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## CHAPTER 21

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# STARTING A NEW HEALTHCARE PRACTICE

by  
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### SCOPE

This chapter reviews the major issues to be faced by a physician starting his or her own medical practice, presenting these issues in checklist form. Issues such as applying for a Medicare provider identification number (PIN), applying for a federal employers' identification number (FEIN), how to address federal payroll requirements, and other issues that should be considered in setting up a physician practice, are included.

### SYNOPSIS

**§21.01 Primary Considerations in Starting a Practice**

**§21.02 To Incorporate or Not Incorporate?**

**§21.03 Starting a New Business: A Basic Checklist**

- [1] Miscellaneous Licenses
- [2] Incorporation or Other Business Entity Formation
- [3] Federal Employer Identification Number
- [4] Medicare Provider Identification Number
- [5] Payroll Taxes - Federal
- [6] State/County Sales Tax
- [7] Intangible Tax
- [8] Tangible Personal Property Tax
- [9] Annual Corporate Tax Returns
- [10] Insurance

- [11] Miscellaneous Items
- [12] Regulatory Requirements and Compliance
- [13] Additional Matters to Consider (Recommendations on Many of These Can Be Made by Your Local County Medical Association)

#### **§21.04 Supplemental Information: Instructions for Applying for a FEIN by Telephone or Fax**

#### **§21.05 References**

##### **§21.01 Primary Considerations in Starting a Practice**

There are many different matters to take into account when starting a new medical practice. We feel the best and most effective way to present these for use by a physician considering starting his or her own practice is through a checklist. Accordingly, we have presented below, in checklist form, the major issues that you should address in starting your practice. Often, additional help will be needed from an attorney or accountant, and these professionals should be consulted often, as needed.

You may also obtain additional information concerning the advantages and disadvantages of different types of business entities if you review the chapter in this book on purchasing or selling a medical practice.

The information included below should address the majority of issues you will encounter in beginning your own medical practice.

##### **§21.02 To Incorporate or Not Incorporate?**

It is our strongest advice that a health care professional just starting a practice should do so through the framework of a corporation, limited liability company, or some other business entity that limits his or her personal liability for contracts, leases, loans, notes and employment law problems that may be encountered in operating a practice. Your business or health care lawyer should be consulted in making the decision as to exactly which type of business entity best suits your purposes. However, before you enter into any lease or contracts, or purchase any assets, this is the first legal issue that you should address.

Unless you are going to purchase real estate to use in your practice (e.g., buying a professional office building or condominium to use), there is little difference in the protections afforded by a corporation (whether this is a professional service corporation (a "P.A.") or a business corporation (designated by the abbreviation "Inc.") and those afforded by a limited liability company ("LLC"). If you are going to be purchasing real estate to use, then you should consult with an experienced business lawyer and an accountant before making this decision; most probably a LLC will be chosen if real estate

is involved. Additionally, you may want to incorporate your practice, form a LLC to purchase the real estate, and then have your practice lease the real estate from the LLC. This will serve the additional purpose of insulating the real-estate from possible liability associated with the operation of the medical practice. Otherwise, and for the purposes of this chapter, we will assume that a corporation will be formed by the physician to deliver medical services.

You should incorporate as early as you can as it may take several days for your lawyer to get the articles of incorporation filed with the Secretary of State (longer if there are multiple shareholders or members and a shareholder or member agreement must be prepared and executed). It may take anywhere from one day (if you can get through to the IRS and obtain it by telephone) to several weeks to request and obtain a federal employers identification number (FEIN) from the IRS. You should also immediately file and IRS Form 2553 (and any other documents required) to elect subchapter S status (under subchapter S of the Internal Revenue Code), if this is what your attorney and accountant recommend. You will usually want to elect subchapter S status as this avoid shaving the corporation's income taxed as corporate income; instead, the corporation is treated as a "passthrough entity" and its income is not taxed separately.

Before the physician signs any leases, purchases any equipment or contracts for any equipment or services, the corporation should be formed and the FEIN obtained. Then, any contract, lease, loan, note, purchase, checking account or agreement should be made or obtained in the name of the corporation and not in the name of the individual physician. Later, if the contract or agreement turns out to be too onerous, or the practice is unsuccessful, the only liability will be that of the corporation and not of the physician individually. Especially in relation to employment matters, any employment contracts or contracts with other health care professionals should be made in the name of the corporation only. Then, if there is any later employment dispute or litigation over such matters as discrimination, unpaid salary or benefits, sexual harassment, or wrongful termination, these will have to be brought against the corporation, and not against the individual physician.

The physician who is just starting his or her practice should be sure that the name of the corporation (including the designation as a "P.A.," "LLC," "Inc." or other similar abbreviation designating it as a business entity) is used at all times on all letterhead, signs, business cards, advertisements, telephone listings, patient encounter forms and financial responsibility agreements and employment and personnel forms. You must make sure that you are advising the world that you are doing business as a corporation.

As a final note, it is important to ensure that you are in compliance with the myriad of complex Federal and State laws and regulations governing health care practices. These extend to and include a plan for handling biomedical wastes (see the chapter in this book on biomedical waste), OSHA compliance, Medicare and Medicaid compliance (see the chapter in this book on Medicare and Medicaid Fraud and Compliance), and HIPAA privacy and security compliance (see the chapter in this book on HIPAA Privacy Regulations), among others.

### §21.03 Starting a New Business: A Basic Checklist

The following Checklist will help you to address most of the issues you will encounter in beginning a new practice.

#### [1] Miscellaneous Licenses

- a. Obtain county occupational license (if applicable). Most counties have occupational licenses. Contact the tax collector of your county for requirements.
- b. Obtain city occupational license (if applicable). Some municipalities (cities and towns) require occupational licenses. Contact the tax collector of your city or department of licenses and permits for requirements.
- c. County business permit for office. This may require inspection by the Fire Marshall, so plan early as you may have to schedule this some time ahead.
- d. City business permit for office (if applicable). This may require inspection by the Fire Marshall.
- e. DEA Registration. Apply for your U.S. Drug Enforcement Administration (DEA) number so you will be authorized to write prescriptions:

**United States Department of Justice**

*Drug Enforcement Administration*

*Central Station*

*P.O. Box 28083*

*Washington, D.C. 20038-8083*

*(800) 882-9539*

- f. CLIA Certification (or waiver) if you intend to perform any laboratory services.

#### [2] Incorporation or Other Business Entity Formation

- a. File articles of incorporation (or agreement for LLC or partnership agreement) with Secretary of State and obtain certificate of incorporation, certificate of existence or other official document from state.
- b. Complete bylaws (or regulations for LLC).
- c. Complete corporation resolutions or other documents needed to establish corporate bank accounts.
- d. File for subchapter-S status. Use IRS Form 2553 (copy attached or obtain from any IRS office). **URGENT — DO THIS RIGHT AWAY**
- e. Register any fictitious business name you will be using with the Secretary of State.

- f. Annual report for corporation must be filed with Secretary of State each year or corporation will be administratively dissolved. Use January of the year as a goal for filing this.
- g. Consult with attorney to ensure completion of all other requirements for incorporating and doing business in Florida as a corporation or other business entity (there are additional documents to be completed or filed and additional actions that should be undertaken).

**[3] Federal Employer Identification Number**

File IRS Form SS-4 to obtain federal employer identification number (FEIN). Copy of IRS Form SS-4 is attached or available from any IRS office. Each employer must have a FEIN. **DO THIS EARLY AS IT MAY TAKE SEVERAL WEEKS TO OBTAIN.** (*Note: You may obtain one by telephone the same day or by fax. Please see attached instructions.*)

**[4] Medicare Provider Identification Number**

- a. Apply for Medicare Provider Identification Number (P.I.N.) as early as possible. If a corporation or business entity, apply for new one. **DO NOT USE ANOTHER ENTITY'S MEDICARE P.I.N THAT IT ASSIGNS TO YOU!** If you have never had a prior Medicare PIN, you will not be able to get paid for any Medicare patients you treat before you have received your PIN.
- b. Apply for provider numbers or otherwise contract with Blue Cross/Blue Shield and other major insurers, managed care plans, and third party payors.
- c. There may be other requirements for physicians and medical groups or businesses. It is recommended that you consult a board certified health care attorney for these.

**[5] Payroll Taxes — Federal**

- a. We recommend contracting with a service company such as PAYCHEX or ADP that can take care of all of the following for you for one low monthly fee. It is well worth it to avoid the hassle. If you do contract with a payroll company, it will usually provide all of the items contained within this Section 5 of this checklist including filing all forms and reports required by the IRS or the state.
- b. General instructions and rates for federal withholding, FICA withholding, and employer's share of FICA, are contained in IRS Circular E (generally revised in January), available at any IRS office.

- c. A Form W-4, Employee's Withholding Allowance Certificate, must be received from each employee. This form is used to determine the amount of income tax to be withheld from an employee's wages.
- d. Form I-9, Employment Eligibility Verification Form, must be completed for each employee.
- e. Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return is filed by January 31 to report required FUTA taxes.
- f. Form 941, Employers Quarterly Federal Tax Return, is used to report social security and an income tax withheld and is filed by April 30, July 31, October 31, and January 31.
- g. Form W-2, Wage and Tax Statement, must be given by the employer to each employee by January 31 to report their salaries.
- h. PAYROLL TAX DEPOSIT REQUIREMENTS: Deposit is made at your bank, using a Federal Deposit Coupon, Form 8109. You will receive a supply of coupons after you apply for an Employer Identification Number. Deposit instructions are found in your Circular E.
- i. FICA and Withholding Tax Deposits
  - (1) For correct payment of the payroll tax liability, an employer must determine if they are a "monthly" or "semiweekly" depositor. If the total tax reported in the 4-quarter lookback period is less than \$50,000, they are a monthly depositor. If the total tax reported during this period is greater than \$50,000, they are a semiweekly depositor.
  - (2) A monthly depositor will deposit all taxes accumulated for the month by the 15th of the following month.
  - (3) A semiweekly depositor must deposit on Wednesday and/or Friday depending on what day of the week wages are paid. Refer to your Circular E for these rules.
- j. Federal Unemployment Tax Assessment (FUTA)

The employer pays federal unemployment tax for each employee annually. The tax is .8% (.008) of the first \$7,000 of wages paid each employee. If the liability at the end of a quarter reaches \$100 or greater, a tax deposit is required. The deposit is made at the bank using Federal Deposit Coupons. These taxes will be reported on form 940 filed at year end (see above).
- k. State Unemployment Taxes
  - (1) For information write to:

**Department of Commerce***Bureau of Unemployment Compensation**Tallahassee, Florida 32301*

- (2) Initially, a Form UCS-1, Report to Determine Status, is filed.
- (3) Form UCT-6 is filed quarterly. This report is used to report individual employees wages and to pay the State unemployment taxes. The report is due April 30, July 31, October 31, and January 31.
- (4) For new employers the tax rate is 2.7% of the first \$7,000 of wages paid to each employee annually.

**[6] State/County Sales Tax**

- a. At the present time there is no tax on professional services such as medical services or legal fees. However, this may change. If you sell certain products (such as cosmetics, nonprescription vitamins or herbal supplements, etc.), there may be a tax on this. Check on it. Information is available by writing:

**Department of Revenue***5050 W. Tennessee Street, Building K**Tallahassee, Florida 32399-1045**Winter Park phone (407) 623-1141*

- b. In general, the state sales tax rate on nonprofessional goods and services is 6%, but it may vary by county. For example, currently Seminole County's sales tax rate is 7%. Other counties may have different rates. At the present time there is no tax on professional services such as medical or legal fees.
- c. If sales tax is due, monthly reports and payments are due the 20th day of the month.
- d. Generally, sales taxes are due from the sale of any tangible property, and rentals. As a general class, only the sales of food, medicine, and services are excluded. A sales tax number can be obtained by filing form DR-1, Application for Sales and Use Tax.
- e. A "Use" tax is required to be paid on any purchases of tangible personal property purchased from out of state and not resold.

**[7] Intangible Tax**

- a. Florida has an Intangible Personal Property Tax, which taxes the value of a business's receivables, notes, basis in stocks, and other intangible assets.

Recently, certain exemptions have been enacted which may apply to you. Information is available by writing:

**Department of Revenue**

*5050 W. Tennessee Street, Bldg. K  
Tallahassee, Florida 32399-0145*

- b. The Intangible Tax Return is due June 30. The return is based on information as of the prior December 31. There are discounts available for earlier filings.

**[8] Tangible Personal Property Tax**

- a. Each county has a tangible personal property tax. This tax is assessed and collected by the local County Tax Assessor. Several Central Florida Tax Assessors' offices are listed below:

**Orange County:**

Richard Crotty, C.F.A.  
Orange County Property Appraiser  
100 East Pine St., 2nd Floor  
Orlando, Florida 32801-2799

**Seminole County:**

H.W. "Bill" Suber  
Seminole County Property Appraiser  
1101 E. First Street  
Sanford, Florida 32771

**Other Counties:**

Local County Property Appraiser  
Local County Offices

- b. A Tangible Personal Property Tax Return is due April 1. The tax will be assessed based on this form and is payable in November.

**[9] Annual Corporate Tax Returns**

- a. We recommend you retain a good, reliable accounting firm that is familiar with the unique features of physicians' practices to prepare and submit this for you. The accountant should be working with your bookkeeper throughout the year to make sure that all information is being properly accounted for and to keep you on track with your financial goals, especially concerning funding of pension and profit-sharing plans. Ask your local health care attorney, local



county medical society or practice management consultant for recommendations.

- b. The Florida Corporate Income Tax Return, for those businesses operating in the Corporate form, is due the first day of the fourth month following the fiscal year-end, or April 1 for the calendar year corporations.
- c. The Federal Corporate Income Tax Return, Form 1120, is due the fifteenth day of the third month following the fiscal year-end or March 15, for calendar year corporations.

#### [10] Insurance

- a. All employers, regardless of the number of employees, must carry **Workmen's Compensation Insurance**. See your insurance agent.
- b. **General liability, premises, automobile**. Contact your local agent to make sure you have adequate coverage for all areas of your operation.
- c. **Professional negligence insurance**. If a professional, obtain professional liability (malpractice) coverage insurance in appropriate amounts to satisfy minimums required by state law, by the LLC Act (if applicable) and to adequately cover your professional activities. We highly recommend that you research this matter and obtain your insurance through only with one of the most financially solvent, reputable insurers licensed in Florida. Contact the Florida Medical Association, your professional association or us for recommendations.
- d. **"Broad Form" or License Defense Coverage**. Many professional liability insurance companies now provide as additional coverage (usually for only a small additional annual charge) "Broad Form Coverage" which will pay your legal fees and expenses associated with any professional disciplinary investigation or hearing, peer review investigations and hearings, hospital credentials hearings, Medicare and Medicaid audit or investigation defense, actions taken against your professional license or by your professional licensing board or association, defense of utilization review proceedings, defense of federal healthcare subpoenas, etc. This coverage is well worth the small additional charge. However make sure your insurance coverage will provide: 1) at least \$25,000 in coverage for this benefit, 2) allow you to select the attorney you want to represent you, and 3) provide coverage for at least the events listed here.

- e. **Tail Coverage/Prior Acts.** If you have been in practice in your profession in the past, determine if you should obtain “tail coverage” or coverage for “prior acts.”
- f. **Directors and Officers (D&O) Liability Insurance.** If you serve on the Board of Directors or Board of Trustees of another organization or if you are an officer of another organization, that organization should purchase D&O liability insurance to protect you. This could be a hospital, a nursing home, an ambulatory surgical center (ASC), a charity, or a business corporation. Otherwise, don't serve on it.

#### [11] Miscellaneous Items

- a. **Health Insurance & HMO Panels.** Apply as early as you can for membership on the panels of any insurers, HMOs, PPOs or other plans in which you intend to participate. Check around concerning each and be selective about the ones you decide to join. examine each agreement carefully to determine whether or not it is really to your advantage to join under the terms and conditions imposed by that plan's agreement. Contact the Florida Medical Association and your local county medical association to determine which ones not to apply to (if any).
- b. **Yellow pages advertising.** Check into Deadlines for this as early as possible. Most finalize ads at beginning of June each year.
- c. **Fictitious Business Names.** Check into availability of these early. Apply for any you desire. It may take several weeks to have these advertised and then process applications.
- d. **Internet Domain Names.** Check into availability. Apply for these as soon as possible or the one(s) you want may disappear on you. Also, consider registering your domain name as a fictitious business name to better protect it from later claims by others.
- e. **Confidential Business Information and Trade Secrets.** Determine if you have any documents, procedures, processes, manuals, client lists, formulas, software, programs or other information that might be considered to be confidential business information or trade secrets. Decide early what steps may be necessary to protect these from employees or others who might be tempted to take and use them.

**[12] Regulatory Requirements and Compliance**

- a. **Biomedical Waste.** Contract with a state certified biomedical waste disposal and transportation company. You must have a biomedical waste-handling plan for each office. See the chapter in this book on biomedical waste.
- b. **Medicare & Medicaid Compliance Plan.** You should have a Medicare and Medicaid Compliance Plan in place and operating within your practice. See separate chapter in this book on Medicare and Medicaid Fraud and Compliance.
- c. **OSHA Compliance and OSHA Manual.** You must have an appropriate OSHA plan in place and certain OSHA workplace protections. For example, if there are any hazardous chemicals you use in the workplace (e.g., developing chemicals for x-rays) you must have an eyewash station. The OSHA Blood-borne Pathogens Standards may apply to your practice and you should have a procedure in place for this. Many procedures, protocols and plans on these subjects are available for free from the government site on the Internet.

**[13] Additional Matters to Consider (Recommendations on Many of These Can Be Made by Your Local County Medical Association):**

- a. Location of Office (visibility to passing traffic, exterior signage, proximity to hospital(s) and referring physicians, etc.)
- b. Office Space (How big, type of facilities, access by patients, lease or purchase, etc.)
- c. Equipment — Medical (Type needed, lease, purchase or finance, new or used, etc.)
- d. Telephone System
- e. Wireless (Cellular) Phones
- f. Wireless Pagers
- g. Answering Service
- h. Personnel
- i. Printing Needs:
  - Letterhead
  - Appointment/Business Cards
  - Stationary
  - Envelopes
  - Prescription Pads
  - Forms

- Registration/medical history
- Progress notes forms
- Super bills
- General consent
- Financial responsibility agreement and authorization for release of information

Fee Schedule

- j. Computer System
- k. Credit Cards — Agreement and equipment
- l. Resource Materials:
  - CPT Coding Manual (Order from AMA)
  - Evaluation and Management (E&M) Manual
  - Coding Books: CPT
  - ICD-9 Manual
  - HCPCS
  - Hospital Charges
- m. Insurance claims forms
- n. Medical Records:
  - See “Forms” above
  - Manila folder jackets
  - Alphabetical tabs
  - Year tabs
- o. Managed care contracts and applications
- p. Biomedical waste spill kit
- q. Job descriptions/personnel manual
- r. Office policies & procedures manual
- s. Referral tracking system
- t. Rubber stamps (return address, “Paid,” “For Deposit,” etc.
- u. Reception area, desk and door signage
- v. Marketing (consider the following):
  - Newspaper (advertising, profess. announcements and press releases)
  - Office brochures
  - Announcement cards
  - Ask-A-Nurse
  - Open house (be sure to send out thank you notes to all attending no later than several days afterwards)

Participate in hospital activities, seminars, etc.  
Participate in Health Fairs  
Put on training seminars for technicians, nurses and nonspecialists  
Free or discounted advertising publications such as Treasure Chest  
Regional magazines (e.g., Central Florida Family Magazine)  
Join the area Chamber of Commerce and participate  
in its monthly meetings  
Join Rotary Club and other civic or business oriented organizations

**§21.04 Supplemental Information: Instructions for Applying for a FEIN by Telephone or Fax**  
The following are instructions for obtaining a FEIN by telephone or fax:

**INSTRUCTIONS FOR APPLICATION FOR FEDERAL EMPLOYER  
IDENTIFICATION NUMBER (FEIN) & IRS FORM SS-4**

**VIA TELEPHONE:**

If you are an officer of the corporation or LLC, you are allowed to obtain the FEIN by telephone. You must be able to prove who you are and you must be the one who will sign the IRS Form SS-4. You must have your (the officer's) date of birth, social security number, local address, and mother's maiden name available to give to the IRS clerk. Fill out the IRS Form SS-4 in advance and have it before you when you call.

**Call the IRS to obtain FEIN for a Florida corporation/business entity:**  
(866) 816-2065 (NOTE: Best to call early between 7:30 a.m. – 8:00 a.m.)

**Additional number to call regarding questions concerning FEIN:**  
(859) 669-7832

**VIA FAX:**

**Fax your completed Form SS-4 to the IRS (Attn: FEIN Assignment):**  
(631) 447-8960

(NOTE: Include a cover letter requesting that the FEIN number be faxed back immediately. Be sure to include your fax number. By requesting immediate action, receipt of the number should take approximately 7-10 days, instead of the 4-5 weeks if applied for by mail.)

**§21.05 References**

<sup>1</sup> **Warning:** this list is meant to be for illustrative purposes only to help assist you. It is not meant to be complete or all-inclusive of every action you must take. Providing this list is not meant to be providing you legal advice on this important subject. You should consult with an appropriately experienced lawyer and an appropriately experienced C.P.A. to ensure you receive thorough and appropriate advice.

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