

CHAPTER 30

CORPORATIONS PROFESSIONAL ASSOCIATIONS AND OTHER BUSINESS ENTITIES FOR NURSES

I. INTRODUCTION

Florida is not now nor has it ever prohibited the corporate practice of medicine. Anyone can own a business or corporation which employs physicians, nurses, and other health professionals (with the limited exception of dentist and optometrist). Anyone, including a nurse or a group of nurses can organize and own a health clinic which employs one or more physicians or other health professionals. Nurses can legally organize into a professional service corporation and contract with one or more other individuals or business entities.

We recommend that a health professional always consult with an experienced business or transactional attorney, one who also has experience with healthcare entities and healthcare issues. Attempting a "do-it-yourself" business entity as a health professional is not wise. Likewise, using a commercial corporate service which does nothing more than fill in the blanks on forms that the individual could do anyway, is also not advisable. Not only is legal advice required, but the entity should be modified to fit the health care business and the health care professionals for whom it is being created. There are many pitfalls that should be avoided.

In most cases, the nurse who is interested in doing business in a separate business entity will decide to use a regular business corporation (most probably electing taxation as a Subchapter S corporation or partnership) or as a limited liability company ("LLC") (electing taxation as a partnership).

This Chapter explains some of the basics of the law relating to corporations and other types of legal business entities.

II. CLASSIFICATION BY LEGAL TYPE OF BUSINESS ENTITY

Traditionally, there were only a few types of business entities recognized in U.S. law. These were sole proprietorships (an individual business owner with no business entity), a partnership (composed of two or more individuals or businesses entities with either no formal agreement or a formal partnership agreement), a corporation (a fictitious business entity which is recognized as a separate individual under the law) and an unincorporated association (similar to a partnership, only traditionally used for social, political, or professional purposes).

The main reasons for forming and providing services as a particular type of business entity include:

1. To limit the owners' personal, individual liability for the debts of the business entity, especially those that may arise because of civil suits or contract liability;
2. For more favorable tax treatment by the Internal Revenue Service (IRS) and state taxing authorities;

3. To take advantage of benefit programs and plans that may be available for one type of business organization and not another;
4. To protect the identities of the actual owners, in the event this is an issue.

A. SOLE PROPRIETORSHIP

A sole proprietorship is an individual doing business without any business entity. This is probably the simplest, easiest and least expensive (from the point of view of attorney's fees, accounting fees and annual maintenance fees, only; it can have some extremely serious and costly expenses when liability issues are taken into account).

In many cases states will have state laws or state administrative regulations that require a sole proprietorship or partnership to carry certain levels of general liability insurance or workers' compensation insurance coverage if they do business as something other than a corporation (corp.) or limited liability company (LLC). For example, Florida requires general contractors to either organize as a corporation (corp.) or limited liability company (LLC), to carry certain amounts and types of insurance.

A sole proprietorship does not have its business income taxed by the IRS. There is no tax on it. The tax is paid, instead, by the owner, since it is income to the owner. The owner will pay personal income taxes to the IRS at whatever his or her tax rate is. Most owners and taxpayers want their business to be taxed as a sole proprietorship because of this, no separate tax on the income of the business. This is sometimes referred to as "pass-through taxation" or the business as a "pass-through entity." This means the income passes through to the individual owner(s) where it is then taxed only as individual income rather than being taxed at the business level and then again as personal income to the owner(s), as many corporations are.

B. PARTNERSHIP

A partnership is composed of two or more individuals or other types of business entities. For example, a partnership can be composed of two or three natural individuals, it can be composed of a corporation and a limited liability company, it can be composed of a natural individual, a corporation and a limited liability company, or just about any other combination. Most partnerships that exist function without any type of formal written agreement (which we do not recommend).

Historically, in the United States, most professionals who did business together, joined together in partnerships, feeling less of a need for the protections offered by a corporate-type structure. Additionally, professionals often considered the calling of their profession to be less like a profit-motivated business, and more like an unincorporated association. Since malpractice suits against most professionals were still very rare, the protections of a corporate structure were, traditionally, considered to be unnecessary.

The biggest drawback for a partnership is that each of its partners can be held liable for the acts of any of the other partners. Thus, one partner can make a contract and all of the partners would be bound by it, even if they did not know the other partner was doing it. If one partner commits an act of negligence while working on behalf of the business, then each and every other partner can be held responsible for it. Thus a partnership is said to lack liability protection for its partners (owners).

A significant advantage of a partnership is that it is considered to be a "pass-through entity" for tax purposes (see above). In other words, although you may be required to file a partnership tax return with the IRS each year, there will be no tax on the income of the business. Only the income that is passed through to the individuals is taxed, so it is taxed only once, as personal income, and it will be taxed at their personal income tax rates.

C. JOINT VENTURE

A joint venture is just another term for a partnership. They mean the same thing.

D. CORPORATION

Corporations are separate business entities that are formed in accordance with a state's laws (or, in certain limited instances, federal law). A corporation is considered to be a completely separate person from its individual owners (who are known as "shareholders"). It has a separate identity. It has a separate tax number (called a federal employer's identification number (FEIN) or a taxpayer's identification number (TIN), both of which mean the same thing), which is treated for all practical purposes the same as an individual's social security number is treated.

The major advantages of a corporation include that they offer personal liability protection to their owners (shareholders), offer tax savings in certain situations, continue to exist forever, and may offer increased opportunities for bringing in investors and raising capital. Corporations are required to perform certain formalities such as holding annual meetings, keeping corporate books and records, keeping minutes of shareholder meetings, and acting by formal votes which should be recorded in a writing (usually called a corporate resolution).

Incorporating your business is usually a good way to protect your personal assets from company liabilities such as contractors, creditors or lawsuits. Many individuals, especially professionals, incorporate for this reason alone. But that's not the only advantage.

Under present Internal Revenue Service (IRS) laws and regulations, corporations may elect to be taxed in a number of different ways, including as a sole proprietorship or partnership, in order to take advantage of the tax rules that apply.

In Florida, the procedures for forming corporations and the requirements for them are contained in Chapter 607, Florida Statutes.

E. THE PROFESSIONAL SERVICE CORPORATION ("P.S.C."), PROFESSIONAL CORPORATION ("P.C.") OR PROFESSIONAL ASSOCIATION ("P.A.")

Corporations made up of professionals are known as professional service corporations ("PSCs") and are also called professional corporations ("PCs") or professional associations ("PAs"). These terms all mean the same thing: a corporation made up solely of members of the same profession. In Florida, for example, the act which authorizes such business entities is known as the Professional Service Corporation act and it calls these entities professional service corporations. However, the abbreviation which is used in Florida to denote that a business entity is a professional service corporation is the abbreviation "PA" (which stands for "professional association"). In other states, the abbreviation "PSC" or "PC" is used to denote a professional service corporation in that state.

In those states which allow professional service corporations (PSCs), the PSC must be owned exclusively by (which means that all shareholders must be) members of the same profession. Additionally all officers and directors of the corporation must be members of the same profession.

Historically, in the United States, there were only two types of business entities (other than sole proprietorships and unincorporated associations): corporations and partnerships. Most professionals were joined together in partnerships, feeling less of a need for the protections offered by a corporate-type structure. Additionally, professionals often considered the calling of their profession to be less like a profit-motivated business, and more like an unincorporated association. Since malpractice suits against most professionals were still very rare, the protections of a corporate structure were, traditionally, considered to be unnecessary.

The first laws that permitted the formation of professional service corporations were intended to give professionals (specifically doctors, lawyers and accountants) the same tax advantages that were afforded to corporations without also giving them the benefit of limited liability. This was due to a public policy that personal responsibility of professionals was a desirable factor to promote. Therefore, the law would not allow professionals to escape liability for their own professional actions by hiding behind a corporate structure.

If a regular business corporation, which is recognized as a separate and distinct individual under the law, becomes insolvent, its creditors are only allowed to make claims against the assets of the corporation for the repayment of debts, and not the individual personal assets of its owners (shareholders). This contrasts with the way in which the law allows sole proprietorships and partnerships to be treated.

However, as many professional groups of doctors, lawyers, accountants, architects and engineers grew larger and larger, becoming national in scope and even international, they came to desire the protections that a corporate structure offers. The differences among the different types of business entities have become blurred over the past four or five decades, as more tax advantages have become available to sole proprietorships and partnerships, and more limited liability has been granted to professional corporations.

Organizing as a professional corporation offers many potential advantages to professionals who are

small business owners. For the most part, these are similar to those offered by other types of business corporations (see below). Some of the tax advantages involve deductions that are allowed for business expenses that are not available to sole proprietorships or partnerships. For example, professional service corporations may create retirement plans and 401(k) plans for their employees that may have higher contribution limits than plans available to individuals or partnerships. In addition, professional service corporations may be able to provide employer-paid health and life insurance coverage as tax-free benefits to their employees by establishing a Voluntary Employees' Beneficiary Association (VEBA). Professional service corporations may be able to take tax deductions for disability insurance, dependent care, and certain other types of fringe benefits provided to employees. In many cases, these benefits will be tax-deductible for the professional service corporation and will not be considered to be taxable income for the employees.

In Florida, the procedures for incorporating professional service corporations and professional service limited liability companies and the requirements for them are contained in Chapter 621, Florida Statutes.

F. LIMITED LIABILITY COMPANIES

Limited liability companies (denoted by the abbreviations "LLC," "LC," or sometimes "Ltd." or "Co."--be sure to check on what your state requires), are often thought of as a business entity that offers the best features of a partnership combined with the best features of a corporation. A limited liability company must be formed in accordance with a state's laws. It is formed by filing articles of organization (the equivalent of articles of incorporation) with the Secretary of State or other appropriate state officer. More importantly for a limited liability company is that it has a comprehensive, detailed operating agreement that each of its members (the equivalent of shareholders in a corporation or partners in a partnership) must sign. This may be thought of as a combination of bylaws and a shareholders' agreement. For legal liability purposes, the operating agreement should be completed, agreed to and signed by all of the members before the articles of organization are filed.

The advantages of a limited liability company are that it can select which features it desires to have and can be modeled along the lines of a corporation, if so desired. As a general rule, the members of a limited liability company will want the limited liability company to have the following features: personal liability protection for the members (owners); treatment as a pass-through entity for tax purposes (i.e., any income or loss is passed on through to the members/owners and is not taxed separately); it can elect the option of being taxed as a corporation or as a partnership, depending on the possible deductions and benefits its members desire; fewer corporate formalities are usually required (such as annual meetings and minutes); and there are no restrictions on who may be an owner (member)-- the members may be individuals, corporations, partnerships, not-for-profit corporations, limited liability partnerships, etc., or any combination.

As a general rule, limited liability companies offer the same personal liability protection as a corporation, but with fewer of the corporate formalities. An added benefit is that in many states (Florida, for example), an individual's membership interest (similar to a "share" in a corporation) cannot be seized by a judgment creditor to satisfy a court judgment. This alone may make it highly desirable for professionals in high risk professions, such as a medical doctor practicing within the medical specialty of obstetrics and gynecology.

In Florida, the procedures for organizing limited liability companies and the requirements for them are contained in Chapter 608, Florida Statutes.

G. NOT-FOR-PROFIT CORPORATIONS

A not-for-profit corporation (sometimes called a "nonprofit corporation") is usually reserved for a corporation that is not formed for the purpose of creating a profit for its owners. Being nonprofit isn't the same thing as having tax-exempt status. Usually, nonprofit corporations are still subject to taxation until they file separate applications under federal Internal Revenue Service Regulations to be granted tax-exempt status. There are differences in state law and federal law (or, more specifically, Internal Revenue Service (IRS) Regulations) on what is required of and allowed of a nonprofit corporation. The term "nonprofit" broadly refers to any organization where income and revenues aren't shared on the basis of ownership. There are no shareholders (owners) or official "earnings" (profit or income) to distribute. As a general rule, most businesses that intend to produce an income should not be incorporated as a not-for-profit corporation. A nonprofit corporation does provide a shield against liability for its directors, officers, employees, volunteers, and its members (if any) of the corporation.

Incorporation as a not-for-profit corporation must follow the state's laws, but generally will be similar to the process for incorporating as a regular business corporation. You will be required to file articles of incorporation with the Secretary of State or other state official with authority over corporations. You should also have corporate bylaws which set forth the procedures for governing the corporation and who will have the right to make corporate decisions. Most states have laws that require certain language that should be included in bylaws or articles to protect board members from personal liability.

A person or several persons can decide to form a not-for-profit corporation under Florida law, but can decide to not apply for nonprofit status under IRS Regulations. It may, therefore, have to pay corporate taxes, even though it is classified as a nonprofit corporation by the Florida Secretary of State. This would be a rare and exceptional situation, though, and it is doubtful that any business would desire to do this.

In Florida, the procedures for incorporating not-for-profit corporations and the requirements for them are contained in Chapter 617, Florida Statutes.

Although most not-for-profit corporations are tax-exempt pursuant to IRS Regulations, there are other reasons that a business may want to organize as a not-for-profit corporation. Sometimes, if profit or income are not motives, then ensuring the immunity from liability of the officers, directors or employees may be available. Often religious and charitable organizations would rather do business with a not-for-profit corporation. Sometimes the organizers don't want the assets of the corporation to be subject to later distribution to others. Sometimes, the organizers are motivated by altruistic concerns.

These are some of the other benefits that may be available to a not-for-profit corporation:

1. Immunity from liability of the officers, directors or employees may be available under federal and state laws (see separate Chapter in this Manual on this issue).

2. Property tax exemptions may be available.
3. Special mailing rates may be given by the United States Postal Service.
4. There may be eligibility for government and private foundation grants.
5. The personal individual assets of the officers, directors or members may be protected.
6. You may be able to obtain authority to accept donations to the corporation and to make such donations tax deductible.

The disadvantages of a not-for-profit corporation may include the following:

1. Profits of the corporation may not be distributed.
2. There may be limitations on the amounts that may be paid to employees, officers, and directors, and with whom the corporation can do business.
3. There may be significant requirements on annual reporting and on certain disclosures that may be required by federal laws and regulations such as the Sarbanes-Oxley Act.
4. It may be more difficult to raise capital or make loans.
5. There are generally prohibitions on lobbying, political fund-raising, political campaigning and other similar types of actions.
6. If you obtain tax-exempt status from the IRS, then if the corporation is ever dissolved then its assets may only be transferred to another not-for-profit corporation.
7. If you desire to obtain tax-exempt status from the IRS, then this can be expensive and time-consuming.
8. If your corporation does obtain tax-exempt status from the IRS, then the annual tax return can be expensive and time-consuming to prepare and file.
9. If your corporation does obtain tax-exempt status from the IRS, you may still have to pay taxes on profits from activities that aren't related to your corporation's nonprofit purpose.

H. PROFESSIONAL LIMITED LIABILITY COMPANIES AND OTHER "HYBRID" TYPES OF BUSINESS ENTITIES

There are a number of other types of business entities that are now recognized by Florida law. I refer to these as "hybrid entities" since they usually offer some sort of combination of the characteristics of one of those discussed above. Several of these are specifically established for professionals. One of these is the professional service limited liability company or professional limited liability company (usually abbreviated as "PLLC" or "PLC"). Another is the professional limited liability partnership (usually abbreviated "PLLP" or "PLP").

In Florida, the procedures for forming professional service limited liability companies and the requirements for them are contained in Chapter 621, Florida Statutes. In Florida, the procedures for forming limited partnership or a limited liability partnership the requirements for them are contained in Chapter 620, Florida Statutes.

A discussion of these is beyond the scope of this chapter.

III. PROHIBITION ON THE CORPORATE PRACTICE OF MEDICINE

Some states have statutes, cases (common law) or professional board decisions which have resulted in a prohibition on the corporate practice of medicine. What a prohibition on the corporate practice of medicine means is that a physician (and in some cases all types of licensed health professionals) is prohibited from working for or being employed by any corporation that is not wholly owned by other physicians. The rationale for this prohibition is that it encourages and ensures that the medical decisions a physician makes are motivated by what is medically necessary for the patient and not what will derive the greatest profits for a business corporation. Of course, this is an unrealistic fiction. For example, Texas, Colorado, and Illinois, are states which prohibit the corporate practice of medicine. In those states where there is a corporate practice of medicine prohibition, there are usually many legal ways to circumvent it.

However, Florida is not now and never has been a state which prohibits the corporate practice of medicine. It is legal in Florida for physicians to work for corporations and other business entities that are owned by non-physicians and even other business entities. This is recognized, for example, by Florida's Health Care Clinic Licensure Act which specifically allows for corporations and other businesses to be owned by non-physicians and to employee physicians.

In Florida, there is a prohibition on the corporate practice of dentistry and the corporate practice of optometry, however. There are specific statutes which make the employment of or control of the practice of a dentist or an optometrist by someone who is not one illegal and a violation of criminal law. There is no similar law which prohibits this for medical doctors (MDs), doctors of osteopathic medicine (DOs), nurses, advanced registered nurse practitioners (ARNPs), or physician assistants (PAs).

IV. ELECTION OF TAXATION TYPE

In general, despite the type of business entity you form, you may now elect to choose exactly how the business entity will be taxed. So, for example, you may form a corporation and elect to have it taxed as a sole proprietorship or as a partnership. You may form a limited liability company and elect to have it taxed as a Subchapter C corporation (meaning it will be subject to corporate taxes). Following are the most widely used types of tax elections that are made by small businesses.

In general, this is usually done by filing IRS Form 8832, "Entity Classification Election." It is important to do this in a timely manner. Be sure you keep a dated copy of your IRS form, documenting how it is transmitted. Follow-up and check with the IRS to make sure it has been received. Make sure you consult with a certified public accountant (CPA) or a tax attorney to determine what type of tax election you should make for your business entity.

If you decide to form a corporation as your business entity, then, in most cases, a newly-formed small business will also want to make the election of doing business as a pass-through business entity (like a sole proprietorship or partnership) in order to avoid paying corporate taxes. This must be done within a short period of forming the corporation by using IRS Form 2553. You must be sure this is done and that you receive a letter back from the IRS documenting that this has been granted.

A. TAXATION AS A SOLE PROPRIETORSHIP OR PARTNERSHIP

As explained briefly above, sole proprietorships and partnerships are considered to be "pass-through" entities or "disregarded entities" since the business structure is disregarded. The income or profit is not taxed at the business level. It is passed through to the individual as individual profit or loss. Therefore, it is only taxed once. This is the way most business owners of small businesses want to be taxed.

B. C CORPORATIONS

A Subchapter C corporation, more commonly called a "C corporation" or "C-corp.," gets its name from the Internal Revenue Code, more specifically, 26 U.S.C., Subtitle A, Chapter 1, Subchapter C. A C corporation pays corporate taxes on all corporate income (profit) for the year.

The shareholders of C corporations may experience double taxation, which means that corporate profits are taxed at both the entity and individual levels. Profits of the business are reported and taxed at the corporate level first. If the corporation distributes any portion of the remaining profits to the shareholders in the form of dividends, the shareholders must report the dividend as personal income and pay taxes on it at the individual level, as well. Most shareholders (owners) of small businesses do not want this.

1. The advantages of a C corporation include the following:
2. C corporations can have an unlimited number of shareholders.

3. A C corporation may benefit from a number of tax deductible business expenses for benefits it provides for its employees that other business entities are not allowed to deduct.
4. The individual shareholders cannot be held personally liable for the losses of the corporation.
5. The shareholders can be any other type of business entity or individuals, including non-resident aliens (in most cases).
6. C corporations tend to be audited by the IRS less frequently than sole proprietorships or corporations

C. S CORPORATIONS

A Subchapter S corporation, more commonly called an "S corporation" or "S-corp.," gets its name from the Internal Revenue Code, more specifically, 26 U.S.C., Subtitle A, Chapter 1, Subchapter S. Electing Subchapter S classification allows the Subchapter S corporation to be taxed as a pass-through entity, i.e., not to pay taxes at the corporate level. After the corporation is created it must file IRS Form 2553 requesting S corporation status.

The income of an S corporation is not considered to be self-employment income, so the income that passes through to the shareholder(s)/owner(s) as dividends or distributions is not subject to social security taxes or Medicare taxes and federal income tax (FITW) does not have to be withheld. This is a major reason why many individuals and professionals use S corporations. One drawback for professionals is, however, that you can't pay yourself an unrealistically small salary as an employee of the S corporation, and then to let most of the income pass through to you in the form of dividends or distributions in order to avoid paying social security or Medicare taxes and having FITW. As a professional employee of an S corporation, you will still be required to pay yourself a "reasonable" salary. This generally means a salary equivalent to what other professionals in the same field would be earning under the circumstances. There has been a recent court case won by the IRS that supports this statement.

Generally, Subchapter S status is only allowed for U.S. small businesses which meet certain restrictions that the law imposes. A small business corporation which desires to be taxed as an S corporation is limited in the following ways:

1. It must be a domestic corporation (i.e., incorporated in a U.S. state or territory or by the federal government).
2. It must not be an ineligible corporation.
3. It must have 100 or fewer shareholders.
4. It must not have as a shareholder any person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual (in other words, shareholder may not be C corporations, other S corporations,

limited liability companies (LLCs), partnerships or most trusts).

5. It must not have a nonresident alien as a shareholder.
6. It must not have more than one class of stock.

If the business cannot meet the above requirements, then you may accomplish the same result by forming a limited liability company and electing to have it taxed as a partnership, instead.

The reason small business owners choose the S corporation is usually because of the special tax benefits. S corporations let shareholders avoid the possibility of double taxation that applies to C corporations. The S corporation must still file a corporate income tax return with the IRS each year. However, no tax is paid at the corporate level. Instead, the profits or losses of the corporation are "passed-through" to the shareholders and are then reported on their individual tax returns and paid only at the individual's rate of taxation.

The advantages of having an S corporation include the following:

1. You enjoy many of the tax benefits of a regular business corporation without having to pay corporate taxes.
2. You avoid double taxation on corporate profits.
3. The shareholders will enjoy all of the other benefits of a corporation.
4. The S corporation is usually audited by the IRS a little less frequently than sole proprietorships.

D. TAX-EXEMPT STATUS

Section 501(c)(3) of the Internal Revenue Code gives tax-exempt status to qualified nonprofit organizations. A corporation which qualifies as a nonprofit corporation under the Internal Revenue Code and which is exempt from federal taxation must be a corporation formed for purposes of the public benefit such as for advancing education, science or religious purposes, pursuant to Section 501(c)3, Internal Revenue Code. This is one of the reasons, not-for-profit corporations are usually referred to as "501(c)3s."

Generally, the operations of such organizations must be for a nonprofit purpose and must fall within one of the following categories:

1. Educational
2. Charitable
3. Scientific
4. Religious
5. Testing for public safety
6. Literary

7. Promotion of national or international amateur sports competition
8. Prevention of cruelty to children or animals
9. Civic leagues and social welfare organizations
10. Labor, agricultural and horticultural organizations
11. Business leagues
12. Social and recreational clubs
13. Fraternal organizations
14. Employee associations
15. Credit unions
16. Veterans' organizations
17. High-risk health coverage organizations
18. Workers' compensation reinsurance organizations
19. Organizations for mutual benefit (mutual benefit associations, burial associations, homeowners associations, country clubs, etc.)

In determining whether or not to grant tax-exempt status, the IRS will look at substance over form. It will require a not-for-profit corporation to structure itself and operate in accordance with well-defined guidelines, in part to ensure that the activities of the organization do not benefit any particular individual. This is sometimes referred to as the "prohibition on private inurement."

After receiving 501(c)(3) status, donations to your charitable organization are generally tax deductible for the donor. However, in many states, Florida being one example, the nonprofit corporation must also register with the state and obtain authorization from the state before it can conduct any solicitation of donations.

Regardless of its tax-exempt status, a not-for-profit corporation is not allowed to perform any activities it desires. Activities which produce income that are outside of its tax-exempt purpose(s) may result in taxes being levied on "unrelated business income" (sometimes referred to as "UBIT" or "unrelated business income taxes"). If there are abuses, if the corporation participates in too much profit-related activity, or if the corporation appears to be functioning primarily for the financial gains of individuals, its tax-exempt status can be revoked by the IRS.

E. LIMITED LIABILITY COMPANIES

Limited liability companies can elect to be taxed as any other type of organization. It can elect to be taxed as a C corporation (usually not a smart move), as an S corporation, as a partnership or as a sole proprietorship. As indicated above, this is done by filing IRS Form 8832, "Entity Classification Election." It is important to do this in a timely manner. Be sure you keep a dated copy of your IRS form, documenting how it is transmitted. Follow-up and check with the IRS to make sure it has been received. Make sure you consult with a certified public accountant (CPA) or a tax attorney to determine what type of tax election you should make for your business entity.

However, if the organizers of a limited liability company fail to file IRS Form 8832, all is not lost. The IRS defaults a limited liability company's tax status (for an LLC with two or more members) to that of a partnership, which is the way that most members of LLCs desire to be taxed, anyway.

For additional taxation information see the IRS Publication "Tax Issues for Limited Liability Companies," IRS Pub 3402 (rev. 3/2008).

V. IMPORTANT POINTS FOR A HEALTH PROFESSIONAL TO CONSIDER WHEN DECIDING ON A BUSINESS ENTITY

Following are some important considerations to think about when deciding upon the type of entity to use in organizing your business:

1. In most cases, the nurse who is interested in doing business in a separate business entity will decide to use a regular business corporation (most probably electing taxation as a Subchapter S corporation or partnership) or as a limited liability company ("LLC") (electing taxation as a partnership). These are easy to form and maintain, often-used, and familiar business entities, which banks, financiers and other professionals recognize.
2. Although you may take tax advice from your certified public accountant, as a general rule, take the legal advice on the type of entity you should form from your experienced transaction health care attorney.
3. Do the statutes and laws under which you will operate allow the particular type of entity you chose? Be sure to check all which might apply, including Health Care Clinic Licensing Act, DEA laws and regulations (if ordering or maintaining prescription medications), financial responsibility laws and regulations, and the applicable rules of your professional licensing board.
4. Is the business entity going to own any real estate or other major capital purchases? If so, then you will probably want to organize as a limited liability company (LLC) and elect taxation as a partnership for more favorable tax treatment if you later decide to transfer the asset(s).
5. Are you likely to have an equity owner (shareholder, member or partner), who is not a member of your same profession? If so, then you cannot legally form as a professional service corporation ("P.A.," "P.S.C.," or "P.C."). You can, in Florida, legally form as a regular business corporation or a limited liability company.
6. Which type of business entity provides the best tax results for your situation and goals?
7. Which type of business entity provides the best liability protection for your situation and goals?
8. Which type of business entity is best suited for multi-state operations (if applicable) for your situation and goals?
9. In Florida, health care professionals (except for dentists and optometrists) are allowed to legally work for, be shareholders in or do business with those who are not licensed in that

profession. You can, in Florida, legally form as a regular business corporation or a limited liability company, made up of both health professionals and nonprofessionals, or which is owned by nonprofessionals and employs health professionals.

10. Health professionals in Florida are allowed to do business and deliver health services as a regular business corporation (noted by the abbreviation "Inc." or "Corp.") or limited liability company.
11. Some health care regulations and statutes do not specifically recognize or authorize "hybrid" business entities such as Professional Limited Liability Companies ("PLLCs") or Professional Limited Partnerships ("PLCs").
12. Will there be more than one owner (shareholder, member or partner)? If so, then you should have a detailed shareholders' agreement (in the case of a corporation), operating agreement (in the case of a limited liability company) or partnership agreement (in the case of a partnership).
13. In most cases, you do not want to organize as a partnership, since the acts of one partner are attributable to every partner. One partner can bind the partnership and the other partners.
14. Will any of the shareholders or owners be other business entities, trusts or non-resident aliens? If so, then you cannot obtain Subchapter S status. You probably should elect to do business as a limited liability company and choose partnership tax status.
15. Are you going to be operating in more than one state? If so, you should choose a business entity which is best suited for multi-state operations.
16. Are you going to be seeking a large number of other investors, shareholders or owners? If so, you should choose a business entity which is best suited for this purpose and can provide the most favorable tax treatment.
17. What is the best type of business entity for your patients, clients, and payers (such as insurance companies)?