



PROFESSIONAL INCORPORATION

Information for members of the College of Physiotherapists of Ontario applying for professional incorporation

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- Application Guide
- Relevant statutes, regulations and by-laws related to incorporation
- Frequently Asked Questions

Application and renewal forms are available on the College website.

For more information, contact:

Entry to Practice/Registration

College of Physiotherapists of Ontario

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INITIAL APPLICATION GUIDE

The Regulated Health Professions Act (RHPA) (including regulations) and the *Business Corporations Act (BCA)*, permit regulated health professionals to incorporate for the purpose of professional practice, providing they obtain certificates of authorization from their respective health profession Colleges. The provisions outline the conditions and requirements that must be met in order to obtain a certificate of authorization from a College, and include:

- all of the issued and outstanding shares of the corporation shall be legally and beneficially owned, directly or indirectly, by one or more members of the same profession, who hold a certificate of registration issued by the College;
- all officers and directors of the corporation must be shareholders of the corporation;
- the articles of the professional corporation must provide that the corporation cannot carry on a business other than the practice of the profession governed by the College and activities related to or ancillary to the practice of the profession; and
- the name of the corporation which must comply with the rules respecting the names of professional corporations set out in the regulations and with the rules respecting names set in the regulations or by-laws under the Act governing the profession.

In order to obtain an initial certificate of authorization from the College, a corporation must complete and submit to the College an application in a form approved by the College, along with certain information and documents as required by regulation. You may wish to refer to section 3.2 of the BCA and Ontario Regulation 39/02 under the *Regulated Health Professions Act*, “Certificates of Authorization” (the regulation) which are appended to this Guide.

SECTION A - NAME AND ADDRESS OF CORPORATION

CORPORATE NAME

The name of the corporation must meet the requirements set out in section 3.2 of the *Business Corporations Act* and the regulation as follows:

- the corporation shall not have a number name;
- the corporate name must include the words “Professional Corporation” or “Société professionnelle”;
- the corporate name must include the last name of one or more shareholders of the corporation as the surname is set out in the College Register;
- the corporate name may also include the shareholder’s first name, one or more of the shareholder’s initials or a combination of his or her first name and initials;
- the corporate name must indicate the health profession practiced by the shareholders;
- the corporate name must **not** include any information other than that permitted or required under the *Business Corporations Act* or the regulation as outlined above; 3
- the corporate name must not violate the provisions of any other Act.

PRACTICE NAME

If the practice name is different from the **corporate** name, provide all of the names under which the corporation practices.

BUSINESS ADDRESS OF THE CORPORATION

This must be the actual **corporate** address of the corporation and not the address of the corporation’s legal counsel.

Please note that any changes to information in Section A must be provided to the Registrar in writing within 30 days of the change. (See Appendix III)

SECTION B - APPLICANT DECLARATION

Complete each statement in this section as directed on the form, noting the following:

1. The individual applying for a certificate of authorization on behalf of the corporation must hold a current certificate of registration with the College and be a director of the corporation.
2. Each shareholder of the corporation must hold a current certificate of registration issued by the College.
3. Each director and officer must be a shareholder of the corporation.
4. The director applying on behalf of the corporation must sign and date the application.
5. The following documentation must accompany the application for a certificate of authorization:
 1. The fee for the certificate of authorization of \$700;
 2. An Undertaking dated and signed by each shareholder of the corporation;
 3. The declaration of a director of the corporation signed not more than 15 days before the application is submitted;
 4. A copy of a corporation profile report issued by the Ministry of Government Services not more than 30 days before the application is submitted to the Registrar, which indicates that the corporation is active;
 5. A copy of the certificate of incorporation of the corporation (including the Articles of Incorporation);
 6. A copy of every Certificate of Incorporation the corporation that has been endorsed under the *Business Corporations Act* as of the day the application is submitted (if applicable).

SECTION C - UNDERTAKING

Each shareholder of the corporation must sign and date Section C, the Undertaking, which is to be submitted with the application for a certificate of authorization. Note that each shareholder must be listed in the application and must hold a current certificate of registration issued by the College. Photocopies may be made of the Undertaking so that one is supplied to each shareholder individually.

SECTION D - DECLARATION

The declaration must be completed by a director of the corporation. The declaration cannot be signed more than 15 days before the application is submitted to the Registrar.

RENEWAL

The certificate of authorization must be renewed on the anniversary date of the initial registration. The annual renewal application form is available on the College website www.collegept.org or by contacting the College at registration@collegept.org. An annual renewal fee of \$250 will apply.

SUBMISSION OF THE APPLICATION

The application for a certificate of authorization must be submitted to the Registrar of the College, along with the required supporting documentation and fee to the following address:

College of Physiotherapists of Ontario
 375 University Ave., Suite 800, Toronto, ON M5G 2J5
 Attention: Registration Team
 Email: registration@collegept.org
 Fax: 416-591-3834



APPENDIX I

Section 3.2 of the Business Corporations Act

Application of Act

APPLICATION OF ACT TO PROFESSIONAL CORPORATIONS

- 3.2 (1) This Act and the regulations apply with respect to a professional corporation except as otherwise set out in this section and sections 3.1, 3.3 and 3.4 and the regulations. 2000, c. 42, Sched., s. 2.

CONDITIONS FOR PROFESSIONAL CORPORATIONS

- (2) Despite any other provision of this Act, but subject to subsection (6) a professional corporation shall satisfy all of the following conditions:
1. All of the issued and outstanding shares of the corporation shall be legally and beneficially owned, directly or indirectly, by one or more members of the same profession.
 2. All officers and directors of the corporation shall be shareholders of the corporation.
 3. The name of the corporation shall include the words “Professional Corporation” or “société professionnelle” and shall comply with the rules respecting the names of professional corporations set out in the regulations and with the rules respecting names set out in the regulations or by-laws made under the Act governing the profession.
 4. The corporation shall not have a number name.
 5. The articles of incorporation of a professional corporation shall provide that the corporation may not carry on a business other than the practice of the profession but this paragraph shall not be construed to prevent the corporation from carrying on activities related to or ancillary to the practice of the profession, including the investment of surplus funds earned by the corporation. 2000, c. 42, Sched., s. 2.; 2002, c. 22, s. 8; 2005, c. 28, Sched. B, s. 1 (1).

DEEMED COMPLIANCE

- (2.1) A professional corporation that has a name that includes the words “société professionnelle” shall be deemed to have complied with the requirements of subsection 10 (1). 2004, c. 19, s. 3 (1).

CORPORATE ACTS NOT INVALID

- (3) No act done by or on behalf of a professional corporation is invalid merely because it contravenes this Act. 2000, c. 42, Sched., s. 2.

VOTING AGREEMENTS VOID

- (4) An agreement or proxy that vests in a person other than a shareholder of a professional corporation the right to vote the rights attached to a share of the corporation is void. 2000, c. 42, Sched., s. 2.

UNANIMOUS SHAREHOLDER AGREEMENTS VOID

- (5) Subject to subsection (6), a unanimous shareholder agreement in respect of a professional corporation is void unless each shareholder of the corporation is a member of the professional corporation. 2000, c. 42, Sched., s. 2; 2005, c. 28, Sched. B, s. 1 (2).

APPENDIX II

ONTARIO REGULATION 39/02

made under the

Regulated Health Professions Act, 1991

CERTIFICATES OF AUTHORIZATION

1. ELIGIBILITY

- (1) A corporation is eligible to hold a certificate of authorization issued by a College if all the following conditions are met:
 1. The articles of the corporation provide that the corporation cannot carry on a business other than the practice of the profession governed by the College and activities related to or ancillary to the practice of that profession.
 2. In the case of a certificate of authorization issued by a College other than the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, all of the issued and outstanding shares of the corporation are legally and beneficially owned, directly or indirectly, by one or more members of the issuing College.
 - 2.1. In the case of a certificate of authorization issued by the College of Physicians and Surgeons of Ontario, each issued and outstanding voting share of the corporation is legally and beneficially owned, directly or indirectly, by a member of the College and each issued and outstanding non-voting share of the corporation is owned in one of the following ways:
 - i. It is legally and beneficially owned, directly or indirectly, by a member of the College.
 - ii. It is legally and beneficially owned, directly or indirectly, by a family member of a voting physician shareholder.

iii. It is owned legally by one or more individuals, as trustees, in trust for one or more children of a voting physician shareholder who are minors, as beneficiaries.

2.2. In the case of a certificate of authorization issued by the Royal College of Dental Surgeons of Ontario, each issued and outstanding voting share of the corporation is legally and beneficially owned, directly or indirectly, by a member of the College and each issued and outstanding non-voting share of the corporation is owned in one of the following ways:

- i. It is legally and beneficially owned, directly or indirectly, by a member of the College.
- ii. It is legally and beneficially owned, directly or indirectly, by a family member of a voting dentist shareholder.
- iii. It is owned legally by one or more individuals, as trustees, in trust for one or more children of a voting dentist shareholder who are minors, as beneficiaries.

3. The name of the corporation meets the standards described in subsections (2) to (5). O. Reg. 39/02, s. 1 (1); O. Reg. 666/05, s. 2 (1).

(2) The name of the corporation must meet the requirements in section 3.2 of the *Business Corporations Act* and must not violate the provisions of any other Act. O. Reg. 39/02, s. 1(2).

(3) The name of the corporation must include the surname of one or more shareholders of the corporation, who are members of the College, as the surname is set out in the College Register, and may also include the shareholder's given name, one or more of the shareholder's initials or a combination of his or her given name and initials. O. Reg. 666/05, s. 2 (2).

(4) The name of the corporation must indicate the health profession to be practiced by members of the College through the corporation O. Reg. 666/05, s. 2 (2).

(5) The name of the corporation must not include any information other than the information permitted or required by subsections (2), (3) and (4). O. Reg. 39/02, s. 1(5).

2. ISSUANCE OF CERTIFICATE

- (1) A College shall issue a certificate of authorization to a corporation in respect of a particular profession if the corporation is eligible to hold one and applies for the certificate by giving the following information and documents to the Registrar:
1. A completed application in a form approved by the College.
 2. The application fee required by the by-laws of the College.
 3. A copy of a corporation profile report issued by the Ministry of Government and Consumer Services or by a service provider which is under contract with the Ministry of Government and Consumer Services, that is dated not more than 30 days before the application is submitted to the Registrar, and that indicates that the corporation is active.
 4. A copy of the certificate of incorporation of the corporation.
 5. A copy of every certificate of the corporation that has been endorsed under the *Business Corporations Act* as of the day the application is submitted.
 6. The declaration of a director of the corporation, signed not more than 15 days before the application is submitted to the Registrar, stating,
 - i. that the corporation is in compliance with section 3.2 of the *Business Corporations Act* including the regulations made under that section, as of the date the declaration is signed,
 - ii. that the corporation does not carry on, and does not plan to carry on, any business that is not the practice of the profession governed by the College or activities related to or ancillary to the practice of that profession,
 - iii. that there has been no change in the status of the corporation since the date of the corporation profile report referred to in paragraph 3, and
 - iv. that the information contained in the application is complete and accurate as of the day the declaration is signed.

7. In the case of an application submitted to the Registrar of either the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, the name of each person who is both a voting shareholder and a member of the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, as the case may be, as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.
 8. In the case of an application submitted to any College other than the Colleges referred to in paragraph 7, the name of each person who is a shareholder of the corporation as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.
 9. The names of the directors and the officers of the corporation as of the day the application is submitted.
 10. The address of the premises at which the corporation carries on activities as of the day the application is submitted. O. Reg. 264/14, s. 2.
- (2) A College may issue a revised certificate of authorization to a corporation if the corporation changes its name after the certificate of authorization has been issued to it. O. Reg. 39/02, s. 2(2).

3. REFUSAL TO ISSUE

The College shall refuse to issue a certificate of authorization if the corporation is not eligible to hold one or if the corporation does not comply with section 2. O. Reg. 39/02, s. 3.

4. DUTY TO NOTIFY COLLEGE OF CHANGE OF NAME OR ARTICLES

- (1) If a corporation that holds a certificate of authorization changes its name or its articles of incorporation, the corporation shall promptly notify the College and give the College a copy of a certificate of the corporation that has been endorsed under the *Business Corporations Act* indicating the change. O. Reg. 39/02, s. 4(1).

- (2) A corporation ceases to be eligible to hold a certificate of authorization if the corporation fails to notify the College when the corporation changes its name or its articles of incorporation or fails to give the College the certificate described in subsection (1). O. Reg. 39/02, s. 4(2).

DECLARATION UPON SHAREHOLDER CHANGES

- 4.1. At the time that a corporation holding a certificate of authorization issued by the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario notifies the Registrar under section 85.9 of the Code of a change in the shareholders of the corporation, the corporation shall also give the Registrar the declaration of a director of the corporation, signed after the change of shareholders, stating that the corporation is in compliance with section 3.2 of the Business Corporations Act, including the regulations made under that section, as of the date the declaration is signed. O. Reg. 264/14, s. 3.

5. ANNUAL RENEWAL

The College shall renew a certificate of authorization for a corporation in respect of a particular profession on an annual basis if the corporation applies for the renewal by giving the following information and documents to the Registrar:

1. A completed application for renewal in a form approved by the College.
2. The annual renewal fee required by the by-laws of the College.
3. A copy of a corporation profile report issued by the Ministry of Government and Consumer Services or by a service provider which is under contract with the Ministry of Government and Consumer Services that is dated not more than 30 days before the application for renewal is submitted to the Registrar, and that indicates that the corporation is active.
4. A copy of every certificate of the corporation that has been endorsed under the *Business Corporations Act* since the corporation's most recent application for a certificate of authorization or for renewal of its certificate of authorization.

5. The declaration of a director of the corporation, signed not more than 15 days before the application for renewal is submitted to the Registrar, stating,
 - i. that the corporation is in compliance with section 3.2 of the *Business Corporations Act* including the regulations made under that section, as of the date the declaration is signed,
 - ii. that the corporation does not carry on, and does not plan to carry on, any business that is not the practice of the profession governed by the College or activities related to or ancillary to the practice of that profession,
 - iii. that there has been no change in the status of the corporation since the date of the corporation profile report referred to in paragraph 3, and
 - iv. that the information contained in the application for renewal is complete and accurate as of the date the declaration is signed.

6. In the case of an application for renewal submitted to the Registrar of either the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, the name of each person who is both a voting shareholder and a member of the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, as the case may be, as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.

7. In the case of an application for renewal submitted to any College other than the Colleges referred to in paragraph 6, the name of each person who is a shareholder of the corporation as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.

8. The names of the directors and officers of the corporation as of the day the application for renewal is submitted.

9. The address of the premises at which the corporation carries on activities as of the day the application for renewal is submitted. O. Reg. 264/14. s. 4.

6. REVOCATION OF CERTIFICATE

- (1) The following are the grounds upon which a corporation's certificate of authorization may be revoked:
1. The corporation ceases to be eligible to hold a certificate of authorization.
 2. The corporation ceases to practice the profession in respect of which the certificate of authorization was issued.
 3. The corporation fails to comply with one or more of the requirements for a renewal of the certificate.
 4. The corporation carries on any business that is not the practice of the profession governed by the College or activities related to or ancillary to the practice of that profession.
 5. The corporation fails to notify the Registrar of a change in shareholders in accordance with section 85.9 of the Code.
 6. In the case of a corporation that holds a certificate of authorization issued by the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, the corporation fails to give the Registrar a declaration in accordance with section 4.1. O. Reg. 39/02, s. 6 (1); O. Reg. 666/05, s. 6; O. Reg. 264/14, s. 5.
- (2) If the College proposes to revoke a corporation's certificate of authorization, the College shall give notice of the proposed revocation, setting out the date the revocation will take effect and the grounds for the proposed revocation. O. Reg. 39/02, s. 6(2).
- (3) The College shall revoke the corporation's certificate of authorization 60 days after the date on which the notice is given if any of the grounds for revocation exist on the revocation date specified in the notice. O. Reg. 39/02, s. 6(3).
- (4) The College shall notify the corporation if a corporation's certificate of authorization is revoked. O. Reg. 39/02, s. 6(4).

7. REINSTATEMENT AFTER REVOCATION

If a corporation's certificate of authorization is revoked, a new certificate of authorization may be issued to the corporation only if the corporation is eligible to hold one and applies for a new certificate in accordance with section 2. O. Reg. 39/02, s. 7.

APPENDIX III

BY-LAWS RELATED TO INCORPORATION

Part 9. Professional Corporations

45. THE REGISTER

- (1) Every member of the College shall, for every professional corporation of which the member is a shareholder, provide in writing the following information on the application and annual renewal forms for a certificate of authorization, upon the written request of the Registrar within 30 days and upon any change in the information within 30 days of the change:
 - (a) the name of the professional corporation as registered with the Ministry of Government Services,
 - (b) any business names used by the professional corporation,
 - (c) the name, as set out in the Register, and registration number of each shareholder of the professional corporation,
 - (d) the name, as set out in the Register, of each officer and director of the professional corporation, and the title or office held by each officer and director,
 - (e) the principal practice₁ address, telephone number, facsimile number (if available) and email address of the professional corporation,
 - (f) the address and telephone number of all other locations₂, other than residences of clients, at which the professional services offered by the professional corporation are provided, and
 - (g) a brief description of the professional activities carried out by the professional corporation.

- (2) The information specified in subsection (1) is designated as public for the purposes of paragraph 4 of subsection 23(3) of the *Health Professions Procedural Code*.



46.FEES

- (1) The fee for application for a Certificate of Authorization, including on any reinstatement of Certificate of Authorization, for professional corporation is \$700.
- (2) The fee for the annual renewal of a Certificate of Authorization is \$250.
- (3) A professional corporation or a member listed in the College's records as a shareholder of a professional corporation shall pay an administrative fee of \$50 for each notice sent by the Registrar to the corporation or member for failure of the corporation to renew its certificate of authorization on time. The fee is due within 30 days of the notice being sent.
- (4) The fee for the issuing of a document or certificate respecting a professional corporation, other than the first certificate of authorization or one annual renewal of a certificate of authorization, is \$25.

FREQUENTLY ASKED QUESTIONS

INTRODUCTION

These questions and the answers to them are intended as general guidance to the most commonly discussed issues relating to professional corporations. The responses are not legal advice and are not intended as such. For more detailed information on professional corporations, readers should review the relevant statutes and regulations provided in this document and consult with independent legal or financial advisors.

GENERAL

1. Should I set up my practice as a professional corporation?

The decision whether or not to set up your practice as a professional corporation will depend on a number of factors including the nature of your practice, with whom you practice, your personal financial circumstances and the financial circumstances of your practice. All these factors must be considered in light of the advantages and disadvantages of the professional corporation model.

In most cases, it is advisable to obtain advice on these matters from professionals skilled in assessing financial circumstances and the legal aspects of corporations. The College recommends that you discuss your plans for professional incorporation with your accountant or your lawyer before proceeding.

2. What are the advantages and disadvantages of setting up my practice as a professional corporation?

As noted above, advantages and disadvantages of setting up your practice as a professional corporation will depend to a large degree on your personal circumstances as well as the circumstances of your practice. Generally speaking, the College understands that much of the benefit of the professional corporation relates to the way corporations are taxed. However, it should be noted that the restricted ownership structure of the professional corporation may negate some of these benefits. As such the College recommends that you discuss your plans for professional incorporation with your accountant or your lawyer before proceeding.

3. What is the difference between a professional corporation and a practice management corporation?

While both are corporations, the rules that stipulate their ownership structures and the activities that they can undertake are different.

Professional Corporations

The shareholders of professional corporations must all be members of the same health regulatory college as must all the officers and directors of the professional corporation. Further, the only business that a professional corporation is permitted to undertake is the practice of the profession and activities that are related to or ancillary to the practice of the profession. This includes the temporary investment of surplus funds earned by the corporation. Every professional corporation is also required to obtain a certificate of authorization from the college of its members before it is permitted to conduct its business.

Practice Management Corporations

In contrast, the ownership rules of corporations that manage practices are more relaxed. Members of different health professions, non-health professionals and even family members can be shareholders as well as officers or directors. In terms of the kinds of business that these corporations can undertake, there are relatively few restrictions on their activities.

However, corporations that manage practices **are not permitted** to practice any regulated health profession and the shareholders of these corporations **are not permitted** to practice their regulated health profession through the corporation. Note that this does not mean that regulated health professionals cannot work for corporations – rather it means that when they are working for a corporation, they, rather than the corporation, is practicing. Because these corporations are not permitted to practice a regulated health profession, they are not required to register with the college or colleges of their shareholders.

4. My colleagues and I, some of whom are members of other health professions, have set up a corporation to manage our clinic. Do we have to register our corporation with the College and obtain a certificate of authorization?

As noted previously, there are differences between professional corporations and those that manage practices. A corporation that manages a practice is not permitted to practice a regulated health profession and hence is not required to register with the college or colleges of their shareholders.

5. How long is the process for setting up and registering a professional corporation?

The College cannot provide information on how long it takes to obtain Articles of Incorporation from the Ministry of Government Services. Registrants are advised to contact the Ministry directly at www.mgs.on.ca for information on how to set up a professional corporation and the timing of this process. Once a registrant submits an application to the College for a Certificate of Authorization for a professional corporation, the College intends that this application will be processed within 30 days. Naturally, the College can only meet this deadline if the application is submitted with all the required supporting documents and fees.

SETTING UP THE CORPORATION

6. What is an acceptable name for my professional corporation?

There are a number of restrictions on the names of professional corporations. Briefly, the names of professional corporations must:

- include the words “Professional Corporation” or “Société professionnelle”;
- include the surname of one or more shareholders of the corporation as the surname is set out in the College Register;
- indicate the health profession practiced by the shareholders;

and must not:

- include any information other than that permitted under the *Business Corporations Act* or the regulations.
- violate the provision of any other Act.
- have a number name.

Despite these restrictions, the corporation name may also include the shareholders’ given name, one or more of the shareholder’s initials or a combination of his or her given name and initials. For detailed information, please refer to section 3.2 of the *Business Corporation Act* and Ontario Regulation 29/02 under the *Regulated Health Professions Act*, both of which are included in the College information package on professional corporations. It is also wise to consult with the College before setting up your corporation to ensure that the name is appropriate and thus avoid the need to change this name before registering with the College.

7. Do I have to change the name of my practice so that is the same as the name of my professional corporation?

Not necessarily. The rules for the names of professional corporations mean that your current practice name will probably not qualify as an appropriate name for your professional corporation. Since it may be confusing for your patients if you change your practice name to match the name of your professional corporation, the rules permit professional corporations to practice under different names. However, any material that includes your practice name should also have the corporation name on it if the two are different. Owners of professional corporations **are required to inform the College** of every practice name under which the professional corporation practices. Naturally, there is nothing to prevent you from using the name of your professional corporation as the name of your practice.

8. What kinds of activities can a professional corporation undertake?

As noted above, the *Business Corporations Act* provides that the only business that professional corporations are permitted to undertake is the practice of the profession and activities that are related to or ancillary to the practice of the profession. This includes the temporary investment of surplus funds earned by the corporation.

9. Who is permitted to be a shareholder, officer or director of a professional corporation?

Section 3.2 of the *Business Corporations Act* requires that all shares of a professional corporation be owned by one or more members of the same profession. The same section also requires that all officers or directors of a professional corporation be shareholders of the professional corporation.

Since shareholders must be members of the same profession, and officers and directors must be shareholders, only members of the same profession can be officers or directors.

10. Can my spouse be a shareholder, officer or director of my professional corporation (she/he's not a physiotherapist)?

No — shareholders in a professional corporation must be members of the same profession. In addition all officers and directors must be shareholders so this means that only members of the same profession can be officers or directors.

PROFESSIONAL RESPONSIBILITY

11. As a registered physiotherapist and part owner of a professional corporation, what is my personal responsibility for the inappropriate activities of the professional corporation?

Section 3.4 of the *Business Corporations Act* makes it clear that the shareholders of professional corporations remain responsible for the activities of the professional corporation. This means that the activities of the corporation reflect directly upon the shareholders' responsibilities to uphold professional standards. In addition, shareholders of professional corporations retain their liability for professional liability claims made against the corporation in respect of errors and omissions that were made or occurred while the person was a shareholder of the corporation. To make it clear that the professional corporation cannot be used as a means of avoiding professional responsibilities, section 3.4 also contains a clause that deems the acts of a professional corporation to be the acts of the shareholders, employees or agents of the corporation, as the case may be.

The College has reinforced these provisions with a proposed amendment to its professional misconduct regulation that extends the definition of professional misconduct to include the following:

- Being a shareholder, officer or director of a professional corporation where the professional corporation does or omits to do anything that would be professional misconduct if done or omitted to be done by the member.
- Being a shareholder, officer or director of a professional corporation that has breached a provision of the Code of Conduct for Professional Corporations published by the College.
- Being a shareholder, officer or director of a professional corporation that has failed to maintain a valid certificate of authorization or which had provided professional or ancillary services while the certificate of authorization was under suspension or revoked.



12. Can the College revoke my professional corporation's certificate of authorization?

Yes — the College can revoke a professional corporation's certificate of authorization in a number of circumstances. These include:

- The corporation ceases to be eligible to hold a certificate of authorization.
- The corporation ceases to practice the profession in respect of which the certificate of authorization was issued.
- The corporation fails to comply with one or more of the requirements for a renewal of the certificate.
- The corporation carries on any business that is not the practice of the profession governed by the College or activities related to or ancillary to the practice of that profession.
- The corporation fails to notify the Registrar of a change in shareholders.

13. If the College revokes my professional corporation's certificate of authorization, how do I get it back?

If the College revokes a certificate of authorization, the professional corporation must apply for a new one and meet the eligibility requirements that are in effect at the time, which include submitting the required information and paying the fees.

14. How often am I supposed to provide the College with updates on changing information about my professional corporation?

The College has a by-law that governs the kind of information that a professional corporation must provide to the College and when it must be provided. The by-law states that every member of the College shall, for every professional corporation of which the registrant is a shareholder, provide in writing the following information on the application and annual renewal forms for a certificate of authorization, upon the written request of the Registrar within 30 days and upon any change in the information within 30 days of the change:

- (a) the name of the professional corporation as registered with the Ministry of Government Services,

- (b) any business names used by the professional corporation,
- (c) the name, as set out in the register, and registration number of each shareholder of the professional corporation,
- (d) the name, as set out in the register, of each officer and director of the professional corporation, and the title or office held by each officer and director,
- (e) the principle practice address, telephone number, facsimile number and email address of the professional corporation,
- (f) the address and telephone number of all other locations, other than residences of clients, at which the professional services offered by the professional corporation are provided, and
- (g) a brief description of the professional activities carried out by the professional corporation.

It is important to note that professional corporations are required to provide the College with updates to this information within 30 days of the change.

THE MODEL

15. Why do I have to obtain Articles of Incorporation from the Ministry of Government Services and then register the corporation with the College as well?

While this model seems to be unnecessarily complex, the statutory changes made to the *Business Corporations Act* require that professional corporations obtain their Articles of Incorporation from the Ministry of Government Services and their certificates of authorization from the organization that regulates their members. The College understands that this process is intended to ensure that the shareholders, officers and directors of professional corporations understand their professional responsibility respecting the activities of their corporations. In addition, the responsibilities that have been delegated to regulatory agencies are justified on the basis that regulatory agencies must retain authority over their members and the ability to grant, and to revoke certificates of authorization is a means of granting this kind of authority.



16. Why has the College chosen to regulate professional corporations?

The College, and other regulatory bodies did not choose to regulate professional corporations. Rather, the government chose to delegate this role to regulatory bodies as an additional duty, above and beyond their duties to regulate individual members.

17. Why is the College charging professional corporations to register and obtain certificates of authorization? Since the owners and shareholders of professional corporations have to be College members anyway, doesn't it mean we are paying twice?

In most respects, corporations, including professional corporations, are entities that are treated in the law much like individuals. This means that although they may be owned by members of the College, the professional corporation is distinct from its owners and must be treated as such.

Further, the requirement for the College to record and monitor substantial amounts of information about professional corporations that is different from the kind of information kept on individual members requires the College to establish separate processes for record keeping and management of professional corporations. With these and similar obligations in mind, the College believed that it was unreasonable to expect members who were not involved in professional corporations to subsidize the administrative obligations of the College respecting professional corporations. As such, a separate fee schedule for professional corporations was established.