nominees listed below o |
|--|---|---|
- Joseph A. Boshart, Emil Hensel, Karen H. Bechtel, W. Larry Cash, Thomas C. Dircks, A. Lawrence Fagan, M. Fazle Husain, Joseph Swedish and Joseph Trunfio

INSTRUCTION: To withhold authority to vote for any individual, write that nominee's name on the space provided below.

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2. PROPOSAL TO APPROVE AMENDMENT TO CROSS COUNTRY'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO CHANGE CORPORATE NAME TO "CROSS COUNTRY HEALTHCARE, INC."

FOR AGAINST ABSTAIN

3. PROPOSAL TO APPROVE AND RATIFY THE APPOINTMENT OF ERNST & YOUNG LLP AS INDEPENDENT AUDITORS FOR THE FISCAL YEAR ENDING DECEMBER 31, 2003

FOR AGAINST ABSTAIN

4. In their discretion, the Proxies are authorized to vote upon such other business as may properly come before the meeting.

(See reverse side)

THIS PROXY, WHEN PROPERLY EXECUTED, WILL BE VOTED IN THE MANNER DIRECTED ON THE PROXY BY THE UNDERSIGNED STOCKHOLDER. IF NO DIRECTION IS MADE, THIS PROXY WILL BE VOTED FOR ELECTION OF ALL NOMINEES FOR DIRECTOR LISTED IN PROPOSAL 1 AND FOR PROPOSALS 2 AND 3.

Dated _____,

Signature of Shareholder

Please sign exactly as names appear on this Proxy. Where shares are held by joint tenants, both should sign. If signing as attorney, executor, administrator, trustee or guardian, please give full title as such. If a corporation, please sign in full corporate name by president or other authorized person. If a partnership, please sign in partnership name by an authorized person.
PLEASE MARK, SIGN, DATE AND RETURN THIS PROXY PROMPTLY USING THE ENCLOSED ENVELOPE.

QuickLinks

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PROPOSAL II APPROVAL OF AMENDMENT TO CROSS COUNTRY'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO CHANGE NAME OF CORPORATION TO "CROSS COUNTRY HEALTHCARE, INC."

PROPOSAL III RATIFICATION OF APPOINTMENT OF INDEPENDENT PUBLIC ACCOUNTANTS

CERTIFICATE OF AMENDMENT OF THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF CROSS COUNTRY, INC.