

TRAPS FOR THE UNWARY

Incorporating Healthcare Providers

Accountants are establishing standard for profit corporations for healthcare providers, and are leaving their clients vulnerable to attacks for practicing within an illegal entity. What may appear to be a preposterous statement is, in fact, the law of the State of Washington. The only "corporate" entities in which healthcare providers may practice their profession are professional services corporations (Ch. 18.100 RCW), professional limited liability company (RCW 25.15.045), professional limited liability partnership (RCW 25.05.510), or non-profit corporation in accordance with RCW 18.100.050(4).

Washington State still maintains the prohibition against the corporate practice of medicine, although it appears in case law, and not statute. Space prohibits a full delineation of the cases, but while unpublished and hence not cited as precedent, the case of American Chiropractic Clinics, Inc. vs. Saunders, 107 Wash. App. 1002, 2001 WL 783756 (2001) contains an excellent recitation of this doctrine through other published opinions. In that case, American Chiropractic was precluded from enforcing the terms of a \$250,000 promissory note because the plaintiff was not properly incorporated as a professional services corporation. The leading published case is Morelli vs. Ehsan, 110 Wn. 2d 555 (1988) which dealt with a partnership between a dentist and layperson, which the court found to be an illegal venture.

The distinction between standard corporations and the professional variety go deeper than using "P.S. or PLLC" versus "Inc." With rare exceptions, we will use professional services corporation interchangeably with a PLLC or professional LLP since both of the latter statutes refer back to Ch. 18.100 RCW. All shareholders and officers, except the secretary and treasurer, have to be licensed healthcare providers as enumerated in RCW 18.100.050(5)(a). A qualified trust can hold shares but that trust must comply with the definitions in RCW 18.100.030(5). No unlicensed laypersons can hold shares or be an officer, except as previously noted. Physical Therapists and occupational therapists can belong to their own professional service corporation, but not in combination with the (5)(a) group. RCW 18.100.050(5)(b). Multi-state enterprises must meet the requirements of RCW 18.100.060. The professional relationship and liabilities existing between provider and patient are unaffected by incorporation. There is no corporate shield, with one notable exception. In a multiple shareholder corporation, the shareholder committing the malpractice or the shareholder who directly supervises and controls the employee committing malpractice is responsible, but the other shareholders are not personally liable. The corporation remains liable for any malpractice committed by its officers, agents or employees. A professional services corporation may not engage in any other business other than the licensees' profession, with exceptions probably unrelated to healthcare providers, and an exception for certain investments. RCW 18.100.080. Except for a qualified trust, a proxy, voting trust, or other voting agreement with respect to shares of a professional corporation shall not be valid unless all holders thereof, all trustees and beneficiaries thereof, or all parties thereto, as the case may be, are eligible to be shareholders of the corporation. RCW 18.100.095 If a shareholder loses his or her license to practice, they must sever their relationship with the corporation. Even a suspension will trigger the provisions of RCW 18.100.100. Absent a provision of law or

court decree, shares in a professional services corporation may not be sold or transferred to an ineligible person as defined in RCW 18.100.030. There are other requirements of the Act which we need not detail in this short article.

What are the consequences of an invalid entity. The American Chiropractic case is one example of refusing to enforce a contractual obligation of another party. The Morelli case involved a dissolution of the partnership which the court refused to honor or to allow an accounting. If an insurance payer or PIP carrier became aware of the illegality, they may seek reimbursement from the entity for all insurance payments. While there may be a quantum merit defense to the last predicament, the costs of defense will far outweigh the cost of correction.

If you have inadvertently formed the wrong type of entity for a healthcare provider, it is relatively simple to correct by amending the articles of incorporation, certificate of formation, bylaws and operating agreement to conform to Ch. 18.100 RCW. Your expenses will be a legal fee, miscellaneous minor costs, and a filing fee to the Corporations Division.

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